
TEXAS REGISTER

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Lizeth Rosas 8th 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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Open Meetings

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

Meeting agendas are available on the *Texas Register's* Internet site:
<http://www.sos.state.tx.us/open/index.shtml>

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

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

- minutes of meetings
- agendas for local government bodies and regional agencies that extend into fewer than four counties
- legislative meetings not subject to the open meetings law

The Office of the Attorney General offers information about the open meetings law, including Frequently Asked Questions, the *Open Meetings Act Handbook*, and Open Meetings Opinions.

<http://www.oag.state.tx.us/open/index.shtml>

The Attorney General's Open Government Hotline is 512-478-OPEN (478-6736) or toll-free at (877) OPEN TEX (673-6839).

Additional information about state government may be found here:
<http://www.texas.gov>

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

THE ATTORNEY GENERAL

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

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

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

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

Requests for Opinions

RQ-1191-GA

Requestor:

Mr. Michael Williams
Commissioner of Education
Texas Education Agency
1701 North Congress Avenue
Austin, Texas 78701-1494

Re: The ability of members of a governmental body to participate in a meeting by videoconference call under §551.127 of the Government Code (RQ-1191-GA)

Briefs requested by April 8, 2014

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

TRD-201401323
Katherine Cary
General Counsel
Office of the Attorney General
Filed: March 26, 2014



Opinions

Opinion No. GA-1047

The Honorable Dan Patrick
Chair, Committee on Education
Texas State Senate
Post Office Box 12068
Austin, Texas 78711-2068

Re: Whether Education Code section 11.301 authorizes the citizens of Harris County to use repealed chapter 18 of the Education Code to increase the county equalization tax (RQ-1152-GA)

S U M M A R Y

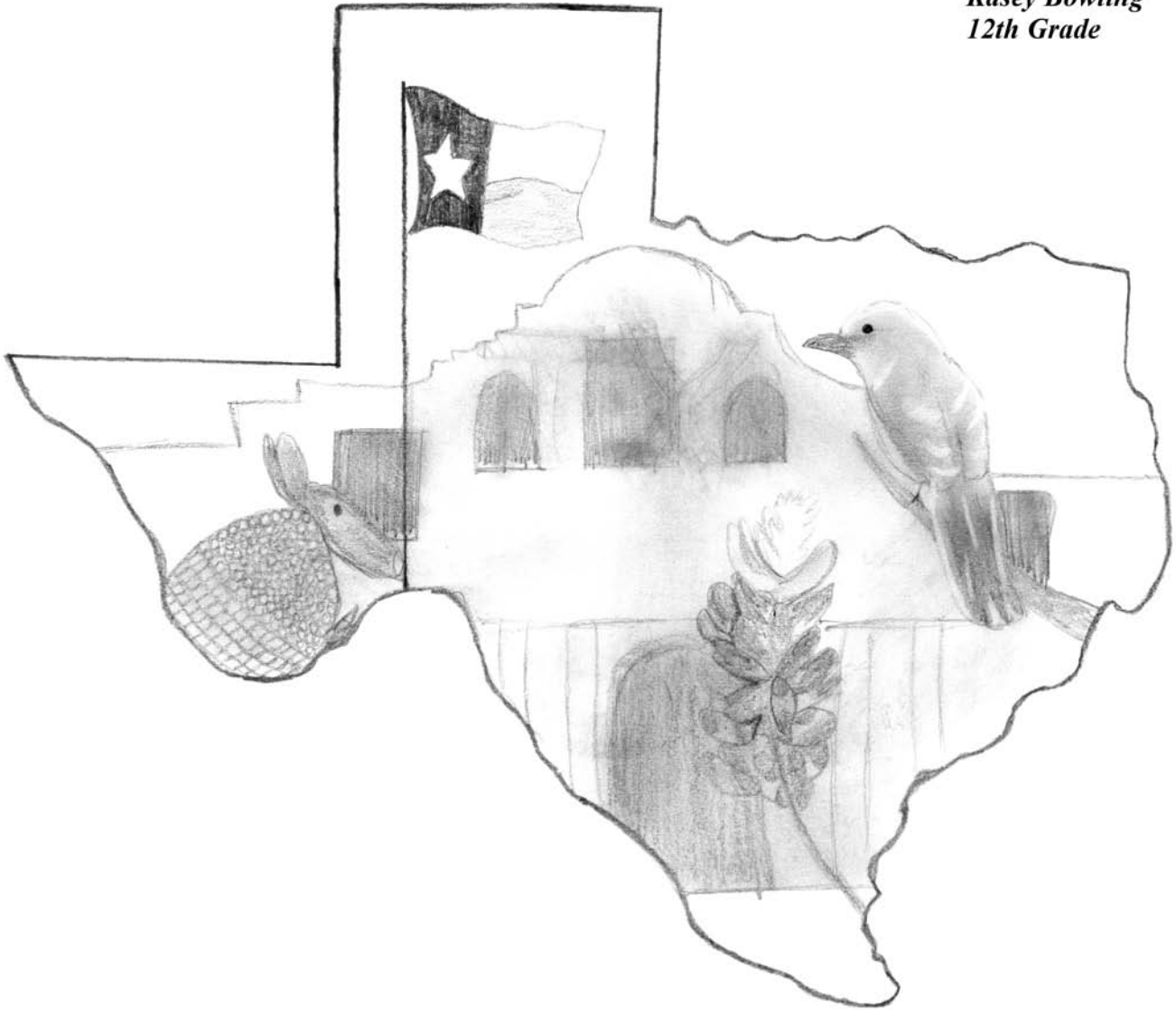
A court would likely conclude that section 11.301 and former chapter 18 of the Education Code do not authorize a countywide school district to hold a petition-initiated election to increase the county equalization tax.

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

TRD-201401301
Katherine Cary
General Counsel
Office of the Attorney General
Filed: March 25, 2014



Kasey Bowling
12th Grade



EMERGENCY RULES

Emergency Rules include new rules, amendments to existing rules, and the repeals of existing rules. A state agency may adopt an emergency rule without prior notice or hearing if the agency finds that an imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on fewer than 30 days' notice. An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days (Government Code, §2001.034).

TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 19. QUARANTINES AND NOXIOUS AND INVASIVE PLANTS

SUBCHAPTER E. DATE PALM LETHAL DECLINE QUARANTINE

4 TAC §19.51

The Texas Department of Agriculture (the department) adopts on an emergency basis amendments to §19.51, concerning the date palm lethal decline quarantine, which establish three new quarantined areas for a dangerous quarantined disease, date palm lethal decline (DPLD). Each of the three new quarantined areas, located in Houston, Harris County, and in Seabrook, Harris County, Texas, contains a newly detected infestation of DPLD. The department believes that establishment of these emergency quarantine areas on a temporary basis is both necessary and appropriate in order to effectively contain, combat, and eradicate these infestations of DPLD, thereby protecting the palm nursery industry, landscapers, homeowners and others who have Canary Island date palms, *Phoenix canariensis*; silver date palms, *Phoenix sylvestris*; queen palms, *Syagrus romanzoffiana*; cabbage palms or sabal palm, *Sabal palmetto*; and date palms, *Phoenix dactylifera* in Texas and other states.

These amendments are temporarily adopted on an emergency basis because samples taken from date palms at one location in Houston, Harris County, and at two separate locations in Seabrook, Harris County, Texas, have been diagnosed by the Texas A&M AgriLife Extension Plant Disease Diagnostic Laboratory, College Station, Texas, to be infected with phytoplasma 16SrIV-D, the causal agent of DPLD.

The emergency amendments to §19.51 establish three new quarantined areas, each with a two-mile radius and a concentric core area with a one-mile radius centered around an infected palm tree. The emergency amendments make quarantined articles in the quarantined areas subject to requirements necessary to prevent the artificial spread of the quarantined pest and provide for its management and eradication, thus protecting the state's important palm tree nursery industry, landscape industry and residential areas. This emergency quarantine will replace the emergency quarantine filed by the department on December 11, 2013, and published in the December 27, 2013, issue of the *Texas Register* (38 TexReg 9423). That emergency filing is withdrawn in this issue of the *Texas Register*.

The amendments to §19.51 are adopted on an emergency basis under the Texas Agriculture Code §71.001, which requires the department to establish quarantine against any dangerous

insect pest or plant disease that exists in any area outside the state but that is new to and not widely distributed in this state; §71.002, which provides the department with the authority to quarantine an area if it determines that a dangerous insect pest or plant disease not widely distributed in this state exists within an area of the state; §71.003, which provides the department with the authority to declare an area pest-free and quarantine surrounding areas if it determines that an insect pest or plant disease of general distribution in this state does not exist in an area; §71.004, which authorizes the department to establish emergency quarantines; §71.005, which requires the department to prevent the movement of quarantined articles from a quarantined area into an unquarantined area, except under adequate safeguards; §71.007, which authorizes the department to adopt rules as necessary to protect agricultural and horticultural interests, including rules to provide for a specific treatment of quarantined articles; §12.020, which authorizes the department to assess administrative penalties for violations of Chapter 71; and the Texas Government Code §2001.034, which provides for the adoption of administrative rules on an emergency basis, without notice and comment.

§19.51. *Quarantined Areas.*

The quarantined areas are as follows:

(1) Cameron, Hidalgo, Nueces, and Willacy counties of Texas.

(2) The area within two miles of palm trees infected with the date palm lethal decline disease located at the following site in Kleberg County of Texas: [-]

[(A)] Latitude 27.52701 N and longitude 97.88132 W.

(3) The area within two miles of the following sites in Harris County, Texas:

[(A)] Latitude 29.5653677 N and longitude 95.01396068 W;

[(B)] Latitude 29.55893576 N and longitude 95.0187833 W; and

[(C)] Latitude 29.75407 N and longitude 95.43647 W.

[(D)] [(B)] Further [Detail] information on the areas described in subparagraphs (A), (B) and (C) [subparagraph (A)] of this paragraph may be obtained from Environmental and Biosecurity Programs, Agriculture and Consumer Protection Division [Regulatory Programs Division], Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711; and

(4) [(3)] The State of Florida.

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

Filed with the Office of the Secretary of State on March 20, 2014.

TRD-201401255

Dolores Alvarado Hibbs

General Counsel

Texas Department of Agriculture

Effective date: March 20, 2014

Expiration date: July 17, 2014

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



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 13. CULTURAL RESOURCES

PART 8. TEXAS FILM COMMISSION

CHAPTER 121. TEXAS MOVING IMAGE INDUSTRY INCENTIVE PROGRAM

13 TAC §121.16

The Texas Film Commission (Commission) proposes new §121.16, concerning the Texas-Based National Network Project.

Proposed new §121.16 defines the criteria by which the Commission may designate a Texas-based television network to receive additional grants under the Texas Moving Image Industry Incentive Program and establishes the financial limits and expiration date of this project. An applicant that submits a Qualifying Application that is approved by the Commission and has not yet submitted its Expended Budget before the effective date of this rule may be eligible to receive an additional grant under this rule.

Heather Page, Director of the Commission, has determined that for the first five-year period that the proposed rule is in effect, the fiscal implication to the state will be the awarding of up to \$3 million in additional grants to qualifying Texas-based television networks. There will be no fiscal implications to local governments as a result of enforcing or administering the proposed rule. There will be no impact on small businesses or micro-businesses.

Ms. Page has also determined that the public benefit anticipated as a result of the proposed rule is to encourage national television networks to base their production in Texas. No economic costs are anticipated to persons who are required to comply with the proposed rule.

Written comments on the proposed rule may be hand delivered to Office of the Governor, General Counsel Division, 1100 San Jacinto, Austin, Texas 78701, mailed to P.O. Box 12428, Austin, Texas 78711-2428, or faxed to (512) 463-1932, and should be addressed to the attention of David Zimmerman, Assistant General Counsel. Comments must be received within 30 days of publication of the proposed rule in the *Texas Register*.

The new rule is proposed pursuant to the Texas Government Code, §485.022, which directs the Commission to develop a procedure for the submission of grant applications and the awarding of grants; and Texas Government Code, Chapter 2001, Subchapter B, which prescribes the standards for rulemaking by state agencies.

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

§121.16. Texas-Based National Network Project.

(a) A Feature Film or Television Program (excluding a Reality Television Project) designated by the Texas Film Commission (Com-

mission) as a Texas-Based National Network Project may receive an additional 5% of total in-state spending.

(b) To be designated by the Commission as a Texas-Based National Network Project and therefore be eligible to receive an additional grant under this section, a project must meet the following requirements:

(1) The project must be produced for broadcast on a Texas-Based Television Network (Network), as defined in subsection (c) of this section;

(2) The project must have total eligible in-state spending of at least \$3.5 million;

(3) The project must integrate identifiable Texas locations into its script and the completed production;

(4) The project must include a Network-produced, Commission-approved, full screen billboard or trailer located immediately following the project content and credits, lasting at least 5 seconds, which acknowledges that the project was produced in the State of Texas for the specified Network. The Commission may waive the requirement set forth in this paragraph for any broadcast of the project that takes place on the Network prior to the effective date of this section;

(5) During each broadcast of the project on the Network, the Network must make at least 30 seconds of advertising time available for Commission-provided Texas promotional advertising (Texas Advertising) at no cost to the Commission. If any broadcast of the project takes place on the Network prior to the effective date of this section, advertising time of equal value must be made available on the Network for Texas Advertising at no cost to the Commission. A proposed advertising schedule must be submitted to the Commission in advance of each broadcast. The advertising time requirement set forth in this paragraph extends for 24 months from the date of first broadcast of the project; and

(6) The first broadcast of the project must be on the Network for which it is initially produced. Notice of the date on which the first broadcast of the project takes place must be submitted to the Commission within 30 days of the date of first broadcast.

(c) For purposes of this section, a "Texas-Based Television Network" or "Network" is defined as a cable television network:

(1) Whose production headquarters is located in the State of Texas;

(2) Whose production headquarters is officially recognized by the Network as being located in the State of Texas;

(3) Whose production headquarters contains pre-production, production, and post-production facilities;

(4) Whose chief executive officer and at least one additional, full-time employee with an average annual gross compensation

(excluding benefits) of at least \$100,000 are employed at its production headquarters and are Texas Residents;

(5) That produces at least one Feature Film or Television Program per calendar year at its production headquarters; and

(6) That has at least 20 million subscribers at the time of the project's first broadcast, as reported in "Cable Household Universe Estimates" by Nielsen Media Research, carriage reports from multi-channel video programming distributors, or other reliable third-party documentation acceptable to the Commission.

(d) Up to \$3,000,000 of Texas Moving Image Industry Incentive Program funds may be used for awarding additional grants under this section.

(e) A project that receives an additional grant under this section is not eligible to receive any additional grant under §121.13 of this chapter.

(f) The purpose of this section is to promote the State of Texas and stimulate tourism in this state.

(g) To be eligible to receive additional grants under this section, an applicant must submit a Qualifying Application to the Commission for initial review under §121.9 of this chapter on or before September 1, 2015.

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

Filed with the Office of the Secretary of State on March 24, 2014.

TRD-201401293

David Zimmerman

Assistant General Counsel

Texas Film Commission

Earliest possible date of adoption: May 4, 2014

For further information, please call: (512) 936-0181



TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 61. SCHOOL DISTRICTS

SUBCHAPTER BB. COMMISSIONER'S RULES ON REPORTING REQUIREMENTS

19 TAC §61.1023

The Texas Education Agency (TEA) proposes new §61.1023, concerning reporting requirements. The proposed new section would establish procedures for each school district to report performance ratings that the district has assigned to itself and to each of its campuses for the new community and student engagement indicators.

House Bill 5, Section 46, 83rd Texas Legislature, Regular Session, 2013, added the Texas Education Code, §39.0545, which requires each school district to assign performance ratings to the district and each campus for community and student engagement indicators. The ratings are to be reported to the TEA.

Proposed new 19 TAC §61.1023 would provide instructions for reporting these ratings and the record of compliance with statutory reporting and policy to the TEA.

The proposed new section would have new reporting implications beyond those already in place. School districts would be required to report their locally assigned performance ratings through the Public Education Information Management System (PEIMS) and the Texas Education Data Standards.

The proposed new section would require a local committee(s) to develop the locally determined criteria that will be used to determine the performance rating and compliance status for the district and each campus. Therefore, each district will need to locally maintain the documents that were developed to determine the performance rating and compliance status for the district and each campus.

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 government as a result of enforcing or administering the new section. However, there would be fiscal implications for local school districts, which would incur some costs to develop indicators, collect information, and report performance ratings for community involvement and student engagement. It is not possible to estimate the fiscal impact on any given district since these costs would vary from school district to school district.

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 provide districts with instructions on how to report the locally assigned performance ratings to the TEA. The TEA would publicize these ratings, making the public aware of each district's rating and compliance status relating to community and student engagement. 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 April 4, 2014, and ends May 5, 2014. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to rules@tea.state.tx.us or faxed to (512) 463-5337. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on April 4, 2014.

The new section is proposed under the Texas Education Code (TEC), §39.0545, as added by House Bill 5, 83rd Texas Legislature, Regular Session, 2013, which authorizes the commissioner to adopt rules regarding school district evaluation of performance in community and student engagement and of compliance with statutory reporting and policy requirements.

The new section implements the TEC, §39.0545, as added by House Bill 5, 83rd Texas Legislature, Regular Session, 2013.

§61.1023. Community and Student Engagement.

(a) In accordance with the Texas Education Code (TEC), §39.0545(a), each school district shall assign performance ratings to the district and each campus for community and student engagement indicators based on locally determined criteria.

(b) Each school district shall designate a local committee(s) to determine criteria, evaluate, and assign a rating of *Exemplary, Recognized, Acceptable, or Unacceptable* for the following programs or specific categories of performance for the district and each campus:

- (1) fine arts;
- (2) wellness and physical education;
- (3) community and parental involvement;
- (4) the 21st Century Workforce Development program;
- (5) the second language acquisition program;
- (6) the digital learning environment;
- (7) dropout prevention strategies; and
- (8) educational programs for gifted and talented students.

(c) A school district may only assign a rating of *Not Applicable* to a program or performance category in subsection (b) of this section when the local committee(s) determines that the program or performance category is not applicable to the district or a campus. A district may not assign a rating of *Not Applicable* to all of the program or performance categories in subsection (b) of this section for the district or a campus.

(d) Each school district shall require the local committee(s) to determine the criteria, evaluate, and assign an overall performance rating of *Exemplary, Recognized, Acceptable, or Unacceptable* to each campus and the district. A district may not assign a rating of *Not Applicable* to this indicator for the district or a campus.

(e) Each school district shall require the local committee(s) to determine the criteria, evaluate, and assign a status of "Yes" or "No" on the record of the district and each campus regarding compliance with statutory reporting and policy requirements under the TEC, §39.0545. A district may not assign a rating of *Not Applicable* to this indicator for the district or a campus.

(f) Each school district shall assign performance ratings for the community and student engagement indicators and compliance status as defined in subsections (b)-(e) of this section to the district and all campuses in the district, except for budgeted campuses, Disciplinary Alternative Education Program campuses, and Juvenile Justice Alternative Education Program campuses.

(g) Each school district shall report the locally determined performance ratings and compliance status to the Texas Education Agency (TEA) in accordance with the reporting requirements and timelines specified in the Public Education Information Management System (PEIMS) Data Standards and the Texas Education Data Standards applicable for that school year.

(h) Each school district shall post the locally determined performance ratings and compliance status for the district and each campus on the school district website no later than August 8 of each year.

(i) The TEA shall report the performance ratings and compliance status for community and student engagement indicators reported by school districts on the TEA website no later than October 1.

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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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: May 4, 2014

For further information, please call: (512) 475-1497



CHAPTER 101. ASSESSMENT
SUBCHAPTER CC. COMMISSIONER'S
RULES CONCERNING IMPLEMENTATION OF
THE ACADEMIC CONTENT AREAS TESTING
PROGRAM
DIVISION 4. PERFORMANCE STANDARDS
19 TAC §101.3041

The Texas Education Agency (TEA) proposes an amendment to §101.3041, concerning student assessment. The section addresses performance standards for the State of Texas Assessments of Academic Readiness (STAAR®). The proposed amendment would establish the performance standards for the new English I and English II combined reading and writing assessments. The proposed amendment would also maintain the phase-in 1 performance standard for the STAAR® program for the 2013-2014 school year.

The 83rd Texas Legislature's passage of House Bill (HB) 5 mandates that, beginning in spring 2014, the STAAR® and STAAR® Modified English I and English II reading and writing assessments may no longer be administered as separate assessments. To reflect the intent of this legislation, the English I and II assessments have been redesigned to combine reading and writing into a single measure with a single test score. Each redesigned English assessment must also be administered on a single day.

Consistent with previous STAAR® standard setting, the following cut scores are proposed for each of the redesigned English assessments:

Level III: Advanced Academic Performance. Performance in this category indicates that students are well prepared for the next grade or course. They demonstrate the ability to think critically and apply the assessed knowledge and skills in varied contexts, both familiar and unfamiliar. Students in this category have a high likelihood of success in the next grade or course with little or no academic intervention.

Level II: Satisfactory Academic Performance. Performance in this category indicates that students are sufficiently prepared for the next grade or course. They generally demonstrate the ability to think critically and apply the assessed knowledge and skills in familiar contexts. Though these students have a reasonable likelihood of success in the next grade or course, they may need short-term, targeted academic intervention.

Students not achieving Level II performance are considered to be at Level I: Unsatisfactory Academic Performance. Performance in this category indicates that students are inadequately prepared for the next grade or course. They do not demonstrate a sufficient understanding of the assessed knowledge and skills. Students in this category are unlikely to succeed in the next grade or course without significant, ongoing academic intervention.

For both the STAAR® and STAAR® Modified English I and English II assessments, phase-in 1, phase-in 2, and final recommended cut scores have been determined for Level II performance. The Level III performance will not be phased in. Phase-in 1, phase-in 2, and final recommended cut scores will be reported in the 2014 statewide test reports.

The proposed amendment to 19 TAC §101.3041 would revise subsection (a) to specify that the phase-in 1 performance standard will remain in effect for the 2013-2014 school year for all applicable assessments.

Performance standards for the Grades 3-8 general, modified, and alternate STAAR® assessments would be addressed in proposed new subsection (b), including corresponding revised figures.

Performance standards for end-of-course (EOC) general, modified, and alternate assessments would be addressed in proposed subsection (c), including corresponding revised figures. The figures in proposed subsection (c)(1) and (2) show the revised English I and English II cut scores for the STAAR® and STAAR® Modified assessments, respectively. The revised figures in subsection (c)(1) and (2) also reflect the repeal of the STAAR® Algebra II, chemistry, English III, geometry, physics, world geography, and world history EOC assessments by HB 5. Proposed subsection (c) would maintain the requirement that the performance standard in place when a student first takes an EOC assessment be maintained throughout the student's high school career and would clarify that this requirement applies to all five EOC assessments.

In addition, pursuant to Senate Bill (SB) 906, 83rd Texas Legislature, Regular Session, 2013, the proposed amendment to 19 TAC §101.3041 would address the performance standards for the STAAR® Alternate assessments. SB 906 prohibits the agency from "adopting a performance standard that indicates that a student's performance on the alternate assessment does not meet standards if the lowest level of the assessment accurately represents the student's developmental level as determined by the student's admission, review, and dismissal committee." To comply with this requirement, the revised figures in proposed subsections (b)(3) and (c)(3) would specify that the phase-in standard used for the STAAR® Alternate program in the 2011-2012 school year be applied to the 2013-2014 school year results. This standard would be in place for one year only since HB 5 also requires the redevelopment of the alternate assessments used for the most severely cognitively disabled students so that they do not require teachers to prepare tasks or materials. The new alternate assessments will be administered for the first time in the spring of the 2014-2015 school year.

The Grade 10 Texas Assessment of Knowledge and Skills performance standards would also be removed from the revised figure in proposed subsection (d) since that assessment is no longer administered.

The proposed amendment would have no procedural and reporting implications beyond those that apply to all Texas students. The proposed amendment would have minimal effect on the paperwork required and maintained by school districts, language proficiency assessment committees, and/or admission, review, and dismissal committees in making and tracking assessment and accommodation decisions for Texas students.

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 would be implementation of STAAR® phase-in performance standards for the new English I and English II assessments. The commissioner of education would also implement the phase-in 1 standard for the 2013-2014 school year. The 2011-2012 performance standards for the alternate assessments would be implemented for the 2013-2014 school year. 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 April 4, 2014, and ends May 5, 2014. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to rules@tea.state.tx.us or faxed to (512) 463-5337. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on April 4, 2014.

The amendment is proposed under the Texas Education Code, §39.023(c), which authorizes the agency to adopt end-of-course assessment instruments for secondary-level courses in Algebra I, biology, English I, English II, and United States history, and §39.0241(a), which authorizes the commissioner to determine the level of performance considered to be satisfactory on the assessment instruments.

The amendment implements the Texas Education Code, §39.023(c) and §39.0241(a).

§101.3041. Performance Standards.

(a) The commissioner of education shall determine the level of performance considered to be satisfactory on the assessment instruments. The figures in this section identify the performance standards established by the commissioner for state-developed assessments, as required by the Texas Education Code, Chapter 39, Subchapter B, for all grades, assessments, and subjects. ~~[The figures in this subsection identify the performance standards established by the commissioner for the Grades 3-8 general, modified, and alternate State of Texas Assessments of Academic Readiness (STAAR®) assessments.]~~

(1) For the 2011-2012 school year, the phase-in 1 standard shall be implemented for the general assessments identified in the figures in subsections (b)(1) and (c)(1) of this section and for the modified assessments identified in the figures in subsections (b)(2) and (c)(2) of this section.

(2) For the 2012-2013 school year, the phase-in 1 standard shall be implemented for the general assessments identified in the figures in subsections (b)(1) and (c)(1) of this section and for the modified assessments identified in the figures in subsections (b)(2) and (c)(2) of this section.

(3) For the 2013-2014 school year, the phase-in 1 standard shall be implemented for the general assessments identified in the figures in subsections (b)(1) and (c)(1) of this section and for the modified

assessments identified in the figures in subsections (b)(2) and (c)(2) of this section.

(b) The figures in this subsection identify the performance standards established by the commissioner for the State of Texas Assessments of Academic Readiness (STAAR®) general, modified, and alternate assessments at Grades 3-8.

(1) The figure in this paragraph identifies the [Grades 3-8] STAAR® general education [assessment] performance standards at Grades 3-8.

Figure: 19 TAC §101.3041(b)(1)

[Figure: 19 TAC §101.3041(a)(1)]

(2) The figure in this paragraph identifies the [Grades 3-8] STAAR® Modified [modified assessment] performance standards at Grades 3-8.

Figure: 19 TAC §101.3041(b)(2)

[Figure: 19 TAC §101.3041(a)(2)]

(3) The figure in this paragraph identifies the [Grades 3-8] STAAR® Alternate [alternate assessment] performance standards at Grades 3-8.

Figure: 19 TAC §101.3041(b)(3)

[Figure: 19 TAC §101.3041(a)(3)]

(c) [(b)] For students first enrolled in Grade 9 or below in the 2011-2012 school year, the figures in this subsection identify the performance standards established by the commissioner for the STAAR® end-of-course (EOC) general, modified, and alternate assessments. The standard in place when a student first takes an EOC assessment [in a particular content area] is the standard that will be maintained on all EOC assessments [in that content area] throughout the student's high school career.

(1) The figure in this paragraph identifies the STAAR® EOC general education [assessment] performance standards.

Figure: 19 TAC §101.3041(c)(1)

[Figure: 19 TAC §101.3041(b)(1)]

(2) The figure in this paragraph identifies the STAAR® Modified EOC [modified assessment] performance standards.

Figure: 19 TAC §101.3041(c)(2)

[Figure: 19 TAC §101.3041(b)(2)]

(3) The figure in this paragraph identifies the STAAR® Alternate EOC [alternate assessment] performance standards.

Figure: 19 TAC §101.3041(c)(3)

[Figure: 19 TAC §101.3041(b)(3)]

(d) [(e)] For students who were first enrolled in Grade 9 prior to the 2011-2012 school year or enrolled in Grade 10 or above in the 2011-2012 school year, the figure in this subsection identifies the performance standards established by the commissioner for the Texas Assessment of Knowledge and Skills [for Grade 10 and] exit level. The exit-level standard in place when a student enters Grade 10 is the standard that will be maintained throughout the student's high school career.

Figure: 19 TAC §101.3041(d)

[Figure: 19 TAC §101.3041(e)]

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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TRD-201401267

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: May 4, 2014

For further information, please call: (512) 475-1497

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TITLE 22. EXAMINING BOARDS

PART 1. TEXAS BOARD OF ARCHITECTURAL EXAMINERS

CHAPTER 1. ARCHITECTS

SUBCHAPTER B. ELIGIBILITY FOR REGISTRATION

22 TAC §1.28

The Texas Board of Architectural Examiners proposes new §1.28, concerning Child Support Arrearage. The rule requires the board to refuse to issue a certificate of registration to an applicant and to refuse to renew the certificate of registration of an architect upon receiving notice from a child support agency that the applicant or architect, respectively, has failed to pay court ordered child support for 6 months. The rule requires the board to continue to refuse registration to the applicant or architect, as applicable, until the board receives notice that the child support has been paid in whole or up to an amount acceptable to the child support agency, an acceptable payment schedule has been established, a temporary exemption has been granted to the obligor, or the obligor has successfully contested the denial of registration or renewal of registration. The rule implements requirements listed in §232.0135, Texas Family Code, which allows child support agencies to order the denial of licensure or renewal of licensure to a child support obligor who has failed to make child support payments.

Scott Gibson, General Counsel, Texas Board of Architectural Examiners, has determined that for the first five-year period the new rule is in effect, the rule will have no significant fiscal impact upon state government and no fiscal impact on local government.

Mr. Gibson also has determined that for the first five-year period the new rule is in effect the public benefit expected as a result of the proposal is to provide public notice that the board is required to deny registration to a child support obligor if the board receives notice from a child support agency that the obligor has failed to make child support payments for 6 months or longer. The proposed rule implements legislative requirements that would apply with or without the rule. The requirements will have an adverse fiscal impact upon those who are denied architectural registration. However, the requirements are imposed by §232.0135, Texas Family Code, and not the rule. Thus, a negative fiscal impact results from the statute, not the rule. To the extent that the requirements cause child support payments, they will have a beneficial fiscal impact upon those who receive them. The new rule will have no negative fiscal impact on small business or micro-business. Therefore no Economic Impact Statement and Regulatory Flexibility Analysis are required.

Comments may be submitted to Scott Gibson, General Counsel, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337.

The new rule is proposed pursuant to §1051.202, Texas Occupations Code, which provides the Texas Board of Architectural Examiners with authority to promulgate rules to implement Chapter 1051, Texas Occupations Code.

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

§1.28. Child Support Arrearage.

Pursuant to Texas Family Code §232.0135, the Board shall not approve an application for registration from an Applicant who has failed to pay court ordered child support. The Board shall refuse to approve such an application upon receipt of notice of the child support arrearage from the child support agency until receipt of notice from the agency that the arrearage has been paid or other conditions specified in Texas Family Code §232.0135 have been met.

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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TRD-201401271

Cathy L. Hendricks, RID, ASID/IIDA

Executive Director

Texas Board of Architectural Examiners

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For further information, please call: (512) 305-9040



SUBCHAPTER J. INTERN DEVELOPMENT TRAINING REQUIREMENT

22 TAC §1.192

The Texas Board of Architectural Examiners proposes an amendment to §1.192, concerning Additional Criteria. The amendment pertains to additional criteria for fulfilling the architectural intern development program. The proposed amendment would set the point of eligibility to participate in the intern development program at the receipt of a high school diploma or equivalent by eliminating most prerequisites for eligibility. The proposed amendment would eliminate the requirement that interns be enrolled in an accredited degree program, an accredited pre-professional degree program at a school that offers an accredited degree, or employed by an architect licensed in Texas or another jurisdiction which has similar licensure requirements. The proposed amendment would also eliminate a requirement that an intern work at least 15 hours per week for a minimum of 8 consecutive weeks in order to earn training hours in an employment setting.

Scott Gibson, General Counsel, Texas Board of Architectural Examiners, has determined that for the first five-year period the amendment is in effect, the amendment will have no significant fiscal impact upon state government and no fiscal impact on local government.

Mr. Gibson has also determined that for the first five-year period the amendment is in effect the public benefit expected as a result of the amendment would be to provide applicants for architectural registration greater flexibility in fulfilling the experience prerequisite for registration. The proposed amendment would reduce the period of time necessary to fulfill the experience prerequisites for registration which would allow a greater number of applicants to become architects which in turn would allow the public a greater variety of options for architectural ser-

vices. The amendment would likely have a positive fiscal impact on applicants who must fulfill the internship requirement. The amendment will have no negative fiscal impact on small or micro-business. Therefore no Economic Impact Statement and Regulatory Flexibility Analysis are required.

Comments may be submitted to Scott Gibson, General Counsel, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337.

The amendment is proposed pursuant to §1051.202 and §1051.705(a)(2), Texas Occupations Code, which provides the Texas Board of Architectural Examiners with authority to promulgate rules to implement Chapter 1051, Texas Occupations Code and the authority to prescribe by rule the architectural experience satisfactory to apply for the Architectural Registration Examination.

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

§1.192. Additional Criteria.

(a) One Training Hour shall equal one hour of acceptable experience. Training Hours may be reported in increments of not less than .25 of an hour.

(b) An Applicant may earn credit for Training Hours [upon enrollment in a NAAB/CACB-accredited degree program; upon enrollment in a pre-professional architecture degree program at a school that offers a NAAB/CACB-accredited degree program; or employment in Experience Setting A described in §1.191 of this subchapter (relating to Description of Experience Required for Registration by Examination)] after obtaining a high school diploma, General Education Degree (GED) equivalent, or other equivalent diploma or degree [a comparable foreign degree].

~~[(e) In order to earn credit for Training Hours in any work setting other than a post-professional degree or teaching or research, an Applicant must work at least fifteen (15) hours per week for a minimum period of eight (8) consecutive weeks.]~~

~~(c) [(d)] Every training activity, the setting in which it took place, and the time devoted to the activity must be verified by the person who supervised the activity.~~

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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Cathy L. Hendricks, RID, ASID/IIDA

Executive Director

Texas Board of Architectural Examiners

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For further information, please call: (512) 305-9040



CHAPTER 3. LANDSCAPE ARCHITECTS SUBCHAPTER B. ELIGIBILITY FOR REGISTRATION

22 TAC §3.28

The Texas Board of Architectural Examiners proposes new §3.28, concerning Child Support Arrearage. The rule requires the board to refuse to issue a certificate of registration to an applicant and to refuse to renew the certificate of registration of

a landscape architect upon receiving notice from a child support agency that the applicant or landscape architect, respectively, has failed to pay court ordered child support. The rule requires the board to continue to refuse registration to the child support obligor until the board receives notice that the payment has been made in whole or in an amount acceptable to the child support agency, an acceptable payment schedule has been established, a temporary exemption from payment has been granted, or the obligor has successfully contested the denial of architectural registration. The rule implements §232.0135, Texas Family Code, which allows child support agencies to order the denial of licensure or renewal of licensure to a child support obligor who has failed to make child support payments. The statute also requires licensing agencies to withhold licensure upon receipt of notice of such an order.

Scott Gibson, General Counsel, Texas Board of Architectural Examiners, has determined that for the first five-year period the new rule is in effect the rule will have no significant fiscal impact upon state government and no fiscal impact on local government.

Mr. Gibson also has determined that for the first five-year period the new rule is in effect the public benefit expected as a result of the proposal is to provide public notice that the board is required to deny registration to a child support obligor if the board receives notice from a child support agency that the obligor has failed to make child support payments for 6 months or longer. The proposed rule implements legislative requirements that would apply with or without the rule. The requirements will have an adverse fiscal impact upon those who are denied landscape architectural registration. However, the requirements are imposed by §232.0135, Texas Family Code, and not the rule. Thus, a negative fiscal impact results from the statute, not the rule. To the extent that the requirements cause child support payments, they will have a beneficial fiscal impact upon those who receive them. The new rule will have no negative fiscal impact on small business or micro-business. Therefore no Economic Impact Statement and Regulatory Flexibility Analysis are required.

Comments may be submitted to Scott Gibson, General Counsel, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337.

The new rule is proposed pursuant to §1051.202, Texas Occupations Code, which provides the Texas Board of Architectural Examiners with authority to promulgate rules to implement Chapter 1051, Texas Occupations Code.

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

§3.28. Child Support Arrearage.

Pursuant to Texas Family Code §232.0135, the Board shall not approve an application for registration from an Applicant who has failed to pay court ordered child support. The Board shall refuse to approve such an application upon receipt of notice of the child support arrearage from the child support agency until receipt of notice from the agency that the arrearage has been paid or other conditions specified in Texas Family Code §232.0135 have been met.

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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Cathy L. Hendricks, RID, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Earliest possible date of adoption: May 4, 2014
For further information, please call: (512) 305-9040



CHAPTER 5. REGISTERED INTERIOR DESIGNERS
SUBCHAPTER B. ELIGIBILITY FOR REGISTRATION

22 TAC §5.38

The Texas Board of Architectural Examiners proposes new §5.38, concerning Child Support Arrearage. The rule requires the board to refuse to issue a certificate of registration to an applicant and to refuse to renew the certificate of registration of a registered interior designer upon receiving notice from a child support agency that the applicant or registered interior designer, respectively, has failed to pay court ordered child support for 6 months or longer. The rule requires the board to continue to refuse registration to the child support obligor until the board receives notice that the payment has been made in whole or in an amount acceptable to the child support agency, an acceptable payment schedule has been established, a temporary exemption from payment has been granted, or the obligor successfully contested the denial of interior design registration. The rule implements §232.0135, Texas Family Code, which allows child support agencies to order the denial of licensure or renewal of licensure to a child support obligor who has failed to make child support payments and requires licensing agencies to withhold licensure upon receipt of notice of such an order.

Scott Gibson, General Counsel, Texas Board of Architectural Examiners, has determined that for the first five-year period the new rule is in effect, the rule will have no significant fiscal impact upon state government and no fiscal impact on local government.

Mr. Gibson also has determined that for the first five-year period the new rule is in effect the public benefit expected as a result of the rule is to provide public notice that the board is required to deny registration to a child support obligor if the board receives notice from a child support agency that the obligor has failed to make child support payments for 6 months or longer. The proposed rule implements legislative requirements that would apply with or without the rule. The requirements will have an adverse fiscal impact upon applicants and registered interior designers who are denied registration renewal. However, the requirements are imposed by §232.0135, Texas Family Code, and not by the rule. Thus, the negative fiscal impact results from the statute, not the rule. To the extent that the requirements cause child support payments, they will have a beneficial fiscal impact upon those who receive them. The new rule will have no negative fiscal impact on small or micro-business. Therefore no Economic Impact Statement and Regulatory Flexibility Analysis are required.

Comments may be submitted to Scott Gibson, General Counsel, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337.

The new rule is proposed pursuant to §1051.202, Texas Occupations Code, which provides the Texas Board of Architectural Examiners with authority to promulgate rules to implement Chapter 1051, Texas Occupations Code.

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

§5.38. Child Support Arrearage.

Pursuant to Texas Family Code §232.0135, the Board shall not approve an application for registration from an Applicant who has failed to pay court ordered child support. The Board shall refuse to approve such an application upon receipt of notice of the child support arrearage from the child support agency until receipt of notice from the agency that the arrearage has been paid or other conditions specified in Texas Family Code §232.0135 have been met.

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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Cathy L. Hendricks, RID, ASID/IIDA
Executive Director

Texas Board of Architectural Examiners

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For further information, please call: (512) 305-9040



TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 289. RADIATION CONTROL SUBCHAPTER C. TEXAS REGULATIONS FOR CONTROL OF RADIATION

The Executive Commissioner of Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes the repeal of §289.101; and new §289.101, concerning the memorandum of understanding between the department and the Texas Commission on Environmental Quality (TCEQ) regarding radiation control functions.

BACKGROUND AND PURPOSE

The repeal and new rule are necessary to comply with Senate Bill (SB) 347, 83rd Legislature, Regular Session, 2013. The purpose of the repeal and new rule is to delineate areas of respective jurisdiction and to coordinate the respective responsibilities and duties of the department and the TCEQ in the regulation of sources of radiation in accordance with Health and Safety Code, §401.011 and §401.069, in order to provide a consistent approach and to avoid duplication of radiation control functions.

In addition, this rule proposal satisfies the four-year review of agency rules in Government Code, §2001.039, which requires that each state agency review every four years its rules and consider for reoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Section 289.101 has been reviewed and the department has determined that the reasons for adopting new §289.101 continue to exist.

SECTION-BY-SECTION SUMMARY

The repeal of the existing rule and the new rule establish respective agency responsibilities regarding general agency jurisdiction, jurisdiction over specific activities and wastes, coordina-

tion of regulatory activities, coordination of enforcement and incident response activities, mutual assistance, and miscellaneous items. New §289.101 updates both agency names, makes minor grammatical and typographical corrections, updates technical terminology, corrects and/or updates rule reference citations; and reorganizes rule text. In addition, the new rule omits the language regarding in situ uranium mining as a result of SB 1604, 80th Legislative Session, 2007, that amended Health and Safety Code, §401.011, and transferred the regulatory authority for licensing and inspection of low-level waste processing and uranium recovery and disposal from the department to the TCEQ.

FISCAL NOTE

John Huss, Section Director, Environmental and Consumer Safety Section, has determined that for each year of the first five years that the repeal and new section are in effect, there will be no fiscal implications to state or local governments as a result of enforcing and administering the repeal and new section as proposed.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Mr. Huss also has determined that there will be no adverse economic impact on small businesses or micro-businesses required to comply with the repeal and new section as proposed. This is determined by interpretation of the rules that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the proposal.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are no anticipated costs to persons who are required to comply with the repeal and new section as proposed. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

In addition, Mr. Huss also has determined that for each year of the first five years the repeal and new section are in effect, the public will benefit from adoption of the proposal. The public benefit anticipated as the result of enforcing or administering the proposal is to ensure continued, enhanced protection of the public, workers, and the environment from unnecessary exposure to radiation by ensuring that the department's and the TCEQ's jurisdictional responsibilities are clear and specific.

REGULATORY ANALYSIS

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

TAKING IMPACT ASSESSMENT

The department has determined that the 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 Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Barbara J. Taylor, Radiation Group, Policy, Standards Quality Assurance Unit, Division of Regulatory Services, Environmental and Consumer Safety Section, Department of State Health Services, Mail Code 1987, P.O. Box 149347, Austin, Texas 78714-9347; (512) 834-6770, extension 2010; or by email to Barbara.J.Taylor@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

PUBLIC HEARING

A public hearing to receive comments on the proposal will be scheduled after publication in the *Texas Register* and will be held at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas 78754. The meeting date will be posted on the Radiation Control website (www.dshs.state.tx.us/radiation). Please contact Barbara J. Taylor at (512) 834-6770, extension 2010; or Barbara.J.Taylor@dshs.state.tx.us if you have questions.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the proposed repeal and new rule have been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

25 TAC §289.101

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

STATUTORY AUTHORITY

The repeal is authorized by SB 347, 83rd Legislature; Health and Safety Code, §401.069, which allows the department and the TCEQ to adopt a memorandum of understanding defining their respective duties; Health and Safety Code, §401.011, which defines generally the jurisdiction of the department and TCEQ; Health and Safety Code, §401.051, which provides the agencies with the authority to adopt rules and guidelines relating to the control of radiation; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. The review of the rule implements Government Code, §2001.039.

The repeal affects Health and Safety Code, Chapters 401 and 1001; and Government Code, Chapter 531.

§289.101. Memorandum of Understanding Between the Texas Department of Health and the Texas Natural Resource Conservation Commission Regarding Radiation Control Functions.

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

Filed with the Office of the Secretary of State on March 21, 2014.

TRD-201401259

Lisa Hernandez
General Counsel
Department of State Health Services
Earliest possible date of adoption: May 4, 2014
For further information, please call: (512) 776-6990



25 TAC §289.101

STATUTORY AUTHORITY

The new rule is authorized by SB 347, 83rd Legislature; Health and Safety Code, §401.069, which allows the department and the TCEQ to adopt a memorandum of understanding defining their respective duties; Health and Safety Code, §401.011, which defines generally the jurisdiction of the department and TCEQ; Health and Safety Code, §401.051, which provides the agencies with the authority to adopt rules and guidelines relating to the control of radiation; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. The review of the rule implements Government Code, §2001.039.

The new rule affects Health and Safety Code, Chapters 401 and 1001; and Government Code, Chapter 531.

§289.101. Memorandum of Understanding Between the Department of State Health Services and the Texas Commission on Environmental Quality Regarding Radiation Control Functions.

(a) Purpose. The purpose of this Memorandum of Understanding (MOU) between the Department of State Health Services (DSHS) and the Texas Commission on Environmental Quality (TCEQ) regarding the regulation of sources of radiation is to acknowledge each agency's respective jurisdiction and duties under Health and Safety Code (HSC), Chapter 401. Pursuant to HSC, §401.414, the separate areas of each agency's jurisdiction are articulated; and the duties and responsibilities of and between the two agencies are clarified. This MOU is adopted between DSHS and TCEQ to ensure that regulation of radiation sources is consistent with HSC, Chapter 401; avoids duplication of effort; and results in a well-coordinated, consistent regulatory scheme.

(b) Definitions. The words and terms used in this section shall have the same meaning as defined in the HSC, §401.003, unless the context clearly indicates otherwise.

(c) Jurisdiction.

(1) DSHS is the Texas Radiation Control Agency. DSHS has jurisdiction over activities and substances regulated under HSC, Chapter 401, except as provided by HSC, §401.011(b) and Subchapters E, F, G, and K of Chapter 401.

(2) TCEQ has jurisdiction to regulate and license:

(A) the disposal of radioactive substances;

(B) the processing or storage of low-level radioactive waste or naturally occurring radioactive material (NORM) waste received from other persons, except oil and gas NORM;

(C) the recovery or processing of source material in accordance with HSC, Chapter 401, Subchapter G;

(D) the processing of by-product material as defined by HSC, §401.003(3)(B); and

(E) sites for the disposal of:

- (i) low-level radioactive waste;
- (ii) by-product material; or
- (iii) NORM waste.

(d) Responsibility over specific activities.

(1) The receipt, storage, or processing of radioactive substances received by a TCEQ licensee for the activity covered by the TCEQ license shall be regulated by TCEQ. All other uses of radioactive material (e.g., well logging, industrial radiography, gauging devices, etc.) at a TCEQ-licensed facility shall be regulated by DSHS.

(2) Radioactive waste produced at DSHS-licensed facilities remains under DSHS jurisdiction until it is transferred to a licensed waste broker, waste processor, or a low-level radioactive waste disposal site.

(3) DSHS has jurisdiction over the possession, processing, and/or use of NORM except for its disposal. TCEQ has jurisdiction over the commercial or third party waste processing and/or disposal of non-oil and gas NORM waste.

(e) Radioactive materials and water quality.

(1) TCEQ has the responsibility for issuance of licenses, permits, and for enforcement of the terms and conditions of licenses, permits, rules, and/or orders that concern the treatment and discharge of radioactive material within the meaning of pollutant as defined in the Water Code, Chapter 26.

(2) TCEQ's jurisdiction regarding discharge of radioactive material is not exclusive as certain wastes are regulated by the Railroad Commission of Texas and DSHS regulates radioactive materials discharged to sanitary sewers. No separate license from TCEQ shall be required to authorize discharge of radioactive wastewaters into a sanitary sewer by DSHS licensees.

(3) TCEQ and DSHS shall notify each other in the event that radioactive materials impact water quality, including safe drinking water standards.

(f) Coordination of regulatory activities. DSHS and TCEQ shall coordinate with each other in the following activities.

(1) DSHS and TCEQ each agree to work together to ensure that complete regulation is maintained for sources, uses, and users of radiation. As appropriate, DSHS and TCEQ each agree to coordinate rulemaking activities between the two agencies and the Texas Radiation Advisory Board (TRAB) to ensure consistency of regulation in accordance with HSC, §401.020. In addition, TCEQ agrees to coordinate with DSHS in the preparation of the annual evaluation and report to the Legislative Budget Board as required under the Government Code, §2110.006 and §2110.007. DSHS and TCEQ each agree to seek and consider advice from TRAB on issues that involve the development, use, or regulation of sources of radiation.

(2) DSHS and TCEQ each agree to coordinate rulemaking activities that pertain to the requirements of the Agreement between the State of Texas and the United States Nuclear Regulatory Commission (NRC), as amended, and to ensure the compatibility of rules and guidelines with federal regulatory programs. Each agency agrees to coordinate on providing information on any proposed legislation relating to the regulation of radioactive substances.

(g) Incident response. Incidents concerning radioactive material will be investigated as follows.

(1) Response to unidentified radioactive material discovered at municipal landfills will be investigated by TCEQ. If the investigation reveals that the waste is not acceptable for the municipal landfill and is determined to be generated by a DSHS licensee, TCEQ will refer the matter to DSHS.

(2) Each agency will investigate incidents and allegations concerning radioactive material within each agency's jurisdiction and make required notifications to the NRC.

(h) Emergency preparedness. Emergency preparedness for response to radiological emergencies shall be as follows.

(1) The State of Texas is required by federal laws and regulations to have trained personnel always available for emergency response training, drills, exercises, and actual emergency response. DSHS is assigned the lead role for the state response to radiological emergencies.

(2) DSHS shall provide training to emergency responders along low-level radioactive waste shipping routes with funds collected from shippers of low-level radioactive waste.

(3) DSHS shall collect an annual fee from the operators of fixed nuclear facilities in the state for expenses arising from emergency response activities, including training.

(4) DSHS and TCEQ will coordinate personnel availability for emergency preparedness and response activities.

(5) DSHS will inform TCEQ in a timely manner of all required exercises, drills, and training. All DSHS and TCEQ technical personnel who work in the radiation program and are assigned to the emergency response team shall attend appropriate emergency response training coordinated by DSHS. TCEQ shall notify DSHS of changes in the employment status of all TCEQ radiation personnel assigned to the emergency response team. In the event of an emergency, the appropriate DSHS and TCEQ radiation staff will be available for emergency response under the direction of DSHS staff and in accordance with Annex D of the State of Texas Emergency Management Plan.

(i) Mutual assistance. Each agency may request from the other agency short-term assistance of personnel or resources when there is need for such assistance, such as for performing close-out surveys, training, incident/emergency response and recovery operations, environmental monitoring, technical reviews, financial security information, and technical support at contested hearings or other project information. Each agency will provide the requested assistance to the extent possible without disrupting its own required activities, in accordance with an approved interagency contract when applicable.

(j) Financial security for decontamination, decommissioning, reclamation, corrective action, and disposal of radioactive material.

(1) When required, TCEQ and DSHS will ensure that financial security is provided for each entity under each agency's jurisdiction.

(2) For entities licensed by both agencies:

(A) each agency will ensure that separate financial security instruments are maintained;

(B) the agencies shall coordinate the allocation of financial security provided to each agency and determine an equitable division of financial assurance to avoid duplication;

(C) each agency will review, evaluate, and collect sufficient financial security instruments required for decontamination, decommissioning, reclamation, and disposal of radioactive material pur-

suant to each agency's rules for each entity under their respective jurisdictions; and

(D) in the event that either agency cannot determine that decontamination, decommissioning, reclamation, or disposal of radioactive material activities fall under the exclusive jurisdiction of either agency, then both agencies will coordinate and share efforts to address the situation in a prompt manner.

(k) Miscellaneous.

(1) DSHS and TCEQ shall revise their respective rules and procedures as needed to implement this MOU.

(2) If any provision of this MOU is held to be invalid, the invalid provision will be severed and the remaining provisions shall not be affected.

(l) Effective date. This MOU will take effect after approval by both agencies and 20 days after the date on which it is filed in the Office of the Secretary of State in accordance with the provisions of Government Code, §2001.036.

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

Filed with the Office of the Secretary of State on March 21, 2014.

TRD-201401260

Lisa Hernandez

General Counsel

Department of State Health Services

Earliest possible date of adoption: May 4, 2014

For further information, please call: (512) 776-6990



SUBCHAPTER D. GENERAL

25 TAC §289.204

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes an amendment to §289.204, concerning fees for certificates of registration, radioactive material licenses, emergency planning and implementation, and other regulatory services.

BACKGROUND AND PURPOSE

The amendment to §289.204 of the department's radiation control rules is necessary to comply with Senate Bill (SB) 347, 83rd Legislature, Regular Session, 2013, a portion of which is codified at Health and Safety Code (HSC), §401.307, which increases both the maximum and the minimum amounts to be held in the state's total perpetual care account (PCA) for radiation.

House Bill 1678, 78th Legislature, Regular Session, 2003, amended HSC, §401.301(d), directing the department to collect an additional 5% fee from radioactive material licensees to be deposited to the department's radiation PCA. The funds in the PCA are to be used to pay for measures to prevent or mitigate adverse effects of abandonment of radioactive materials, default on a lawful obligation, insolvency, or other inability of licensees to meet radiation control requirements. The department commenced collection of these fees effective September 1, 2004. In November 2008, the department suspended collection of this 5% fee when the total amount in the PCA reached \$500,000, the legislative cap previously imposed.

Under SB 347, the cap of the state's PCA was raised from \$500,000 to \$100 million, effective September 1, 2013. More specifically, when the balance of the state's PCA, to which both the department and the Texas Commission on Environmental Quality (TCEQ) now contribute, totals \$100 million, further collection of these fees is to be suspended. The department collects this 5% fee from its radioactive material licensees, excluding licensees that are authorized only for diagnostic nuclear medicine. If and when the balance of the state's PCA falls to \$50 million or less, the 5% fee is to be reinstated.

This rule proposal also satisfies the four-year review of agency rules in Government Code, §2001.039, which requires that each state agency review every four years its rules and consider for re-adoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Section 289.204 has been reviewed in its entirety and the department has determined that the reasons for adopting the section continue to exist; however, revisions to the rule are necessary as outlined in this preamble.

SECTION-BY-SECTION SUMMARY

A change to §289.204(d)(5) clarifies that radioactive material licensees authorized only for diagnostic nuclear medicine are not required to pay this additional 5% fee.

The amendment to §289.204(d)(5)(B) increases the state's PCA cap from \$500,000 to \$100 million and raises the minimum amount to be maintained in the PCA from \$350,000 to \$50 million. If and when the balance of the total PCA exceeds \$100 million, the 5% fee is to be suspended; if and when the balance is reduced to \$50 million or less, the department is to reinstate the additional 5% fee.

FISCAL NOTE

John Huss, Section Director, Environmental and Consumer Safety Section, has determined that for each year of the first five years that the section is in effect, there will be fiscal implications to state or local governments as a result of enforcing and administering the section as proposed. The department will receive an estimated additional \$196,800 in revenue each year of the first five years from the additional 5% fee to radioactive material licensees, excluding licensees authorized only for diagnostic nuclear medicine. Collection of the additional fee will continue until the amount in the state's PCA reaches \$100 million. The fees shall be deposited to the credit of the department's PCA to be administered only for specifically designated uses as prescribed by HSC, §401.052(d) and §401.305. If the balance in the state's PCA is reduced to \$50 million or less, the department is to reinstate the assessment of the fee until the balance reaches \$100 million. The fiscal impact to state or local government entities licensed to possess radioactive materials, excluding licensees authorized only for diagnostic nuclear medicine, will be an additional cost equal to 5% of the respective radioactive material license fee ranging from \$55 to \$3,850 every 2 years, until the \$100 million PCA cap is met.

The department is unable to determine the duration for the collection of the 5% fee due to the collection of multiple funds being deposited to the state's total PCA, imposed by HSC, §§401.301(d), 401.052(d), and 401.207(g), until the \$100 million PCA cap is met. The variables or factors involved in calculating the balance of the state's total PCA include: (1) the differing fees paid by specific licensees which is the basis for the 5% fee (collected and deposited by the department as well as TCEQ); (2) the unknown quantities of low-level radioactive waste that

will be shipped (with associated fees collected and deposited by the department); (3) the total contract rate for nonparty compact waste (funds collected and deposited by TCEQ); and (4) the possible withdrawal of funds for specifically designated uses as prescribed by Health and Safety Code, §401.052(d) and §401.305.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Mr. Huss also has determined that there will be an adverse economic impact on licensees that are small businesses or micro-businesses, excluding licensees authorized only for diagnostic nuclear medicine, required to comply with the section as proposed. These businesses will incur an additional cost equal to 5% of the respective radioactive material license fee, ranging from \$55 to \$3,850 every 2 years, until the \$100 million PCA cap is met.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are anticipated costs to licensees that are persons, excluding licensees authorized only for diagnostic nuclear medicine, who are required to comply with the section as proposed. These persons will incur an additional cost equal to 5% of the respective radioactive material license fee, ranging from \$55 to \$3,850 every 2 years, until the \$100 million PCA cap is met. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

Mr. Huss has determined that for each year of the first five years the section is in effect, the public will benefit from adoption of the section as amended. The public benefit anticipated as the result of administering this section will be continued protection of the public, workers, and the environment from unnecessary exposure to radiation by ensuring funds are available to prevent or mitigate adverse effects of abandonment or radioactive materials or the default on a lawful obligation, insolvency, or other inability of licensees to meet the radiation control requirements.

REGULATORY ANALYSIS

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

TAKING IMPACT ASSESSMENT

The department has determined that the 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 Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Barbara J. Taylor, Radiation Group, Policy, Standards and Quality Assurance Unit, Environmental and Consumer Safety Section, Division for Regulatory Services, Department of State Health Services, Mail Code 1987, P.O. Box 149347, Austin, Texas 78714-9347; (512) 834-6770, extension 2010; or by email to Barbara.J.Taylor@dshs.state.tx.us.

Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

PUBLIC HEARING

A public hearing to receive comments on the proposal will be scheduled after publication in the *Texas Register* and will be held at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas 78754. The meeting date will be posted on the Radiation Control website (www.dshs.state.tx.us/radiation). Please contact Barbara J. Taylor at (512) 834-6770, extension 2010; or Barbara.J.Taylor@dshs.state.tx.us if you have questions.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the proposed rule has been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

STATUTORY AUTHORITY

The amendment is authorized by SB 347, 83rd Legislature (codified at Health and Safety Code, §401.307); Health and Safety Code, §401.301, which allows the department to collect fees for radiation control licenses and registrations that it issues; Health and Safety Code, §401.302, which allows the department to collect fees from each nuclear reactor or other fixed nuclear facility in the state that uses special nuclear material; Health and Safety Code, §401.051, which provides the Executive Commissioner of the Health and Human Services Commission with authority to adopt rules and guidelines relating to the control of radiation; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. The review of the rule implements Government Code, §2001.039.

The amendment affects Health and Safety Code, Chapters 401 and 1001; and Government Code, Chapter 531.

§289.204. Fees for Certificates of Registration, Radioactive Material Licenses, Emergency Planning and Implementation, and Other Regulatory Services.

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

(d) Payment of fees.

(1) - (4) (No change.)

(5) An additional nonrefundable fee equal to 5% [five percent] of the total fee for each specific license shall be paid with the specified fee by each holder of a specific license, excluding licensees that are authorized only for diagnostic nuclear medicine [licensees].

(A) The fees collected by the agency in accordance with this paragraph shall be deposited to the credit of the agency's Radiation and Perpetual Care Account[, until the fees collectively total \$500,000].

(B) The agency shall collect the fees [If the balance of fees collected] in accordance with this paragraph so long as the sum of the balances of the perpetual care accounts specified under Health and Safety Code, §401.307, does not exceed \$100 million; and if the sum of such balances subsequently is [is subsequently] reduced to \$50 million [\$350,000] or less, the agency shall reinstitute assessment of the fee until the sum of such balances [balance] reaches \$100 million [\$500,000].

(6) - (9) (No change.)

(e) - (m) (No change.)

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

Filed with the Office of the Secretary of State on March 21, 2014.

TRD-201401261

Lisa Hernandez

General Counsel

Department of State Health Services

Earliest possible date of adoption: May 4, 2014

For further information, please call: (512) 776-6990



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 15. LICENSING STANDARDS FOR PRESCRIBED PEDIATRIC EXTENDED CARE CENTERS

The Texas Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), new Chapter 15, §§15.1 - 15.5, 15.101 - 15.122, 15.201 - 15.211, 15.301 - 15.311, 15.401 - 15.419, 15.501 - 15.511, 15.601 - 15.608, 15.701 - 15.708, 15.801 - 15.803, 15.901 - 15.906, 15.1001 - 15.1004, 15.1101, 15.1102, 15.1201 - 15.1224, 15.1301 - 15.1305, and 15.1401 - 15.1409, concerning Licensing Standards for Prescribed Pediatric Extended Care Centers.

BACKGROUND AND PURPOSE

The purpose of the proposal is to establish rules to license and regulate prescribed pediatric extended care center services in Texas in response to Senate Bill 492, 83rd Legislature, Regular Session, 2013, which enacted Texas Health and Safety Code (THSC) Chapter 248A. A prescribed pediatric extended care center provides services to medically dependent and technologically dependent individuals who are younger than age 21.

The proposal authorizes a licensed prescribed pediatric extended care center to provide a location where individuals with medically complex conditions may receive daily medical care in a non-residential setting. When prescribed by a physician, the individual can attend a prescribed pediatric extended care center up to a maximum of 12 hours per day to receive medical, nursing, psychosocial, therapeutic, and developmental services appropriate to the individual's medical condition and developmental status.

The proposal establishes licensing procedures and requirements, provides definitions for the program, establishes minimum standards designed to protect the health and safety of individuals served by a center, and establishes procedures for enforcement actions that DADS may take against a center.

The legislation mandates that prescribed pediatric extended care centers be licensed as of January 1, 2015.

SECTION-BY-SECTION SUMMARY

Proposed new §15.1 states the purpose of Chapter 15, which is to implement THSC 248A by adopting minimum standards that a person must meet to be licensed as a center. The new section also establishes that a person may not own or operate a center unless the person holds a license issued by DADS under THSC Chapter 248A and proposed new Chapter 15.

Proposed new §15.2 states that Chapter 15 establishes minimum standards for centers to promote the health, safety and welfare of minors served by a center. The section also explains that the standards are to ensure the provision of medical, nursing, psychosocial, therapeutic, and developmental services to a minor, and to meet the caregiver training needs of a minor's parent. The standards are the basis for inspection activities for licensure. The section also explains that the phrases "at a center" and "at the center" mean the premises of a center and vehicles used for transportation, if transportation is provided by the center.

Proposed new §15.3 establishes the applicability of the chapter, regardless of a center's funding sources. The section also provides that services provided by a center are not intended to supplant a minor's access to Medicaid private duty nursing and must not supplant services afforded to a minor by the Individuals with Disabilities Education Act and Section 504 of the Rehabilitation Act of 1973.

Proposed new §15.4 establishes that compliance with THSC Chapter 248A and the minimum standards in Chapter 15 is required to maintain a prescribed pediatric extended care center license, and that Chapter 15 controls if there is a conflict with a local, county, or municipal ordinance.

Proposed new §15.5 defines certain terms used in Chapter 15. In particular, the term "minor" means an individual who is younger than 21 years of age who is medically dependent or technologically dependent, which is consistent with the terminology used in THSC 248A.

Proposed new §15.101 establishes some of the general eligibility criteria and operating requirements for a center.

Proposed new §15.102 describes the process and requirements to apply for a center license.

Proposed new §15.103 requires a center to obtain building approval from the local fire authority or the state fire marshal for a license, and to notify the local health authority for a license other than a renewal license.

Proposed new §15.104 describes some of the information that must be disclosed by an applicant for a center license and requires an applicant or license holder to provide additional information requested by DADS within 30 days after the request.

Proposed new §15.105 establishes the application procedures for an initial center license, including requirements for pre-licensing program training, a letter of credit, Life Safety Code and health inspections, and building approval. The section describes the criteria DADS considers for granting an initial license. The section describes the content of the license and prohibits the license from being transferred or assigned. The section allows an applicant to request an administrative hearing if its application is denied. The section provides that an initial license expires on the second anniversary after its effective date.

Proposed new §15.106 establishes the procedures to renew a center license, including providing that if a license holder does

not timely submit a renewal application to DADS, DADS denies the renewal application. The section states that the license holder is not eligible to renew the license and must cease operation on the date the license expires. The section describes the criteria DADS considers for issuing a renewal license. In addition, the section describes the process for a center to show compliance before a renewal license is denied. The section also allows a license holder to request an administrative hearing if its application is denied. The section provides that a renewal license expires on the second anniversary after its effective date.

Proposed new §15.107 describes when a change of ownership occurs. The section also states that DADS may propose to take enforcement action against a center's license if any controlling person or any person required to submit background and qualification information fails to meet the criteria for a license.

Proposed new §15.108 establishes procedures for applying for a change of ownership license. The section provides that a license holder's license becomes invalid on the date DADS acknowledges a change of ownership and that the prospective new license holder must obtain a new license. The section also requires submission of a change of ownership application 30 days before the anticipated change of ownership.

Proposed new §15.109 establishes standards for a center to apply for a license with increased licensed capacity, including requirements for a letter of credit, Life Safety Code and health inspections, and building approval. The section describes the criteria DADS considers for granting an increased capacity license. The section allows an applicant to request an administrative hearing if the application is denied.

Proposed new §15.110 establishes the notification requirements if a center wants to decrease its licensed capacity.

Proposed new §15.111 establishes the procedures for a center to relocate its business operations to another location. The section prohibits a license holder from providing services at a new location without approval from DADS and requires the license holder to submit an application for an initial license. The section describes the requirements for obtaining the new license, including a letter of credit, Life Safety Code and health inspections, and building approval. The section describes the criteria DADS considers for granting the relocation license. The section allows an applicant to request an administrative hearing if the application is denied.

Proposed new §15.112 establishes the fees for a license and for a late fee. The section provides that, in general, the license fee is not refundable.

Proposed new §15.113 establishes the fees for DADS review of plans for new buildings, additions, conversion of buildings not previously licensed by DADS, and remodeling of licensed existing buildings.

Proposed new §15.114 establishes the time periods during which DADS processes a license application for an initial license, renewal of a license and a change of ownership. If an application is not processed within the required timeframe, the license holder may request a refund of the fee.

Proposed new §15.115 sets forth the reasons DADS may deny an initial or renewal application. The section allows an applicant to request an administrative hearing if its application is denied.

Proposed new §15.116 requires a center to display the license in a conspicuous location, readily visible to a person entering the center.

Proposed new §15.117 prohibits altering a center's license.

Proposed new §15.118 establishes procedures for reporting a change in a center's application information.

Proposed new §15.119 establishes procedures for notifying DADS of changes in a center's administrative and management staff.

Proposed new §15.120 establishes procedures for notifying DADS of a change in the center's telephone number and mailing address.

Proposed new §15.121 establishes procedures for notifying DADS of a change in a center's operating hours.

Proposed new §15.122 establishes procedures for notifying DADS of a change in a center's name that does not qualify as a change of ownership.

Proposed new §15.201 requires a center to adopt and enforce a written policy identifying the center's operating hours. The section prohibits a center from allowing services to be provided to a minor for more than 12 hours in any 24-hour period and from providing services overnight.

Proposed new §15.202 establishes standards for a center's voluntary suspension of operations for five or more consecutive days and when the center has at least 15 days advance notice of the suspension.

Proposed new §15.203 requires a center to have the financial ability to carry out its functions. The section also requires a center to make business records available to DADS and provides standards for making entries into records and maintaining records.

Proposed new §15.204 requires a center to adopt and enforce written policies ensuring accurate filing of bills and insurance claims and for preventing, detecting, and reporting fraud, waste, and abuse.

Proposed new §15.205 establishes standards to ensure a center implements safety provisions, including policies regarding fire drills, medical emergencies, transporting minors to an emergency medical facility, verifying and monitoring visitors, releasing minors, hand-rub dispensers, and weapons.

Proposed new §15.206 establishes standards for the development of policy regarding acceptable person-centered direction and guidance used at the center. The section allows timeout under certain conditions and prohibits negative discipline techniques. The section requires a center to establish a person-centered direction and guidance committee to review techniques and strategies used at the center.

Proposed new §15.207 establishes standards for the use of restraints in a center. Restraints are only permitted under certain conditions described in the section. The section lists the types of restraints that may be used and circumstances under which restraints are prohibited. The section requires monitoring and notification regarding the use of restraint. The section also sets forth additional requirements for restraint used in a behavioral emergency.

Proposed new §15.208 establishes standards for the use, maintenance, and cleaning of equipment, devices, and supplies that

the center must keep on the premises to meet the needs of minors and for emergency purposes. The section also requires a center to ensure the availability of necessary consumable supplies and resources, including diapers.

Proposed new §15.209 establishes standards for emergency preparedness planning and implementation. A center is required to have an emergency preparedness and response plan that describes its approach to an emergency situation and includes provisions related to each of the eight core functions of emergency management. A center must train staff on the emergency response plan. A center must have a separate fire response emergency plan and must conduct fire prevention inspections on a monthly basis.

Proposed new §15.210 requires a center to ensure a sanitary environment by following accepted standards of practice and maintaining a safe physical environment free of hazards. The section establishes standards for sanitation, housekeeping, and the handling of linen.

Proposed new §15.211 requires a center to establish an infection prevention and control program. The section sets forth other requirements a center must meet to control communicable diseases and to control an identified public health disaster as defined in the rule. The section also establishes requirements related to vaccinations.

Proposed new §15.301 establishes that a center license holder is responsible for the operation of the center and for compliance with all enforcement orders issued by DADS. A center must designate an administrator and alternate administrator.

Proposed new §15.302 requires a center to prepare and maintain a current written description of the center's organizational structure and lines of authority that includes a description of the services provided by the center.

Proposed new §15.303 establishes the qualifications for a center administrator and alternate administrator.

Proposed new §15.304 establishes the responsibilities of a center administrator.

Proposed new §15.305 establishes the initial educational training requirements for an administrator and alternate administrator.

Proposed new §15.306 establishes the continuing educational training requirements for an administrator and alternate administrator.

Proposed new §15.307 establishes the qualifications for the medical director of a center.

Proposed new §15.308 establishes the responsibilities of the medical director of a center.

Proposed new §15.309 establishes the qualifications of the nursing director and alternate nursing director of a center. The section also sets forth the requirements related to staffing ratios for these positions.

Proposed new §15.310 establishes standards for quality of care, service delivery, supervision of nursing staff, and implementation of staffing policies by the nursing director of a center.

Proposed new §15.311 requires a center to adopt and enforce a written policy prohibiting the solicitation in accordance with Texas Occupations Code, Chapter 102.

Proposed new §15.401 requires a center to maintain sufficient registered and licensed vocational nurses on staff to ensure that the services are provided in accordance with the minor's plan of care.

Proposed new §15.402 establishes the minimum qualifications for a registered nurse providing services on behalf of a center.

Proposed new §15.403 establishes the responsibilities of a registered nurse providing services on behalf of a center.

Proposed new §15.404 establishes the qualifications for a licensed vocational nurse providing services on behalf of a center.

Proposed new §15.405 establishes the responsibilities of a licensed vocational nurse providing services on behalf of a center.

Proposed new §15.406 establishes the conditions under which a student nurse may provide care at a center.

Proposed new §15.407 requires a center to adopt and enforce a policy to ensure compliance with the rules of the Texas Board of Nursing at 22 TAC Chapters 221, 213 - 217 and 219 - 226, regarding nurse continuing education, licensure, and practice.

Proposed new §15.408 requires a center to adopt and enforce a policy that complies with rules of the Texas Board of Nursing at 22 TAC Chapter 224 (relating to Delegation of Nursing Tasks by Registered Professional Nurses to Unlicensed Personnel for Clients with Acute Conditions or in Acute Care Environments).

Proposed new §15.409 establishes the qualifications for direct care staff providing services on behalf of a center.

Proposed new §15.410 establishes the nursing services staffing ratios required for a center. Nursing service staff includes registered nurses, licensed vocational nurses, and direct care staff. The staffing ratio is based on the number of minors on the center's actual census that are receiving nursing services from the center. The section also describes the documentation that must be maintained by a center to support compliance with the ratios.

Proposed new §15.411 establishes the qualifications for rehabilitative and ancillary professional staff providing services or supervising services on behalf of a center. In addition to valid licensure, one year of experience in pediatric care within a health care setting is required for many of the disciplines. The section also provides that a center must not include rehabilitative professionals in the staffing ratios.

Proposed new §15.412 requires a center to adopt and enforce a written policy to ensure that all professionals comply with the appropriate professional practice act relating to reporting and peer review.

Proposed new §15.413 sets forth provisions that must be contained in a contract between a center and an independent contractor who provides services at the center. A center is required to maintain a contract management system to ensure the services provided by a contractor are accurately documented and systematically organized. A center is not required to maintain a personnel record for a contractor but must have documentation to show that the contractor meets the qualifications for the duties performed.

Proposed new §15.414 establishes the qualifications for volunteers used by a center. The volunteers must be used in defined roles and supervised by designated center staff. A center must not include volunteers at the center's staffing ratios.

Proposed new §15.415 requires a center to adopt and enforce staffing policies that govern employees, volunteers and contractors. The section sets forth the areas that must be addressed in the staffing policies. The section requires a center to adopt and enforce written policies for parent orientation and training programs and sets forth the topics that must be addressed in the policies.

Proposed new §15.416 establishes the required elements for a center's staff development program. A center must document certain information relating to all staff development and maintain the documentation for two years. Documentation of training that is for individualized services to a specific minor must be maintained as part of the minor's medical record.

Proposed new §15.417 establishes the requirements for a center's personnel records for an employee or volunteer.

Proposed new §15.418 establishes standards for the background checks a center must perform for licensed and unlicensed staff. It also sets forth the actions a center must take in response to the results of the background checks.

Proposed new §15.419 requires a center to have a policy that discloses whether it conducts drug testing of its employee, volunteers, and contractors. A copy of the policy must be provided to anyone who applies for services from the center and anyone who requests a copy of the policy.

Proposed new §15.501 requires a center to ensure basic services are based on the needs of the minor and the minor's family in accordance with the minor's plan of care.

Proposed new §15.502 requires a center to ensure the provision of medical services ordered by a minor's physician. A center's nursing director or designee must communicate with each prescribing physician at least every 180 days or when there is a change in the status of a minor's health or physical condition.

Proposed new §15.503 requires a center to ensure the provision of nursing services as ordered by a minor's prescribing physician. The section establishes the responsibilities of a center's nursing director.

Proposed new §15.504 requires a center to ensure the provision of psychosocial treatment as ordered by a minor's prescribing physician. If psychosocial treatments are provided in a center, the center must adopt and enforce policies and procedures relating to the provision of those services. The section also requires the initial health assessment of a minor to include certain components if psychosocial treatments are provided in a center.

Proposed new §15.505 requires a center to ensure the provision of social services as ordered by a minor's prescribing physician. The section requires the social services to be overseen by a social worker or a registered nurse.

Proposed new §15.506 requires a center to ensure the provision of rehabilitative services as ordered by a minor's prescribing physician.

Proposed new §15.507 requires a center to ensure the provision of functional developmental services as ordered by a minor's prescribing physician. A center must ensure that a minor has a functional assessment incorporated into the comprehensive assessment to include developmentally appropriate areas.

Proposed new §15.508 requires a center adopt and enforce policies and procedures to facilitate a minor's access to educational services and programs in the community. The center must not be

the primary location for the education program unless the education program and the minor's parent and prescribing physician determine that the center is the least restrictive environment for educational services.

Proposed new §15.509 requires a center to develop a training program for each minor's parent and family, as identified in the minor's plan of care. The documentation requirements for parent training and the outcomes of parent training are set forth in the section.

Proposed new §15.510 requires a center to provide nutritional counseling based on a minor's needs and in accordance with the minor's plan of care. Nutritional counseling must be overseen by a qualified individual, which may include a dietitian, a nutritionist, or a registered nurse.

Proposed new §15.511 requires a center to provide a minor with a well-balanced diet or a diet prescribed by the minor's prescribing physician. The center's dietitian is responsible for operation of the dietary service at the center. The dietitian must review a minor's plan of care for any known food allergies or special diets of the individual. The section sets forth requirements regarding menus, eating equipment and utensils, and monitoring food intake of minors. The section also sets forth requirements for dietary service staff.

Proposed new §15.601 establishes criteria for admitting a minor to a center. The minor's prescribing physician must recommend admission and issue an order for care at the center. The minor must also be stable for outpatient medical services and require ongoing nursing care and other basic services. Admission to a center must be voluntary.

Proposed new §15.602 establishes the requirements for a pre-admission conference held with a minor before the minor receives services at the center and no later than three days after the center receives a referral.

Proposed new §15.603 establishes the requirements for an agreement and disclosure form that specifies the care and services provided to a minor. The form documents that the center obtained written informed consent from the parent of a minor who cannot consent or from an adult minor.

Proposed new §15.604 establishes procedures for a center to admit a minor. A center must conduct an interview with an adult minor or the parent of a minor before or at the minor's admission. The center must keep a copy of the minor's medical history and documentation of a physical exam performed within 30 days before or after the date of the minor's admission. A center must have a signed order from the minor's prescribing physician on the day of the minor's admission.

Proposed new §15.605 establishes standards for performing initial and updated comprehensive assessments on a minor. The initial comprehensive assessment must be completed no earlier than three business days before the minor is admitted to the center. A comprehensive assessment must be conducted at least once every 180 days after admitting the minor into the center or when the minor has a change in condition or the minor's needs change.

Proposed new §15.606 requires a center to designate an interdisciplinary team for a minor. The interdisciplinary team must prepare a written plan of care for the minor and must monitor services provided to the minor at the center. The section sets forth the required members of the interdisciplinary team.

Proposed new §15.607 requires a center to develop an individualized plan of care for a minor. The section sets forth the requirements for members of the interdisciplinary team to sign the plan. The section also requires the interdisciplinary team and a registered nurse to periodically update the plan of care. Center staff are responsible for ensuring the provision of services and treatments in accordance with the plan of care.

Proposed new §15.608 requires a center to provide oral and written notification to a minor's parent or an adult minor if the center intends to transfer or discharge the minor. The center must provide the notification no later than 15 days before the date the minor will be transferred or discharged. The section sets forth the circumstances under which a minor may be transferred or discharged without the required notification.

Proposed new §15.701 establishes the information that must be included in a physician order. A center must include physician orders in a minor's medical record.

Proposed new §15.702 requires a center to adopt and enforce a written policy for receiving physician orders, including verbal orders. The section sets forth additional requirements for orders that are facsimile copies or electronically signed.

Proposed new §15.703 requires a center to have a pharmacist or a qualified individual with education and training in drug management to provide consultation to center staff if the center administers or stores medication.

Proposed new §15.704 requires a center to adopt and enforce a written policy regarding the storage and administration of medication. The section sets forth the requirements for storing medication, including over-the-counter medication, Schedule II substances, and medication requiring refrigeration.

Proposed new §15.705 requires a center to adopt and enforce written policies regarding the administration of medication and maintenance of a current medication list and medication administration record for a minor. A registered nurse must periodically review and update a medication list. A center must also adopt and enforce written policies and procedures on medication errors that ensures the nursing director, the prescribing physician, an adult minor, and a minor's parent are notified immediately after the discovery of a medication error.

Proposed new §15.706 requires a center that provides laboratory services to adopt a written policy to ensure the center meets the Clinical Laboratory Improvement Act.

Proposed new §15.707 requires a center to adopt and enforce a written policy for the safe handling and disposal of special and medical waste and materials. The section requires a center to dispose of such waste in accordance with rules of the Department of State Health Services.

Proposed new §15.708 requires a center to adopt and enforce a written policy for the safe and legal disposal and destruction of pharmaceuticals.

Proposed new §15.801 requires a center to adopt and enforce written policies and procedures that describe the care practices of the center. The section describes the topics that must be addressed in the policies and procedures.

Proposed new §15.802 requires a center to adopt and enforce a written policy for the coordination of services among staff providing services on behalf of a center and between the center and health care providers not providing services on behalf of the

center. The section requires the coordination of care to be documented in a minor's medical record.

Proposed new §15.803 requires a center to adopt and enforce written policies and procedures to develop the center's actual, daily, and total censuses. The section describes the information that must be included in each type of census.

Proposed new §15.901 requires a center to adopt and enforce a written policies to ensure a minor's legal rights are observed and protected. The section also requires a center to take action to protect a minor and to notify a minor and a minor's parent of certain processes designed to protect the minor and parent, including the process for filing a complaint with the center.

Proposed new §15.902 requires a center to adopt and enforce a written policy regarding the implementation of advance directives. The section requires the center to notify minors and minors' parents of any procedure the center is unable to provide or withhold in accordance with an advance directive.

Proposed new §15.903 establishes requirements and procedures for preventing and reporting abuse, neglect, or exploitation of a minor. DADS investigates a complaint or allegation if the act occurs at a center, a center employee is responsible for the care of the minor at the time the act occurs, or the alleged perpetrator is associated with the center. Other complaints must be referred to the Department of Family and Protective Services. The section sets forth the reporting requirements an employee who has cause to believe that the health or welfare of a minor has been adversely affected by abuse, neglect, or exploitation must follow.

Proposed new §15.904 describes the investigation by DADS of a complaint. The section also requires a center to adopt and enforce a written policy relating to the center's prompt investigation of complaints, grievances, and reports of abuse, neglect, and exploitation.

Proposed new §15.905 requires a center to report the death of a minor at the center or within 24 hours of transferring from the center to DADS no later than 10 days after the date of the minor's death.

Proposed new §15.906 requires a center to make available a DADS notification of inspection relating to the center. The center must redact from the report any information that is confidential under law.

Proposed new §15.1001 requires a center to establish and maintain a medical records system to ensure services are accurately documented. The section addresses requirements for maintenance of confidentiality, release, and storage of records. The section contains specific requirements regarding the content of a minor's medical record.

Proposed new §15.1002 requires a center to develop, implement, and maintain a written quality assessment and performance improvement (QAPI) program. The center must implement the program using a QAPI committee. The section sets forth the composition and responsibilities of the QAPI committee. The center is required to collect data regarding services and measure the quality, effectiveness, and safety of services provided. The section requires the QAPI committee to meet at least quarterly to analyze data and use the data to improve services. Documents of the committee must be kept confidential, but must be readily available to DADS upon request.

Proposed new §15.1003 requires a center to develop a policy that describes the center's plan for dissolution. The plan must include procedures for notifying minor's and minor's parents about the dissolution and for transferring or discharging minors receiving services.

Proposed new §15.1004 requires a center to develop a policy regarding retention of records by a center, including a center that permanently closes.

Proposed new §15.1101 requires a center to provide transportation services for a minor, as authorized by the minor's prescribing physician. The center must adopt and enforce written policies and procedures describing the staff and equipment that will accompany a minor during transportation. The staff must include a driver and a registered nurse.

Proposed new §15.1102 requires a center to adopt and enforce policies and procedures to ensure the care and safety of minors during transport. The section requires a center to train staff on the needs of a minor being transported. The section requires a center to adopt and enforce a policy regarding emergencies while transporting a minor. The section also contains specific requirements a center must follow if the center conducts field trips.

Proposed new §15.1201 establishes that the requirements in Chapter 15, Subchapter E, regarding building requirements apply to newly constructed centers, alterations, additions, or renovations to an existing center; existing buildings renovated to create a center; and a center's maintenance.

Proposed new §15.1202 establishes that the requirements for the submission of building plan reviews to DADS. The specific documents that must be required for building plan review are described in the section.

Proposed new §15.1203 establishes certain design requirements for a center. An applicant must meet applicable codes and ordinances. An applicant must submit site approval by the fire authority and building authority with appropriate jurisdiction.

Proposed new §15.1204 establishes standards a center must comply with related to fire safety.

Proposed new §15.1205 establishes standards to ensure that center building is physically and programmatically distinct from any other building to which it is attached or of which it is a part. The center must have its own entrance and the center space must be contiguous. If the center has more than one building, the center must provide protection from inclement for travel between the buildings.

Proposed new §15.1206 establishes standards for exterior spaces of a center.

Proposed new §15.1207 establishes standards for interior spaces of a center.

Proposed new §15.1208 establishes standards for the preparation of meals, snacks, and prescribed nourishments at a center. A center must comply with applicable sanitation and safe food handling standards.

Proposed new §15.1209 establishes standards for toileting facilities in a center.

Proposed new §15.1210 establishes standards for storage of a minor's personal possessions at a center. A center must provide locked storage for personal possessions as needed.

Proposed new §15.1211 establishes standards for linen storage.

Proposed new §15.1212 establishes standards for storage and labeling of janitorial supplies, equipment, poisonous and toxic materials.

Proposed new §15.1213 establishes standards for maintaining locked areas in a center.

Proposed new §15.1214 establishes standards for maintenance and storage of medical records and other files, records, and manuals.

Proposed new §15.1215 establishes standards for the storage of garbage.

Proposed new §15.1216 establishes standards for the storage of equipment, devices, and supplies, including a wheelchair, bed, and mattress.

Proposed new §15.1217 establishes standards for clean linen and laundry, and the handling, storage and transport of laundry to prevent the spread of infection.

Proposed new §15.1218 establishes standards for housekeeping to maintain a clean and safe environment free of unpleasant odors.

Proposed new §15.1219 establishes standards for the maintenance of the exterior and interior of a center building, durable medical equipment, and the use of pest control.

Proposed new §15.1220 establishes standards for maintaining a heating, ventilation, and air conditioning system.

Proposed new §15.1221 establishes standards for maintaining an adequate water supply.

Proposed new §15.1222 establishes standards for sewage disposal.

Proposed new §15.1223 requires a center's address and name to be easily visible from the street.

Proposed new §15.1224 allows DADS to grant a waiver for certain provisions of the physical plant and environmental requirements in Chapter 15. A waiver is not transferable in a change of ownership.

Proposed new §15.1301 describes the procedures for DADS inspections and visits.

Proposed new §15.1302 describes the procedures for DADS investigation of complaints and self-reported incidents.

Proposed new §15.1303 provides that a center consents to entry or inspection of the premises by DADS by applying for and holding a license. The section provides that a center must make its books, records and other documents available to DADS upon request. DADS is authorized to photocopy documents, photograph minors, and use other recording devices to preserve the evidence of conditions found during an inspection or investigation. The section prohibits a center representative from making a false statement, willingly interfering with a DADS representative, or refusing to allow a DADS representative to inspect a book, a record, or a file. DADS may assess an administrative penalty and take enforcement action for violation of this section.

Proposed new §15.1304 establishes the requirements of a center's administrative staff during a DADS inspection, including providing entry not later than two hours after the inspector's arrival at the center.

Proposed new §15.1305 includes general provisions related to an inspection exit conference, the submission of acceptable plans of correction, and the informal dispute resolution process.

Proposed new §15.1401 provides that DADS may deny an initial or a renewal license for the reasons set forth in §15.115 Criteria for Denial of a License.

Proposed new §15.1402 sets forth the reasons DADS may suspend a center's license. The section also describes the notice provided and the opportunity for a center to show compliance. A center may request an administrative hearing to challenge a licensure suspension.

Proposed new §15.1403 sets forth the reasons DADS may issue an emergency order to suspend a center's license. The section describes the notice provided and the hearing available to a center if its license is subject to an emergency suspension.

Proposed new §15.1404 sets forth the reasons DADS may revoke a center's license. The section describes the notice provided and the hearing available to a center if its license is revoked.

Proposed new §15.1405 describes the reasons DADS places a center on probation and process for doing so.

Proposed new §15.1406 describes the injunctive relief and civil penalties DADS may pursue against a center.

Proposed new §15.1407 describes the process a center may follow to show compliance with THSC Chapter 248A or Chapter 15 before DADS revokes, suspends, or denies a center license.

Proposed new §15.1408 allows DADS to assessment of administrative penalties against a center and describes the reasons for which DADS would assess such a penalty. The section sets forth the four levels of severity for administrative penalties and provides a chart of the available penalties.

Proposed new §15.1409 allows the assessment of a civil penalty against a person who operates a center without a license.

FISCAL NOTE

James Jenkins, DADS Chief Financial Officer, has determined that, for each year of the first five years the proposed new sections are in effect, there are foreseeable implications relating to costs or revenues of state and local governments.

The effect on state government for each year of the first five years the proposed new sections are in effect is an estimated additional cost of \$641,824 in fiscal year (FY) 2014; \$826,345 in FY 2015; \$1,162,642 in FY 2016; \$1,162,642 in FY 2017; and \$1,162,642 in FY 2018. This represents the cost of salaries, benefits, travel, and technology for the new employees required to implement and regulate this program. Funds were appropriated by the Texas Legislature for Senate Bill 492, 83rd Legislature, Regular Session, 2013. The effect on state government for each year of the first five years the proposed new sections are in effect is an estimated increase in revenue of \$784,139 in fiscal year FY 2014; \$686,225 in FY 2015; \$929,323 in FY 2016; \$928,813 in FY 2017; and \$930,343 in FY 2018.

The effect on local governments for the first five years the proposed new sections are in effect is unknown. There is a potential additional cost if local governments choose to inspect or regulate the centers at the local level.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the economic impact of these rules on small and micro-businesses is unknown because these rules create a provider type that did not previously exist.

DADS has determined that the number of small businesses and micro-businesses that will be subject to the proposed new sections is unknown. The projected economic impact for a small business or micro-business is also unknown.

No alternatives were considered in determining how to accomplish the objectives of the proposed rules while minimizing the adverse economic effect on small businesses or micro-businesses because licensure of prescribed pediatric extended care centers is required by state statute.

PUBLIC BENEFIT AND COSTS

Mary T. Henderson, DADS Assistant Commissioner for Regulatory Services, has determined that, for each year of the first five years the new sections are in effect, the public benefit expected as a result of enforcing the new sections is the availability of prescribed pediatric extended care center services and the protection to health and safety of individuals served in the prescribed pediatric extended care centers through the licensure and regulatory oversight provided by the new chapter.

Ms. Henderson anticipates that there will be an economic cost to persons who choose to operate a prescribed pediatric extended care center and are required to comply with the new sections. The probable economic cost is unknown because the costs will vary significantly depending on a number of factors, including: location, number of persons served, and construction choices. The new sections will not affect a local economy.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Rosalind Nelson-Gamblin at (512) 438-3161 in DADS Regulatory Services. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-13R23, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030, or street address 701 West 51st St., Austin, Texas 78751; faxed to (512) 438-5759; or e-mailed to rulescomments@dads.state.tx.us. To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register*. The last day to submit comments falls on a Sunday; therefore, comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered to DADS before 5:00 p.m. on DADS last working day of the comment period; or (3) faxed or e-mailed by midnight on the last day of the comment period. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 13R23" in the subject line.

SUBCHAPTER A. PURPOSE, SCOPE, LIMITATIONS, COMPLIANCE, AND DEFINITIONS

40 TAC §§15.1 - 15.5

STATUTORY AUTHORITY

The new sections are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code, Chapter 248A, which provides that the HHSC executive commissioner shall adopt rules that are necessary to implement the chapter and to establish minimum standards for prescribed pediatric extended care centers.

The new sections implement Texas Government Code, §531.0055, Texas Human Resources Code, §161.021, and Texas Health and Safety Code, Chapter 248A.

§15.1. Purpose.

(a) The purpose of this chapter is to implement THSC Chapter 248A, which directs the executive commissioner of the Texas Health and Human Services Commission to adopt minimum standards that a person must meet to be licensed as a center.

(b) Except as provided by THSC §248A.002, a person may not own or operate a center unless the person holds a license issued by DADS under THSC Chapter 248A and this chapter.

§15.2. Scope.

(a) This chapter establishes the minimum standards necessary to promote the health, safety, and welfare of a minor served and to ensure that a center ensures the provision of medical, nursing, psychosocial, therapeutic, and developmental services to a minor, and meets the caregiver training needs of a minor's parent. The standards are the basis for inspection activities for licensure.

(b) For purposes of this chapter, "at a center" and "at the center" includes the premises of the center and vehicles used for transportation, if transportation is provided by the center.

§15.3. Limitations.

(a) Requirements established by private or public funding sources such as health maintenance organizations or other private third-party insurance, Medicaid (Title XIX of the Social Security Act), Medicare (Title XVIII of the Social Security Act), or state-sponsored funding programs are separate and apart from the requirements in this chapter for a center. Notwithstanding the funding source requirements that apply, a center must comply with the applicable provisions of THSC Chapter 248A and this chapter. A center is responsible for researching the availability of funding to pay for the services the center provides.

(b) Admission to a center is not intended to supplant a minor's right to a Medicaid private duty nursing benefit when private duty nursing is medically necessary for the minor.

(c) The services of a center must not supplant services afforded to a minor by the Individuals with Disabilities Education Act and Section 504 of the Rehabilitation Act of 1973.

§15.4. Compliance.

(a) A center must maintain satisfactory compliance with THSC Chapter 248A and this chapter to maintain licensure.

(b) To the extent of any conflict between the standards in this chapter and a standard required in a local, county, or municipal ordinance, this chapter controls.

§15.5. Definitions.

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

(1) Active Play--Any physical activity from which a minor derives amusement, entertainment, enjoyment, or satisfaction by taking a participatory rather than a passive role. Active play includes various forms of activities, from the exploration of objects and toys to the structured play of formal games, sports, and hobbies.

(2) Actual census--The number of minors at a center at any given time.

(3) Administration of medication--The direct application of a medication to the body of a minor by any route. This includes removing an individual or unit dose from a previously dispensed, correctly labeled container, verifying it with the medication order, giving the correct medication and the correct dose to the correct minor at the correct time by the correct route, and accurately recording the time and dose given.

(4) Administrator--The person who is responsible for implementing and supervising the administrative policies and operations of a center and for administratively supervising the provision of services to minors and their parents on a day-to-day basis.

(5) Adult minor--A minor who is 18 years of age or older or is emancipated, and has not been adjudged incompetent.

(6) Affiliate--With respect to an applicant or license holder that is:

(A) a corporation means an officer, director, or stockholder with direct ownership or disclosable interest of at least five percent, a subsidiary, or a parent company;

(B) a limited liability company means an officer, member, or parent company;

(C) an individual means:

(i) the individual's spouse;

(ii) each partnership and each partner thereof of which an individual or any affiliate of an individual is a partner; and

(iii) each corporation in which an individual is an officer, director, or stockholder with a direct ownership of at least five percent;

(D) a partnership means a partner or a parent company of the partnership; and

(E) a group of co-owners under any other business arrangement means an officer, director, or the equivalent under the specific business arrangement or a parent company.

(7) Applicant--A person who applies for a license under THSC Chapter 248A and this chapter. The applicant is the person in whose name DADS issues the license.

(8) Audiologist--A person who has a valid license under Texas Occupations Code, Chapter 401, as an audiologist.

(9) Basic services--Include:

(A) the development, implementation, and monitoring of a comprehensive protocol of care that:

(i) is provided to a medically dependent or technologically dependent minor;

(ii) is developed in conjunction with the minor's parent; and

(iii) specifies the medical, nursing, psychosocial, therapeutic, and developmental services required by the minor; and

(B) the caregiver training needs of a medically dependent or technologically dependent minor's parent.

(10) Behavioral emergency--A situation that occurs after which preventative, de-escalation, or oral techniques have been considered or attempted and determined to be ineffective and it is immediately necessary to restrain a minor to prevent an imminent probable death or substantial bodily harm to the minor because the minor is attempting serious bodily harm or imminent physical harm to others.

(11) Business day--Any day except a national or state holiday listed in Texas Government Code §662.003(a) or (b). The term includes Saturday or Sunday if the center is open on that day.

(12) Center--A prescribed pediatric extended care center. A facility operated for profit or on a nonprofit basis that provides non-residential basic services to four or more medically dependent or technologically dependent minors who require the services of the facility and who are not related by blood, marriage, or adoption to the owner or operator of the facility.

(13) Chemical restraint--The use of any chemical, including pharmaceuticals, through topical application, oral administration, injection, or other means for purposes of restraint and which is not a standard treatment for a minor's medical or psychosocial condition.

(14) Chief financial officer--An individual who is responsible for supervising and managing all financial activities for a center.

(15) Clinical note--A notation of a contact with a minor or a minor's family member that is written and dated by any staff providing services on behalf of a center and that describes signs and symptoms of the minor, and treatments and medications administered to the minor, including the minor's reaction or response, and any changes in physical, emotional, psychosocial, or spiritual condition of the minor during a given period of time.

(16) Commission--The Texas Health and Human Services Commission.

(17) Commissioner--The commissioner of the Department of Aging and Disability Services (DADS).

(18) Community disaster resources--A local, statewide, or nationwide emergency system that provides information and resources during a disaster, including weather information, transportation, evacuation and shelter information, disaster assistance and recovery efforts, evacuee and disaster victim resources, and resources for locating evacuated friends and relatives.

(19) Complaint--An allegation against a center or involving services provided at a center that involves a violation of this chapter or THSC Chapter 248A.

(20) Continuous face-to-face observation--Maintaining an in-person line of sight of a minor that is uninterrupted and free from distraction.

(21) Contractor--An individual providing services ordered by a prescribing physician on behalf of a center that the center would otherwise provide by its employees.

(22) Controlling person--A person who has the ability, acting alone or in concert with others, to directly or indirectly influence, direct, or cause the direction of the management of, expenditure of money for, or policies of a center or other person.

(A) A controlling person includes:

(i) a management company, landlord, or other business entity that operates or contracts with another person for the operation of a center;

(ii) any person who is a controlling person of a management company or other business entity that operates a center or that contracts with another person for the operation of a center; and

(iii) any other person who, because of a personal, familial, or other relationship with the owner, manager, landlord, tenant, or provider of a center, is in a position of actual control of or authority with respect to the center, regardless of whether the person is formally named as an owner, manager, director, officer, provider, consultant, contractor, or employee of the center.

(B) Notwithstanding any other provision of this paragraph, a controlling person of a center or of a management company or other business entity described by subparagraph (A)(i) of this paragraph that is a publicly traded corporation or is controlled by a publicly traded corporation means an officer or director of the corporation. The term does not include a shareholder or lender of the publicly traded corporation.

(C) A controlling person described by subparagraph (A)(iii) of this paragraph does not include a person, including an employee, lender, secured creditor, or landlord, who does not exercise any formal or actual influence or control over the operation of the center.

(23) Conviction--An adjudication of guilt based on a finding of guilt, a plea of guilty, or a plea of nolo contendere.

(24) DADS--Department of Aging and Disability Services.

(25) Daily census--The number of minors served at a center during a center's hours of operation for a 24-hour period, starting at midnight.

(26) Day--A calendar day, unless otherwise specified in the text. A calendar day includes Saturday, Sunday, and a holiday.

(27) Dietitian--A person who has a valid license under the Licensed Dietitian Act, Texas Occupations Code, Chapter 701, as a licensed dietitian or provisional licensed dietitian, or who is registered as a dietitian by the Commission on Dietetic Registration of the American Dietetic Association.

(28) Emergency situation--An impending or actual situation that:

(A) interferes with normal activities of a center or minors at a center;

(B) may:

(i) cause injury or death to a minor or individual at the center; or

(ii) cause damage to the center's property;

(C) requires the center to respond immediately to mitigate or avoid injury, death, damage, or interference; and

(D) does not include a situation that arises from the medical condition of a minor such as cardiac arrest, obstructed airway, or cerebrovascular accident.

(29) Executive commissioner--The executive commissioner of the Texas Health and Human Services Commission.

(30) Functional assessment--An evaluation of a minor's abilities, wants, interests, and needs related to self-care, communica-

tion skills, social skills, motor skills, play with toys or objects, growth, and development appropriate for age.

(31) Health care provider--An individual or facility licensed, certified, or otherwise authorized to administer health care in the ordinary course of business or professional practice.

(32) Health care setting--A location at which licensed, certified, or otherwise regulated health care is administered.

(33) IDT--Interdisciplinary team. Individuals who work together to meet the medical, nursing, psychosocial, and developmental needs of a minor and a minor's parent's training needs.

(34) Inactive medical record--A record for a minor who was admitted by a center to receive services and was subsequently discharged by the center.

(35) Inspection--An on-site examination or audit of a center by DADS to determine compliance with THSC Chapter 248A and this chapter.

(36) Isolation--The involuntary confinement of a minor in a room of a center for the purposes of infection control, assessment, and observation away from other minors in a room at the center. When in isolation, a minor is physically prevented from contact with other minors.

(37) Joint training--Training provided by DADS to service providers and DADS inspectors on subjects that address the 10 most commonly cited violations of state law governing centers, as published in DADS annual reports. DADS determines the frequency of joint training.

(38) Licensed assistant in speech-language pathology--A person who has a valid license under Texas Occupations Code, Chapter 401, as a licensed assistant in speech-language pathology and who provides speech language support services under the supervision of a licensed speech-language pathologist.

(39) Licensed vocational nurse--LVN. A person who has a valid license under Texas Occupations Code, Chapter 301, as a licensed vocational nurse.

(40) Life Safety Code--A publication of the National Fire Protection Association (NFPA), also known as NFPA 101, 2000 edition.

(41) Local emergency management agencies--The local emergency management coordinator, fire, police, and emergency medical services.

(42) Local emergency management coordinator--The person identified as the emergency management coordinator by the mayor or county judge for the geographical area in which a center is located.

(43) Medical director--A physician who has the qualifications described in §15.307 of this chapter (relating to Medical Director Qualifications and Conditions) and has the responsibilities described in §15.308 of this chapter (relating to Medical Director Responsibilities).

(44) Medical record--A record composed first-hand for a minor who has or is receiving services at a center.

(45) Medically dependent or technologically dependent--The condition of an individual who, because of an acute, chronic, or intermittent medically complex or fragile condition or disability, requires ongoing, technology-based skilled nursing care prescribed by a physician to avert death or further disability, or the routine use of a medical device to compensate for a deficit in a life-sustaining body function. The term does not include a controlled or occasional medical condition

that does not require continuous nursing care, including asthma or diabetes, or a condition that requires an epinephrine injection.

(46) Medication administration record--A record used to document the administration of a minor's medications and pharmaceuticals.

(47) Medication list--A list that includes all prescriptions, over-the-counter pharmaceuticals, and supplements that a minor is prescribed or taking, including the dosage, preparation, frequency, and the method of administration.

(48) Minor--An individual younger than 21 years of age who is medically dependent or technologically dependent.

(49) Mitigation--An action taken to eliminate or reduce the probability of an emergency or public health emergency, or reduce an emergency's severity or consequences.

(50) Nursing director--The individual responsible for supervising skilled services provided at a center and who has the qualifications described in §15.309 of this chapter (relating to the Nursing Director and Alternate Nursing Director Qualifications and Conditions).

(51) Nutritional counseling--Advising and assisting an adult minor or a minor's parent or family on appropriate nutritional intake by integrating information from a nutrition assessment with information on food and other sources of nutrients and meal preparation consistent with cultural background and socioeconomic status, with the goal being health promotion, disease prevention, and nutrition education. The term includes:

(A) dialogue with an adult minor or a minor's parent to discuss current eating habits, exercise habits, food budget, and problems with food preparation;

(B) discussion of dietary needs to help an adult minor or the minor's parent understand why certain foods should be included or excluded from the minor's diet and to help with adjustment to the new or revised or existing diet plan;

(C) a personalized written diet plan as ordered by the minor's physician, to include instructions for implementation;

(D) providing the adult minor or the minor's parent with motivation to help them understand and appreciate the importance of the diet plan in getting and staying healthy; or

(E) working with the adult minor or the minor's parent by recommending ideas for meal planning, food budget planning, and appropriate food gifts.

(52) Occupational therapist--A person who has a valid license under Texas Occupations Code, Chapter 454, as an occupational therapist.

(53) Occupational therapy assistant--A person who has a valid license under Texas Occupations Code, Chapter 454, as an occupational therapy assistant who assists in the practice of occupational therapy under the general supervision of an occupational therapist.

(54) Operating hours--The days of the week and the hours of day a center is open for services to a minor as identified in a center's written policy as required by §15.201 of this chapter (relating to Operating Hours).

(55) Overnight--The hours between 9:00 p.m. and 5:00 a.m. during the days of the week a center operates.

(56) Over-the-counter pharmaceuticals--A drug or formula for which a physician's prescription is not needed for purchase or administration.

(57) Parent--A person authorized by law to act on behalf of a minor with regard to a matter described in this chapter. The term includes:

- (A) a biological, adoptive, or foster parent;
- (B) a guardian;
- (C) a managing conservator; and
- (D) a non-parent decision-maker as authorized by Texas Family Code §32.001.

(58) Parent company--A person, other than an individual, who has a direct 100 percent ownership interest in the owner of a center.

(59) Person--An individual, firm, partnership, corporation, association, or joint stock association, and the legal successor thereof.

(60) Person with a disclosable interest--A person who owns at least a five percent interest in any corporation, partnership, or other business entity that is required to be licensed under THSC Chapter 248A. A person with a disclosable interest does not include a bank, savings and loan, savings bank, trust company, building and loan association, credit union, individual loan and thrift company, investment banking firm, or insurance company, unless these entities participate in the management of the center.

(61) Personal care services--Services required by a minor, including:

- (A) bathing;
- (B) maintaining personal hygiene;
- (C) routine hair and skin care;
- (D) grooming;
- (E) dressing;
- (F) feeding;
- (G) eating;
- (H) toileting;
- (I) maintaining continence;
- (J) positioning;
- (K) mobility and bed mobility;
- (L) transfer and ambulation;
- (M) range of motion;
- (N) exercise; and
- (O) use of durable medical equipment.

(62) Pharmaceuticals--Of or pertaining to drugs, including over-the-counter drugs and those requiring a physician's prescription for purchase or administration.

(63) Pharmacist--A person who is licensed to practice pharmacy under Texas Occupations Code, Chapter 558.

(64) Pharmacy--A facility at which a prescription drug or medication order is received, processed, or dispensed as defined in Texas Occupations Code §551.003.

(65) Physical restraint--A physical method that a minor cannot remove easily and that restricts freedom of movement of or access to the minor's body.

(66) Physical therapist--A person who has a valid license under Texas Occupations Code, Chapter 453, as a physical therapist.

(67) Physical therapist assistant--A person who has a valid license under Texas Occupations Code, Chapter 453, as a physical therapist assistant and:

- (A) who assists and is supervised by a physical therapist in the practice of physical therapy; and
- (B) whose activities require an understanding of physical therapy.

(68) Physician--A person who:

(A) has a valid license in Texas to practice medicine or osteopathy in accordance with Texas Occupations Code, Chapter 155;

(B) has a valid license in Arkansas, Louisiana, New Mexico, or Oklahoma to practice medicine, who is the treating physician of a minor, and orders services for the minor, in accordance with Texas Occupations Code, Chapter 151; or

(C) is a commissioned or contract physician or surgeon who serves in the United States uniformed services or Public Health Service if the person is not engaged in private practice, in accordance with Texas Occupations Code, Chapter 151.

(69) Place of business--An office of a center where medical records are maintained and from which services are directed.

(70) Plan of care--A protocol of care.

(71) Positive intervention--An intervention that is based on or uses a minor's preferences as positive reinforcement, and focuses on positive outcomes and wellness for the minor.

(72) Pre-licensing program training--Computer-based training, available on DADS website, designed to acquaint center staff with licensure standards.

(73) Preparedness--Actions taken in anticipation of a disaster including a public health disaster.

(74) Prescribing physician--A physician who is authorized to write and issue orders for services at a center.

(75) Progress note--A dated and signed written notation summarizing facts about services provided to a minor and the minor's response during a given period of time.

(76) Protective device--A mechanism or treatment used with the consent of an adult minor or minor's parent to immobilize a minor during medical, dental, diagnostic, or nursing procedures, to permit wounds to heal, or for a medical condition diagnosed by a physician and in accordance with the minor's plan of care and physician's orders.

(77) Protocol of care--A comprehensive, interdisciplinary plan of care that includes the medical physician's plan of care, nursing care plan and protocols, psychosocial needs, and therapeutic and developmental service needs required by a minor and family served.

(78) Psychologist--A person who has a valid license under Texas Occupations Code, Chapter 501, as a psychologist.

(79) Psychosocial treatment--The provision of skilled services to a minor under the direction of a physician that includes one or more of the following:

- (A) assessment of alterations in mental status or evidence of suicide ideation or tendencies;
- (B) teaching coping mechanisms or skills;
- (C) counseling activities; or
- (D) evaluation of a plan of care.

(80) Public health disaster declaration--A governor's announcement based on a determination by the Department of State Health Services that there exists an immediate threat from a communicable disease that:

(A) poses a high risk of death or serious long-term disability to a large number of people; and

(B) creates a substantial risk of public exposure because of the disease's high level of contagion or the method by which the disease is transmitted.

(81) Quiet time--A behavior management technique used to provide a minor with an opportunity to regain self-control, where the minor, on the minor's own initiative, enters and remains for a limited period of time in a designated area that is separated from other minors but from which egress is not prevented.

(82) Recovery--Activities implemented during and after a disaster response, including a public health disaster response, designed to return a center to its normal operations as quickly as possible.

(83) Registered nurse--RN. A person who has a valid license under Texas Occupations Code, Chapter 301, to practice professional nursing.

(84) Relocation--The closing of a center and the movement of its business operations to another location.

(85) Respiratory therapist--A person who has a valid license under Texas Occupations Code, Chapter 604, as a respiratory care practitioner.

(86) Response--Actions taken immediately before an impending disaster or during and after a disaster, including a public health disaster, to address the immediate and short-term effects of the disaster.

(87) Restraint--The use of physical force, chemical restraint, or a mechanical device to significantly restrict the free movement of all or a portion of a minor's body.

(88) RN delegation--Delegation of tasks by an RN in accordance with 22 TAC Chapter 224 (relating to Delegation of Nursing Tasks by Registered Professional Nurses to Unlicensed Personnel for Clients with Acute Conditions or in Acute Care Environments).

(89) Sedation--The act of allaying nervous excitement of a minor by administration of medication that commonly induces the nervous system to calm. This is considered a chemical restraint.

(90) Social worker--A person who has a valid license under Texas Occupations Code, Chapter 505, as a social worker.

(91) Speech-language pathologist--A person who has a valid license under Texas Occupations Code, Chapter 401, as a speech-language pathologist.

(92) Substantial compliance--A finding in which a center receives no recommendation for enforcement action after an inspection.

(93) Supervision--Authoritative procedural guidance by a qualified person that instructs another person and assists in accomplishing a function or activity. Supervision includes initial direction and periodic inspection of the actual act of accomplishing the function or activity.

(94) Support services--Social, spiritual, and emotional care provided to a minor and a minor's parent by a center.

(95) THSC--Texas Health and Safety Code.

(96) Timeout--A behavior management technique used to provide a minor with an opportunity to regain self-control, where the minor is separated from other minors for a limited period in a setting from which egress is not prevented.

(97) Total census--The total number of minors with active plans of care at a center.

(98) Violation--A finding of noncompliance with this chapter or THSC Chapter 248A resulting from an inspection.

(99) Volunteer--An individual who provides assistance to a center without compensation other than reimbursement for actual expenses.

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

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SUBCHAPTER B. LICENSING APPLICATION, MAINTENANCE, AND FEES

40 TAC §§15.101 - 15.122

STATUTORY AUTHORITY

The new sections are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code, Chapter 248A, which provides that the HHSC executive commissioner shall adopt rules that are necessary to implement the chapter and to establish minimum standards for prescribed pediatric extended care centers.

The new sections implement Texas Government Code, §531.0055, Texas Human Resources Code, §161.021, and Texas Health and Safety Code, Chapter 248A.

§15.101. Criteria and Eligibility for a License.

(a) To obtain a license, a person must meet the application requirements in this subchapter and meet the criteria for a license.

(b) A center must be located in Texas. The center must have a Texas mailing address.

(c) A person may not operate a center on the same premises as:

(1) a child-care center licensed in accordance with Texas Human Resource Code, Chapter 42; or

(2) any other facility licensed by DADS or the Department of State Health Services.

(d) A separate license is required for each center located on separate premises, regardless of whether the centers are owned or operated by the same person.

(e) The actual census for a center must not exceed the capacity authorized by DADS, as indicated on the license.

(f) Before issuing a license, DADS considers the background and qualifications of:

- (1) the applicant;
- (2) a controlling person of the applicant;
- (3) a person with a disclosable interest;
- (4) an affiliate of the applicant;
- (5) the administrator;
- (6) the alternate administrator; and
- (7) the chief financial officer, if the center has a chief financial officer.

(g) An applicant must affirmatively show that the center:

(1) obtained approval of building plans through plan review by DADS Architectural Unit as required by Subchapter E of this chapter (relating to Building Requirements);

(2) meets local building ordinances;

(3) is approved by the local fire authority;

(4) meets the standards of the Life Safety Code and the requirements in Subchapter E of this chapter; and

(5) meets the requirements of this chapter based on an on-site health inspection by DADS.

§15.102. General Application Requirements.

(a) An applicant may apply for a license for a center by submitting a sworn application from the DADS Licensing and Credentialing Unit. An application may be obtained from the DADS website.

(b) An applicant must complete the application in accordance with the instructions provided on the application and the DADS website.

(c) An applicant must provide accurate and complete statements on the application and any attachments.

(d) If an applicant decides not to continue the application process for a license after submitting an application and license fee, the applicant must submit a written request to DADS to withdraw the application. DADS does not refund the license fee for an application that is withdrawn, except as provided in §15.114 of this subchapter (relating to Time Periods for Processing All Types of License Applications).

§15.103. Building Approval.

(a) Fire authority. An applicant must receive approval from the local fire authority or, if the jurisdiction does not have a local fire authority, the state fire marshal, for an initial, renewal, change of ownership, relocation, or capacity increase license application. An applicant may submit a license application to DADS before receiving fire authority approval. An applicant must submit to DADS a copy of a signed and dated written approval for occupancy by the local fire authority or state fire marshal that describes the center by name and address.

(b) Local health authority. An applicant for an initial, change of ownership, relocation, or capacity increase license must submit to

DADS a copy of a dated written notification to the local health authority that the applicant is submitting a license application to DADS. DADS sends the local health authority a copy of DADS license renewal notification specifying the expiration date of the center's current license. A local health authority may provide an evaluation to DADS regarding the status of the center's compliance with local codes, ordinances or regulations. The local health authority may also recommend that DADS issue or deny a license to the center, but DADS makes the final decision regarding licensure of the center.

§15.104. Applicant Disclosure Requirements.

(a) A person that submits an initial, renewal, change of ownership, relocation, or increase in capacity license application must:

(1) identify the location of the place of business for which the license is sought;

(2) include documentation, signed by the appropriate local government official, stating that the center's place of business and the use of the center meet local zoning requirements;

(3) provide the name, address, and social security number of, and background and criminal history check information for:

(A) the applicant;

(B) the administrator;

(C) the financial officer; and

(D) each controlling person of the applicant;

(4) provide the federal employer identification number or taxpayer identification number of the applicant and of each controlling person, if an applicant or controlling person is not an individual;

(5) state the assumed name under which the center will be doing business;

(6) state the maximum capacity requested for the center;

and
(7) include a sworn affidavit that the applicant has complied with this chapter.

(b) For an initial license and change of ownership application, an applicant must:

(1) submit to DADS evidence of the right to possess or occupy the center at the time the application is submitted, which may include:

(A) a lease agreement; or

(B) a deed;

(2) disclose to DADS the name and address of the owner of the real property, including the owner of the buildings and grounds appurtenant to the center;

(3) submit to DADS a certificate of account status issued by the Comptroller of Public Accounts; and

(4) submit to DADS a certificate of incorporation issued by the Secretary of State for a corporation or a copy of the partnership agreement for a partnership.

(c) For a renewal application, an applicant must submit to DADS a certificate of account status issued by the Comptroller of Public Accounts.

(d) An applicant or license holder must provide to DADS any additional information requested by DADS no later than 30 days after the date of DADS request.

(e) DADS may require an applicant to disclose information relating to the fiduciary-appointed administrator of the center.

§15.105. Initial License Application Procedures and Issuance.

(a) The following center staff must complete pre-licensing program training before an applicant may submit an initial application for a license:

- (1) the administrator;
- (2) the alternate administrator;
- (3) the nursing director; and
- (4) the alternate nursing director.

(b) An applicant for an initial license must submit:

(1) a complete and correct application including all documents and information that DADS requires as part of the application process;

(2) the correct license fee established in §15.112 of this subchapter (relating to Licensing Fees);

(3) a letter of credit for \$250,000 from a bank that is insured by the Federal Deposit Insurance Corporation, to demonstrate an applicant's financial viability; and

(4) all other documents described in the instructions provided on the application and on the DADS website.

(c) After DADS receives an application for an initial license and the correct license fee, DADS reviews the application and notifies the applicant if additional information is needed to complete the application.

(d) An applicant must submit written notice to DADS that the center is ready for a Life Safety Code inspection.

(1) The written notice must be submitted:

(A) with the application; or

(B) no later than 120 days after DADS Licensing and Credentialing Unit receives the application.

(2) After DADS receives the written notice for a Life Safety Code inspection and an applicant has satisfied the application submission requirements, DADS staff conducts an on-site Life Safety Code inspection.

(e) The center must meet the building requirements described in Subchapter E of this chapter (relating to Building Requirements). If a center fails to meet the building requirements and fails to implement an approved written plan of correction no later than 120 days after the initial Life Safety Code inspection, DADS denies the license application.

(f) If a center meets the building requirements in Subchapter E of this chapter, the center may admit no more than three minors. If the center admits a minor, the applicant must send written notice to DADS indicating the center is ready for a health inspection. The health inspection request must be submitted no later than 120 days after the date the center meets the building requirements.

(1) DADS conducts an on-site health inspection to determine compliance with this chapter.

(2) If the center fails to comply with this chapter and fails to implement an approved written plan of correction no later than 120 days after the date of the initial health inspection, DADS denies the license application.

(g) If an applicant receives a notice from DADS that some or all of the information is missing or incomplete, an applicant must submit the requested information no later than 30 days after the date of the notice. If the applicant fails to timely submit the requested information, DADS denies the application. If DADS denies the application, DADS does not refund the license fee.

(h) DADS issues an initial license if it determines that an applicant has met the provisions of this chapter and THSC Chapter 248A.

(i) The issuance of an initial license constitutes DADS notice to the center of the approval of the application.

(j) DADS issues a center license to the license holder named on the license at the place of business listed on the license. The license is not transferable or assignable.

(k) The license includes:

(1) the license holder's name;

(2) the name of the center;

(3) the center's place of business;

(4) the center's licensed capacity;

(5) a statement that the center provides services to minors for 12 hours or less in a 24-hour period but no overnight care; and

(6) the effective date of the license.

(l) DADS may deny an application for an initial license if the applicant, a controlling person, or a person required to submit background and qualification information fails to meet the criteria for a license established in §15.101 of this subchapter (relating to Criteria and Eligibility for a License) or for any reason specified in §15.115 of this subchapter (relating to Criteria for Denial of a License).

(m) If DADS denies an application for an initial license, DADS sends the applicant written notice of the denial and informs the applicant of the right to request an administrative hearing to appeal the denial. The administrative hearing is held in accordance with 1 TAC Chapter 357, Subchapter I (relating to Hearings Under the Administrative Procedure Act) and Chapter 91 of this title (relating to Hearings Under the Administrative Procedure Act).

(n) An initial license expires on the second anniversary after the effective date of the initial license.

§15.106. Renewal License Application Procedures and Issuance.

(a) A center license expires on the second anniversary of the effective date. To renew a license, a license holder must submit a renewal application to DADS before the expiration date. DADS sends written notice of expiration of a license to the license holder at least 120 days before the expiration date of a license. The written notice includes instructions for completing the renewal application.

(b) A license holder must comply with the requirements in §15.102 of this subchapter (relating to General Application Requirements) and §15.114 of this subchapter (relating to Time Periods for Processing All Types of License Applications) to renew a license.

(c) In accordance with Texas Government Code, §2001.054, DADS considers that a license holder meets the renewal application submission deadline if the license holder submits:

(1) no later than 60 days before the expiration date of the current license:

(A) a complete application for renewal or an incomplete application for renewal with a letter explaining the circumstances that prevented the inclusion of the missing information; and

(B) the correct license fee established in §15.112 of this subchapter (relating to Licensing Fees); or

(2) during the 60-day period ending on the date the current license expires;

(A) a complete application for renewal or an incomplete application with a letter explaining the circumstances that prevented the inclusion of the missing information;

(B) the correct license fee established in §15.112 of this subchapter; and

(C) the late fee established in §15.112 of this subchapter.

(d) DADS reviews a renewal application and notifies the license holder if additional information is needed to complete the application.

(e) It is the license holder's responsibility to ensure that the application is timely received by DADS. Failure to submit a timely and sufficient renewal application with the correct license fee will result in the expiration of the license.

(f) If a license holder submits a renewal application to DADS that is postmarked after the expiration date of the license, DADS denies the renewal application and does not refund the renewal license fee. The license holder is not eligible to renew the license and must cease operation on the date the license expires. A license holder whose license expires must apply for an initial license in accordance with §15.105 of this subchapter (relating to Initial License Application Procedures and Issuance).

(g) DADS issues a renewal license after determining that an applicant and the center have met the provisions of this chapter.

(h) The issuance of a renewal license constitutes DADS notice to the center that the application is approved.

(i) A renewal license issued in accordance with this chapter expires on the second anniversary after the effective date.

(j) DADS may pend action on an application for the renewal of a license for up to six months if the center is not in compliance with this chapter based an on-site inspection.

(k) DADS may deny an application for the renewal of a license if an applicant, controlling person, or any person required to submit background and qualification information fails to meet the criteria for a license established in §15.101 of this subchapter (relating to Criteria and Eligibility for a License) or for any reason specified in §15.115 of this subchapter (relating to Criteria for Denial of a License).

(l) Before denying a license renewal application, DADS gives the license holder:

(1) notice by personal service or by registered or certified mail of the facts or conduct alleged to warrant the proposed action; and

(2) an opportunity to show compliance with all the requirements of THSC Chapter 248A and this chapter to retain the license.

(m) To request an opportunity to show compliance, the license holder must send a written request to DADS. The request must:

(1) be postmarked no later than 10 days after the date of DADS notice of proposed action and received by DADS no later than 10 days after the date of the postmark; and

(2) contain documentation that refutes DADS allegations specifically.

(n) The opportunity to show compliance is limited to a review of documentation submitted by the license holder and information DADS used as the basis for the proposed action. The opportunity to show compliance is not an administrative hearing. DADS gives the license holder a written affirmation or reversal of the proposed action.

(o) If DADS denies an application for a renewal license, DADS sends the license holder a written notice of the denial and informs the license holder of the right to request an administrative hearing to appeal the denial. The administrative hearing is held in accordance with 1 TAC Chapter 357, Subchapter I (relating to Hearings Under the Administrative Procedure Act) and DADS hearing rules found in Chapter 91 of this title (relating to Hearings Under the Administrative Procedure Act).

§15.107. Change of Ownership.

(a) A change of ownership occurs under the following circumstances:

(1) for a license holder who is a sole proprietor:

(A) the sole proprietor sells or otherwise transfers operation of the center to another person; or

(B) the sole proprietor dies and another person operates the center;

(2) for a license holder that is a general partnership as defined in the Texas Business Organizations Code, §1.002:

(A) a partner is added to the general partnership;

(B) the general partnership is sold or otherwise transferred to another person;

(C) the general partnership sells or otherwise transfers operation of the center to another person;

(D) for any reason other than correction of an error, the federal taxpayer identification number of the general partnership changes; or

(E) the general partnership is dissolved and another person operates the center;

(3) for a license holder that is a limited partnership as defined in the Texas Business Organizations Code, §1.002:

(A) a general partner is added to the limited partnership;

(B) the limited partnership is sold or otherwise transferred to another person;

(C) the limited partnership sells or otherwise transfers operation of the center to another person;

(D) for any reason other than correction of an error, the federal taxpayer identification number of the limited partnership changes; or

(E) the limited partnership is dissolved and another person operates the center;

(4) for a license holder that is a nonprofit organization:

(A) the nonprofit organization is sold or otherwise transferred to another person;

(B) the nonprofit organization sells or otherwise transfers operation of the center to another person;

(C) for any reason other than correction of an error, the federal taxpayer identification number of the nonprofit organization changes; or

(D) the nonprofit organization is dissolved and another person operates the center;

(5) for a license holder that is a for-profit corporation or limited liability company:

(A) the corporation or limited liability company is sold or otherwise transferred to another person;

(B) the corporation or limited liability company sells or otherwise transfers operation of the center to another person;

(C) for any reason other than correction of an error, the federal taxpayer identification number of the corporation or limited liability corporation changes; or

(D) the corporation or limited liability company is dissolved and another person operates the center;

(6) for a license holder that is a city, county, state, or federal government authority, hospital district, or hospital authority:

(A) the city, county, state, or federal government authority, hospital district, or hospital authority sells or otherwise transfers operation of the center to another person; or

(B) the city, county, state, or federal government authority, hospital district or hospital authority ceases to exist and another person operates the center;

(7) for a license holder that is a trust, living trust, estate, or any other entity type not included in paragraphs (1) - (6) of this subsection:

(A) the trust, living trust, estate, or other person is sold or otherwise transferred to another person;

(B) the trust, living trust, estate, or any other entity type sells or otherwise transfers operation of the center to another person;

(C) for any reason other than correction or an error, the federal taxpayer identification number of the trust, living trust, estate, or other person changes; or

(D) the trust, living trust, estate, or any other entity type ceases to exist and another person operates the center.

(b) An action described in subsection (a)(1) - (7) of this section that occurs at a level of the ownership structure above the license holder will not be considered a change of ownership but must be reported to DADS. The license holder must submit the background and qualifications of any new controlling persons for DADS consideration. DADS may propose to take enforcement action against a center's license if any controlling person or any person required to submit background and qualification information fails to meet the criteria for a license established in §15.115 of this subchapter (relating to Criteria for Denial of a License) or §15.1402 of this chapter (relating to License Suspension) and §15.1404 of this chapter (relating to License Revocation). At its discretion, DADS conducts a desk review or on-site survey of a center that reports an action described in subsection (a)(1) - (7) of this section that occurs at a level of the ownership structure above the license holder.

(c) The substitution of the administrator, executor, or personal representative of a decedent's estate for a license holder is not the addition of a controlling person for purposes of subsection (a)(1) - (7) of this section however, DADS will not renew a license if the license holder is deceased. An administrator, executor, or personal representative must submit an initial license application for a center license in accordance with §15.101 of this subchapter (relating to Criteria and Eligibility for a License) if the administrator, executor, or personal representative operates the center after the license expiration date.

(d) A conversion, as described in Chapter 10, Subchapter C, of the Texas Business Organizations Code, is not a change of ownership if a controlling person is not added to the license holder.

§15.108. Change of Ownership License Application Procedures and Issuance.

(a) A center license is not assignable or transferable. If a change of ownership occurs, the license holder's license becomes invalid on the date DADS acknowledges the change of ownership. The prospective new license holder must obtain a license in accordance with subsection (c) of this section.

(b) An application for a center license when there is a change of ownership is an application for an initial license.

(c) A prospective new license holder must submit to DADS:

(1) a complete application for a license in accordance with §15.101 of this subchapter (relating to Criteria and Eligibility for a License) or an incomplete application with a letter explaining the circumstances that prevented the inclusion of the missing information;

(2) the application fee, in accordance with §15.112 of this subchapter (relating to Licensing Fees);

(3) a letter of credit for \$250,000, from a bank that is insured by the Federal Deposit Insurance Corporation, to demonstrate an applicant's financial viability; and

(4) signed written notice from a center's existing license holder of intent to transfer operation of the center to an applicant beginning on a date specified by an applicant, unless waived in accordance with subsection (f) of this section.

(d) DADS may deny issuance of a license if an applicant, controlling person, or any person required to submit background and qualification information fails to meet the criteria for a license established in §15.101 of this subchapter or for any reason specified in §15.115 of this subchapter (relating to Criteria for Denial of a License).

(e) To avoid a center operating without a license, a prospective license holder must submit all items in subsection (c) of this section at least 30 days before the anticipated date of the change of ownership in accordance with DADS application instructions.

(f) The 30-day notice required by subsection (e) of this section may be waived by DADS if:

(1) the prospective license holder presents evidence to DADS demonstrating that an eviction of the center or a foreclosure of the property from which the center operates is imminent and that circumstance prevented the timely submission of the notice; or

(2) DADS, in its sole discretion, determines that circumstances are present that threaten a minor's health, safety, or welfare which necessitate waiver of timely submission of the notice.

(g) If an applicant meets the requirements of Subchapter E of this chapter (relating to Building Requirements) and passes a health inspection, DADS issues a license. The effective date of the license is the same date as the effective date of the change of ownership and cannot precede the date the application was received by DADS Licensing and Credentialing Unit.

(h) The initial license issued to the new license holder expires on the second anniversary of the effective date.

(i) The previous license holder's license is void on the effective date of the new license holder's initial license.

§15.109. Increase in Capacity.

(a) A license holder must not increase a center's licensed capacity without approval from DADS.

(b) The license holder must submit an application for an increase in capacity in accordance with §15.102 of this subchapter (relating to General Application Requirements) and the correct fee required in §15.112 of this subchapter (relating to Licensing Fees).

(c) The license holder must arrange for an inspection of the center by the local fire marshal and provide written evidence of the fire marshal's approval to DADS.

(d) An applicant must send written notice to DADS indicating that the center is ready for a Life Safety Code inspection.

(1) The written notice must be submitted:

(A) with the application; or

(B) no later than 120 days after DADS Licensing and Credentialing Unit receives the application.

(2) After DADS receives the written notice for a Life Safety Code inspection and an applicant has satisfied the application submission requirements, DADS staff conducts an on-site Life Safety Code inspection.

(e) If an applicant receives a notice from DADS that some or all of the information is missing or incomplete, an applicant must submit the requested information no later than 30 days after the date of the notice. If an applicant fails to submit the requested information no later than 30 days after the notice date, DADS considers the application incomplete and denies the application. If DADS denies the application, DADS does not refund the license fee.

(f) The center must meet the building requirements described in Subchapter E of this chapter (relating to Building Requirements). If a center fails to meet the building requirements and fails to implement an approved written plan of correction no later than 120 days after the initial Life Safety Code inspection, DADS denies the application for a license.

(g) After a center has met Life Safety Code requirements, DADS conducts an on-site health inspection.

(h) DADS issues a new license with an increased capacity if DADS determines that the center is in compliance with this chapter.

(i) If an applicant decides not to continue the application process after submitting the application and correct license fee, an applicant must submit to DADS a written request to withdraw the application. DADS does not refund the license fee.

(j) Before denying an application for an increase in capacity, DADS gives the license holder:

(1) notice by personal service or by registered or certified mail of the facts or conduct alleged to warrant the proposed action; and

(2) an opportunity to show compliance with all the requirements of the THSC Chapter 248A and this chapter to retain the license.

(k) To request an opportunity to show compliance, the license holder must send a written request to DADS. The request must:

(1) be postmarked no later than 10 days after the date of DADS notice of proposed action and received by DADS no later than 10 days after the date of the postmark; and

(2) contain documentation that refutes DADS allegations superficially.

(l) The opportunity to show compliance is limited to a review of documentation submitted by the license holder and information

DADS used as the basis for the proposed action. The opportunity to show compliance is not an administrative hearing. DADS gives the license holder a written affirmation or reversal of the proposed action.

(m) If DADS denies an application for an increase in capacity, DADS sends the license holder a written notice of the denial and informs the license holder of the right to request an administrative hearing to appeal the denial. The administrative hearing is held in accordance with Texas Health and Human Services Commission rules found at 1 TAC Chapter 357, Subchapter I (relating to Hearings Under the Administrative Procedure Act) and DADS hearing rules found in Chapter 91 of this title (relating to Hearings Under the Administrative Procedure Act).

§15.110. Decrease in Capacity.

(a) A license holder who wishes to decrease the licensed capacity of the center must provide written notification to DADS. The written notification must indicate the new licensed capacity for the center.

(b) After DADS receives the written notification, DADS issues a new license with the new licensed capacity as indicated in the written notification.

§15.111. Relocation.

(a) Relocation is the closing of a center and the movement of its business operations to another location.

(b) A license holder must not relocate a center or provide services to a minor at a new location without prior approval from DADS.

(c) The license holder must continue to maintain the license at the current location and must continue to meet all requirements for operation of the center until DADS has approved the relocation.

(d) Before a relocation, the license holder must submit an application for an initial license for the new location in accordance with §15.105 of this subchapter (relating to Initial License Application Procedures and Issuance) and the correct fee for an initial license required in §15.112 of this subchapter (relating to Licensing Fees).

(e) The license holder must arrange for an inspection of the center by the local fire marshal and provide written evidence of the fire marshal's approval to DADS.

(f) An applicant must send written notice to DADS indicating that the center is ready for a Life Safety Code inspection.

(1) The written notice must be submitted:

(A) with the application; or

(B) no later than 120 days after DADS Licensing and Credentialing Unit receives the application.

(2) After DADS receives the written notice for a Life Safety Code inspection and an applicant has satisfied the application submission requirements, DADS staff conducts an on-site Life Safety Code inspection.

(g) If an applicant receives a notice from DADS that some or all of the information is missing or incomplete, an applicant must submit the requested information no later than 30 days after the date of the notice. If an applicant fails to submit the requested information no later than 30 days after the notice date, DADS considers the application incomplete and denies the application. If DADS denies the application, DADS does not refund the license fee.

(h) The center must meet the building requirements described in Subchapter E of this chapter (relating to Building Requirements). If a center fails to meet the building requirements and fails to implement

an approved written plan of correction no later than 120 days after the initial Life Safety Code inspection, DADS denies the application for a license.

(i) After a center has met Life Safety Code requirements, DADS conducts an on-site health inspection.

(j) Following Life Safety Code approval by DADS, the license holder must notify DADS of the date the business operations will be relocated.

(k) DADS issues a license for the new center if the new center meets the requirements in this chapter. The effective date of the license is the date all business operations are relocated.

(l) The issuance of a license constitutes DADS approval of the relocation.

(m) The license for the current location becomes invalid upon issuance of the new license for the new location.

(n) If an applicant decides not to continue the application process after submitting the application and correct license fee, an applicant must submit to DADS a written request to withdraw the application. DADS does not refund the license fee.

(o) Before denying an application for relocation, DADS gives the license holder:

(1) notice by personal service or by registered or certified mail of the facts or conduct alleged to warrant the proposed action; and

(2) an opportunity to show compliance with all the requirements of THSC Chapter 248A and the Chapter to retain the license.

(p) To request an opportunity to show compliance, the license holder must send a written request to DADS. The request must:

(1) be postmarked no later than 10 days after the date of DADS notice of proposed action and received by DADS no later than 10 days after the date of the postmark; and

(2) contain documentation that refutes DADS allegations specifically.

(q) The opportunity to show compliance is limited to a review of documentation submitted by the license holder and information DADS used as the basis for the proposed action. The opportunity to show compliance is not an administrative hearing. DADS gives the license holder a written affirmation or reversal of the proposed action.

(r) If DADS denies an application for relocation, DADS sends the license holder a written notice of the denial and informs the license holder of the right to request an administrative hearing to appeal the denial. The administrative hearing is held in accordance with Texas Health and Human Services Commission rules found in 1 TAC Chapter 357, Subchapter I (relating to Hearings Under the Administrative Procedure Act) and DADS hearing rules found in Chapter 91 of this title (relating to Hearings Under the Administrative Procedure Act).

§15.112. Licensing Fees.

(a) The schedule of fees for licensure of a center is as follows:

(1) initial license fee (includes changes of ownership and relocation)--\$1750;

(2) renewal license fee--\$1750; and

(3) increase in capacity--\$875.

(b) DADS does not waive the license fee for a change of ownership application despite a demonstration of the circumstances referenced in §15.108(f) of this subchapter (relating to Change of Ownership License Application Procedures and Issuance). DADS may waive

the timely submission of an application for a change of ownership in accordance with §15.108(f) of this subchapter.

(c) The late fee established in §15.106 of this subchapter (relating to Renewal License Application Procedures and Issuance) is \$50 per day to a license holder who submits a renewal application after the date as described at §15.106 of this subchapter, except that the total amount of a late fee may not exceed \$500.00.

(d) DADS does not consider an application as submitted until an applicant pays the correct license fee as required in this section. The fee must accompany the application.

(e) A fee paid to DADS is not refundable, except as provided by §15.114 of this chapter (relating to Time Periods for Processing All Types of License Applications).

(f) DADS accepts payment according to methods described in the application instructions provided on the DADS website.

§15.113. Plan Review Fees.

(a) A center must pay a fee to DADS for its review of plans for new buildings, additions, conversion of buildings not licensed by DADS, or remodeling of existing licensed facilities as described on the DADS website.

(b) The fee schedule follows:

(1) facilities--new construction:

(A) single-story facilities--\$2,000; and

(B) multiple-story facilities--\$2,500; and

(2) additions or remodeling of existing licensed facilities--2 percent of construction cost with a \$500 minimum fee and a maximum not to exceed \$2,000.

§15.114. Time Periods for Processing All Types of License Applications.

(a) The date of an application is the date the DADS Licensing and Credentialing Unit receives the application and the correct license fee as required in §15.112 of this subchapter (relating to Licensing Fees).

(b) DADS considers an application for an initial license complete when DADS accepts the information described in §15.105 of this subchapter (relating to Initial License Application Procedures and Issuance).

(c) DADS considers an application for a renewal license complete when DADS accepts the information described in §15.106 of this subchapter (relating to Renewal License Application Procedures and Issuance). A center may continue to operate during the renewal application process in accordance with §15.106 of this subchapter.

(d) DADS considers an application for a change of ownership license complete when DADS accepts the information described in §15.108 of this subchapter (relating to Change of Ownership License Application Procedures and Issuance).

(e) DADS reviews an application for a license no later than 45 days after the date DADS Licensing and Credentialing Unit receives the application.

(f) If an applicant receives a notice from DADS that some or all of the information required by this chapter is missing or incomplete, an applicant must submit the required information no later than 30 days after the date of the notice. If an applicant fails to submit the required information no later than 30 days after the notice date, DADS considers the application incomplete and denies the application. If DADS denies the application, DADS does not refund the license fee.

(g) DADS denies an application that remains incomplete 120 days after the date that DADS Licensing and Credentialing Unit receives the application.

(h) DADS issues a license no later than 30 days after DADS determines that an applicant and the center have met all licensure requirements referenced in §15.105 and §15.106 of this subchapter, as applicable.

(i) If DADS does not process an application in the time period described in subsections (e) and (h) of this section, an applicant may request reimbursement of the license fee paid. The applicant must submit the reimbursement request following the instructions on the DADS website.

(j) If DADS does not agree that the established time period for processing an application described in subsection (e) of this section has been violated or finds that good cause existed for exceeding the established time period, DADS will deny the request.

(k) Good cause for exceeding the established time period exists if:

(1) DADS receives an application during the time period of September 1, 2014 through June 30, 2015;

(2) the number of applications to be processed exceeds by 15 percent or more the number processed in the same fiscal quarter of the preceding year effective when DADS has obtained and published two quarters of application data;

(3) DADS must rely on another public or private entity to process all or a part of the application received by DADS, and the delay is caused by that entity; or

(4) other conditions existed giving good cause for exceeding the established time period.

(l) If DADS denies the request for reimbursement, an applicant may request that the DADS commissioner resolve the dispute. An applicant must send a written statement to the DADS commissioner describing the request for reimbursement and the reason for the request. The DADS commissioner will review the request and notify an applicant in writing of the decision.

§15.115. Criteria for Denial of a License.

(a) DADS may deny an application for an initial center license or for renewal of a license for:

(1) a violation of the THSC Chapter 248A or a standard in this chapter committed by the license holder, applicant, or a person listed on the application;

(2) an intentional or negligent act by the center or an employee of the center that DADS determines significantly affects the health or safety of a minor served at the center;

(3) use of drugs or intoxicating liquors to an extent that affects the license holder's or applicant's professional competence;

(4) a felony conviction, including a finding or verdict of guilty, an admission of guilt, or a plea of nolo contendere, in this state or in any other state of any person required by this chapter to undergo a background and criminal history;

(5) fraudulent acts, including acts relating to Medicaid fraud and obtaining or attempting to obtain a license by fraud or deception, committed by any person listed on the application;

(6) a license revocation, suspension, or other disciplinary action taken in Texas or another state against the license holder or any person listed on the application;

(7) criteria described in Chapter 99 of this title (relating to Denial or Refusal of License) that applies to any person required by this chapter to undergo a background and criminal history check;

(8) aiding, abetting, or permitting a substantial violation described in paragraph (1) of this subsection about which a person listed on the application had or should have had knowledge;

(9) a license holder or applicant's failure to provide the required information as requested on the application or in follow-up to the review of the application;

(10) a license holder or applicant who knowingly:

(A) submits false or intentionally misleading statements to DADS on an application;

(B) uses subterfuge or other evasive means of filing an application;

(C) engages in subterfuge or other evasive means of filing an application on behalf of another who is unqualified for licensure; or

(D) conceals a material fact on an application;

(11) a person listed on the application failing to pay the following fees, taxes, and assessments when due:

(A) licensing fees as described in §15.112 of this subchapter (relating to Licensing Fees);

(B) franchise taxes, if applicable; and

(C) federal taxes, as applicable; or

(12) a person listed on the application having a history of any of the following actions during the five-year period preceding the date of the application:

(A) operation of a facility in Texas or another state or jurisdiction that has been decertified or had its contract canceled under the Medicare or Medicaid program;

(B) federal or state Medicare or Medicaid sanctions or penalties;

(C) an unsatisfied final court judgment;

(D) eviction in Texas or another state or jurisdiction involving any property or space used as a center; or

(E) suspension in Texas or another state or jurisdiction of a license to operate a health facility, long-term care facility, assisted living facility, or a similar facility, or a center.

(b) DADS:

(1) denies a license to an applicant to operate a center if an applicant has on the date of the application:

(A) a debarment or exclusion from the Medicare or Medicaid programs by the federal government or a state; or

(B) a court injunction prohibiting an applicant or manager from operating a center.

(2) may deny a license to an applicant to operate a new center if an applicant has a history of any of the following actions at any time preceding the date of the application:

(A) revocation of a license to operate a health care facility, long-term care facility, assisted living facility or similar facility, or center in any state;

(B) surrender of a license in lieu of revocation or while a revocation hearing is pending;

(C) expiration of a license while a revocation action is pending and the license is surrendered without an appeal of the revocation or an appeal is withdrawn; or

(D) probation period placed on a license to operate a center.

(c) DADS may consider exculpatory information provided by any person described in §15.101(f) of this subchapter (relating to Criteria and Eligibility for a License) and grant a license if DADS finds that person able to comply with THSC Chapter 248A and this chapter.

(d) In determining the denial of a license, DADS considers all final actions taken against an applicant or license holder whether issued by DADS or another state or federal agency. An action is final when administrative and judicial remedies are exhausted. All actions, whether pending or final, must be disclosed.

(e) If an applicant owns multiple centers, DADS examines the overall record of compliance in all of the centers or other facilities types and agencies. An overall record poor enough to deny issuance of a new license will not preclude the renewal of licenses of individual centers with satisfactory records.

(f) If DADS denies an application for a license or refuses to issue a renewal of a license, an applicant or license holder may request a hearing by complying with the Texas Health and Human Services Commission's rules for hearings found in 1 TAC Chapter 357, Subchapter I (relating to Hearings Under the Administrative Procedure Act) and DADS rules for hearings found in Chapter 91 of this title (relating to Hearings Under the Administrative Procedure Act). An administrative hearing is conducted in accordance with Texas Government Code, Chapter 2001; 1 TAC Chapter 357, Subchapter I; and Chapter 91 of this title.

§15.116. Display of License.

A center must display the center's license in a conspicuous location readily visible to a person entering the center.

§15.117. License Alteration Prohibited.

A center license may not be altered.

§15.118. Reporting Changes in Application Information.

If certain information provided on an initial or renewal application changes after DADS issues the license, a center must report the change to the DADS by following the instructions on the DADS website for reporting a change. For requirements on reporting a change in:

(1) the administrator, alternate administrator, nursing director, alternate nursing director, chief financial officer and controlling person see §15.302 of this chapter (relating to Organizational Structure and Lines of Authority) and §15.104(b)(3) of this subchapter (relating to Applicant Disclosure Requirements);

(2) the center's contact information see §15.120 of this subchapter (relating to Notification Procedures for a Change in Contact Information);

(3) the center's operating hours see §15.121 of this subchapter (relating to Notification Procedures for a Change in Operating Hours);

(4) name (legal entity or doing business as), see §15.122 of this subchapter (relating to Notification Procedures for a Name Change).

§15.119. Notification Procedures for a Change in Administration and Management.

(a) If a change occurs in the following management staff, a center must submit written notice to DADS no later than seven days after the date of a change in:

(1) administrator;

(2) alternate administrator;

(3) nursing director;

(4) alternate nursing director;

(5) chief financial officer; or

(6) controlling person, as defined in §15.5 of this chapter (relating to Definitions), including:

(A) a change of five percent or more of the controlling interest of a limited partner in a limited partnership or the addition of a controlling person to the limited partnership; or

(B) a change of five percent or more of the controlling interest in a for-profit corporation or limited liability company.

(b) A change in the management staff listed in subsection (a) of this section requires DADS evaluation and approval. DADS reviews the required documents and information submitted. DADS provides notification to a center if a person listed in subsection (a)(1) - (6) of this section does not meet the required qualifications.

§15.120. Notification Procedures for a Change of Contact Information.

A center must submit written notice to DADS no later than seven days after a change at the center:

(1) telephone number; or

(2) mailing address, if different from the physical location.

§15.121. Notification Procedures for a Change in Operating Hours.

A center must submit written notice to DADS no later than seven days after a change at the center's operating hours.

§15.122. Notification Procedures for a Name Change.

(a) If a center intends to change the name of its legal entity or assumed name, but does not undergo a change of ownership as defined in §15.107 of this subchapter (relating to Change of Ownership), the center must report the name change to DADS no later than seven days after the effective date of the name change.

(b) If a center changes its name but does not undergo a change of ownership, the license holder must notify DADS and submit a copy of a certificate of amendment from the Office of the Secretary of State. After DADS receives the certificate of amendment, a license is issued in the license holder's new name.

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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Department of Aging and Disability Services

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For further information, please call: (512) 438-4162

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SUBCHAPTER C. GENERAL PROVISIONS

DIVISION 1. OPERATIONS AND SAFETY
PROVISIONS

40 TAC §§15.201 - 15.211

STATUTORY AUTHORITY

The new sections are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code, Chapter 248A, which provides that the HHSC executive commissioner shall adopt rules that are necessary to implement the chapter and to establish minimum standards for prescribed pediatric extended care centers.

The new sections implement Texas Government Code, §531.0055, Texas Human Resources Code, §161.021, and Texas Health and Safety Code, Chapter 248A.

§15.201. Operating Hours.

(a) A center must adopt and enforce a written policy identifying the center's operating hours. A center may not:

(1) allow the provision of services to a minor at a center for more than 12 hours in any 24-hour period; or

(2) allow the provision of services to a minor at a center overnight.

(b) For the purposes of this section, the person in charge means the administrator, the alternate administrator, the nursing director, or the alternate nursing director.

(c) If a center is closed during the center's operating hours, the person in charge must:

(1) post a notice, in a location visible outside the center, that provides information regarding how to contact the person in charge by telephone; and

(2) leave an outgoing message on the center's answering machine or similar electronic mechanism or with an answering service that provides information about how to contact the person in charge by telephone.

§15.202. Suspension of Operations.

(a) Suspension of operations occurs when a center suspends its normal business operations for five or more consecutive days due to:

(1) a scheduled closing of the center when a center has at least 45 days advance notice of the need to close the center; or

(2) an unscheduled closing of the center when a center has less than 45 days but more than 15 days advance notice of the need to close the center.

(b) A suspension of operations may not exceed the expiration date of the licensure period.

(c) If a center suspends operations due to a scheduled closing of the center, the center must:

(1) provide written notification to an adult minor or a minor's parent at least 30 days before the suspension of operations begins that includes:

(A) the start and end date of the suspension;

(B) instructions for obtaining a minor's medical records before and during the suspension for all services provided at the center; and

(C) information about the available options to transfer, discharge, or put a minor's services on hold depending on the needs of the minor;

(2) assist a parent or an adult minor with finding alternative services during the suspension;

(3) discharge, transfer or put a minor's services on hold in accordance with §15.608 of this chapter (relating to Discharge or Transfer Notification);

(4) ensure coordination of services for the minor's other service providers;

(5) notify the minor's physician at least 30 days before the suspension of operations begins;

(6) provide written notification to DADS at least 30 days before the suspension of operations begins;

(7) post a notice, in a location visible outside of the center for the duration of the suspension, that provides information about the suspension of operations, including:

(A) the start and end date of the suspension; and

(B) how to obtain a minor's records during the suspension;

(8) leave an outgoing message, on the center's answering machine or other similar electronic mechanism or with an answering service, that provides the information in paragraph (7) of this subsection; and

(9) notify DADS in writing within seven days after resuming normal business operations.

(d) If a center suspends operations due to an unscheduled closing of the center, the center must:

(1) provide oral and written notification to a minor's parent no later than 15 days before the suspension of operations begins that includes:

(A) the start and estimated end date of the suspension;

(B) instructions for obtaining a minor's medical records before and during the suspension for all services provided at the center; and

(C) information about the available options to transfer, discharge, or put a minor's services on hold depending on the needs of the minor;

(2) assist a parent or an adult minor with finding alternative services during the suspension;

(3) discharge, transfer or put the minor's services on hold in accordance with §15.608 of this chapter;

(4) ensure coordination of services with the minor's other service providers;

(5) notify the minor's physician no later than 15 days before the suspension of operations begins;

(6) provide written notification to DADS no later than 15 days before the suspension of operations begins;

(7) post a notice, in a location visible outside of the center, for the duration of the suspension that provides information about the suspension of operations, including:

(A) the start and estimated end date of the suspension;
and

(B) how to obtain a minor's records during the suspension;

(8) leave an outgoing message, on the center's answering machine or other similar electronic mechanism or with an answering service, that provides the information in paragraph (7) of this subsection; and

(9) notify DADS in writing within seven days after resuming normal business operations.

(e) If the center must close with less than 15 days advance notice, the center must follow the requirements in §15.209 of this division (relating to Emergency Preparedness Planning and Implementation).

§15.203. Financial Solvency and Business Records.

(a) A center must have the financial ability to carry out its functions.

(b) A center must make available to DADS, upon request, business records relating to its ability to carry out its functions. DADS may conduct a more extensive review of the records if there is a question relating to the accuracy of the records or the center's financial ability to carry out its functions.

(c) A center must maintain business records in their original state. Each entry must be accurate and include the date of entry. Correction fluid or tape may not be used in the record. Corrections must be made in accordance with standard accounting practices.

§15.204. Billing and Insurance Claims.

A center must adopt and enforce a written policy that includes procedures:

(1) to ensure that the center submits accurate billing and insurance claims; and

(2) to prevent, detect, and report fraud, waste, and abuse.

§15.205. Safety Provisions.

(a) A center must ensure that the local fire marshal's office inspects the center annually. The center must keep a copy of the annual fire inspection report on file at the center for two years after the date of inspection.

(b) A center must prepare a fire drill plan and conduct fire drills at least once every month. The center's administrator and nursing director must participate in the monthly fire drills. The staff must conduct the drills at various times of the day and document each drill on a DADS Fire Drill Report Form. Documentation must include:

(1) the date and time of the drill;

(2) the number of minors present;

(3) the time taken to evacuate the center; and

(4) the signatures of all staff present.

(c) The center's administrator and nursing director must:

(1) review the center's fire drill plan;

(2) evaluate the effectiveness of the plan after each fire drill;

(3) review any problems that occurred during each drill and take corrective action, if necessary; and

(4) maintain documentation to support the requirements of this subsection.

(d) A center must have a working telephone available at all times at the center. Coin operated telephones or cellular telephones are not acceptable for this purpose. If the center has multiple buildings, a working telephone must be located in each of the buildings.

(e) A center must post at or near the immediate vicinity of all telephones:

(1) emergency telephone numbers including:

(A) the DADS abuse, neglect, and exploitation hotline;

(B) poison control;

(C) 911 or the local fire department, ambulance, and police in communities where a 911 management system is unavailable; and

(D) an emergency medical facility; and

(2) the center's address.

(f) A center must adopt and enforce written policies and procedures for a minor's medical emergency. The policy must include:

(1) a requirement that each minor has an emergency plan, developed in collaboration with a minor's parent, that:

(A) includes instructions from a minor's prescribing physician, as applicable;

(B) includes coordination with other health care providers, including hospice; and

(C) is updated and reviewed at least yearly or more often as necessary to meet the needs of a minor;

(2) a requirement that staff receive training for medical emergencies;

(3) a requirement that staff receive training in the use of emergency equipment; and

(4) procedures that staff follow when a minor's parent cannot be contacted in an emergency.

(g) If a minor must be transported to an emergency medical facility while at the center, the staff must immediately notify a minor's parent and hospice provider, if applicable. If a parent cannot be contacted, the center must ensure that an individual authorized by the parent or center staff meets a minor at the emergency facility.

(h) The center must prepare a medical emergency transfer form to give to the emergency transportation provider when transporting a minor to an emergency medical facility. The transfer form must include:

(1) the minor's name and age;

(2) the minor's diagnoses, allergies, and medication;

(3) the minor's parent name and contact information;

(4) the minor's prescribing physician name and contact information;

(5) the center's name and contact information; and

(6) the name of the administrator or nursing director.

(i) A center must maintain a first aid kit with unexpired supplies and an automated external defibrillator for minors served at the center that is easily accessible but not within reach of minors.

(j) A center must adopt and enforce written policies and procedures for the verification and monitoring of visitors, including service providers at a center. The policies and procedures must include:

- (1) verification of a visitor's identity;
- (2) verification of a visitor's authorization to enter a center;
- (3) the recording of a visitor's name, organization, purpose of the visit, and the date and time a visitor entered and exited a center;
- (4) the center's awareness of a visitor while in a center; and
- (5) documentation of the requirements in this subsection.

(k) A center must adopt and enforce written policies and procedures for the release of a minor. The policy must include:

- (1) procedures to verify the identity of a person authorized to pick up a minor from the center; and
- (2) procedures for the release of a minor when transported by the center in accordance with Subchapter D of this chapter (relating to Transportation).

(l) A center must adopt and enforce written policies and procedures to ensure that no minor is left unattended at the center. The policy must include procedures for:

- (1) a minor who arrives at the center;
- (2) a minor who remains at the center during operating hours;
- (3) a minor who leaves the center; and
- (4) staff to conduct daily visual checks at the center at the close of business.

(m) A center must maintain daily records and documentation of the visual check at the end of each day to ensure no minor is left at the center. The documentation must include:

- (1) the date and time; and
- (2) the signature of the staff member conducting the daily visual checks at the center at the close of business.

(n) Except as otherwise provided in this section, a center must meet the provisions applicable to the health care occupancy chapters of the 2000 edition of the LSC of the National Fire Protection Association (NFPA) and the requirements in Subchapter E of this chapter (relating to Building Requirements). Roller latches are prohibited on corridor doors.

(o) Notwithstanding any provisions of the 2000 edition of the Life Safety Code, NFPA 101, to the contrary, a center may place alcohol-based hand rub dispensers at the center if:

- (1) use of alcohol-based hand-rub dispensers does not conflict with any state or local codes that prohibit or otherwise restrict the placement of such dispensers in health care facilities;
- (2) the dispensers are installed in a manner that minimizes leaks and spills that could lead to falls;
- (3) the dispensers are installed in a manner or location out of reach of a minor; and
- (4) the dispensers are installed in accordance with Chapter 18.3.2.7 or Chapter 19.3.2.7 of the 2000 edition of the LSC, as amended by NFPA Temporary Interim Amendment 00-1(101), issued by the Standards Council of the National Fire Protection Association on April 15, 2004.

(p) A center's environment must be free of health and safety hazards to reduce risks to minors. The center must:

(1) use childproof electrical outlets or childproof covers on unused electrical outlets in all rooms to which minors have access at the center;

(2) use safety precautions for strings and cords, including those used on window coverings, and keep them out of the reach of minors;

(3) use safety precautions for all furnishings including cabinets, shelves, and other furniture items that are not permanently attached to the center; and

(4) use play material and equipment that is safe and free from sharp or rough edges and toxic paints.

(q) A center must adopt and enforce a written policy describing whether a center is a weapons-free location. A center must:

(1) provide a copy of the policy to staff, individuals providing services on behalf of a center an adult minor, and a minor's parent; and

(2) provide a copy of the policy to any person who requests it.

(r) If a center is weapons-free, a center must post a visible and readable sign at the entrance of the center indicating the center is a weapons-free location.

§15.206. Person-Centered Direction and Guidance.

(a) A center must adopt and enforce written policies and procedures for the use of person-centered direction and guidance by individuals providing services to minors at the center. The policy must include:

(1) the implementation of a system-wide, person-centered direction and guidance program for minors that includes:

(A) the teaching of successful behavior and coping skills;

(B) proactive strategies to identify and manage a minor's behaviors before they escalate; and

(C) the monitoring and evaluation of the effectiveness of direction and guidance used with a minor by a committee as described in this section;

(2) procedures for ensuring consistent language, practices, and application of direction and guidance by individuals providing services at a center; and

(3) procedures for documenting and providing to a minor's parent a daily report of the minor's behavior.

(b) A center must ensure that only person-centered strategies and techniques that encourage self-esteem, self-control, and self-direction are used for the purposes of direction and guidance of a minor at a center.

(c) Person-centered direction and guidance must be:

(1) individualized and consistent for each minor;

(2) differentiated in both nature and intensity based on a minor's level of behavior;

(3) appropriate to the minor's level of understanding and functional or educational development; and

(4) directed toward teaching the minor successful behavior, awareness of behavior triggers and self-control, including:

(A) reminding a minor of behavior expectations in accordance with a minor's individualized psychosocial program;

(B) redirecting behavior using positive statements; and

(C) teaching the minor to use effective behavior management techniques, such as quiet time.

(d) A center must ensure that timeout, if used, is:

(1) in accordance with the minor's psychosocial program and plan of care;

(2) brief and under continuous face-to-face observation by center staff;

(3) appropriate for the minor's age and development;

(4) limited to no more than one minute per year of the minor's developmental age; and

(5) applied as to not result in the placement of a minor alone in a locked room.

(e) A center must ensure the protection of minors at the center from harsh, cruel, or unusual treatment. The following types of negative discipline are considered punishment and abuse and are prohibited at a center:

(1) corporal punishment or threats of corporal punishment;

(2) punishment associated with food, naps, or toilet training;

(3) pinching, shaking, or biting a minor;

(4) hitting a minor with a hand or object;

(5) putting anything in or on a minor's mouth;

(6) humiliating, ridiculing, rejecting, or yelling at a minor;

(7) subjecting a minor to harsh, abusive, or profane language;

(8) placing a minor alone in a locked or darkened room, bathroom, or closet without windows;

(9) requiring a minor to remain silent or inactive for inappropriately long periods of time for the minor's developmental age; and

(10) use of a chemical restraint.

(f) The center must establish a person-centered direction and guidance committee to review the techniques and strategies used at a center to:

(1) determine whether the individualized direction and guidance used as established in a plan of care is consistently applied for each minor in accordance with center policy;

(2) evaluate the frequency and outcomes of strategies and techniques used with a minor to:

(A) determine the impact of the direction and guidance on a minor's ability to achieve progress in goals;

(B) determine effectiveness of the minor's program; and

(C) recommend the use of new strategies and techniques when current strategies and techniques are determined to be ineffective.

(g) The committee must include:

(1) the center's administrator;

(2) the center's nursing director or designee;

(3) an individual providing psychosocial treatment and services on behalf of a center; and

(4) a parent or an individual from a parent council or support group for minors receiving services at the center.

(h) The center is not required to include a parent or individual from a parent council or support group if, after a good faith effort, the center is unable to include a parent or individual in a committee meeting. The center must document, for DADS review, a good faith effort to include a parent or individual from a parent council or support group at each meeting. DADS determines whether the center made a good faith effort to include a parent or individual from a parent council in the committee meeting.

(i) The center must adopt and enforce written policies and procedures for the frequency, format and documentation of committee meetings.

(j) A center must provide its written person-centered direction and guidance policy to all parents, employees, volunteers and contractors. The center must maintain documentation of acknowledgment of the written policy from all employees, volunteers and contractors.

§15.207. Restraints.

(a) A center must ensure that restraints, as ordered by a minor's physician, as agreed to by the parent and in accordance with a minor's psychosocial program and plan of care, are only used in the following circumstances:

(1) as part of a therapeutic regimen of basic services for a minor's physical health and development;

(2) during medical, nursing, diagnostic, and dental procedures as prescribed by a physician's order and to protect the health and safety of a minor;

(3) in a medical emergency to protect the health and safety of a minor; and

(4) in a behavioral emergency when the health and safety of the minor or other minors are at risk.

(b) A center may use only the following restraints:

(1) a protective device as defined in this chapter;

(2) a device used only for body positioning of a minor to ensure health and safety, such as a safety vest, belt, or body strap;

(3) a device used to provide postural support to a minor or to assist a minor in obtaining and maintaining normative bodily functioning;

(4) physical restraint as defined in this chapter only in a behavioral emergency; and

(5) sedation as a protective device as defined in this chapter.

(c) A center must adopt and enforce written policies and procedures regarding the use of restraints for a minor as described in this section, in accordance with the minor's psychosocial treatment program and the minor's plan of care.

(d) A center must not implement a physician's order for the use of a protective device, physical restraint, or sedation on an as-needed basis.

(e) Except in a behavioral emergency, a center must ensure a physician's order is obtained for the use of a restraint before using a restraint at a center. The physician's order must include:

(1) the circumstances under which a restraint may be used at a center;

- (2) instructions on how long a restraint may be used; and
- (3) less restrictive methods that are individualized for the minor and described in the minor's plan of care.

(f) A center must ensure that an RN, with input from an adult minor, a minor's parent, and the IDT:

- (1) conducts an assessment of a minor's need for restraint;
- (2) reviews a physician's order for restraint, including the type of device and the circumstances under which it may be used; and
- (3) obtains and documents in a minor's medical record the written consent of an adult minor or a minor's parent to use a restraint.

(g) Except in a behavioral emergency, before using a restraint for the first time, the center must ensure an RN provides oral and written notification to an adult minor or a minor's parent of the right at any time to withdraw consent and discontinue use of a restraint.

(h) The center must ensure that a staff member who will use a restraint has been properly trained in the use of a restraint for a minor as ordered in the minor's plan of care and in accordance with this section.

(i) If a restraint is used for a minor, the center must ensure:

(1) that the minor is assessed in accordance with the physician's order but no less than once every hour to determine if the restraint must be repositioned or removed;

(2) that the restraint is removed at least once every hour or more frequently in accordance with an assessment described in paragraph (1) of this subsection;

(3) that center staff replaces the restraint, if necessary after assessment, in a manner that ensures the overall health and safety of the minor;

(4) that a minor's physician is notified immediately if an assessment determines a change in the minor's condition or a negative reaction to the restraint has occurred, including notification of:

- (A) the minor's psychosocial condition;
- (B) the minor's reaction to the restraint;
- (C) the minor's medical condition; and
- (D) the need to continue or terminate the restraint;

(5) that the type and frequency of restraint used at the center is documented;

(6) that the effects of a restraint on the minor's health and welfare are evaluated and documented in the medical record; and

(7) that an RN, an adult minor, a minor's parent, and the IDT, at least every 180 days, or as a minor's needs change, review the use of a restraint to determine effectiveness and the need to continue the use of restraint.

(j) When a behavioral emergency occurs, a center may restrain a minor using an action or procedure that limits the minor's movement; or access to other individuals, locations, or activities. In addition to all other requirements in this section, the center must ensure:

- (1) all less restrictive options available are exhausted before using a restraint;
- (2) the restraint is limited to the use of such reasonable force as is necessary to address the emergency;
- (3) the restraint is discontinued at the point at which the emergency no longer exists;

(4) the restraint is implemented in such a way as to protect the health and safety of the minor and others; and

(5) the following documentation and notifications occur:

(A) on the day the restraint is used, the administrator and director of nursing are notified orally and in writing that the restraint occurred;

(B) on the day the restraint is used, the minor's parent is notified orally that the restraint occurred;

(C) within one day after use of the restraint, the minor's parent is notified in writing that the restraint occurred;

(D) written documentation regarding the use of the restraint is included in a minor's medical record within 24 hours after the restraint is applied;

(E) written notification to a minor's parent and written documentation in the minor's medical record must include:

(i) the name of the individual who administered the restraint;

(ii) the date and time the restraint began and ended;

(iii) the location of the restraint;

(iv) the nature of the restraint;

(v) a description of the activity in which the minor was engaged immediately preceding the use of the restraint;

(vi) the behavior that prompted the restraint;

(vii) the efforts made to de-escalate the situation and the less restrictive alternatives attempted before the restraint;

(viii) the minor's condition after the restraint was discontinued; and

(ix) documentation of parent contact and notification.

(k) A center must ensure that the use of a restraint at a center must not be used in a manner that:

(1) obstructs a minor's airway, including the placement of anything in, on, or over the minor's mouth or nose;

(2) impairs the minor's breathing by putting pressure on the minor's torso;

(3) interferes with the minor's ability to communicate;

(4) extends muscle groups away from each other;

(5) uses hyperextension of joints; or

(6) uses pressure points or pain.

(l) A center must ensure that a restraint is not used for:

(1) controlling a minor's behavior in a non-emergency;

(2) negative disciplinary purposes as described in §15.206 of this division (relating to Person-Centered Direction and Guidance);

(3) convenience;

(4) coercion or retaliation; or

(5) substituting for effective functional assistance or positive interventions.

(m) A center must maintain documentation of compliance with this section.

§15.208. Equipment, Devices, and Supplies.

(a) A center, with input from the medical director, must determine the quantity and types including age and developmentally appropriate equipment, devices, and supplies that the center must keep on the premises to meet the needs of minors and for emergency purposes.

(b) The center must coordinate with a minor, a minor's parent, and a minor's prescribing physician and other basic service providers, as applicable, to ensure that equipment, devices, and supplies used by a minor are available to a minor at the center.

(c) The center must ensure the provision of necessary consumable supplies and resources, including diapers, if the center determines, after the minor's arrival at the center, that the minor's parent failed to provide an adequate amount of necessary consumable supplies and resources for the minor.

(d) The center must adopt and enforce written preventive maintenance policies and procedures to ensure the center's equipment, devices, and supplies are inspected for safety purposes and maintained at least annually or more frequently if recommended by the manufacturer. Equipment, devices, and supplies must be maintained free of defects that could pose a potential hazard to a minor or an individual at the center. The staff may perform preventive maintenance if the staff are trained and experienced in maintaining the specific equipment.

(e) The center must adopt and enforce written policies and procedures to ensure equipment used by a minor is cleaned and sanitized after each use.

(f) A center must have clean storage areas for equipment, devices, and supplies.

§15.209. Emergency Preparedness Planning and Implementation.

(a) A center must have a written emergency preparedness and response plan that comprehensively describes its approach to an emergency situation, including a public health disaster that could affect the need for its services or its ability to provide those services.

(b) Administration. A center must:

(1) develop and implement a written plan as described in subsection (c) of this section;

(2) maintain a current written copy of the plan in a central location that is accessible to all staff at all times and at a work station of each staff who has responsibilities under the plan;

(3) evaluate the plan to determine if information in the plan must change:

(A) no later than 30 days after an emergency situation;

(B) as soon as possible after the remodeling or construction of an addition to the center; and

(C) at least annually;

(4) revise the plan no later than 30 days after information in the plan changes; and

(5) maintain documentation of compliance with this section.

(c) Emergency Preparedness and Response Plan. A center's plan must:

(1) include a risk assessment of all potential external and internal emergency situations that pose a risk for harm to minors or property and are relevant to the provision of services at a center and the center's geographical area, such as fire, earthquake, hurricane, tornado, flood, extreme snow and ice conditions for the area, wildfire, terrorism, hazardous materials accident, thunderstorm, wind storm, wave

action, oil spill or other water contamination, epidemic, air contamination, infestation, explosion, riot, hostile military or paramilitary action, or energy emergency, water outage, failure of heating and cooling systems, power outage, bomb threat, and explosion;

(2) include a description of minors served at the center;

(3) include a description of the services and assistance needed by minors served at the center in an emergency situation;

(4) include a section for each core function of emergency management, as described in subsection (d) of this section, that is based on the center's decision to either temporarily shelter-in-place or evacuate during an emergency situation; and

(5) include a section for a fire safety plan that complies with §15.205 of this division (relating to Safety Provisions).

(d) Plan Requirements Regarding Eight Core Functions of Emergency Management.

(1) Direction and control. A center's plan must contain a section for direction and control that:

(A) designates by name or title the emergency preparedness coordinator (EPC) who is the staff person with the authority to manage the center's response to an emergency situation in accordance with the plan, and includes the EPC's current phone number;

(B) designates by name or title the alternate EPC who is the staff person with the authority to act as the EPC if the EPC is unable to serve in that capacity, and includes the alternate EPC's current phone number;

(C) documents the name and contact information for the local emergency management coordinator (EMC) for the area where the center is located, as identified by the office of the local mayor or county judge;

(D) includes procedures for notifying the local EMC of the execution of the plan;

(E) includes a plan for coordinating a staffing response to an emergency situation; and

(F) includes a plan for relocating minors to a safe location that is based on the type of emergency situation occurring and a center's decision to either temporarily shelter-in-place or evacuate during an emergency situation.

(2) Warning. A center's plan must contain a section for warning that:

(A) describes how the EPC will be notified of an emergency situation;

(B) identifies who the EPC will notify of an emergency situation and when the notification will occur, including during off hours, weekends, and holidays; and

(C) addresses monitoring local news and weather reports regarding a disaster or potential disaster, taking into consideration factors such as geographic-specific natural disasters, whether a disaster is likely to be addressed or forecast in the reports, and the conditions, natural or otherwise, that would cause staff to monitor news and weather reports for a disaster.

(3) Communication. A center's plan must contain a section for communication that:

(A) identifies the center's primary mode of communication to be used during an emergency situation and the center's alternate mode of communication to be used in the event of power failure or the

loss of the center's primary mode of communication in an emergency situation;

(B) requires posting of the emergency contact number for the local fire department, ambulance, and police at or near each telephone at the center in communities where a 911 emergency management system is unavailable;

(C) includes procedures for maintaining a current list of telephone numbers for:

- (i) minors' parents;
- (ii) safe locations; and
- (iii) center staff;

(D) identifies the location of the lists described in subparagraph (C) of this paragraph;

(E) includes procedures to notify:

- (i) center staff about an emergency situation;
- (ii) a contact person at a safe location about an impending or actual evacuation of minors; and
- (iii) a minor's parent about an impending or actual evacuation;

(F) provides a method for staff to obtain a minor's emergency information during an emergency situation;

(G) includes procedures for the center to maintain communication with:

- (i) center staff during an emergency situation;
- (ii) a contact person at a safe location; and
- (iii) the authorized driver of a vehicle transporting minors, medication, medical records, food, water, equipment, or supplies during an evacuation; and

(H) includes procedures for reporting to DADS an emergency situation that caused the death or serious injury of a minor as follows:

- (i) by telephone at 1-800-458-9858 or by using the DADS website, no later than 24 hours after the death or serious injury of a minor; and
- (ii) in writing on the DADS Provider Investigation Report Form no later than five days after the center makes the report.

(4) Shelter-in-place. A center's plan must contain a section that includes procedures to temporarily shelter minors in place during an emergency situation.

(5) Evacuation. A center's plan must contain a section for evacuation that:

- (A) requires posting center evacuation routes conspicuously throughout the center;
- (B) identifies evacuation destinations and routes for an authorized driver, and includes a map that shows the destinations and routes;
- (C) includes procedures for implementing a decision to evacuate minors to a safe location;
- (D) includes a current copy of an agreement with a prearranged safe location, outlining arrangements for receiving minors in the event of an evacuation, if the evacuation destination identified in accordance with subparagraph (B) of this paragraph is a prearranged

safe location that is not owned by the same entity as the evacuating center;

(E) includes procedures for:

- (i) ensuring that staff accompany evacuating minors;
- (ii) ensuring that minors and staff present at the center have been evacuated;
- (iii) ensuring that visitors, including parents and service providers, evacuate the center;
- (iv) accounting for minors and staff after they have been evacuated;
- (v) accounting for minors absent from the center at the time of the evacuation;
- (vi) releasing minor information in an emergency situation to promote continuity of a minor's care, in accordance with state law;
- (vii) includes procedures for notifying the local EMC regarding an evacuation of the center, if required by the local EMC guidelines;
- (viii) contacting the local EMC, if required by the local EMC guidelines, to find out if it is safe to return to the geographical area after an evacuation; and
- (ix) determining if it is safe to re-enter and occupy the center after an evacuation;
- (x) includes procedures for notifying DADS by telephone, at 1-800-458-9858, no later than 24 hours after an evacuation that minors have been evacuated; and
- (xi) includes procedures for notifying DADS Regulatory Services by telephone immediately after the EPC makes a decision to evacuate all minors from the center.

(6) Transportation. A center's plan must contain a section for transportation that:

- (A) arranges for a sufficient number of vehicles to safely evacuate all minors;
- (B) identifies staff or contractors designated to drive a center owned, leased, or rented vehicle during an evacuation;
- (C) includes procedures for safely transporting minors and staff involved in an evacuation; and
- (D) includes procedures for safely transporting and having timely access to oxygen, medications, medical records, food, water, equipment, and supplies needed during an evacuation.

(7) Health and Medical Needs. A center's plan must contain a section for health and special needs that:

- (A) identifies the types of services and medical equipment used by minors, including oxygen, respirator care, or hospice services; and
- (B) ensures that a minor's needs identified in subparagraph (A) of this paragraph are met during an emergency situation.

(8) Resource Management. A center's plan must contain a section for resource management that:

- (A) includes a plan for identifying medications, medical records, food, water, equipment, and supplies needed during an emergency situation;

(B) identifies staff who are assigned to locate the items in subparagraph (A) of this paragraph and who must ensure the transportation of the items during an emergency situation; and

(C) includes procedures to ensure that medications are secure and maintained at the proper temperature during an emergency situation.

(e) Training. A center must:

(1) train staff on their responsibilities under the plan no later than 30 days from their hire date;

(2) train staff on the staff responsibilities under the plan at least annually and when the staff member's responsibilities under the plan change; and

(3) conduct one unannounced annual drill with staff for severe weather and other emergency situations identified by a center as likely to occur, based on the results of the risk assessment required by subsection (c) of this section.

(f) Fire Emergency Response Plan.

(1) The center must have a comprehensive written fire emergency response plan. Copies of the plan must be available to all staff. The center must periodically instruct and inform staff about the duties of their positions under the plan. The written fire emergency response plan must provide for the following:

(A) use of alarms;

(B) transmission of an alarm to a fire department;

(C) response to alarms;

(D) isolation of fire;

(E) evacuation of the immediate area;

(F) preparation of floors and building for evacuation;

and

(G) fire extinguishment.

(2) The fire emergency response plan must include procedures to contact DADS by telephone, at 1-800-458-9858, no later than 24 hours after activation of its Fire Emergency Response Plan.

(3) The staff must conduct emergency egress and relocation drills as follows:

(A) perform a monthly fire drill with all occupants of the building at expected and unexpected times and under varying conditions;

(B) relocate, during the monthly drill, all occupants of the building to a predetermined location where occupants must remain until a recall or dismissal is given; and

(C) complete the DADS Fire Drill Report Form for each required drill.

(4) The EPC or a designee must conduct fire prevention inspections on a monthly basis and prepare a report of the inspection results. The center must maintain copies of the fire prevention inspection report prepared by the center within the last 12 months. The center must post a copy of the most recent fire prevention inspection report in a conspicuous place at the center.

§15.210. Sanitation, Housekeeping, and Linens.

(a) A center must ensure a sanitary environment by following accepted standards of practice and maintain a safe physical environment free of hazards for minors, staff, and visitors.

(b) A center must ensure that the following conditions are met.

(1) Wastewater and sewage must be discharged into a state-approved municipal sewage system. An on-site sewage facility must be approved by the Texas Commission on Environmental Quality (TCEQ) or authorized agent.

(2) The water supply must be from a system approved by the Public Drinking Water Section of the TCEQ, or from a system regulated by an entity responsible for water quality in the jurisdiction where the center is located as approved by the Public Drinking Water Section of the TCEQ.

(3) Waste, trash, and garbage must be disposed of from the premises at regular intervals in accordance with state and local practices. Excessive accumulations are not permitted. Outside containers must have tight-fitting lids left in closed position. Containers must be maintained in a clean and serviceable condition.

(4) Center grounds must be well kept and the exterior of the building, including sidewalks, steps, porches, ramps, and fences, must be in good repair.

(5) The interior of the center's buildings including walls, ceilings, floors, windows, window coverings, doors, plumbing and electrical fixtures must be in good repair.

(6) Pest control must be provided by a licensed structural pest control applicator with a license category for pests. The center must maintain documented evidence of routine efforts to remove rodents and insects.

(7) The center must be kept free of offensive odors, accumulations of dirt, rubbish, dust, and hazards. Storage areas, attics, and cellars must be free of refuse and extraneous materials.

(c) A center must adopt and enforce a written work plan for housekeeping operations, with categorization of cleaning assignments as daily, weekly, monthly, or annually within each area of the center.

(d) A center must ensure the provision of housekeeping and maintenance of the interior, exterior and grounds of the center in a safe, clean, orderly and attractive manner. The center must provide housekeeping and maintenance staff with equipment and supplies if needed. A center must designate staff to be responsible for overseeing the housekeeping services.

(e) A center must develop procedures for the selection, use, and disposal of housekeeping and cleaning products and equipment. The center must ensure:

(1) the use EPA approved cleaning products appropriate for the application and materials to be sanitized;

(2) the following of manufacturer instructions for use and disposal of cleaning products;

(3) all bleaches, detergents, disinfectants, insecticides, and other poisonous substances are kept in a safe place accessible only to staff; and

(4) all products are labeled.

(f) A center must ensure a sufficient supply of clean linens is available to meet the needs of minors. Clean laundry must be provided in-house by the center, through a contract with another health care center, or with an outside commercial laundry service.

(g) A center must ensure:

(1) linens are handled, stored, and processed so as to control the spread of infection;

- (2) linens are maintained in good repair;
- (3) linens are washed, dried, stored, and transported in a manner which will produce hygienically clean linen;
- (4) the washing process has a mechanism for removing soil and killing bacteria;
- (5) clean linens are stored in a clean linen area easily accessible to the staff;
- (6) soiled linens and clothing are stored separately from clean linen and clothing;
- (7) soiled linens and clothing are stored in well ventilated areas, and are not permitted to accumulate at the center;
- (8) soiled linens and clothing are transported in accordance with procedures consistent with universal precautions;
- (9) soiled linens are not sorted, laundered, rinsed, or stored in bathrooms, corridors, food preparation area, or food storage areas;
- (10) a minor's clothing stored at the center is cleaned after each use; and
- (11) staff wash their hands both after handling soiled linen and before handling clean linen.

§15.211. Infection Prevention and Control Program and Vaccinations Requirements.

(a) A center must establish and maintain an infection prevention and control program (IPCP) designed to provide a safe, sanitary, and comfortable environment by preventing the development and transmission of disease and infection. Under the IPCP, the center must:

- (1) investigate, prevent, and control infections at the center;
- (2) decide what procedures, such as isolation, should be applied to an individual minor;
- (3) address vaccine preventable diseases in accordance with THSC, Chapter 224;
- (4) address hepatitis B vaccinations in accordance with Occupational Safety and Health Administration;
- (5) address tuberculosis requirements; and
- (6) maintain a record of incidents and corrective actions relating to infections.

(b) A center must provide IPCP information to employees, contractors, volunteers, parents, health care providers, other service providers and visitors.

(c) A center's IPCP must include written policies and procedures for admissions and attendance of minors who are at risk for infections or present a significant risk to other minors. The policy must include that a minor is accepted only:

- (1) as authorized by a minor's prescribing physician;
 - (2) as determined by the center's medical director's assessment of the risk;
 - (3) as determined by the medical and nursing director review, on a case-by-case basis, to determine appropriateness of admission to or attendance at the center; and
 - (4) in accordance with Centers for Disease Control (CDC) guidelines.
- (d) The center's IPCP must include written policies and procedures for preventing the spread of infection.

(1) If the center determines, in accordance with its IPCP, that a minor must be isolated to prevent the spread of infection, the center must isolate a minor.

(A) The center must maintain an isolation room with a glass window for observation of a minor. The isolation room must be equipped with emergency outlets and equipment as necessary to provide care to a minor. The isolation room must have a dedicated bathroom not accessible to the center's other rooms if appropriate to control the spread of infectious disease.

(B) The center must ensure that all equipment is thoroughly cleaned and disinfected before being placed in the isolation room and before being removed from the room.

(C) The center's procedures must address:

(i) notification to a minor's parent of the minor's condition and the center's recommendation of isolation or removal based on the minor's risk assessment;

(ii) the arrangement of transportation if the minor must be removed from the center; and

(iii) the return of a minor to the center, as determined by a reassessment conducted by a nurse that the minor no longer poses a risk to other minors.

(2) The center must prohibit employees, volunteers, and contractors with an infectious disease or infected skin lesions from direct contact with minors or food, if direct contact will transmit the disease.

(3) The center's infection control policy must provide that staff, volunteers, and contractors wash their hands between each treatment and care interaction with a minor.

(4) The center must immediately report the name of any minor with a reportable disease as specified in 25 TAC Chapter 97, Subchapter A (relating to Control of Communicable Diseases) to the city health officer, county health officer, or health unit director having jurisdiction, and implement appropriate infection control procedures as directed by the local health authority or the Department of State Health Services.

(e) The center must assign a crib, bed, or sleep mat for a minor's exclusive use each day. A center must label cribs, beds, and sleep mats with the minor's name.

(f) A center must place liquid soap, disposable paper towels, and trash containers at each sink.

(g) The center must adopt and enforce written policies and procedures for the control of communicable diseases for employees, contractors, volunteers, parents, health care providers, other service providers, and visitors and must maintain evidence of compliance.

(h) The center must adopt and enforce written policies and procedures for the control of an identified public health disaster.

(1) If a center determines or suspects that an employee, volunteer, or contractor providing services has been exposed to, or has a positive screening for, a communicable disease, the center must respond according to current CDC guidelines and keep documentation of the action taken.

(2) If the center determines that an employee, volunteer or contractor providing services has been exposed to a communicable disease, the center must conduct and document a reassessment of the risk classification. The center must conduct and document subsequent screenings based upon the reassessed risk classification.

(3) If the center determines that an employee, volunteer, or a contractor providing services at the center is suspected of having a communicable disease, the individual must not return to the center until the individual no longer poses a risk of transmission as documented by a written physician's statement.

(i) The center must conduct and document an annual review that assesses the center's current risk classification according to the current CDC Guidelines for Preventing the Transmission of Mycobacterium Tuberculosis in Health Care Settings and 25 TAC Chapter 97, Subchapter A.

(1) The center must have a system in place to screen all individuals providing services at the center.

(2) The center must require employees, volunteers, and contractors providing services to provide evidence of current tuberculosis screening before providing services at the center. The center must maintain evidence of compliance.

(3) Any employee, volunteer, or contractor providing services at a center with positive results must be referred to the person's personal physician, and if active tuberculosis is suspected or diagnosed, the person must be excluded from work until the physician provides written approval to return to work.

(j) A center must adopt and enforce written policies and procedures to protect a minor from vaccine preventable diseases, in accordance with THSC, Chapter 224.

(1) The policy must:

(A) require an employee, volunteer, or contractor providing direct care to receive vaccines for the vaccine preventable diseases specified by the center based on the level of risk the employee, volunteer, or contractor, presents to minors by the employee's, volunteer's, or contractor's routine and direct exposure to minors;

(B) specify the vaccines an employee, volunteer, or contractor who provides direct care is required to receive in accordance with subsection (i) of this section;

(C) include procedures for the center to verify that an employee, volunteer, or contractor who provides direct care has complied with the policy;

(D) include procedures for the center to exempt an employee, volunteer, or contractor who provides direct care from the required vaccines for the medical conditions identified as contraindications or precautions by the CDC;

(E) include procedures, including using protective equipment such as gloves and masks, to protect minors from exposure to vaccine preventable diseases, based on the level of risk the employee, volunteer, or contractor presents to minors by the employee's, volunteer's, or contractor's routine and direct exposure to minors;

(F) prohibit discrimination or retaliatory action against an employee, volunteer, or contractor who provides direct care and who is exempt from the required vaccines for the medical conditions identified as contraindications or precautions by the CDC, except that required use of protective medical equipment, such as gloves and masks, will not be considered retaliatory action;

(G) require the center to maintain a written or electronic record of each employee's, volunteer's or contractor's compliance with or exemption from the policy; and

(H) include disciplinary actions the center may take against an employee, volunteer, or contractor providing direct care who fails to comply with the policy.

(2) The center must have a written policy describing whether it will exempt an employee, volunteer, or contractor providing direct care:

(A) from the required vaccines based on reasons of conscience, including a religious belief; and

(B) prohibit an employee, volunteer, or contractor providing direct care who is exempt from the required vaccines from having contact with minors during a public health disaster.

(k) The center must adopt and enforce written policies and procedures to identify employees, volunteers, or contractors at risk of directly contacting blood or potentially infectious materials in accordance with Occupational Safety and Health Administration (OSHA), 29 Code of Federal Regulations Part 1910.1030 and Appendix A relating to Bloodborne Pathogens.

(l) A center must ensure that its employees, volunteers, and contractors comply with:

(1) the center's IPCP;

(2) the Communicable Disease Prevention and Control Act, THSC Chapter 81; and

(3) THSC Chapter 85, Subchapter I, concerning the prevention of the transmission of human immunodeficiency virus and hepatitis B virus.

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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For further information, please call: (512) 438-4162



DIVISION 2. ADMINISTRATION AND MANAGEMENT

40 TAC §§15.301 - 15.311

STATUTORY AUTHORITY

The new sections are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code, Chapter 248A, which provides that the HHSC executive commissioner shall adopt rules that are necessary to implement the chapter and to establish minimum standards for prescribed pediatric extended care centers.

The new sections implement Texas Government Code, §531.0055, Texas Human Resources Code, §161.021, and Texas Health and Safety Code, Chapter 248A.

§15.301. License Holder's Responsibilities.

(a) The license holder is responsible for the conduct of the center and for the adoption, implementation, and enforcement of the written policies required throughout this chapter. The license holder is also responsible for ensuring that these policies comply with THSC Chapter 248A and the applicable provisions of this chapter and are administered to provide safe, professional, and quality health care.

(b) The persons described in §15.101(f) of this chapter (relating to Criteria and Eligibility for a License) must not have been convicted of an offense described in §99.2 of this title (relating to Convictions Barring Licensure), during the time frames described in that chapter.

(c) The license holder must ensure that all documents submitted to DADS or maintained by the center as required by this chapter are accurate and do not misrepresent or conceal a material fact.

(d) The license holder must comply with an order of the DADS commissioner or other enforcement orders that may be imposed on the center in accordance with THSC Chapter 248A and this chapter.

(e) The license holder of the center must have full legal authority and responsibility for the operation of the center.

(f) A license holder must designate an individual who meets the qualifications and conditions set out in §15.303 of this subchapter (relating to Administrator and Alternate Administrator Qualifications and Conditions) to serve as the administrator of the center.

(g) A license holder must designate in writing an alternate administrator who meets the qualifications and conditions of an administrator set out in §15.303 of this subchapter to act in the absence of the administrator or when the administrator is unavailable to the staff during the center's operating hours.

(h) A license holder must ensure the position and designation of an administrator or alternate administrator is filled with a qualified staff.

(i) A license holder must ensure maintenance of documentation of efforts to ensure a vacancy in the position of an administrator or alternate administrator does not last more than 30 days.

(j) A license holder must ensure all written notices to DADS required by this chapter, unless specified, are submitted as described in the instructions provided on the DADS website.

§15.302. Organizational Structure and Lines of Authority.

(a) A center must prepare and maintain a current written description of the center's organizational structure. The document may be either in the form of a chart or a narrative.

(b) The description must include:

(1) all services provided by the center;

(2) if applicable to the center's organization structure and lines of authority, the governing body, board of directors, the administrator, alternate administrator, the medical director, the nursing director, the alternate nursing director, advisory committee, IDT, and staff, as appropriate, based on services provided by the center; and

(3) the lines of authority and the delegation of responsibility down to and including the direct care level.

§15.303. Administrator and Alternate Administrator Qualifications and Conditions.

(a) The administrator and alternate administrator of a center must have two years of experience in supervision and management in a pediatric health care setting and meet one of the following criteria:

(1) be a physician licensed in Texas to practice medicine in accordance with Texas Occupations Code, Chapter 155;

(2) be an RN with a master's or baccalaureate degree in nursing and be licensed under the Nursing Practice Act, Texas Occupations Code, Chapter 301, with no disciplinary actions;

(3) be a college graduate with a bachelor's degree with one additional year of supervision or management experience in a health care setting;

(4) have an associate's degree in health care or administration with two additional years of supervision or management experience in a health care setting; or

(5) have an associate's degree in nursing and currently licensed under the Nursing Practice Act, Texas Occupations Code, Chapter 301, with no disciplinary action with two additional years of supervision or management experience in a health care setting.

(b) The administrator and the alternate administrator of a center must be at least 25 years of age.

(c) An administrator and alternate administrator of a center must meet the initial training requirements specified in §15.305 of this division (relating to Initial Training in Administration) and the continuing training requirements specified in §15.306 of this division (relating to Continuing Training in Administration).

(d) A person is not eligible to be the administrator or alternate administrator of a center if the person was the administrator of a center cited with a violation that resulted in DADS taking enforcement action against the center while the person was the administrator of the cited center.

(1) This subsection applies for 12 months after the date of the enforcement action.

(2) For purposes of this subsection, enforcement action means license suspension, licensure revocation, emergency suspension of a license, denial of an application for a license, or the issuance of an injunction. Enforcement action does not include administrative or civil penalties.

(e) An administrator or alternate administrator must not be convicted of an offense described in §99.2 of this title (relating to Convictions Barring Licensure) during the time frames described in that chapter.

(f) The designated administrator and alternate administrator of a center must be full-time employees of the center.

(g) The designated administrator or alternate administrator may serve as the nursing director or alternate nursing director if the administrator or alternate administrator meets the nursing director qualifications as described in §15.309 of this division (relating to Nursing Director and Alternate Nursing Director Qualifications and Conditions).

(h) The designated administrator or alternate administrator may be included in the center's staffing ratio if:

(1) the administrator or alternate administrator is a licensed nurse or meets the qualifications in §15.409 of this subchapter (relating to Direct Care Staff Qualifications); and

(2) the center's actual census is less than four minors.

(i) The designated administrator or alternate administrator must not be included in the center's staffing ratios when functioning as the nursing director or alternate nursing director.

(j) The designated administrator must manage only one center.

§15.304. Administrator Responsibilities.

(a) An administrator of a center must be responsible for implementing and supervising the administrative policies and operations of the center and for administratively supervising the provision of all services to minors on a day-to-day basis.

(b) A center's administrator must:

(1) ensure that the center complies with applicable federal, state, and local laws, rules, and regulations;

(2) manage the daily operations of the center;

(3) organize and direct the center's ongoing functions;

(4) ensure the availability of qualified staff and ancillary services to ensure the health, safety, and proper care of each minor;

(5) ensure criminal history checks, employee misconduct, and nurse aide registry checks are conducted for required staff before employment;

(6) ensure the implementation of the center's training program policies and procedures;

(7) familiarize staff with regulatory issues, as well as the center's policies and procedures;

(8) ensure that the documentation of services provided is accurate and timely;

(9) manage census records, including daily, actual, and total, in accordance with §15.803 of this subchapter (relating to Census);

(10) ensure that the center immediately notifies a minor's parent of any and all accidents or unusual incidents involving their minor or that had the potential to cause injury or harm to a minor;

(11) ensure that the center provides written notice to the parent of accidents or unusual incidents involving their minor on the day of occurrence;

(12) maintain a record of accidents or unusual incidents involving a minor or staff member that caused, or had the potential to cause, injury or harm to a person or property at the center;

(13) maintain a copy of current contractor agreements with third party providers contracted by the center;

(14) maintain a copy of current written agreements with each contractor;

(15) ensure adequate staff education and evaluations according to requirements in §15.415 of this subchapter (relating to Staffing Policies for Orientation, Development, and Training);

(16) maintain documented development programs for all staff;

(17) ensure the accuracy of public information materials and activities made available and presented on behalf of the center;

(18) ensure implementation of an effective budgeting and accounting system consistent with good business practice that promotes the health and safety of the center's minors; and

(19) supervise the annual distribution and evaluation of the responses to the parent-satisfaction surveys on all minors served.

§15.305. Initial Training in Administration.

(a) This section applies to an administrator and alternate administrator designated as an administrator or alternate administrator of a center.

(b) Before designation, an administrator or alternate administrator must complete the DADS pre-licensing program training titled Overview of Prescribed Pediatric Extended Care Center Licensing Standards in Texas.

(c) An administrator and alternate administrator of a center must complete a total of 12 clock hours of training in the administration of a center before the end of the first 12 months after designation to the position.

(d) The initial 12 clock hours of training must address:

(1) information on state and federal laws applicable to a center, including:

(A) the Americans with Disabilities Act;

(B) the Civil Rights Act of 1991;

(C) the Rehabilitation Act of 1973;

(D) the Family and Medical Leave Act of 1993;

(E) Public Law 111-148 Patient Protection and Affordable Care Act; and

(F) Occupational Safety and Health Administration requirements;

(2) information regarding the prevention, detection and reporting of fraud, waste, and abuse;

(3) legal issues regarding advance directives;

(4) infection control;

(5) communicable disease reporting;

(6) nutrition;

(7) principles of person-centered direction and guidance; and

(8) provision of services to a minor.

(e) The 12-clock-hour training requirement described in subsection (d) of this section must be met through structured, formalized classes, correspondence courses, competency-based computer courses, training videos, distance learning programs, or off-site training courses. Subject matter that deals with the internal affairs of a center does not qualify for clock hours.

(1) The training must be provided or produced by:

(A) an academic institution;

(B) a recognized state or national organization or association;

(C) a consultant;

(D) an accredited pediatric hospital; or

(E) DADS or other state agency.

(2) If a consultant provides or produces the training, the training must be approved by a recognized state or national organization or association. The center must maintain documentation of this approval or recognition for review by DADS inspectors.

(3) An administrator and alternate administrator may apply joint training provided by DADS toward the 12 clock hours of training required by this section if the joint training meets the training requirements described in subsection (d) of this section.

(f) Documentation of administrator and alternate administrator training must:

- (1) be on file at the center; and
- (2) contain:
 - (A) the name of the class or workshop;
 - (B) course content, including the curriculum;
 - (C) hours and dates of the training; and
 - (D) name and contact information of the entity and trainer who provided the training.

(g) An administrator and alternate administrator must not apply the pre-licensing program training as part of the 12 clock hours of training required in this section.

(h) After completing 12 clock hours of initial training during the first 12 months after designation as an administrator and alternate administrator, an administrator and alternate administrator must complete the continuing training requirements as specified in §15.306 of this division (relating to Continuing Training in Administration) in each subsequent 12-month period after designation.

§15.306. Continuing Training in Administration.

(a) An administrator and alternate administrator must complete 12 clock hours of continuing training within each subsequent 12-month period beginning with the date of designation. The 12 clock hours of continuing training must include at least two of the following topics and may include other topics relating to the duties of an administrator:

- (1) any one of the training topics listed in §15.305(d) of this division (relating to Initial Training in Administration);
- (2) development and interpretation of the center policies;
- (3) basic principles of management in a licensed health care setting;
- (4) ethics;
- (5) quality improvement;
- (6) risk assessment and management;
- (7) financial management;
- (8) skills for working with minors, a minor's parent, and other professional service providers;
- (9) community resources;
- (10) communicable disease reporting; or
- (11) marketing.

(b) In addition to the 12 clock hours of training required in this section, an administrator or alternate administrator must complete the Overview of Prescribed Pediatric Extended Care Center Licensing Standards in Texas provided by DADS every three years from the date of designation to the position.

(c) The center must keep documentation of administrator and alternate administrator continuing training on file at the center and maintain:

- (1) the name of the class or workshop;
- (2) course content, including the curriculum;
- (3) hours and dates of the training; and
- (4) name and contact information of the entity and trainer who provided the training.

(d) An administrator or alternate administrator must not apply the pre-licensing program training toward the continuing training requirements in this section.

§15.307. Medical Director Qualifications and Conditions.

(a) A center must designate a medical director who:

(1) has a valid, unrestricted license to practice medicine or osteopathy in Texas in accordance with Texas Occupations Code Chapter 155; and

(2) is board-certified in a pediatric specialty recognized by the American Board of Medical Specialties or the American Osteopathic Association.

(b) The medical director must be available in person or by phone for consultation or collaboration with prescribing physicians and the center's staff during the center's operating hours.

(c) The medical director must not be included in the center's staffing ratios.

§15.308. Medical Director Responsibilities.

The medical director must:

(1) review the services provided at the center to ensure a high quality of services;

(2) maintain a liaison role with the medical community in the location of the center's place of business;

(3) participate in the development and implementation of appropriate performance improvement and safety initiatives as directed by the Quality Assessment and Performance Improvement (QAPI) program;

(4) participate in the development of new programs and modifications of existing programs at the center;

(5) designate a physician as defined in §15.5 of this chapter (relating to Definitions) to provide medical consultation in the event the medical director is unavailable to the center's staff;

(6) serve on committees as defined and required by this chapter and the center's policies;

(7) consult with the center's administrator and nursing director on the health status of the center's staff as it relates to the center's IPCP and on a minor's health and safety or as threats to infection control arise;

(8) review reports of accidents and unusual incidents occurring at the center and identify to the center's administrator hazards to health and safety as directed by the QAPI program;

(9) participate in the development and implementation of policies and procedures for the delivery of emergency services for minors;

(10) participate in the development and implementation of policies and procedures for the use of restraints; and

(11) participate in the development and implementation of policies and procedures for the delivery of physician's services when a minor's prescribing physician or designated alternate is not available.

§15.309. Nursing Director and Alternate Nursing Director Qualifications and Conditions.

(a) A center must designate a nursing director and alternate nursing director who meet the qualifications and conditions set out in this section.

(b) The nursing director and alternate nursing director must have the following qualifications:

- (1) a baccalaureate degree in nursing;
- (2) a valid RN license under Texas Occupations Code, Chapter 301, with no disciplinary action;
- (3) a valid certification in Cardio Pulmonary Resuscitation or Basic Cardiac Life Support; and

(4) a minimum of two years of supervision and management in employment in a pediatric setting caring for a medically or technologically dependent minor or at least two years of supervision in one of the following specialty settings:

- (A) pediatric intensive care;
- (B) neonatal intensive care;
- (C) pediatric emergency care;
- (D) center;
- (E) home health or hospice agency specializing in pediatric care;
- (F) ambulatory surgical center specializing in pediatric care; or

(G) have comparable pediatric unit experience in a hospital for two consecutive years before the person applies for the position of nursing director.

(c) The nursing director and alternate nursing director meet the following conditions:

(1) The nursing director must be a full time employee of the center.

(2) The nursing director or alternate nursing director may serve as the administrator or alternate administrator of the center if the nursing director or alternate nursing director meets the administrator qualifications as described in §15.303 of this division (relating to Administrator and Alternate Administrator Qualifications and Conditions).

(3) A center must designate an alternate nursing director who meets the qualifications as specified in this section who will assume the responsibilities of the nursing director when the nursing director is unavailable during the center's operating hours.

(4) The nursing director must not be included in the center's staffing ratio when the center's actual census is four or more minors.

(5) The nursing director must not be included in the center's staffing ratio when the center's actual census is less than four minors and the nursing director is also functioning as the administrator or alternate administrator.

(6) The designated alternate nursing director must not be included in the center's staffing ratio when functioning as the nursing director, administrator or alternate administrator.

§15.310. Nursing Director Responsibilities and Supervision Responsibilities.

The center's nursing director's responsibilities must include, but are not limited to:

- (1) supervising all aspects of a minor's plan of care to ensure the minor's plan of care is implemented as ordered;
- (2) supervising all activities of the center's professional nursing staff and direct care staff to ensure compliance with current standards of accepted nursing practice;
- (3) ensuring compliance with all federal and state laws, rules, and regulations in this chapter;

- (4) supervising the daily clinical operations of the center;
- (5) ensuring the documentation of the center's actual, daily, and total census in accordance with §15.803 of this subchapter (relating to Census) and §15.410 of this subchapter (relating to Nursing Services Staffing Ratio);

(6) ensuring the documentation of the center's staffing ratios in accordance with §15.410 of this subchapter;

(7) supervising the implementation of staffing policies to ensure that only qualified staff are hired by the center, including verification of licensure and certification before employment and annually thereafter;

(8) ensuring the maintenance of records to support competency of the center's nursing and direct care staff;

(9) ensuring the implementation of the center's policies and procedures that establish and support quality care to a minor;

(10) providing orientation and in-service training to employees and providers of basic services to promote effective basic services and safety to a minor;

(11) performing timely annual performance evaluations for the center's nursing and direct care staff;

(12) ensuring participation in regularly scheduled continuing training for the center's nursing and direct care staff; and

(13) ensuring that the care at the center promotes effective services and the safety of a minor.

§15.311. Prohibition of Solicitation.

(a) A center must adopt and enforce a written policy to ensure compliance of the center and its employees, volunteers and contractors with Texas Occupations Code, Chapter 102.

(b) DADS may take enforcement action against a center in accordance with Subchapter G of this chapter (relating to Enforcement) if the center violates Texas Occupations Code, §102.001 or §102.006.

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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DIVISION 3. NURSING AND STAFFING REQUIREMENTS

40 TAC §§15.401 - 15.419

STATUTORY AUTHORITY

The new sections are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commis-

sioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code, Chapter 248A, which provides that the HHSC executive commissioner shall adopt rules that are necessary to implement the chapter and to establish minimum standards for prescribed pediatric extended care centers.

The new sections implement Texas Government Code, §531.0055, Texas Human Resources Code, §161.021, and Texas Health and Safety Code, Chapter 248A.

§15.401. Nursing Staff.

If nursing services are provided at a center, the center must ensure there are sufficient RNs and LVNs to ensure that the services provided to each minor are in accordance with the minor's plan of care.

§15.402. Registered Nurse Qualifications.

A RN providing services on behalf of a center must have at least the following qualifications and experience:

(1) a valid RN license under Texas Occupations Code, Chapter 301, with no disciplinary action;

(2) valid certifications in Cardio Pulmonary Resuscitation and Basic First Aid; and

(3) one year of pediatric specialty experience with emphasis on medically and technologically dependent minors, obtained within the previous five years.

§15.403. Registered Nurse Responsibilities.

An RN providing services on behalf of a center must be responsible for the following:

(1) maintaining compliance with the standards of nursing practice and delegation;

(2) developing a minor's plan of care;

(3) providing nursing interventions that includes parental training, information, and education to increase a parent's confidence and competence in caring for a minor;

(4) coordinating services with other service providers;

(5) monitoring the ongoing physical and developmental growth of a minor;

(6) having knowledge of access to available community resources;

(7) participating on the IDT and in the IDT meetings regarding a minor's plan of care and progress;

(8) administering medication, intravenous infusions, parenteral feeding, and other specialized treatments; monitoring and documenting the effect of medications, therapies, and progress in accordance with accepted standards of professional practice;

(9) communicating findings to a minor's prescribing physician and the center's nursing director; and

(10) supervising the center's direct care staff.

§15.404. Licensed Vocational Nurse Qualifications.

An LVN providing services on behalf of a center must have at least the following qualifications and experience:

(1) a valid LVN licensed under Texas Occupations Code, Chapter 301, with no disciplinary action;

(2) valid certifications in Cardio Pulmonary Resuscitation and Basic First Aid; and

(3) one year of pediatric specialty experience with emphasis on medically and technologically dependent minors obtained within the last consecutive five years.

§15.405. Licensed Vocational Nurse Responsibilities.

(a) An LVN providing services on behalf of a center must work under the supervision of an RN and is responsible to provide, within the LVN's level of competence and scope of practice, nursing care to the center's minors as ordered in the plan of care.

(b) An LVN must be responsible for the following:

(1) maintaining compliance with the standards of nursing practice;

(2) providing nursing interventions that includes parental training, information, and education to increase a parent's confidence and competence in caring for a minor;

(3) having knowledge of the availability of community resources;

(4) participating on the IDT and in the IDT meetings regarding a minor's plan of care and progress;

(5) communicating findings to a minor's prescribing physician and an RN; and

(6) administering medication, intravenous infusions, parenteral feeding, and other specialized treatments; monitoring and documenting the effect of medications, therapies, and progress in accordance with accepted standards of professional practice.

§15.406. Student Nurses.

If a center has an agreement with an accredited school of nursing to use the center for a portion of a student nurse's clinical experience, the student nurse may provide care under the following conditions:

(1) an instructor from the school is on-site, provides class supervision, and assumes responsibility for all student nursing activities at the center;

(2) the agreement ensures that criminal history checks are conducted for a student nurse in accordance with §15.418 of this division (relating to Criminal History Checks, Nurse Aide Registry (NAR), and Employee Misconduct Registry (EMR) Requirements) before a student nurse provides direct care; and

(3) a student nurse is not counted in the staffing ratio required in this chapter.

§15.407. Nursing Education, Licensure, and Practice.

A center must adopt and enforce a written policy to ensure compliance with the rules of the Texas Board of Nursing adopted at 22 TAC Chapters 211, 213 - 217, and 219 - 226.

§15.408. Delegation of Nursing Tasks by Registered Professional Nurses to Unlicensed Personnel and Tasks Not Requiring Delegation.

A center must adopt and enforce a written policy to ensure compliance with rules adopted by the Texas Board of Nursing as specified in 22 TAC Chapter 224 (relating to Delegation of Nursing Tasks by Registered Professional Nurses to Unlicensed Personnel for Clients with Acute Conditions or in Acute Care Environments).

§15.409. Direct Care Staff Qualifications.

Direct care staff providing services on behalf of a center, must have the following qualifications:

(1) be 18 years of age or older;

(2) a high school diploma or a general equivalency degree;

(3) one of the following:

(A) one year of experience employed in a health care, childcare, or school setting providing direct care to minors who are medically or technologically dependent; or

(B) two years of experience employed in a health care, childcare, or school setting providing direct care to minors; and

(4) maintain current certification in Pediatric Cardio Pulmonary Resuscitation and basic First Aid.

§15.410. Nursing Services Staffing Ratio.

(a) A center's total staffing for nursing services must be maintained, at a minimum, in the following ratios but at no time must there be less than one staff member on duty per three minors receiving nursing services from a center. If only one staff member is on duty, that member must be an RN.

(b) The staffing ratio is based on the number of minors on the center's actual census that are receiving nursing services from the center.

(c) A center must maintain documentation to support compliance with this section and §15.803 of this subchapter (relating to Census). Documentation must include:

(1) each change in the number of minors on the center's actual census that are receiving nursing services from the center; and

(2) the increase or decrease in the number of RNs, LVNs, and direct care staff in accordance with this section as changes in the number of minors on the center's actual census that are receiving nursing services from the center occurs.

Figure: 40 TAC §15.410(c)(2)

§15.411. Rehabilitative and Ancillary Professional Staff and Qualifications.

(a) If the following staff will be providing services on behalf of a center or supervising services at a center, the staff must have one year of experience of pediatric care in a health care setting. The staff may be:

(1) an audiologist with a valid license under Texas Occupations Code, Chapter 401;

(2) an occupational therapist with a valid license under Texas Occupations Code, Chapter 454;

(3) an occupational therapist assistant with a valid license under Texas Occupations Code, Chapter 454;

(4) a physical therapist with a valid license under Texas Occupations Code, Chapter 453;

(5) a physical therapist assistant with a valid license under Texas Occupations Code, Chapter 453;

(6) a respiratory therapist with a valid license under Texas Occupations Code, Chapter 604;

(7) a speech-language pathologist with a valid license under Texas Occupations Code, Chapter 401;

(8) a licensed assistant in speech-language pathology with a valid license under Texas Occupations Code, Chapter 401; or

(9) a social worker with a valid license under Texas Occupation Code, Chapter 505.

(b) A center must employ or contract with a qualified dietitian who has a valid license under the laws of the State of Texas to use the title of licensed dietitian or provisional licensed dietitian, or who is a registered dietitian with one year of supervisory experience in dietetic service.

(c) If a center has a qualified pharmacist on a full-time, part-time, or consultant basis, the pharmacist must have a valid license under Texas Occupations Code, Chapter 558.

(d) A rehabilitative professional providing services on behalf of a center or supervising services at a center must be supervised by a center's qualified licensed person who practices under the center's policies and procedures.

(e) A center must not include rehabilitative professionals in the staffing ratios.

§15.412. Peer Review.

A center must adopt and enforce written policies and procedures to ensure that all professional disciplines providing services on behalf of the center comply with their respective professional practice acts or title acts relating to reporting and peer review.

§15.413. Contractors.

(a) If a center uses contractors, the center must enter into a contract with each contractor. The contract must be enforced by the center and clearly designate:

(1) that minors are accepted for care only by the center;

(2) the services to be provided by the contractor and how they will be provided, including per visit or per hour;

(3) the necessity of the contractor to conform to all applicable center policies, including staff qualifications;

(4) the contractor's responsibility for participating in developing the plan of care;

(5) the manner in which services will be coordinated and evaluated by the center in accordance with §15.802 of this subchapter (relating to Coordination of Services); and

(6) the procedures for:

(A) submitting information and documentation by the contractor in accordance with the center's record policies;

(B) scheduling of visits by the contractor or the center; and

(C) periodic evaluation of the minor by the contractor.

(b) A center must establish and maintain a contract management record system to ensure that services provided to each minor by a contractor at the center are completely and accurately documented, readily accessible and systematically organized to facilitate the compilation, retrieval and review of the information.

(c) The center is not required to maintain a personnel record for contractors. Upon request by DADS, a center must provide documentation at the site of a survey no later than eight working hours of the request to demonstrate:

(1) that contractors meet the center's written job qualifications for the position and duties performed; and

(2) the center is in compliance with §15.418 of this division (relating to Criminal History Checks, Nurse Aide Registry (NAR), and Employee Misconduct Registry (EMR) Requirements).

§15.414. Volunteers.

(a) If a center uses volunteers, the center must use volunteers in defined roles under the supervision of a designated center staff.

(b) A volunteer must meet the same qualifications, requirements and standards in this chapter that apply to center staff performing the same activities on behalf of the center.

(c) A center must not include the volunteer in the center's staffing ratios.

§15.415. Staffing Policies for Staff Orientation, Development, and Training.

(a) A center must adopt and enforce a written staffing policies and procedures that govern all staff providing services on behalf of the center, including employees, volunteers, and contractors.

(b) A center's written staffing policies must:

(1) include requirements for orientation to the policies, procedures, and objectives of the center;

(2) include requirements and procedures for processing criminal history checks;

(3) include requirements that staff are current on immunizations;

(4) require an applicant for employment provide written documentation to rule out communicable diseases, including but not limited to tuberculosis;

(5) include requirements for direct care staff to demonstrate the necessary skills and competency to meet the direct care needs of a minor to which he or she is assigned and as described in their job description;

(6) include requirements for staff to participate in appropriate employee development programs quarterly;

(7) include requirements for participation by all staff in job-specific training. The center's training program policies must:

(A) ensure staff are properly oriented to tasks performed;

(B) ensure demonstration of competency for tasks when competency cannot be determined through education, license, certification, or experience;

(C) ensure quarterly continuing systemic training for all staff that provide services, including infection prevention and control;

(D) ensure staff are informed of changes in techniques, philosophies, organization, minor's rights, ethics and confidentiality, medical record requirements, information relating to minor's development, goals, and products relating to a minor's care;

(E) ensure staff are properly oriented and trained in the proper use of person-centered direction and guidance as outlined in center policy and in accordance with §15.206 of this subchapter (relating to Person-Centered Direction and Guidance); and

(F) ensure staff are properly oriented and trained in the proper use and application of restraints;

(8) include a written job description (statement of those functions and responsibilities which constitute job requirements) and job qualifications (specific education and training necessary to perform the job) for each position at the center;

(9) include procedures for searching the nurse aide registry and the employee misconduct registry for staff in accordance with §15.418 of this division (relating to Criminal History Checks, Nurse Aid Registry (NAR), and Employee Misconduct Registry (EMR) Requirements);

(10) ensure annual evaluation of employee and volunteer performance;

(11) address employee and volunteer disciplinary action and procedures;

(12) address the use of volunteers. The policy must be in compliance with §15.414 of this division (relating to Volunteers); and

(13) include a requirement that all staff providing services on behalf of a center sign a statement that the staff have read, understand, and will comply with all applicable center policies.

(c) A center must adopt and enforce written policies and procedures for parent orientation and training programs in accordance with §15.509 of this subchapter (relating to Parent Training). The policy must:

(1) include that orientation is provided to each parent of each minor admitted to the center; and

(2) ensure that orientation includes:

(A) the philosophy of the center;

(B) the basic services as defined in this chapter;

(C) on-going parent training needs as determined by the individual needs of the minor;

(D) a minor's parent agreement and disclosure form;

(E) the center attendance policy for minors; and

(F) information about a minor's rights while receiving services at the center.

§15.416. Staff Development Program.

(a) A center's staff development programs must:

(1) facilitate the ability of the staff to function as a member of an IDT that includes health professionals, an adult minor, and a minor's parent;

(2) improve communication skills to:

(A) facilitate a collaborative relationship between an adult minor, a minor's parent, and the staff;

(B) focus on person-centered thinking;

(C) facilitate positive behavior support; and

(D) incorporate person-first language;

(3) increase the understanding of childhood illness and the effects it has on a minor's development, a minor's parent, and a minor's family;

(4) provide mechanisms and skills for coping with the effects of childhood illness;

(5) develop case management skills to assist an adult minor and a minor's parent in setting priorities, planning, and implementing a minor's care at home;

(6) facilitate staff implementation of life-sustaining and assistive technology, provided by the center or by durable medical equipment contractors, used in the care of a minor;

(7) facilitate the ability of staff to develop an individualized comprehensive plan of care; and

(8) prepare staff for the response to and management of emergency medical situations in a center.

(b) A center must:

(1) conduct quarterly staff development programs appropriate to the staff providing services to minors to maintain high quality care; and

(2) ensure that all center staff providing basic services to minors maintain basic life support certification.

(c) A center must document all staff development programs to include:

- (1) the title and a short summary of the training program;
- (2) date and time;
- (3) name of the trainer; and
- (4) certificate of completion.

(d) A center must maintain the quarterly staff development training program documentation for a period of two years. If the staff development training is specific to services provided to a specific minor, reference to the training must be maintained as part of a minor's medical record.

§15.417. Personnel Records.

(a) A center must maintain a personnel record for an employee and volunteer. A personnel record may be maintained electronically if it meets the same requirements as a paper record. All information must be kept current. A personnel record must include the following:

(1) a signed job description and qualifications for each position accepted or a signed statement that the person read the job description and qualifications for each position accepted;

(2) an application for employment or volunteer agreement;

(3) a record of the immunizations requirements and evaluation of the tuberculosis results;

(4) verification of references, job experience, and educational requirements as conducted by the center to verify qualifications for each position accepted;

(5) verification of licenses, permits, and certifications before employment and annually;

(6) annual performance evaluations and disciplinary actions;

(7) the signed statement about compliance with center policies required by §15.415 of this division (relating to Staffing Policies for Staff Orientation, Development, and Training); and

(8) for an employee and volunteer:

(A) a printed copy of the results of the initial and annual searches of the nurse aide registry and employee misconduct registry obtained from the DADS Internet website; and

(B) documentation that the employee, volunteer, or contractor in accordance with §15.418 of this division (relating to Criminal History Checks, Nurse Aide Registry (NAR), and Employee Misconduct Registry (EMR) Requirements) received written information about the EMR.

(b) A center must keep a complete and accurate personnel record for an employee and volunteer at its licensed location.

§15.418. Criminal History Checks, Nurse Aide Registry (NAR), and Employee Misconduct Registry (EMR) Requirements.

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

(1) Applicant means any individual applying for a position in a center.

(2) Employee means an individual directly employed by a center, a volunteer, or a contractor.

(b) The provisions in this subsection apply to an applicant and an employee.

(1) A center must conduct a criminal history check authorized by, and in compliance with, THSC Chapter 250 for an applicant for employment and an employee.

(2) A center must not employ an applicant whose criminal history check includes a conviction listed in THSC §250.006 that bars employment or a conviction the center has determined is a contraindication to employment. If an applicant's or employee's criminal history check includes a conviction of an offense that is not listed in THSC §250.006, the center must document its review of the conviction and its determination of whether the conviction is a contraindication to employment.

(3) The center must immediately discharge an employee when the center becomes aware that the employee's criminal history check reveals conviction of a crime that bars employment or that the center has determined is a contraindication to employment.

(c) The provisions in this subsection apply to an applicant and an employee.

(1) Before a center hires an applicant, the center must search the Nurse Aid Registry (NAR) and the Employee Misconduct Registry (EMR) using the DADS website to determine if an applicant or employee is listed in either registry as unemployable. The center must not employ an applicant who is listed as unemployable in either registry.

(2) The center must provide information about the EMR to an employee no later than five business days after hiring an employee. The information must:

(A) be in writing;

(B) state that a person listed in the EMR is not employable by the center; and

(C) include a reference to Chapter 93 of this title (relating to Employee Misconduct Registry (EMR)) and THSC Chapter 253.

(3) In addition to the initial verification of employability, the center must search the NAR and the EMR to determine if the employee is listed as unemployable in either registry at least every 12 months.

(4) The center must immediately discharge an employee when the center becomes aware:

(A) that the employee is designated in the NAR or the EMR as unemployable; or

(B) that the employee's criminal history check reveals conviction of a crime that bars employment or that the center has determined is a contraindication to employment.

(d) Upon request by DADS, a center must provide documentation to demonstrate compliance with subsections (b) and (c) of this section.

§15.419. Drug Testing Policy.

(a) A center must adopt and enforce a written policy describing whether it will conduct drug testing of its staff, volunteers, and contractors.

(b) If a center conducts drug testing, the written policy must describe the method by which drug testing is conducted.

(c) If a center does not practice drug testing, the written policy must state that the center does not conduct drug testing.

(d) A center must provide a copy of the policy to anyone applying for services from the center and any person who requests a copy of the policy.

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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DIVISION 4. GENERAL SERVICES

40 TAC §§15.501 - 15.511

STATUTORY AUTHORITY

The new sections are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code, Chapter 248A, which provides that the HHSC executive commissioner shall adopt rules that are necessary to implement the chapter and to establish minimum standards for prescribed pediatric extended care centers.

The new sections implement Texas Government Code, §531.0055, Texas Human Resources Code, §161.021, and Texas Health and Safety Code, Chapter 248A.

§15.501. Basic Services.

A center must ensure the provision of all basic services based on the needs of a minor and a minor's family in accordance with the plan of care.

§15.502. Medical Services.

(a) A center must ensure the provision of medical services based on the needs of a minor, in accordance with a minor's plan of care and as ordered by a minor's prescribing physician.

(b) A center must ensure that a minor's prescribing physician maintains responsibility for the overall medical therapeutic plan of a minor and consults and collaborates with the staff providing services in a center.

(c) A center's nursing director or designee must communicate with each minor's prescribing physician at least every 180 days or when there is a health status or physical status change in a minor's condition.

(d) A center must adopt and enforce a written policy requiring that therapists who provide services to a minor at the center consult with a minor's prescribing physician directly or coordinate with the clinical staff at least every 180 days or when there is a health status or physical status change in a minor's condition.

§15.503. Nursing Services.

(a) A center must ensure nursing services are provided based on the needs of a minor, in accordance with a minor's plan of care and as ordered by a minor's prescribing physician.

(b) A center's nursing director or designee must participate in pre-admission planning along with other appropriate nursing staff.

(c) The center's nursing director is responsible for:

(1) ensuring the implementation of the nursing care plan;

(2) monitoring and documenting the care and treatment according to a minor's plan of care;

(3) ensuring that nurses providing services at the center participate in interdisciplinary team meetings regarding a minor's progress towards goals;

(4) ensuring the maintenance of a minor's medical record in accordance with the center's policies and procedures; and

(5) ensuring a minor's parent is instructed on how to provide the necessary care and treatment in the home.

§15.504. Psychosocial Treatment and Services.

(a) A center must ensure the provision of psychosocial treatment based on the needs of a minor, in accordance with a minor's plan of care and as ordered by a minor's physician.

(b) If psychosocial treatment and services are provided at the center, the center must ensure that the provision of psychosocial treatment and services complies with the requirements of this section, §15.206 of this subchapter (relating to Person-Centered Direction and Guidance) and §15.207 of this subchapter (relating to Restraints) as applicable to a minor's plan of care and physician's order.

(c) The center must ensure psychosocial treatments and services provided at a center are overseen by a physician, RN or psychologist.

(d) If psychosocial treatments and services are provided in a center, the center must adopt and enforce written policies and procedures relating to the provision of psychosocial treatments to a minor, including:

(1) ensuring the development of interventions to foster normal development;

(2) ensuring the development of interventions to foster psychosocial adaptations;

(3) using person-centered direction and guidance in accordance with §15.206 of this subchapter; and

(4) using restraints in accordance with §15.207 of this subchapter.

(e) If psychosocial treatments are provided in a center, the center must ensure the initial health assessment of a minor receiving psychosocial treatments includes:

(1) mental status including psychological and behavioral status;

(2) sensory and motor function;

(3) cranial nerve function;

(4) language function; and

(5) any other criteria established by a center's policy.

(f) The center must ensure that an individual providing psychosocial treatment and services in a center:

(1) actively participates in the coordination of a minor's care, in accordance with accepted standards of practice;

(2) participates in ongoing interdisciplinary comprehensive assessments and developing and evaluating the plan of care;

(3) participate as a committee member in the continuous review of the center's person-centered direction and guidance program in accordance with §15.206 of this subchapter;

(4) provides assistance to a minor's family with the effects of chronic illness and supporting effective relationships within a family; and

(5) develops interventions to foster normal development and psychosocial adaptation.

§15.505. Social Services.

(a) A center must ensure the provision of social services based on the needs of a minor, in accordance with a minor's plan of care and as ordered by a minor's prescribing physician.

(b) If social services are provided in a center, the services must be overseen by a social worker or RN.

(c) The center must ensure that an individual providing social services in a center:

(1) actively participates in the coordination of a minor's care, in accordance with accepted standards of practice; and

(2) participates in ongoing interdisciplinary comprehensive assessments, developing and evaluating the plan of care.

(d) The center must ensure that a minor's parent receives assistance in finding referrals to appropriate local community resources and is provided assistance to enhance coping skills in the parent's care of a minor.

§15.506. Rehabilitative Services.

(a) A center must ensure the provision of rehabilitative services based on the needs of a minor, in accordance with a plan of care and as ordered by a minor's prescribing physician.

(b) The center must ensure rehabilitative services provided at a center are overseen by a licensed or certified qualified professional staff as specified in §15.411 of this subchapter (relating to Rehabilitative and Ancillary Professional Staff and Qualifications).

(c) The center must ensure that an individual providing rehabilitative services in a center:

(1) actively participates in the coordination of a minor's care, in accordance with accepted standards of practice; and

(2) participates in ongoing interdisciplinary comprehensive assessments, developing and evaluating the plan of care.

§15.507. Functional Developmental Services.

(a) A center must ensure the provision of functional developmental services based on the needs of a minor, in accordance with the minor's plan of care and as ordered by a minor's prescribing physician.

(b) A center must ensure that each minor has a functional assessment incorporated into the comprehensive assessment to include developmentally appropriate areas.

(c) A minor's functional assessment must include:

(1) measurable goals that enhance independent functioning in daily activities and to promote socialization;

(2) a description of a minor's strengths and present performance level with respect to each goal;

(3) skills areas in priority order; and

(4) planning for specific areas identified as needing development.

§15.508. Educational Developmental Services.

(a) The center must adopt and enforce written policies and procedures to facilitate each minor's access to available educational services and programs in the community where a minor resides and where the center is located. The center's educational policy must:

(1) be person-centered and parent driven;

(2) be collaborative with the education provider;

(3) ensure that the center does not act as the primary education provider for a minor; and

(4) support a minor's education program as agreed to by a parent and education provider.

(b) The center must not coerce or provide an incentive to an individual that would result in a minor's removal from a less restrictive educational environment.

(c) The center must not be the primary location for the education program to deliver services to a minor unless it is determined by the education program in collaboration with a minor's parent and a minor's prescribing physician that the center is the least restrictive environment for a minor to receive educational services.

(d) For a minor who is not participating in any education program, the center must provide a minor and a minor's parent contact information for the Local Education Agency where a minor resides.

(e) For a minor participating in an education program, the center must:

(1) not duplicate or provide services that conflict with a minor's education program;

(2) when requested by a parent, make available a minor's records to support the minor's education program;

(3) request copies of a minor's education program records to support center care planning activities;

(4) if requested by a parent, participate in planning activities for a minor conducted by the education program;

(5) request that a minor's teacher participate as part of the IDT to ensure coordination of a minor's services with the scheduled education component of activities;

(6) support a minor's education program activities at the center, if needed, by:

(A) providing a well-lighted room, private space or other adequate workspace;

(B) providing functional assistance to a minor;

(C) coordinating with a minor and a minor's parent to ensure special and general supplies and equipment available for a minor if needed; and

(D) providing an area to post education program calendars and information bulletins provided to the center for minors and parents to view.

§15.509. Parent Training.

(a) A center must develop parent training for each minor's parent and family as identified in a minor's plan of care.

(b) A center must identify the minimum frequency for parent training appropriate to a minor's plan of care to maintain high quality care at home and at the center.

(c) A center must ensure that parent training includes the importance of basic life support certification and first aid training.

(d) A center must document parent training in a minor's medical record, to include:

- (1) the title and a short summary of the training;
- (2) the date and time the training was conducted;
- (3) the name and title of the staff who provided the training;

and

(4) a copy of the training sign-in sheet or other attendance record.

(e) A center's parent training program must:

(1) facilitate the ability of a parent to be an active participant of an IDT in the development of an individualized comprehensive plan of care;

(2) facilitate the ability of a parent to be an active participant in the development of a minor's emergency medical plan;

(3) improve communication skills to facilitate a collaborative relationship between a minor's parent and providers of basic services;

(4) increase the understanding of childhood illness and the effects it has on a minor's development and a minor's family;

(5) provide mechanisms and skills for coping with the effects of childhood illness;

(6) provide information on the importance of meeting a child's needs through a well-balanced and nutritional diet;

(7) provide training regarding appropriate person-centered direction and guidance for effectively promoting successful behavioral and coping skills for a minor relating to a minor's medical conditions and treatment;

(8) develop skills to determine and set priorities, and plan and implement a minor's care at home; and

(9) provide training regarding the use, importance, and function of new technology used to provide care to a minor.

§15.510. Nutritional Counseling.

(a) A center must ensure the provision of nutritional counseling as defined in §15.5 of this chapter (relating to Definitions) based on the minor's needs and in accordance with the minor's plan of care.

(b) Nutritional counseling must be overseen by a qualified individual including a dietitian, nutritionist, or RN.

§15.511. Dietary Services.

(a) A center must provide a minor with:

(1) a nourishing, well-balanced diet as recommended by the American Academy of Pediatrics or Food and Nutrition Board of the National Research Council, National Academy of Sciences; or

(2) a diet ordered by a minor's prescribing physician.

(b) The center must employ or contract with a dietitian as described in §15.411(b) of this subchapter (relating to Rehabilitative and Ancillary Professional Staff and Qualifications).

(c) The dietitian is responsible for the overall operation of the dietary service.

(d) The dietitian must participate in regular conferences with the administrator and nursing director to provide information about approaches to identified nutritional problems.

(e) The dietitian must participate in the development of dietary support staff policies.

(f) The center must employ sufficient dietary support staff who meet the qualifications to carry out the functions of the dietary service.

(g) The dietitian must ensure that a minor has a diet:

(1) that meets the daily nutritional and special dietary needs of a minor, based upon the acuity and clinical needs of a minor; or

(2) as prescribed by a minor's prescribing physician.

(h) The dietitian is required to review a minor's plan of care for any known food allergy and special diet ordered by a minor's prescribing physician as often as necessary for changes to a minor's dietary needs.

(i) A dietitian must develop a menu that:

(1) is prepared at least one week in advance;

(2) is written for each type of diet;

(3) varies from week to week, taking the general age-group of minors into consideration; and

(4) any substitutions must be documented as required in subsection (o) of this section.

(j) The center must retain records of menus served and food purchased for 30 days. The center must keep a list of minors receiving special diets and a record of the diets in the minors' medical records for at least 30 days.

(k) The center must post the current week's menu in a conspicuous location so an adult minor and a minor's parent may see it.

(l) The center must:

(1) provide tables that allow minors to eat together when possible;

(2) provide assistance to minors, as needed;

(3) served food on appropriate tableware; and

(4) ensure clean napkins, bibs, dishes, and utensils are available for each use.

(m) A center must coordinate with an adult minor or a minor's parent to ensure special eating equipment and utensils are available for a minor at the center if needed.

(n) An identification system, such as tray cards, must be available to ensure that all food is served in accordance with a minor's diet.

(o) A center must monitor and record food intake of all minors as follows.

(1) Deviations from normal food and fluid intake must be recorded in a minor's medical record.

(2) In-between meal snacks, and supplementary feedings, either as a part of the overall plan of care or as ordered by a minor's prescribing physician, including special diets, must be documented using professional practice standards.

(p) The center must serve a minor meals and snacks as specified in this section or as outlined in a minor's plan of care.

(1) If breakfast is served, a morning snack is not required.

(2) Notwithstanding the provisions of this section, a minor must not go more than three hours without a meal or snack being offered, unless a minor is sleeping.

(3) The center must offer at least one snack to a minor who is served at the center for less than four hours.

(4) The center must offer one meal, or one meal and one snack, equal to one third of a minor's daily food needs to a minor who is served at the center for four to seven hours.

(5) The center must offer two meals and one snack, or two snacks and one meal, equal to one half of a minor's daily food needs to a minor who is served at the center for more than seven hours.

(6) The center must ensure that a supply of drinking water is always available to each minor and is served at every snack, meal-time, and after active play.

(q) The center must:

(1) purchase food from sources approved or considered satisfactory by federal, state, and local authorities;

(2) store, prepare, and serve food under sanitary conditions, as required by the Department of State Health Services food service sanitation requirements; and

(3) dispose of garbage and refuse properly.

(r) Dietary service staff must be in good health and practice hygienic food-handling techniques. Staff with symptoms of communicable diseases or open, infected wounds may not work at the center until the center receives written documentation from a health care professional that the staff member is released to return to work or, the signs and symptoms which relate to the communicable disease are no longer evident.

(s) Dietary service staff must wear clean, washable garments, wear hair coverings or clean caps, and have clean hands and fingernails.

(t) Routine health examinations must meet all local, state, and federal codes for food service staff.

(u) A minor's parent may provide meals or snacks to a minor in place of the center providing the meals and snacks. The center and a minor's parent must have a written signed agreement that includes a statement that a parent chooses to provide a minor's meals and or snacks from home and that a minor's parent understands the center is not responsible for the nutritional value of the meal or snack or for meeting a minor's daily food needs.

(v) If a minor's parent provides only a meal but not a snack, the center is responsible for meeting the requirements of subsection (p) of this section.

(w) The center must provide safe and proper storage and service of a minor's meals and snacks provided by a minor's parent.

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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DIVISION 5. ADMISSION CRITERIA, CONFERENCE, ASSESSMENT, INTERDISCIPLINARY PLAN OF CARE, AND DISCHARGE OR TRANSFER

40 TAC §§15.601 - 15.608

STATUTORY AUTHORITY

The new sections are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code, Chapter 248A, which provides that the HHSC executive commissioner shall adopt rules that are necessary to implement the chapter and to establish minimum standards for prescribed pediatric extended care centers.

The new sections implement Texas Government Code, §531.0055, Texas Human Resources Code, §161.021, and Texas Health and Safety Code, Chapter 248A.

§15.601. Admission Criteria.

(a) A center may admit a minor if:

(1) the minor's prescribing physician, in consultation with the minor's parent and the minor, recommends admission to a center, taking into consideration the medical, nursing, psychosocial, therapeutic, nutritional, dietary, functional, education and development needs of the minor in addition to the emotional, psychosocial, and environmental factors;

(2) the minor's prescribing physician issues a prescription ordering care at a center;

(3) the minor is stable for outpatient medical services and requires ongoing nursing care and other basic services;

(4) the adult minor or the minor's parent signs a written agreement and disclosure form consenting to the minor's admission to a center; and

(5) the admission is voluntary.

(b) The center must ensure that its admission criteria are in accordance with §15.211 of this subchapter (relating to Infection Prevention and Control Program and Vaccinations Requirements).

§15.602. Pre-admission Conference.

(a) If a minor meets the criteria for admission into a center as described in §15.601 of this division (relating to Admission Criteria), the medical or nursing director must contact the minor's prescribing physician to schedule a pre-admission conference before the minor receives services at the center.

(b) If a minor is hospitalized at the time of referral to a center, the pre-admission conference must include the minor's parent, the minor, the minor's prescribing physician, center staff, relevant hospital staff, including medical, nursing, social services, and developmental staff, and any other individuals requested by the adult minor or the minor's parent, to begin developing the plan of care.

(c) If a minor is not hospitalized at the time of referral to a center, the pre-admission conference must include the minor's parent, the minor, the minor's prescribing physician, center staff, and any other individuals requested by the adult minor or the minor's parent to begin developing the plan of care.

(d) A center must schedule a pre-admission conference no later than three days after receipt of the referral. The pre-admission conference must address a minor's:

- (1) medical history;
- (2) diagnosis;
- (3) mental and developmental status;
- (4) nutritional status;
- (5) dietary requirements;
- (6) functional abilities and limitations;
- (7) activities permitted and prohibited;
- (8) use of assistive devices;
- (9) treatment procedures;
- (10) use of restraints, if applicable;
- (11) medication;
- (12) safety measures to protect against injury;
- (13) education level and participation in an education program, if applicable;
- (14) immunization record;
- (15) receipt of services from other service providers; and
- (16) other appropriate information.

§15.603. Agreement and Disclosure.

(a) A center must review a written agreement and disclosure form with a minor's parent or with the adult minor before services are provided at the center.

(b) The agreement and disclosure form must include evidence or attestation that the parent has the legal authority to consent to a minor's medical care.

(c) The agreement and disclosure form must document that a center obtained a minor's parent's or an adult minor's written informed consent specifying the services that may be provided on behalf of a center to a minor.

(d) The agreement and disclosure form must document that the center provided the following information orally and in writing to the minor's parent or the minor, in a language or format he or she understands:

- (1) the notice of rights and responsibilities described in §15.901 of this subchapter (relating to Rights and Responsibilities);
- (2) information on the Advance Directives Act, THSC, Chapter 166;
- (3) the extent to which payment for services provided on behalf of the center may be expected from any third-party payment source known to a center, the charges for services not covered by a third-party payment source and charges that a minor's parent or adult minor may have to pay;
- (4) a list of the staff who will provide services on behalf of the center;

(5) a list of expected outcomes and any specific limitations or barriers to reaching the outcomes;

(6) the method of supervision and oversight by a center of the services to be provided at the center;

(7) DADS toll-free telephone number and its purpose;

(8) the process for directing a grievance to the administrator about services provided at the center and the time frame in which the center must review and resolve a grievance;

(9) an adult minor's and a parent's responsibilities;

(10) an emergency plan for a minor; and

(11) notice of the center's policies regarding:

(A) attendance requirements;

(B) implementing an advance directive in accordance with §15.902 of this subchapter (relating to Advance Directives);

(C) disclosure of the minor's medical record;

(D) person-centered direction and guidance;

(E) restraints;

(F) reporting abuse, neglect, or exploitation of a minor by an employee, volunteer, or contractor;

(G) drug testing of employees in direct contact with a minor in accordance with §15.419 of this subchapter (relating to Drug Testing Policy); and

(H) management and disposal of medications in the center.

(e) The agreement and disclosure form must be signed by a minor's parent or an adult minor.

(f) A center must provide a signed copy of the agreement and disclosure form to the minor's parent or the adult minor.

(g) The center must keep the signed written agreement and disclosure form in the minor's medical record.

(h) The center must update the agreement and disclosure form if information in the form changes.

(i) The center must comply with the terms of the agreement.

§15.604. Admission Procedures.

(a) A center's administrator, nursing director, or designee must conduct an interview with a minor's parent or an adult minor before or at a minor's admission to the center that addresses the following:

- (1) the adult minor's and parent's rights and responsibilities;
- (2) the center's policies and procedures;
- (3) basic services;
- (4) the center's dietary services;
- (5) the center's transportation services;
- (6) the center's operating hours and contact information;
- (7) the center's infection prevention and control program;
- (8) the center's emergency preparedness plan;
- (9) the center's attendance policy;
- (10) services the minor is receiving at the center, but not provided by the center;

- (11) development of the minor's plan of care;
- (12) the minor's emergency plan and needs; and
- (13) the minor's transfer and discharge planning.

(b) A center must request and keep a copy of a minor's medical history and documentation of a physical examination performed by a minor's prescribing physician within 30 days before or after the date of the minor's admission to the center.

(c) A center must have a signed order from the minor's prescribing physician on the day of the minor's admission, as described in §15.701 of this subchapter (relating to Physician Orders).

§15.605. Initial and Updated Comprehensive Assessment.

(a) A center's RN must conduct and document a specific initial comprehensive assessment that identifies the minor's medical, nursing, psychosocial, therapeutic, nutritional, dietary, functional abilities, educational, and developmental needs and the adult minor's or minor's parent's training needs.

(b) The initial comprehensive assessment must include the minor's discharge planning, including transition support, self-advocacy guidance, and coordination of services required by the minor and the minor's parent.

(c) The initial comprehensive assessment must be conducted in consultation with a minor's parent and the minor, if the minor is an adult minor.

(d) An RN must complete an initial comprehensive assessment no earlier than three business days before the minor is admitted to the center.

(e) An RN must conduct, in consultation with a minor's parent or the adult minor, a comprehensive assessment of the minor at least once every 180 days after admitting the minor into the center. An RN must conduct a new comprehensive assessment on the minor when the minor has a change of condition or the minor's needs change.

(f) The updated comprehensive assessment described in subsection (e) of this section must:

(1) identify a minor's ongoing medical, nursing, psychosocial, therapeutic, nutritional, dietary, functional, educational, and developmental needs and the adult minor's and a minor's parent's training needs; and

(2) include a minor's discharge planning, detailing transition support, if needed, self-advocacy guidance, and coordination with the minor's parent or the adult minor.

§15.606. Interdisciplinary Team.

(a) A center must designate an IDT.

(b) The IDT must monitor the services provided to the minor at the center.

(c) A center must designate an RN to be a member of the IDT to:

- (1) provide coordination of care for the minor;
- (2) ensure continuous assessment of the minor's and the minor's parent's needs; and
- (3) implement the minor's interdisciplinary plan of care.

(d) The IDT must prepare a written plan of care for the minor as described in §15.607 of this division (relating to Initial and Updated Plan of Care).

(e) The IDT must include:

- (1) the minor's prescribing physician;
- (2) the center's nursing director or an RN designated by the nursing director;
- (3) the minor;
- (4) the minor's parent;
- (5) a social worker, if the minor is receiving social services at the center; and
- (6) another individual providing basic services to a minor if the minor is receiving basic services other than nursing services at the center.

(f) The IDT must participate in the development of a plan of care with goals and objectives for a minor that includes discharge planning when goals and objectives are met.

§15.607. Initial and Updated Plan of Care.

(a) A center must develop an individualized written plan of care for a minor. The plan of care must include:

(1) the minor's and the minor's parent's goals and interventions based on the issues identified in the pre-admission conference and the initial and updated comprehensive assessments; and

(2) measurable goals with interventions based on the minor's care needs and means of achieving each goal and must address, as appropriate, rehabilitative and restorative measures, preventive intervention and training, and teaching of personal care by the minor's parent.

(b) An RN must address in the written interdisciplinary plan of care:

(1) the services needed to address the medical, nursing, psychosocial, therapeutic, dietary, functional, educational, and developmental needs of the minor and the training needs of the minor's parent;

(2) the minor's functional assessment;

(3) the specific goals of care;

(4) the time frame for achieving the goals and the schedule for evaluation of progress;

(5) the orders for treatment, services, medications, medical equipment, diet, and restraints, if applicable;

(6) specific criteria for transitioning from or discontinuing participation at the center; and

(7) the minor's scheduled days of attendance.

(c) In collaboration with the interdisciplinary team, an RN, a minor's parent, the minor, and an individual requested by the adult minor or the minor's parent must develop a plan of care based on the comprehensive assessment.

(d) The RN, a minor's parent and the minor, if the minor is an adult minor, must sign the plan of care within five days after initiation of the plan.

(e) A minor's prescribing physician must review and sign the plan of care within 30 days after initiation of the plan.

(f) The center must incorporate the plan of care into a minor's medical record no later than 10 days after receiving the signed plan from a minor's prescribing physician.

(g) Copies of the plan of care must be given to a minor's parent, the minor, if the minor is an adult minor, the minor's prescribing physi-

cian, the center's staff and other health care providers and providers of basic services as appropriate.

(h) The center's IDT and an RN must review and update a minor's plan of care at least every 180 days, or more often, if there is a change in a minor's medical condition or changes in a minor's needs.

(i) A minor's parent and the minor, if the minor is an adult minor, must review and sign the updated plan of care within five days before changes to the plan of care are implemented.

(j) A minor's prescribing physician must review and sign the updated plan of care within 30 days after initiation of the updated plan.

(k) The center must incorporate the updated plan of care into a minor's medical record no later than 10 days after receiving the signed plan from a minor's prescribing physician.

(l) The center must adopt and enforce written policies and procedures regarding the communication and coordination of a minor's care with a minor's prescribing physician in accordance with the plan of care.

(m) The policy described in subsection (l) of this section must ensure the communication between the center's staff and the minor's prescribing physician is conveyed to the minor's parent and the minor in a language and format that an adult minor and minor's parent understand.

(n) The center's nursing director or designee must:

(1) document communication with the minor's prescribing physician;

(2) maintain the documentation in the minor's medical record; and

(3) ensure that the communication is conveyed to the minor's parent and the adult minor in a language and format the adult minor and minor's parent understand.

(o) The center staff must ensure the provision of services and treatments in accordance with the plan of care and as ordered by the minor's prescribing physician.

§15.608. Discharge or Transfer Notification.

(a) A center intending to transfer or discharge a minor must provide both oral and written notification to a minor's parent and adult minor no later than 15 days before the date the minor will be transferred or discharged, if the notification is provided in person.

(b) If the center does not provide the notice of transfer or discharge in person, the center must provide oral notification to a minor's parent and adult minor by telephone no later than 15 days before the date of transfer or discharge and mail the written notification no later than 15 days before the date of transfer or discharge.

(c) A center that intends to transfer or discharge a minor must also notify the minor's prescribing physician no later than 15 days before the date the minor will be transferred or discharged.

(d) A center may transfer or discharge a minor without providing the oral and written notification described in subsections (a) and (b) of this section:

(1) if the minor's parent or adult minor requests the transfer or discharge;

(2) if the minor's medical needs require transfer, including a medical emergency;

(3) if the minor's health and safety is at risk due to an emergency and a transfer is made in accordance with §15.209 of this sub-

chapter (relating to Emergency Preparedness Planning and Implementation);

(4) for the protection of staff or a minor attending the center after the center makes a documented, reasonable effort to notify the minor's parent, the minor's prescribing physician, and appropriate state or local authorities of the center's concerns for the safety of staff or the minor, and in accordance with center policy;

(5) according to the minor's prescribing physician's orders;
or

(6) if the minor's parent or an adult minor fails to pay for services, except as prohibited by state law.

(e) A center must keep in a minor's medical record:

(1) a copy of the written notification provided in accordance with subsection (a) or (b) of this section to the minor's parent or adult minor;

(2) documentation of the personal contact with the minor's parent or adult minor in accordance with subsection (b) of this section; and

(3) documentation that the minor's prescribing physician was notified of the date of transfer or discharge in accordance with subsection (c) of this section.

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**DIVISION 6. PHYSICIAN, PHARMACY,
MEDICATION, AND LABORATORY SERVICES**

40 TAC §§15.701 - 15.708

STATUTORY AUTHORITY

The new sections are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code, Chapter 248A, which provides that the HHSC executive commissioner shall adopt rules that are necessary to implement the chapter and to establish minimum standards for prescribed pediatric extended care centers.

The new sections implement Texas Government Code, §531.0055, Texas Human Resources Code, §161.021, and Texas Health and Safety Code, Chapter 248A.

§15.701. Physician Orders.

(a) A center must ensure that a minor admitted to the center is admitted under an order of the minor's prescribing physician and remains under the care of the prescribing physician for the duration of the minor's stay at the center. The minor's medical record must contain the written prescribing physician order used for admission as well as all subsequent prescribing physician orders.

(b) The prescribing physician orders must include:

- (1) approval of a minor's admission to a center;
- (2) nursing services;
- (3) medication administration, if applicable;
- (4) dietary needs, if applicable;
- (5) permitted activities, if applicable;
- (6) therapies treatments, if applicable;
- (7) transportation authorization, if applicable; and
- (8) other services, if applicable.

§15.702. Receiving Physician Orders.

(a) A center must adopt and enforce a written policy describing protocols and procedures the center must follow when receiving physician orders. A center's written policy must comply with this section. The center's written policy must ensure the center's compliance with THSC Chapter 248A, applicable rules in this chapter, and applicable state and federal regulations relating to receiving physician orders. If there is a conflict between this chapter and other applicable state and federal laws and regulations, a center must comply with the more stringent requirement.

(b) A center's written policy describing protocols and procedures for receiving physician orders must address:

- (1) receipt of a physician order before providing basic services;
- (2) the licensed staff authorized to accept physician verbal orders;
- (3) the recording and signing of verbal physician orders by licensed staff;
- (4) the time frame for a physician to sign and date verbal orders; and
- (5) whether the center accepts an electronically signed physician order or a physician order submitted via a facsimile machine.

(c) A center may accept signed facsimile copies of physician orders. A center must be able to obtain an original signature to verify a signature on a facsimile copy. If signed physician orders are accepted by this method, the written policy must describe:

- (1) safeguards to ensure that transmitted information is sent to the appropriate individual; and
- (2) the procedure to be followed in the case of misdirected transmission.

(d) A center may accept electronically signed physician orders submitted electronically. If signed physician orders are accepted by this method, the written policy must describe the center's method for verifying that the system and software product the physician uses provides protection against:

- (1) modification of the physician order, including the physician's signature and date of signature; and

(2) the unauthorized use of the physician's electronic signature.

§15.703. Pharmacist Services.

(a) If a center administers or stores medication, the center must have a pharmacist or a qualified RN with education and training in drug management and on a full-time, part-time, or on a consultant basis to provide consultation to the medical director, administrator, nursing director, and other center staff.

(b) A center must consult with a pharmacist or qualified RN as needed on the following:

(1) establishing written policies and procedures for the storage and administration of medications as described in §15.704 of this division (relating to Storage of Medication) and §15.705 of this division (relating to Administration of Medication);

(2) reviewing medical records to ensure that the medication records are accurate, updated and reflect that medications are administered in accordance with the orders of a minor's prescribing physician;

(3) providing in-service training to staff on the storage and administration of medications; and

(4) ensuring pharmaceutical compliance.

§15.704. Storage of Medication.

(a) A center must adopt and enforce a written policy for the storage and administration of medication at the center. The policy must include protocols and procedures for:

(1) labeling;

(2) storage;

(3) integrity;

(4) control; and

(5) accountability of all medications stored by a center;

(b) A center must store over-the-counter (OTC) stock medications separately from medication brought to the center by an adult minor or a minor's parent. The OTC medication must include a medication label that includes:

(1) the medication name;

(2) strength;

(3) manufacturer's name;

(4) lot number;

(5) expiration date;

(6) recommended dosage for safe use; and

(7) applicable cautionary or accessory labeling.

(c) A center must only receive prescription medication from an adult minor or a minor's parent and in the original and labeled container issued by a pharmacy.

(d) A center must store medication in a locked cabinet, located in or convenient to a nurse's station or other central location.

(e) A center must keep Schedule II substances in separately locked, securely fixed boxes or drawers in the locked medication cabinet and under two locks.

(f) A center must keep medications requiring refrigeration in a separate locked box in a separate refrigerator from the refrigerator the center uses to store food.

§15.705. Administration of Medication.

(a) A center must adopt and enforce written policies and procedures for the administration of medication to a minor. The policies and procedures must address:

- (1) removing an individual dose from a previously dispensed, properly labeled container;
- (2) verifying the medication with the prescriber's orders;
- (3) verifying the order with the correct minor;
- (4) giving the correct medication dose to a minor;
- (5) giving the medication by the correct route;
- (6) observing that the medication is taken;
- (7) recording the required information, including the method of administration; and
- (8) documenting any medication not administered and the reason.

(b) A center's written policy must ensure compliance with:

- (1) THSC Chapter 248A;
- (2) this chapter;
- (3) state law authorizing a person licensed under the Texas Occupations Code to administer medications;
- (4) rules adopted by the Texas Board of Nursing 22 TAC Chapter 224 (relating to Delegation of Nursing Tasks by Registered Professional Nurses to Unlicensed Personnel for Clients with Acute Conditions or in Acute Care Environments) governing when an RN may delegate the administration of medication to an unlicensed person; and
- (5) any other applicable state and federal regulations relating to the administration of medication to a minor.

(c) If there is a direct conflict between this chapter and other applicable state and federal laws and regulations, a center must comply with the more stringent requirements.

(d) The administration of medication by center staff must be included in a minor's plan of care.

(e) A center must adopt and enforce written policies and procedures for maintaining a current medication list and a current medication administration record.

(f) A center's written policy must require center staff who supervise, assign, or delegate the administration of medication or administer medication to a minor to maintain a current medication list in the minor's medical record.

(g) A center may incorporate a current medication list and medication administration record into one document.

(h) An RN must review the medication list initially after a minor is admitted and update the list when necessary but at least every 90 days.

(i) An RN must report significant findings from a review of the medication list to the minor's prescribing physician.

(j) Review of the medication list includes evaluation of prescription and over-the-counter drugs, medication orders, and the medication list for:

- (1) known allergies;
- (2) rational drug therapy-contraindication;
- (3) reasonable dose and route of administration;

- (4) reasonable directions for use;
- (5) duplication of drug therapy;
- (6) drug-drug interaction;
- (7) drug-food interaction;
- (8) drug-disease interaction;
- (9) adverse drug reaction; and
- (10) proper use, including overuse or under use.

(k) A center must adopt and enforce written policies and procedures on medication errors. The policy must ensure that the nursing director, a minor's prescribing physician and the minor's parent are notified immediately after the discovery of a medication error or an adverse reaction.

§15.706. Laboratory Services.

If a center provides laboratory services, then the center must adopt and enforce a written policy to ensure that the center meets the Clinical Laboratory Improvement Act, 42 United States Code Annotated, §263a (CLIA 1988).

§15.707. Disposal of Special or Medical Waste.

(a) A center must adopt and enforce a written policy for the safe handling and disposal of special or medical waste and materials, including bio-hazardous waste and materials.

(b) A center that generates special or medical waste while providing services must dispose of the waste according to the requirements issued by the Department of State Health Services in 25 TAC Chapter 1, Subchapter K (relating to Definition, Treatment, and Disposition of Special Waste From Health Care-Related Facilities).

§15.708. Disposal and Destruction of Pharmaceuticals.

A center must adopt and enforce a written policy for the safe and legal disposal and destruction of pharmaceuticals in accordance with all state, federal, and local laws.

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DIVISION 7. CARE POLICIES, COORDINATION OF SERVICES, AND CENSUS

40 TAC §§15.801 - 15.803

STATUTORY AUTHORITY

The new sections are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing

the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code, Chapter 248A, which provides that the HHSC executive commissioner shall adopt rules that are necessary to implement the chapter and to establish minimum standards for prescribed pediatric extended care centers.

The new sections implement Texas Government Code, §531.0055, Texas Human Resources Code, §161.021, and Texas Health and Safety Code, Chapter 248A.

§15.801. Care Policies.

A center must adopt and enforce written policies and procedures that specify the center's care practices. The written care policies and procedures must address the following topics, as applicable:

- (1) initial and updated comprehensive assessment;
- (2) pre-admission, admission, placing a minor on hold, transfer, and discharge;
- (3) attendance requirements;
- (4) active play of a minor;
- (5) intravenous services;
- (6) safety of center staff;
- (7) safety of a minor;
- (8) the prevention, detection, and reporting of abuse, neglect, or exploitation;
- (9) nursing procedures relating to the care of a minor;
- (10) psychiatric nursing procedures;
- (11) person-centered direction and guidance;
- (12) restraints;
- (13) parent teaching;
- (14) care planning;
- (15) palliative care and management of a terminal illness;
- (16) performing waived laboratory testing;
- (17) medication administration;
- (18) emergency plans of care; and
- (19) any other care policies relating to the services provided on behalf of a center.

§15.802. Coordination of Services.

(a) A center must adopt and enforce written policies and procedures regarding coordination of services to ensure the effective exchange of information, reporting, and coordination of a minor's services:

- (1) among all staff providing services on behalf of a center; and
- (2) between the center and a provider of services to the minor that is not providing services on behalf of the center, if known by the center.

(b) Documentation in a minor's medical records must demonstrate coordination of services as described in subsection (a) of this section.

(c) For a minor receiving services from a provider that is not providing services on behalf of a center, the center must:

(1) not duplicate or provide services that conflict with a minor's care plan or service plan with the provider;

(2) when requested by an adult minor or parent, make available a minor's records to support the coordination of services between the center and the provider;

(3) request copies of a minor's records with the provider to support center care planning activities;

(4) if requested by an adult minor or parent, participate in planning activities for a minor conducted by the provider;

(5) request that a minor's provider participate as part of the center's interdisciplinary team and QAPI committee, as applicable; and

(6) support the coordination of a minor's services by allowing a minor's provider to serve a minor at the center, if:

(A) the center, a minor's parent, a minor, if the minor is an adult minor and the provider agree that the provision of services to a minor by the provider at the center would be appropriate for the minor; and

(B) the center and the provider establish a written agreement for the provision of services at the center. The written agreement must include the provider's compliance with center policies and this chapter.

§15.803. Census.

(a) A center must adopt and enforce written policies and procedures for the development of the center's actual, daily, and total census lists.

(b) A center's written policies and procedures must address:

- (1) developing and maintaining the census lists;
- (2) the staff responsible for maintaining the census lists; and
- (3) the retrieval of the census lists when requested by DADS.

(c) A center must maintain the following lists of minors receiving services:

- (1) actual census, which must be updated each time the number of minors at the center changes;
- (2) daily census; and
- (3) total census.

(d) The actual and daily census must include:

- (1) a minor's name;
- (2) the services provided to a minor and the provider responsible for the delivery of each service; and
- (3) the time a minor entered and left the center.

(e) The total census must include:

- (1) a minor's name;
- (2) a minor's diagnosis; and
- (3) the name and contact information of a minor's prescribing physician.

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

Filed with the Office of the Secretary of State on March 24, 2014.



DIVISION 8. RIGHTS AND RESPONSIBILITIES, ADVANCE DIRECTIVES, ABUSE, NEGLECT, AND EXPLOITATION, INVESTIGATIONS, DEATH REPORTING, AND INSPECTION RESULTS

40 TAC §§15.901 - 15.906

STATUTORY AUTHORITY

The new sections are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code, Chapter 248A, which provides that the HHSC executive commissioner shall adopt rules that are necessary to implement the chapter and to establish minimum standards for prescribed pediatric extended care centers.

The new sections implement Texas Government Code, §531.0055, Texas Human Resources Code, §161.021, and Texas Health and Safety Code, Chapter 248A.

§15.901. Rights and Responsibilities.

(a) A center must adopt and enforce written policies to ensure a minor's legal rights are observed and protected and to ensure compliance with this section. The policies must comply with relevant law and ensure that the center considers a minor's age and legal status, including whether a guardian has been appointed or the disabilities of minority have been removed, to determine a minor's or other individual's authority to make decisions for the minor.

(b) Before providing services to a minor, a center must provide an adult minor and a minor's parent with oral and written notification of the requirements of this section in a language and format that the minor and parent understand. The center must obtain the signature of the adult minor and minor's parent to confirm that the individual received the notice.

(c) A center must:

(1) ensure that a minor is free from abuse, neglect, and exploitation at the center, as described in §15.903 of this division (relating to Abuse, Neglect, or Exploitation Reportable to DADS);

(2) inform a minor and a minor's parent of the center's policy for reporting abuse, neglect, or exploitation of a minor;

(3) ensure that a minor and the minor's property is treated with respect;

(4) at the time of admission, inform an adult minor and a minor's parent, orally and in a written statement, that a complaint or

question about the center may be directed to the Department of Aging and Disability Services, DADS Consumer Rights and Services Division, P.O. Box 149030, Austin, Texas 78714-9030, toll free 1-800-458-9858;

(5) at the time of admission, inform an adult minor and a minor's parent, orally and in a written statement, that:

(A) states that complaints about services at the center may be directed to the administrator who will address them promptly;

(B) provides the time frame in which a center must review and resolve the complaint as described in §15.904 of this division (relating to Investigations of a Complaint and Grievance); and

(C) does not include a statement that a complaint must be made to the center administrator before directing a complaint to DADS;

(6) ensure that a minor is not subjected to unlawful discrimination or retaliation;

(7) ensure that a minor is treated appropriate to his or her age and developmental status;

(8) ensure that a minor is allowed to interact with other minors, including through planned and spontaneous active play, respective to a minor's condition and physician orders;

(9) ensure that an adult minor and a minor's parent are informed in advance about the services to be provided, including:

(A) staff who will provide the services and the proposed frequency of each service;

(B) any change in the plan of care before the change is made, except when a delay based on notification would compromise the health and safety of a minor;

(10) ensure that an adult minor and a minor's parent are informed of the expected outcomes of services and any specific limitations or barriers to services;

(11) ensure that an adult minor and a minor's parent are allowed and encouraged to participate in planning services and in planning changes to services before the changes are made, except when a delay based on participation in planning would compromise the health and safety of a minor;

(12) ensure that an adult minor and a minor's parent are informed of the center's policies on implementing an advance directive in accordance with §15.902 of this division (relating to Advance Directives) and to receive information about executing an advance directive;

(13) ensure that an adult minor and a minor's parent are allowed to refuse services;

(14) ensure that minor's medical record is kept confidential and an adult minor and a minor's parent are informed of the center's policies and procedures regarding disclosure of medical records;

(15) ensure that an adult minor and a minor's parent are informed, before care is provided, of the:

(A) extent to which payment for the center's services may be expected from Medicaid, or any other federally funded or aided program known to the center, or any other third-party payment source;

(B) charges for services not covered by a third-party payment source; and

(C) charges that the adult minor or minor's parent may have to pay;

(16) inform an adult minor and a minor's parent of any changes in the information provided in accordance with paragraph (15) of this subsection as soon as possible after changes occur, but no later than 30 days after the date the center becomes aware of the change;

(17) inform an adult minor and a minor's parent of the availability of other programs, including day care, early intervention programs, or school if a minor's condition improves sufficiently to transition to other programs; and

(18) ensure that an adult minor and a minor's parent are allowed to convene or participate in a council or support group for individuals receiving services at the center.

§15.902. Advance Directives.

(a) A center must adopt and enforce a written policy regarding implementation of advance directives. The policy must be in compliance with the Advance Directives Act, THSC, Chapter 166. The policy must include a clear and precise statement of any procedure the center is unwilling or unable to provide or withhold in accordance with an advance directive.

(b) A center must provide written notice to a minor's parent and the adult minor of the written policy required by subsection (a) of this section. The notice must be provided at the earlier of:

(1) the time a minor is admitted to receive services at the center; or

(2) the time service provision begins for a minor.

(c) DADS assesses an administrative penalty of \$500 against a center that violates this section.

§15.903. Abuse, Neglect, or Exploitation Reportable to DADS.

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

(1) Abuse, neglect, and exploitation of a minor have the meanings assigned in THSC Chapter 260A; and

(2) Employee means an individual directly employed by a center, a contractor, or a volunteer.

(b) DADS investigates a complaint or an incident of abuse, neglect, or exploitation when the act occurs at a center, a center employee is responsible for the care of a minor at the time the act occurs, or the alleged perpetrator is associated with the center. A complaint of abuse, neglect, or exploitation that does not meet these criteria must be referred to the Department of Family and Protective Services.

(c) A center must adopt and enforce a written policy relating to the center's procedures for preventing, detecting, and reporting alleged acts of abuse, neglect, and exploitation of a minor.

(d) A center's employee who has cause to believe that the physical or mental health or welfare of a minor has been or may be adversely affected by abuse, neglect, or exploitation must report the information immediately:

(1) to DADS Consumer Rights and Services section at 1-800-458-9858 or via the DADS website;

(2) to one of the following law enforcement agencies in accordance with THSC Chapter 260A:

(A) a municipal law enforcement agency, if the center is located in the territorial boundaries of a municipality; or

(B) the sheriff's department of the county in which the center is located if a center is not located in the territorial boundaries of a municipality; and

(3) in accordance with Texas Family Code, §261.101.

(e) The following information must be reported to DADS:

(1) name, age, and address of the alleged victim;

(2) name and address of the person responsible for the care of the alleged victim;

(3) nature of the alleged act;

(4) nature and extent of the alleged victim's condition;

(5) identity of the alleged perpetrator; and

(6) any other relevant information.

(f) A center must investigate allegations of abuse, neglect, or exploitation immediately and send a written report of the investigation using DADS Provider Investigation Report form to the DADS Complaint Intake Unit no later than five days after the initial report.

(g) A center must complete DADS Provider Investigation Report form and include the following information:

(1) incident date;

(2) the alleged victim;

(3) the alleged perpetrator;

(4) any witnesses;

(5) the allegation;

(6) any injury or adverse effect;

(7) any assessments made;

(8) any treatment required;

(9) the investigation summary; and

(10) any action taken.

(h) A center must require an employee, as a condition of employment with a center, to sign a statement indicating that the employee may be criminally liable for the failure to report abuse, neglect, or exploitation.

(i) A center must prominently and conspicuously post a readable sign for display in a public area accessible to minors, minors' parents, employees and visitors that reads: "Cases of Suspected Abuse, Neglect, or Exploitation Shall be Reported to the Department of Aging and Disability Services by calling 1-800-458-9858."

§15.904. Investigations of a Complaint and Grievance.

(a) DADS investigates a complaint of non-compliance with THSC Chapter 248A or this chapter regarding:

(1) treatment or care that was furnished at a center;

(2) treatment or care that a center failed to furnish; or

(3) a lack of respect for a minor's property by anyone furnishing services at the center.

(b) A center must adopt and enforce a written policy relating to the center's procedures for prompt investigation of complaints, grievances, and reports of abuse, neglect, and exploitation.

(c) A center must:

(1) acknowledge receipt of a complaint or grievance;

(2) document receipt of a complaint or grievance;

(3) initiate an investigation no later than 10 days after a center receives a complaint or grievance; and

(4) document all components of an investigation.

(d) A center must retain all investigation documentation for a minimum of three years from the date a complaint or grievance was received.

(e) A center must not retaliate against a person for filing a complaint, presenting a grievance, or providing in good faith information relating to services provided by a center.

(1) A center may not retaliate against a minor or a minor's parent for filing a complaint, presenting a grievance, or providing, in good faith, information relating to services provided at the center.

(2) A center is not prohibited from terminating an employee for a reason other than retaliation.

(f) A center must not discharge or otherwise retaliate against a minor or a minor's parent for presenting a complaint or grievance against a center.

§15.905. Reporting of a Minor's Death.

(a) A center must report to DADS the death of a minor at the center and those minors transferred from the center to a hospital who expire within 24 hours after the transfer.

(b) A center must submit to the DADS Consumer Rights and Services section a DADS Provider Investigation Incident Report form no later than 10 days after the date a minor dies. A center must complete the DADS Provider Investigation Incident Report form and include the following information:

- (1) name of a deceased minor;
- (2) social security number of a deceased minor;
- (3) date, time, place of death; and
- (4) name and address of a center.

§15.906. Examination of Inspection Results.

(a) A center must make available to any person on request a copy of each DADS written notification of the inspection results pertaining to the center.

(b) Before making the inspection results available under this subsection, the center must redact from the report any information that is confidential under other state or federal law.

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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DIVISION 9. MEDICAL RECORDS, QUALITY ASSESSMENT AND PERFORMANCE IMPROVEMENT, DISSOLUTION AND RETENTION OF RECORDS

40 TAC §§15.1001 - 15.1004

STATUTORY AUTHORITY

The new sections are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code, Chapter 248A, which provides that the HHSC executive commissioner shall adopt rules that are necessary to implement the chapter and to establish minimum standards for prescribed pediatric extended care centers.

The new sections implement Texas Government Code, §531.0055, Texas Human Resources Code, §161.021, and Texas Health and Safety Code, Chapter 248A.

§15.1001. Medical Records.

(a) In accordance with accepted principles of practice, a center must establish and maintain a medical record system to ensure that the services provided to a minor are completely and accurately documented, readily accessible, and systematically organized to facilitate the compilation and retrieval of information.

(b) A center must establish a record for a minor and must maintain the record in accordance with and contain the information described in subsection (g) of this section.

(c) A center must keep a single file for services provided to a minor and a minor's parent.

(d) A center must adopt and enforce written procedures regarding the use and removal of records, the release of information, and when applicable, the incorporation of clinical, progress, or other notes into the medical record.

(e) A center may not release any portion of a minor's medical record to anyone other than an adult minor and a minor's parent, except as allowed by law.

(f) A center must establish a secure area for original active medical record storage at the center's place of business.

(1) A center must ensure that a minor's medical record is treated as confidential, safeguarded against loss and unofficial use, and maintained according to professional standards of practice.

(2) A center must keep a minor's medical record in original form, as a microfilmed copy, on an electronic system, or as a certified copy.

(3) A medical record in its original form is a signed paper record or an electronically signed computer record.

(4) A center must ensure that computerized medical records meet the requirements of paper records, including protection from unofficial use as specified in subsection (g) of this section and retention for the period specified in §15.1004 of this division (relating to Retention of Records).

(5) A center must ensure that an entry to a medical record regarding the delivery of services is not altered without evidence and explanation of the alteration.

(6) A center must ensure that an entry to a minor's medical record is current, accurate, legible, clear, complete, and appropriately authenticated and dated with the date of entry by the individual making

the entry. The record must document all services provided on behalf of the center. The center must not use correction fluid or tape in the record. The center must make corrections by striking through the error with a single line and including the date the correction was made and the initials of the person making the correction.

(7) A center must store the record of an inactive minor's medical record on paper, microfilm, or electronically. The center must secure the medical record and ensure that it is readily retrievable by the center staff.

(g) Each medical record must include the following information as applicable to the services provided on behalf of a center:

(1) a minor's referral and application for services including, but not limited to:

(A) a minor's full name;

(B) sex and date of birth;

(C) the name, address and telephone number of a minor's parent, or others as identified by a minor's parent;

(D) a minor's prescribing physician's name and telephone numbers, and an emergency contact number; and

(E) a minor's prescribing physician's initial order for services;

(2) comprehensive assessments, pertinent medical history including allergies and special precautions and subsequent assessments;

(3) plans of care, nursing care plans and other plans as applicable;

(4) verbal orders of a physician reduced to writing and signed by the physician in accordance with the center's policy as required by §15.702 of this subchapter (relating to Receiving Physician Orders);

(5) documentation of nutritional counseling and special diets, as appropriate;

(6) clinical and progress notes from all professionals providing services to a minor;

(7) documentation of all known services and significant events;

(8) current medication list;

(9) medication administration record, if medication is administered by center staff;

(10) current immunization record;

(11) written acknowledgment of an adult minor's and a minor's parent's receipt of written notification of the requirements of §15.901 of this subchapter (relating to Rights and Responsibilities);

(12) written acknowledgment of an adult minor's and a minor's parent's receipt of a center's policy relating to the reporting of abuse, neglect, or exploitation of a minor;

(13) written acknowledgement of an adult minor's and a minor's parent's receipt of the notice of advance directives;

(14) written acknowledgement of an adult minor's and a minor's parent's receipt of the center's policies relating to discipline and guidance;

(15) documentation demonstrating that an adult minor and a minor's parent have been informed of how to register a complaint in accordance with §15.901 of this subchapter;

(16) discharge summary, including the reason for discharge or transfer and a center's documented notice to an adult minor, a minor's parent, a minor's prescribing physician, and other individuals as required in §15.608 of this subchapter (relating to Discharge or Transfer Notification);

(17) services provided to a minor's parent; and

(18) all consent and election forms, as applicable.

(h) The center must ensure that clinical and progress notes are written the day service is rendered and incorporated into the medical record no later than two business days after the services are rendered.

§15.1002. Quality Assessment and Performance Improvement.

(a) A center must develop, implement, and maintain a written quality assessment and performance improvement (QAPI) program.

(b) A center must designate in writing the group or individuals, by title, responsible for ensuring that a center's written QAPI program is developed, implemented, and maintained in accordance with this section.

(c) The center must implement the QAPI program using a QAPI Committee. The QAPI committee must be composed of the following persons based on the services provided at the center during the time period under review by the QAPI:

(1) the administrator;

(2) the medical director;

(3) the nursing director;

(4) a therapist from each therapy that provided services during the review period (i.e., if physical therapy was provided during the quarter being reviewed, a PT must be on the QAPI committee);

(5) a social worker that provided services during the review period; and

(6) a supervisor of the direct care staff.

(d) The QAPI program must evaluate all services including:

(1) monitoring activities that have an impact on health and safety of minors;

(2) monitoring and evaluating the quality of services;

(3) improving measurable outcomes for minors, if applicable;

(4) resolving problems identified by a center and raised by parents and adult minors; and

(5) ensuring a center's compliance with THSC Chapter 248A and this chapter.

(e) The QAPI program must be ongoing. Ongoing means there is a continuous and periodic collection and assessment of measurable care provided to minors and administrative quality data.

(f) The written QAPI program must include the frequency and detail of data collection.

(g) A center must collect quality data at least quarterly for all services provided to a minor.

(h) The QAPI program must include a system that measures the quality, effectiveness, and safety of services provided to minors and identifies opportunities and priorities for performance improvement.

(i) The system of measures must allow the QAPI Committee to collect and analyze services provided to minors and administrative quality data. The measures must include a review and analysis of the following, as applicable to the services provided at the center and the problems a center identifies:

- (1) a representative sample of active and closed medical records;
- (2) negative care outcomes to minors or adverse events;
- (3) complaints and grievances;
- (4) self-reported incidents alleging abuse, neglect, or exploitation by the center employees, volunteers, or contractors;
- (5) minor's parent satisfaction surveys;
- (6) infection control activities;
- (7) incident reports, including reports of medication errors and unprofessional conduct by licensed staff;
- (8) the accuracy and completeness of center personnel records;
- (9) the implementation and effectiveness of center policies;
- (10) the effectiveness and safety of all services provided, including:
 - (A) competency and qualifications of staff;
 - (B) the promptness, safety, and quality of services provided to minors;
 - (C) the center's response to complaints and reports of abuse, neglect, or exploitation; and
 - (D) a determination that services are provided as outlined in each minor's plan of care; and
- (11) an annual review and evaluation of a center's total operation.

(j) The QAPI Committee must meet quarterly or more often if needed to analyze the data collected and to use the data to improve services. A center must immediately correct identified problems that directly or potentially threaten health and safety of minors. The QAPI Committee must:

- (1) plan and document actions taken to correct identified problems, and if necessary, to revise center policies;
- (2) measure and document the outcome of the corrective action taken; and
- (3) monitor and document the level of improvement over time to ensure sustained improvements.

(k) The QAPI Committee must review and update or revise the written QAPI program at least annually, or more often if needed.

(l) The center must document the ongoing implementation and annual review of the written QAPI program.

(m) The center must keep QAPI documents confidential and make the documents readily available to DADS upon request.

§15.1003. Dissolution.

- (a) A center must adopt and enforce a written policy that describes the center's written contingency plan for dissolution.
- (b) A center must implement the dissolution plan in the event of dissolution to ensure continuity of a minor's care.
- (c) The plan must include procedures for a center to:

(1) notify minors actively receiving services and a minor's parent of a center's dissolution; and

(2) transfer or discharge minors actively receiving services consistent with §15.608 of this subchapter (relating to Discharge or Transfer Notification).

§15.1004. Retention of Records.

A center, including a center that permanently closes must adopt and enforce a written policy relating to the retention of records in accordance with this section.

(1) A center must retain original medical records for a minor until a minor's twenty-fourth birthday or five years from the date of service, whichever is later.

(2) The center may not destroy medical records that relate to any matter that is involved in litigation if a center knows the litigation has not been finally resolved.

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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Lorri Haden

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Department of Aging and Disability Services

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SUBCHAPTER D. TRANSPORTATION

40 TAC §15.1101, §15.1102

STATUTORY AUTHORITY

The new sections are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code, Chapter 248A, which provides that the HHSC executive commissioner shall adopt rules that are necessary to implement the chapter and to establish minimum standards for prescribed pediatric extended care centers.

The new sections implement Texas Government Code, §531.0055, Texas Human Resources Code, §161.021, and Texas Health and Safety Code, Chapter 248A.

§15.1101. Transportation Services.

(a) A center must provide transportation services to a minor, as authorized by a prescribing physician:

- (1) from the minor's home to the center;
- (2) from the center to the minor's home; and
- (3) to and from the center for services coordinated by the center.

(b) A center must ensure that vehicles are accessible for a minor with disabilities and equipped to meet the needs of a minor during transport.

(c) A minor's parent may decline a center's transportation services.

(d) A center must adopt and enforce written policies and procedures describing the staff and equipment that will accompany a minor during transportation. The staff must include a driver and an RN.

(e) A center must ensure that:

(1) a person transporting a minor on behalf of a center has a valid and appropriate Texas driver's license, a copy of which the center must keep on file;

(2) a vehicle used to transport a minor has a current Texas safety inspection sticker and vehicle registration decal properly affixed to a vehicle;

(3) the center maintains commercial insurance for the operation of a center's vehicles, including coverage for minors and staff in a center's vehicle in the event of accident or injury;

(4) documentation of the insurance is maintained and includes:

(A) the name of the insurance company;

(B) the insurance policy number;

(C) the period of coverage; and

(D) an explanation of the coverage;

(5) the center provides a driver and the center's RN with an up-to-date master transportation list that includes a minor's name, pick up and drop off locations, and authorized persons to whom a minor may be released;

(6) the master transportation list is on file at the center;

(7) the driver and the center's RN riding in the vehicle maintain a daily attendance record for each trip that includes the driver's name, the date, names of all passengers in the vehicle, the name of the person to whom a minor was released, and the time of release; and

(8) the number of people in a vehicle used to transport minors does not exceed the manufacturer's recommended capacity for the vehicle.

§15.1102. Transportation Safety Provisions.

(a) A center must adopt and enforce written policies and procedures to ensure the care and safety of minors during transport.

(b) A center must appropriately train staff on the needs of a minor being transported.

(c) A center must properly restrain or secure a minor when the minor is transported by the center in a motor vehicle, in accordance with applicable federal motor vehicle safety standards, state law, THSC Chapter 248A, and this chapter.

(d) A center must ensure that:

(1) a minor boards and leaves the vehicle from the curbside of the street and is safely accompanied to the minor's destination;

(2) there is a first aid kit with unexpired supplies, including oxygen, a pulse oximeter, and suction equipment, in each center vehicle;

(3) the center prohibits the use of tobacco in any form, alcohol and possession of illegal substances or unauthorized potentially toxic substances, firearms, pellet or BB guns, including loaded or unloaded BB guns, in any vehicle;

(4) the driver does not use a hand-held wireless communication device while operating a center vehicle;

(5) a center's RN accompanies all minors during transport;

(6) at least one direct care staff member, or more depending on the acuity of the minors, accompanies every seven minors;

(7) the driver or center's RN does not leave a minor unattended in the vehicle at any time;

(8) the driver or the center's RN riding in the vehicle inspects the vehicle at the completion of each trip to ensure that no minor is left in the vehicle; and

(9) the center maintains documentation that includes the signature of the individual conducting the inspection described in paragraph (8) of this subsection and the time of inspection.

(e) A center must post near the emergency exit of each vehicle that transports a minor the following information in an easily readable font:

(1) the name of the administrator;

(2) the center's name;

(3) the center's telephone number; and

(4) the center's address.

(f) The center must adopt and enforce a policy on emergencies while transporting a minor. The policy must include:

(1) procedures for mechanical break downs;

(2) procedures for vehicle accidents; and

(3) procedures for a minor's emergency.

(g) If a center conducts a field trip, the center must ensure that the driver or center's RN riding in the vehicle must inspect the vehicle and account for each minor upon arrival and departure from each destination to ensure that no minor is left in the vehicle after reaching the vehicle's final destination.

(1) A center must ensure that the driver or center's RN riding in the vehicle maintains a field trip record for each trip. The record must include the driver's name, the RN's name, the time and date, the vehicle's destinations, and names of all passengers in the vehicle.

(2) A center must maintain documentation that includes the signature of the person conducting the inspection and the time of each inspection during the field trip.

(3) Appropriate staff must be present when a minor is delivered to the center.

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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SUBCHAPTER E. BUILDING REQUIREMENTS

40 TAC §§15.1201 - 15.1224

STATUTORY AUTHORITY

The new sections are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code, Chapter 248A, which provides that the HHSC executive commissioner shall adopt rules that are necessary to implement the chapter and to establish minimum standards for prescribed pediatric extended care centers.

The new sections implement Texas Government Code, §531.0055, Texas Human Resources Code, §161.021, and Texas Health and Safety Code, Chapter 248A.

§15.1201. General Requirements.

The standards in this subchapter apply to:

- (1) a newly constructed center;
- (2) alterations, additions, or renovations to an existing center;
- (3) an existing building renovated to create a center; and
- (4) a center's maintenance.

§15.1202. Plan Reviews.

(a) Plans for new buildings, additions, conversions of buildings not licensed by DADS, and the remodeling of existing licensed facilities must be submitted to DADS for review. No later than 30 days after receipt of the plans, DADS informs an applicant in writing of the results of the review.

(b) If the submitted plans comply with DADS architectural requirements, DADS may not subsequently change the architectural requirement that applies to the project unless the change is required by federal law or an applicant fails to complete the project no later than two years after submitting the plans to DADS.

(c) DADS may grant a waiver of the two-year period for delays due to unusual circumstances.

(d) DADS may impose a deadline for completing a project using requirements that are revised after the project was reviewed.

(e) Submittal of plans.

(1) One copy of contract documents must be submitted to DADS before construction begins. The documents must:

- (A) include working drawing and specifications;

(B) have sufficient detail for DADS to interpret compliance with this chapter and for a general contractor or builder to ensure proper construction; and

(C) be prepared according to accepted architectural practice and include general construction, special conditions, and schedules.

(2) Final copies of plans must be submitted to DADS and include:

- (A) a title block that shows the name of the center;
- (B) the person or organization preparing the sheet;
- (C) sheet numbers;
- (D) the center's address; and
- (E) the drawing date.

(3) Sheets and sections covering structural, electrical, mechanical, and sanitary engineering final plans, designs, and specifications must bear the seal of a professional engineer licensed by the Texas Board of Professional Engineers.

(4) An architect licensed by the Texas Board of Architectural Examiners must prepare contract documents for additions, remodeling, and construction of a new center. Drawings must bear the seal of the architect.

(5) A final plan for a major addition to a center must be submitted to DADS and include a basic layout to scale of the entire building into which the addition will connect. North direction must be shown. The entire basic layout must be scaled to fit on a single 8 1/2-inch by 11-inch sheet.

(6) Final plans and specifications for conversions or remodeling must be submitted to DADS and include all parts and features involved.

(7) Qualified staff must be employed to prepare the contract documents for construction. If the contract documents have errors or omissions to the extent that compliance with this chapter cannot be reasonably ensured or determined, DADS may request a revised set of documents for review.

(8) DADS review of the plans and specifications is based on general utility and compliance with this chapter and the Life Safety Code. DADS review is not an all-inclusive review of the structural, electrical, or mechanical components of a center. DADS review does not include a review of building plans for compliance with the Texas Accessibility Standards as administered and enforced by the Texas Department of Licensing and Regulation.

(9) Plan review fees must be submitted in accordance with §15.113 of this chapter (relating to Plan Review Fees).

(f) Contract documents.

(1) Site plan documents must be submitted to DADS and include:

- (A) grade contours;
- (B) streets with names;
- (C) north arrow;
- (D) fire hydrants;
- (E) fire lanes;
- (F) public or private utilities;
- (G) fences; and

(H) unusual site conditions, including:

- (i) ditches;
- (ii) low water levels;
- (iii) other buildings on-site; and
- (iv) indications of buildings five feet or less beyond site property lines.

(2) Foundation plan documents must be submitted to DADS and include general foundation design and details.

(3) Floor plan documents must be submitted to DADS and include:

- (A) room names, numbers, and usages;
- (B) numbered doors, including swing;
- (C) windows;
- (D) legend or clarification of wall types that include:
 - (i) dimensions;
 - (ii) fixed equipment;
 - (iii) plumbing fixtures;
 - (iv) basic layout of the food preparation area; and
 - (v) identification of all smoke barrier walls from outside wall to outside wall or fire walls.

(4) For both new construction and additions or remodeling to existing buildings, an overall plan of the entire building drawn or reduced to fit on a single 8 1/2-inch by 11-inch sheet must be submitted to DADS.

(5) Schedules must be submitted to DADS and include:

- (A) door materials, widths, and types;
- (B) window materials, sizes, and types;
- (C) room finishes; and
- (D) special hardware.

(6) Elevations and roof plans must be submitted to DADS. Plans must include exterior elevations, including:

- (A) material note indications;
- (B) rooftop equipment;
- (C) roof slopes;
- (D) drains;
- (E) gas piping; and
- (F) interior elevations where needed for special conditions.

(7) Contract document details must be submitted to DADS and include:

- (A) wall sections as needed, especially for special conditions;
- (B) cabinet and built-in work, basic design only;
- (C) cross sections through buildings as needed; and
- (D) miscellaneous details and enlargements as needed.

(8) Building structure documents must be submitted to DADS and include:

(A) structural framing layout and details used primarily for column, beam, joist, and structural building;

(B) roof framing layout if it cannot be adequately shown on a cross section; and

(C) cross sections in quantity and detail to show sufficient structural design and structural details as necessary to ensure adequate structural design and calculated design loads.

(9) Electrical documents must be submitted to DADS and include:

(A) electrical layout, including lights, convenience outlets, equipment outlets, switches, and other electrical outlets and devices;

(B) service, circuiting, distribution, and panel diagrams;

(C) exit light systems with exit signs and emergency egress lighting;

(D) emergency electrical provisions, including generators and panels;

(E) staff communication systems;

(F) fire alarm and similar systems, including control panel, devices, and alarms; and

(G) sizes and details sufficient to ensure safe and properly operating systems.

(10) Plumbing documents must be submitted to DADS and include:

(A) plumbing layout with pipe sizes and details sufficient to ensure safe and properly operating systems;

(B) water systems;

(C) sanitary systems;

(D) gas systems; and

(E) other systems normally considered under the scope of plumbing, fixtures, and provisions for combustion air supply.

(11) Heating, ventilating, and air-conditioning systems (HVAC) documents must be submitted to DADS and include:

(A) sufficient details of HVAC systems and components to ensure a safe and properly operating installation, including heating, ventilating, and air-conditioning layout, ducts, protection of duct inlets and outlets, combustion air, piping, exhausts, and duct smoke and fire dampers; and

(B) equipment types, sizes, and locations.

(12) Sprinkler system documents must be submitted to DADS and include:

(A) plans and details of National Fire Protection Association (NFPA) designed systems to meet the requirements of NFPA 13, Standard for the Installation of Sprinklers;

(B) plans and details of partial systems provided only for hazardous areas; and

(C) electrical devices interconnected to the alarm system.

(13) Specifications must be submitted to DADS that include:

(A) installation techniques;

- (B) quality standards and manufacturers;
- (C) references to specific codes and standards;
- (D) design criteria;
- (E) special equipment;
- (F) hardware;
- (G) finishes; and
- (H) other specifications as needed to amplify drawings

and notes.

(14) Other layouts, plans or details must be submitted to DADS as necessary for DADS to obtain a clear understanding of the design and scope of the project. Plans covering private water or sewer systems that have been reviewed by the health or wastewater authority having appropriate jurisdiction must be submitted to DADS.

(g) Construction phase.

(1) DADS Architectural Unit must be notified in writing before beginning construction of a new center or the remodeling of an existing center.

(2) DADS requires additional drawings if construction of the center is not performed in accordance with the completed plans and specifications as submitted to DADS for review or as modified in accordance with DADS review requirements, if the change is significant.

(h) Initial inspection of completed construction.

(1) After completion of construction, including grounds and basic equipment and furnishings, DADS performs an initial architectural inspection of the center before the center admits a minor. DADS schedules an initial architectural inspection after DADS receives a licensure application, required fees, fire marshal approval, approval of local building authority, and a letter from an architect or engineer stating that, to the best of the architect or engineer's knowledge, the center meets the building requirements for licensure.

(2) If DADS Life Safety Code staff inspect the completed construction and find it in compliance with this chapter, the DADS Architectural Unit forwards the information to the DADS Licensing and Credentialing Unit as part of an applicant's license application. For additions to or remodeling of an existing center, DADS may require an applicant to submit a revision or modification to an existing license. The building, including basic furnishings and operational needs, grades, drives, and parking, must be 100 percent complete at the time of DADS initial architectural inspection. A center may admit at least one but no more than three minors after it receives initial approval from DADS but before a license is issued.

(3) An applicant must make the following documents related to the completed building available to DADS architectural inspection surveyor at the time of the inspection:

(A) written approval of the local authorities as required in paragraph (1) of this subsection;

(B) for fire detection and alarm systems:

(i) record drawings of the fire detection and alarm system as installed, signed by an alarm planning superintendent licensed by the State Fire Marshal's Office or sealed by a licensed professional engineer;

(ii) a sequence of operation, the owner's manuals and the manufacturer's published instructions covering all system equipment;

(iii) a signed copy of the State Fire Marshal's Office Fire Alarm Installation Certificate; and

(iv) for software-based systems, a record copy of the site-specific software, excluding the system executive software or external programmer software in non-volatile, non-erasable, non-rewritable memory;

(C) documentation of materials used in the building that are required to have a specific limited fire or flame spread rating, including special wall finishes or floor coverings, flame retardant rated ceilings and curtains, including cubicle curtains;

(D) for carpeting that is required to have a specific limited fire or flame spread rating, a signed letter from the installer verifying that the carpeting installed is named in the laboratory test document;

(E) for fire sprinkler systems:

(i) record drawings of the fire sprinkler system as installed, signed by a responsible managing employee, licensed by the State Fire Marshal's Office or sealed by a licensed professional engineer;

(ii) the hydraulic calculations;

(iii) the alarm configuration;

(iv) above ground and underground Contractor's Material and Test Certificate;

(v) the literature and instructions provided by the manufacturer describing the proper operation and maintenance of all equipment and devices in accordance with NFPA 25, Standard for the Inspection, Testing, and Maintenance of Water-Based Fire Protection Systems;

(vi) service contracts for maintenance and testing of alarm systems and sprinkler systems;

(vii) a copy of gas test results of the center's gas lines from the meter;

(viii) a written statement from an architect or engineer stating, to the best of the architect or engineer's knowledge, the building was constructed in substantial compliance with the construction documents, the Life Safety Code, this chapter, and local codes; and

(ix) any other such documentation as needed.

(i) Non-approval of new construction.

(1) If, during the initial on-site architectural inspection of completed construction, the DADS Life Safety Code surveyor finds certain basic requirements are not met, the surveyor may recommend that the center not be licensed or approved for occupancy. Items that may result in this recommendation include:

(A) substantial changes made during construction that were not submitted to DADS for review and that may require revised "as-built" drawings to include the changes, including, architectural, structural, mechanical, and electrical items as specified in this section;

(B) construction that does not meet minimum code or licensure standards, including corridors that are less than the required width, ceilings installed at less than the minimum seven-foot, six-inch height, and other features that would disrupt or otherwise adversely affect minors and staff if corrected after occupancy;

(C) lack of written approval by appropriate local authorities;

(D) fire protection systems, including fire alarm systems, emergency power and lighting, and sprinkler systems, that are not completely installed or functioning properly;

(E) required exits that not all usable according to NFPA 101 requirements;

(F) telephones that are not installed or not working properly;

(G) sufficient basic furnishings, essential appliances, and equipment that are not installed or functioning; and

(H) other basic operational or safety feature that would preclude safe and normal occupancy by a minor on that day.

(2) An applicant must submit copies of reduced-size floor plans on an 8 1/2-inch by 11-inch sheet, in duplicate, to DADS for records and for the center's use for an evacuation plan, or fire alarm zone identification. The plan must contain basic legible information including scale, room usage names, actual bedroom numbers, doors, windows, and any other pertinent information.

§15.1203. Design Criteria.

(a) A center must be designed in accordance with:

(1) the Health Care Occupancy chapter of the 2000 edition of the National Fire Protection Association (NFPA) 101 Life Safety Code for newly constructed centers or centers converting an existing unlicensed building to a center; and

(2) the requirements of Limited Care, as defined by NFPA 101.

(b) An applicant for a center license must submit to DADS site approval by the local building department and fire marshal having appropriate jurisdiction.

(c) An applicant for a center license must meet applicable local, state, or national codes and ordinances as determined by the authority having appropriate jurisdiction for those codes and ordinances and by DADS.

(d) A center must meet the requirements of the International Plumbing Code or Uniform Plumbing Code, as adopted by the local municipality.

(e) If conflicting codes apply to the construction of the center, the more stringent codes apply.

(f) A center may not be built in an area designated as a floodplain of 100 years or less.

(g) A center must comply with the accessibility requirements for individuals with disabilities as referenced in the revised regulations for Title II and III (2010 ADA Standards for Accessible Design) of the Americans with Disabilities Act of 1990 at Title 42, United States Code, Chapter 126; federal regulations at Title 28, Code of Federal Regulations, Part 35 and Part 36; Texas Accessibility Standards at Texas Government Code, Chapter 469; and Texas Department of Licensing and Regulation rules at 16 TAC Chapter 68 (relating to Elimination of Architectural Barriers).

§15.1204. Fire Safety.

(a) A center's construction type is limited to the building construction shown in the minimum construction requirements in the Life Safety Code chapter for New Health Care Occupancies.

(b) A center must have a National Fire Protection Association (NFPA) 72 fire alarm system with initiation, notification, emergency forces notification, annunciation, emergency control and detection in

accordance with the Life Safety Code. The center must have a written contract with a fire alarm firm that has been issued an Alarm Certificate of Registration number from the Texas State Fire Marshal's Office to inspect, test and maintain a fire alarm system to meet NFPA 72 requirements, semiannually. Inspections required in the contract must be performed. The person performing the semiannual service must have an individual fire alarm license from the Texas State Fire Marshal's Office.

(c) A center must be protected throughout by an approved, supervised automatic sprinkler system installed in accordance with NFPA 13. The center must ensure that the sprinkler system is inspected, tested, and maintained in accordance with NFPA 25. The center must have a written contract with a fire protection sprinkler firm that has been issued a Sprinkler Certificate of Registration number from the Texas State Fire Marshal's Office to perform the required services, semiannually. The center must document and show to DADS that all the requirements of NFPA 25 are met including the annual inspection, test, and maintenance performed by the registered fire sprinkler firm. The center must retain one set of the fire sprinkler system plans and hydraulic calculations on the property.

(d) A center must distribute portable fire extinguishers throughout the center of size and type in accordance with NFPA 10.

(e) A center must provide emergency power for emergency lighting, exit signs, and the fire alarm by a generator.

(f) A center must ensure that the design, installation, and maintenance of emergency motor generators are in accordance with NFPA 37, NFPA 99, and NFPA 110.

(g) A center must ensure that the generator is of sufficient size to maintain Life Safety Code requirements, medical equipment, and HVAC to operate in designated core areas of the center in the event of power failure.

(h) The center must ensure that emergency powered receptacles are used:

(1) for a patient care-related electrical appliance, including a biological refrigerator;

(2) at a nurse station; and

(3) in a medication room.

(i) The center must store and administer oxygen in accordance with NFPA 99.

§15.1205. Distinct Part Facilities and Physical and Programmatic Separation.

(a) A center must be physically and programmatically distinct from any business to which it is attached or of which it is a part.

(b) If more than one business occupies the same building or physical location, the center must have its own entrance.

(c) A center must be separated from other occupancies with construction having a fire resistance rating of not less than 2 hours.

(d) A center's separate entrance must not be accessed solely through another business or health care provider.

(e) A center's separate entrance must have appropriate signage and be clearly identified as belonging to the center.

(f) A licensed center's space must be contiguous.

(g) If a center has more than one building, the center must provide protection from inclement weather to minors, staff, contractors, volunteers and visitors who travel between the buildings.

§15.1206. Exterior Spaces.

(a) A center must have separate entrances for guests and minors.

(b) A center must have a covered entry with a covered drop-off for family, emergency medical services (EMS), and the center's vehicles.

(c) A center's roof overhang or canopy must extend as far as practicable to the face of the driveway or curb of the passenger access door of a passenger vehicle.

(d) A center's roof overhang or cover must be of sufficient height to allow entry or departure from EMS vehicles.

(e) A center must provide for an outdoor play space with a direct exit from the center into the outdoor play space. The outdoor play space should at least be 400 square feet in area with at least 20 percent of that area shaded.

(f) A center's play yard must meet the requirements of the Texas Accessibility Standards.

(g) A center must ensure that its structures and the grounds of the center that are used by minors are maintained in good repair and are free from hazards to health and safety.

(h) A center must fence or ensure natural barriers are present to protect a minor from areas determined to be unsafe by DADS, including steep grades, cliffs, open pits, swimming pools, high voltage boosters, high voltage equipment, and high speed roads.

(i) A center must keep fences in good repair.

(j) A center must store garbage, rubbish, and trash securely in outdoor, covered containers.

(k) A center must keep trash collection receptacles and incinerators separated from outdoor recreational spaces and locate the receptacles and incinerators in a place to avoid being a nuisance.

§15.1207. Interior Spaces.

(a) A center must consist of a building suitable for the purpose intended, and have a minimum of 50 square feet of space per minor exclusive of kitchen, toilet facilities, storage areas, hallways, stairways, basements, and attics.

(b) If a center uses a room exclusively for dining or sleeping, the center must not count that space as part of the licensed capacity.

(c) A center must have sufficient rooms to accommodate and segregate the different age groups of minors being served at the center.

(d) A center must provide staff area and staff toilets.

(e) A center must provide a reception area.

(f) A center must provide an administrative office.

(g) A center must provide quiet rooms as required by the minors admitted to the center.

(h) A center's quiet room must contain a minimum of 100 square feet.

(i) A center must provide indoor recreational exercise play area.

(j) A center must provide a treatment room with a medication preparation area. The medication preparation area must contain a work counter, refrigerator, sink with hot and cold water, and locked storage for biologicals and drugs.

(k) A center must develop isolation procedures to prevent cross-infection and provide an isolation room with at least one large

glass area for observation of a minor in accordance with §15.211 of this chapter (relating to Infection Prevention and Control Program and Vaccination Requirements). The isolation room must contain a minimum of 100 square feet.

(l) The center must make privacy accommodations available to attend to the personal care needs of a minor.

§15.1208. Food Preparation.

A center must have a food preparation area designated for the preparation of meals, snacks, or prescribed nourishments. The meals, snacks and nourishments must be maintained in accordance with state and local sanitation and safe food handling standards, including the Texas Food Establishment Rules. The center must be in compliance with Department of State Health Services rules in 25 TAC §§229.161 - 229.171 and §§229.173 - 229.175 and local health ordinances or requirements in the storage, preparation, and distribution of food; sanitation of dishes, equipment, and work area; and in the storage and disposal of waste.

§15.1209. Toileting Facilities.

(a) A center must provide toileting facilities appropriately accessible to persons with disabilities and age appropriate in design with hand-washing stations.

(b) A center must have separate toilet facilities for minors, staff, and visitors.

(c) A center must install a hand-washing station in each play area, classroom, and therapy room or area.

§15.1210. Minor's Personal Belongings.

(a) A center must have a secure, individually labeled space available for each minor's personal belongings.

(b) A center must provide locked storage for a minor's personal possessions as needed.

§15.1211. Linen Storage.

(a) A center must have a mechanical forced air exhaust system to the outside for soiled linen areas in accordance with §15.210 of this chapter (relating to Sanitation, Housekeeping, and Linens).

(b) A center must have separate storage areas for clean and soiled linen in accordance with §15.210 of this chapter.

§15.1212. Janitorial Supplies.

(a) A center must have a secure room for the safe storage of janitorial supplies and equipment, poisonous materials, and toxic materials.

(b) A center must label and identify poisonous and toxic substances and place them in locked cabinets that are used for no other purpose.

(c) A center must provide a janitor's closet with mechanical forced air exhaust to the outside.

(d) A center must install child proof latches onto closet and cabinet doors that are accessible to a minor.

§15.1213. Locked Areas.

A center must secure and lock any area the center determines is unsafe for a minor or minor's family. The center's door locking arrangement must meet Life Safety Code egress requirements from inside the room. An unsafe area includes high voltage areas and equipment rooms.

§15.1214. File Storage.

A center must have an area for the safe and secure maintenance and storage of medical records and other center files, records, and manuals.

If these areas are deemed hazardous storage in accordance with the Life Safety Code, the center must have rated doors with closers.

§15.1215. Garbage.

(a) A center must store garbage, rubbish, and trash in an area separate from the areas used for the preparation and storage of food. A center must remove garbage, trash, and rubbish from the premises and sanitize the containers regularly.

(b) A center must meet the sanitation requirements in §15.210 of this chapter (relating to Sanitation, Housekeeping, and Linens).

§15.1216. Furnishings and Equipment.

(a) A center must secure clean storage areas for equipment, devices, and supplies including equipment supplied by the center for a minor's needs, including a wheelchair, a bed, and a mattress.

(b) A center must maintain an age appropriate and developmentally appropriate environment in each of the areas where services are provided to a minor.

§15.1217. Laundry.

(a) A center must have a supply of clean linen sufficient to meet the needs of a minor. Clean laundry must be provided by:

- (1) an in-house laundry service;
- (2) contract with another health care center; or
- (3) an outside commercial laundry service.

(b) A center must handle, store, process, and transport laundry in a manner to prevent the spread of infection in accordance with §15.210 of this chapter (relating to Sanitation, Housekeeping, and Linens).

§15.1218. Housekeeping.

(a) A center must:

- (1) maintain a clean and safe environment;
- (2) be free of unpleasant odors; and
- (3) eliminate odors at the center at their source by prompt and thorough cleaning of commodes, urinals, bedpans, and other sources.

(b) A center must meet the housekeeping requirements in §15.210 of this chapter (relating to Sanitation, Housekeeping, and Linens).

§15.1219. Maintenance.

(a) A center must:

- (1) ensure that the grounds and the exterior of the building, including the sidewalks, steps, porches, ramps, and fences are in good repair;
- (2) keep equipment supplied by the center for a minor's needs in good repair, including wheelchairs, cribs, and mattresses;
- (3) keep the interior of the building including walls, ceilings, floors, windows, window coverings, doors, plumbing, and electrical fixtures in good repair; and
- (4) use pest control services provided by a licensed structural pest control applicator with a license category for pests.

(b) A center must meet the requirements in §15.210 of this chapter (relating to Sanitation, Housekeeping, and Linens).

§15.1220. Heating, Ventilation, Air Conditioning (HVAC).

(a) A center must use a safe HVAC system that meets the requirements of the National Fire Protection Association (NFPA) 90A and is sufficient to maintain a comfortable temperature, with a minimum of 65 degrees and a maximum of 80 degrees Fahrenheit, in all public and private areas year round.

(b) A center must ensure that during warm weather conditions, the temperature within the center does not exceed 80 degrees Fahrenheit. The center must ensure that the HVAC operates in designated core areas of the center in the event of power failure.

(c) A center must maintain the HVAC system in good repair.

(d) A center must inspect gas-fired heating equipment before the cold weather season to ensure that the equipment operates properly and safely. The center must ensure that gas-fired heating equipment is inspected by a person licensed or approved by the State of Texas to inspect the equipment.

(e) The center must maintain a record of the inspection conducted in accordance with subsection (d) of this section.

(f) A center must correct any unsatisfactory condition or evacuate or relocate the minors.

(g) A center must ensure that a gas heating unit and water heater are vented in accordance with NFPA 54 to carry the products of combustion to the outside atmosphere. The center must ensure that a vent is constructed and maintained to provide a continuous draft to the outside atmosphere in accordance with NFPA 54. The center must ensure that a heating unit is provided with a sufficient supply of outside combustion air in accordance with NFPA 54. A center must not use a portable heater within the center.

§15.1221. Water Supply.

(a) A center must maintain an adequate supply of water, under pressure at all times. When a public water system is available, the center must ensure it is connected to the public water system. If the center uses water from a source other than a public water supply, the center must ensure that the water supply meets the rules issued by the Texas Commission on Environmental Quality.

(b) A center must have a plan and policy for an alternative water supply in the event of interruption of water supply and the temporary loss of water to the center.

§15.1222. Sewage.

A center must ensure that sewage is disposed of by a public system or an approved sewage disposal system constructed and operated to conform with the standards established for systems by the Texas Commission on Environmental Quality and in accordance with sanitation requirements in §15.210 of this chapter (relating to Sanitation, Housekeeping, and Linens).

§15.1223. Signage.

A center's address and name must be displayed so as to be easily visible from the street.

§15.1224. Waivers.

(a) DADS may grant a waiver for certain provisions of the physical plant and environment requirements of DADS licensure standards, which, in DADS opinion, would be impractical for a center to meet. In granting the waiver, DADS, on a case by case basis, determines if:

(1) there are adverse effects on the health and safety of a minor if the center does not meet the licensure requirement; and

(2) the center will experience an unreasonable hardship if the requirement is not waived.

(b) DADS may require a center to offset or comply with an equivalent provision if DADS grants a waiver. A center must demonstrate an equivalent safety feature by utilizing the National Fire Protection Association 101A, Guide on Alternative Approaches to Life Safety, for waivers of the Life Safety Code.

(c) A DADS waiver is not transferable in a change of ownership and is subject to DADS review or revocation upon any change in circumstances at the center.

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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Department of Aging and Disability Services

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For further information, please call: (512) 438-4162



SUBCHAPTER F. INSPECTIONS AND VISITS

40 TAC §§15.1301 - 15.1305

STATUTORY AUTHORITY

The new sections are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code, Chapter 248A, which provides that the HHSC executive commissioner shall adopt rules that are necessary to implement the chapter and to establish minimum standards for prescribed pediatric extended care centers.

The new sections implement Texas Government Code, §531.0055, Texas Human Resources Code, §161.021, and Texas Health and Safety Code, Chapter 248A.

§15.1301. Inspections and Visits.

(a) DADS performs inspections, follow-up visits, compliance investigations, investigations of abuse, neglect and exploitation, and other contact visits at a center as deemed appropriate or as required to determine a center's compliance with this chapter.

(b) An inspection may be conducted by an inspector or by a team depending on the purpose of the inspection, size of a center, and other factors.

(c) DADS does not announce inspections or visits.

(d) DADS conducts at least one unannounced licensing inspection annually after issuance of a license.

(e) DADS may visit a center for purposes other than the reasons described in subsection (a) of this section.

(1) DADS may visit a center to consult with a center's staff to determine how a center's physical space may be expanded or upgraded or determine the progress of a center's construction or repairs,

equipment installation or repairs, systems installation or repairs, or when conditions or emergencies arise, including fire, windstorm, or malfunctioning or nonfunctioning of electrical or mechanical systems.

(2) DADS may announce visits that are not for a purpose described in subsection (a) of this section.

§15.1302. Investigation of Complaints and Self-Reported Incidents.

(a) DADS investigates complaints of abuse, neglect, or exploitation if:

(1) the act occurs at the center;

(2) the center is responsible for the supervision of a minor at the time the act occurs;

(3) the alleged perpetrator is associated with the center; or

(4) the alleged perpetrator is present at the center.

(b) DADS refers complaints of abuse, neglect, or exploitation not meeting the criteria in subsection (a) of this section to the Department of Family and Protective Services.

(c) DADS conducts an investigation under this section in accordance with THSC §260.007.

(d) A center's investigation of complaints and self-reported incidents does not preclude DADS from taking action in accordance with Subchapter G of this chapter (relating to Enforcement).

(e) DADS notifies the following individuals of the results of a DADS investigation:

(1) the individual who reported the allegation or complaint;

(2) an adult minor;

(3) a minor's parent;

(4) any person designated by an adult minor or minor's parent to receive information concerning a minor; and

(5) a center.

§15.1303. Cooperation with an Inspection and Visit.

(a) By applying for and holding a license, a license holder consents to entry or inspection of the center's premises by a DADS representative to verify compliance with THSC Chapter 248A and this chapter.

(b) A center must make all of its books, records, and other documents maintained by or on behalf of a center accessible to DADS upon request.

(1) DADS is authorized to photocopy documents, photograph minors, and use any other available recording devices to preserve all relevant evidence of conditions found during an inspection or investigation that DADS reasonably believes threaten the health and safety of a minor.

(2) DADS may request, photocopy, and otherwise reproduce records and documents including admission sheets, medication records, observation notes, medical records, clinical notes, and any other of a center's documents.

(3) DADS protects the copies for privacy and confidentially purposes in accordance with recognized standards of medical records practice, applicable state laws, and DADS policy.

(c) During an inspection or investigation, a center's representative and staff must not:

(1) make a false statement that a person knows or should know is false of a material fact about a matter under investigation by DADS;

(2) willfully interfere with the work of a DADS representative;

(3) willfully interfere with a DADS representative in preserving evidence of a violation; or

(4) refuse to allow a DADS representative to inspect a book, record, or file required to be maintained by or on behalf of a center.

(d) DADS may assess an administrative penalty for a violation of provisions in this section, or may take other enforcement action to deny, revoke, or suspend a license, if a center does not cooperate with an inspection.

§15.1304. Staff Requirements for an Inspection.

(a) The center's administrator, alternate administrator, nursing director, or alternate nursing director must be present in person at the entrance and exit conferences of every DADS inspection or visit and be available in person during the inspection.

(b) If a required individual is not at the center when the inspector arrives and is unavailable during the inspection, the inspector will make reasonable attempts to contact the individual.

(c) If an inspector arrives during regular business hours and the center is closed, an administrator, alternate administrator, nursing director, or alternate nursing director must provide the inspector entry to the center no later than two hours after the inspector's arrival at the center. The center must comply with the notice requirements described in §15.201 of this chapter (relating to Operating Hours).

§15.1305. General Provisions.

(a) DADS determines if a center meets the requirements of the THSC Chapter 248A and this chapter.

(b) After an inspection is completed, the inspector holds an exit conference to inform a center of the preliminary findings.

(c) A center may submit additional written documentation and facts after the exit conference only if a center describes the additional documentation and facts to the inspector during the exit conference.

(1) A center must submit the additional written documentation and facts to the DADS inspector or inspection team no later than two business days after the end of the exit conference.

(2) If a center properly submits additional written documentation, the inspector may add the documentation to the record of the inspection.

(d) DADS provides a written notification of the inspection results to the center no later than 10 business days after the exit conference. The written notification includes a statement of violations and instructions for submitting an acceptable plan of correction, and provides an opportunity for an informal dispute resolution.

(e) If a center receives DADS written notification of the inspection results indicating that the center is in violation of THSC Chapter 248A or this chapter, the center must follow DADS instructions included with the notification for submitting an acceptable plan of correction.

(f) If required, a center must submit an acceptable plan of correction that includes the corrective measures and time frame in which the center will comply to ensure correction of a violation. If a center fails to correct each violation by the date on the plan of correction, DADS may take enforcement action against the center.

(g) A center must submit an acceptable plan of correction for each violation no later than 10 calendar days after receipt of DADS written notification of the inspection results. An acceptable plan of correction must address:

(1) how the center will accomplish corrective action for the minors affected by the violation;

(2) how the center will identify other minors with the potential to be affected by the same violation;

(3) the measures that the center will incorporate, or systemic changes the center made to ensure the violation will not recur;

(4) how the center will monitor its corrective actions to ensure that the violation is corrected and will not recur; and

(5) dates when the center's corrective action will be completed.

(h) A center's acceptable plan of correction does not preclude DADS from taking enforcement action against the center in accordance with Subchapter G of this chapter (relating to Enforcement).

(i) A center must submit a plan of correction in response to DADS written notification of inspection results that specifies a violation even if the center disagrees with the inspection results.

(j) If a center disagrees with the inspection results, the center may request an informal dispute resolution (IDR). The center must submit a written request and all supporting documentation DADS no later than the 10th calendar day after the center receives DADS statement of violations.

(k) A center waives its right to an IDR if the center fails to submit the required information to DADS Regulatory Services, Survey and Certification Enforcement Unit, within the required time frames.

(l) A center must make available to any person on request a copy of each DADS inspection report. Before making an inspection report available under this subsection, the center must redact from the report any information that is confidential under other law.

(m) A center must post inspection results in a conspicuous location at the center.

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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SUBCHAPTER G. ENFORCEMENT

40 TAC §§15.1401 - 15.1409

STATUTORY AUTHORITY

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

vides 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 Health and Safety Code, Chapter 248A, which provides that the HHSC executive commissioner shall adopt rules that are necessary to implement the chapter and to establish minimum standards for prescribed pediatric extended care centers.

The new sections implement Texas Government Code, §531.0055, Texas Human Resources Code, §161.021, and Texas Health and Safety Code, Chapter 248A.

§15.1401. Denial of License Application.

DADS may deny a license application for the reasons described in §15.115 of this chapter (relating to Criteria for Denial of a License).

§15.1402. License Suspension.

(a) DADS may suspend a center's license for:

(1) a violation of THSC Chapter 248A or standard in this chapter committed by the license holder, applicant, or a person listed on the application;

(2) an intentional or negligent act by a center or an employee of a center that DADS determines significantly affects the health and safety of a minor served at a center;

(3) use of drugs or intoxicating liquors to an extent that it affects the license holder's or applicant's professional competence;

(4) a felony conviction, including a finding or verdict of guilty, an admission of guilt, or a plea of nolo contendere, in Texas or another state of any person required by this chapter to undergo a background and criminal history check;

(5) fraudulent acts, including acts relating to Medicaid fraud and obtaining or attempting to obtain a license by fraud or deception committed by any person listed on the application;

(6) license revocation, suspension, or other disciplinary action taken in Texas or another state against the license holder or any person listed in the application;

(7) criteria described in Chapter 99 of this title (relating to Denial or Refusal of License) that applies to any person required by this chapter to undergo a background and criminal history check;

(8) aiding, abetting, or permitting a violation described in paragraph (1) of this subsection about which a person listed on the application had or should have had knowledge;

(9) a license holder or applicant's failure to provide the required information, facts, or references;

(10) a license holder or applicant who knowingly:

(A) submits false or intentionally misleading statements to DADS on an application;

(B) uses subterfuge or other evasive means of filing an application;

(C) engages in subterfuge or other evasive means of filing an application on behalf of another who is unqualified for licensure; or

(D) conceals a material fact on an application; or

(11) a person listed on the application failing to pay the following fees, taxes, and assessments when due:

(A) licensing fees as described in §15.112 of this chapter (relating to Licensing Fees);

(B) plan review fees as described in §15.113 of this chapter (relating to Plan Review Fees); or

(C) franchise taxes, if applicable.

(b) DADS may suspend a license simultaneously with any other enforcement action available to DADS.

(c) DADS notifies the license holder by personal service, facsimile transmission, or registered or certified mail of DADS intent to suspend the license, including the facts or conduct alleged to warrant the suspension.

(d) The license holder has an opportunity to show compliance with all requirements of law to retain the license, as provided in §15.1407 of this subchapter (relating to Opportunity to Show Compliance). If the license holder requests an opportunity to show compliance, DADS gives the license holder a written affirmation or reversal of the proposed action.

(e) DADS notifies the license holder by personal services, facsimile transmission or by registered or certified mail of DADS suspension of the center license. The license holder has 20 days after receipt of the notice to request a hearing in accordance with Texas Government Code, Chapter 2001, and the formal hearing procedures in 1 TAC Chapter 357, Subchapter I (relating to Hearings Under the Administrative Procedure Act) and Chapter 91 of this title (relating to Hearings Under the Administrative Procedure Act). The license suspension takes effect when the deadline for an appeal of the suspension expires, unless the license holder appeals the suspension.

(f) If a license holder appeals, the license remains valid until all administrative appeals are final, unless the license expires without a timely application for renewal submitted to DADS. The license holder must continue to submit a renewal application in accordance with §15.106 of this chapter (relating to Renewal License Application Procedures and Issuance) until the action to suspend the license is completed. However, DADS does not renew the license until it determines the reason for the proposed action no longer exists.

(g) If a license holder appeals, the enforcement action takes effect when all administrative appeals are final and the proposed enforcement action is upheld. If the center wins the appeal, DADS does not take the proposed action.

(h) If DADS suspends a license, the suspension remains in effect until DADS determines that the reason for suspension no longer exists. A suspension may last no longer than the term of the license. DADS conducts an on-site investigation before making a determination. During the suspension, the license holder must return the license to DADS.

§15.1403. Emergency License Suspension.

(a) DADS may issue an emergency order to suspend a license, as authorized by THSC Chapter 248A, if DADS has reasonable cause to believe that the conduct of a license holder creates an immediate danger to a minor served at the center or the public's health and safety.

(1) If DADS issues an order for emergency suspension of the center's license, DADS provides immediate notice to the controlling person, administrator, or alternate administrator of the center by personal service, facsimile transmission, or registered or certified mail. The notice includes:

(A) the action taken;

(B) legal grounds for the action;

(C) the procedure governing appeal of the action; and

(D) the effective date of the order.

(2) An order for emergency licensure suspension goes into effect immediately.

(3) On written request of a license holder, DADS conducts a hearing not earlier than the 10th day or later than the 30th day after the date DADS receives the hearing request to determine if the emergency suspension should be continued, modified, or rescinded.

(4) The hearing and any appeal are governed by DADS rules for a contested case hearing and by Chapter 2001, Texas Government Code.

(b) If DADS suspends a license, the suspension remains in effect until DADS determines that the reason for an emergency licensure suspension no longer exists. An emergency licensure suspension may last no longer than the term of the license. DADS conducts an inspection of the center before making a determination to recommend cancellation of a suspension. During the suspension, the license holder must return the license to DADS.

§15.1404. License Revocation.

(a) DADS may revoke a center's license for:

(1) a violation of THSC Chapter 248A or standard in this chapter committed by the license holder, applicant, or a person listed on the application;

(2) an intentional or negligent act by a center or an employee of a center that DADS determines significantly affects the health and safety of a minor served at a center;

(3) use of drugs or intoxicating liquors to an extent that affects the license holder's or applicant's professional competence;

(4) a felony conviction, including a finding or verdict of guilty, an admission of guilt, or a plea of nolo contendere, in Texas or another state of any person required by this chapter to undergo a background and criminal history check;

(5) fraudulent acts, including acts relating to Medicaid fraud and obtaining or attempting to obtain a license by fraud or deception committed by any person listed on the application;

(6) license revocation, suspension, or other disciplinary action taken in Texas or another state against the license holder or any person listed in the application;

(7) criteria described in Chapter 99 of this title (relating to Denial or Refusal of License) that applies to any person required by this chapter to undergo a background and criminal history check;

(8) aiding, abetting, or permitting a violation described in paragraph (1) of this subsection about which a person listed on the application had or should have had knowledge;

(9) a license holder or applicant's failure to provide the required information, facts, or references;

(10) a license holder or applicant who knowingly:

(A) submits false or intentionally misleading statements to DADS on an application;

(B) uses subterfuge or other evasive means of filing an application;

(C) engages in subterfuge or other evasive means of filing an application on behalf of another who is unqualified for licensure; or

(D) conceals a material fact on an application;

(11) a person listed on the application committing fraud; or

(12) a person listed on the application failing to pay the following fees, taxes, and assessments when due:

(A) licensing fees as described in §15.112 of this chapter (relating to Licensing Fees);

(B) plan review fees as described in §15.113 of this chapter (relating to Plan Review Fees); and

(C) franchise taxes, if applicable.

(b) DADS may revoke a license simultaneously with any other enforcement action available to DADS.

(c) DADS notifies the license holder by personal service, facsimile transmission, registered or certified mail of DADS intent to revoke the license, including the facts or conduct alleged to warrant the revocation, and sends a copy to the center. The license holder has an opportunity to show compliance with all requirements of the law to retain the license, as provided in §15.1407 of this subchapter (relating to Opportunity to Show Compliance). If the license holder requests an opportunity to show compliance, DADS gives the license holder a written affirmation or reversal of the proposed action.

(d) DADS notifies a license holder by personal service, facsimile transmission, or by registered or certified mail of DADS revocation of the center license, and sends a copy to the center. The license holder has 20 days after receipt of the notice to request a hearing in accordance with the Health and Human Services Commission's formal hearing procedures in 1 TAC Chapter 357, Subchapter I (relating to Hearings Under the Administrative Procedure Act), and DADS formal hearing procedures in Chapter 91 of this title (relating to Hearings Under the Administrative Procedure Act). The revocation takes effect when the deadline for appeal of the revocation expires, unless the license holder appeals the revocation.

(e) If a license holder appeals, the license remains valid until all appeals are final, unless the license expires without a timely application for renewal submitted to DADS. The license holder must continue to submit a renewal application in accordance with §15.106 of this chapter (relating to Renewal Application Procedures and Issuance) until the action to revoke the license is completed. However, DADS does not renew the license until it determines the reason for the proposed action no longer exists.

(f) If a license holder appeals, the enforcement action takes effect when all appeals are final and the proposed enforcement action is upheld. Upon revocation, the license must be returned to DADS. If the license holder wins the appeal, DADS does not take the proposed action.

§15.1405. Probation.

If DADS finds that a center is in repeated noncompliance with THSC Chapter 248A, this chapter or a plan of correction, but the noncompliance does not endanger a minor served at a center or the public health and safety, DADS may schedule the center for probation rather than suspending or revoking the center's license.

(1) DADS provides notice to the license holder of the probation and the items of noncompliance not later than the 10th day before the date the probation period begins.

(2) DADS designates a period of not less than 30 days during which the center remains on probation. During the probation period, the center must correct the items that were in noncompliance and report the corrections to DADS for approval.

(3) DADS may suspend or revoke the license of a center that does not correct items that were in noncompliance or does not comply with THSC Chapter 248A or this chapter within the applicable probation period.

§15.1406. Injunctive Relief or Civil Penalties.

(a) DADS may petition a district court for a temporary restraining order against a center to restrain a continuing violation of THSC Chapter 248A or standard in this chapter if DADS finds that the violation creates an immediate threat to the health and safety of minors served at a center.

(b) A district court, on petition of DADS, and on a finding of the court that a person is violating THSC Chapter 248A or a standard in this chapter, may by injunction:

(1) prohibit the person from continuing the violation;

(2) restrain or prevent the establishment or operation of a center without a license under THSC Chapter 248A; or

(3) grant any other injunctive relief warranted by the facts.

(c) DADS may request the attorney general to institute and conduct a suit authorized by this section.

(d) DADS may recover reasonable expenses incurred in obtaining relief under this section, including court costs, reasonable attorney's fees, investigation costs, witness fees, and deposition expenses.

(e) Venue for a suit brought under this section is in the county in which the center is located or in Travis County.

(f) If DADS determines that a violation of THSC Chapter 248A or a standard in this chapter threatens the health and safety of a minor served at the center, DADS may seek, against the person who violates THSC Chapter 248A, the requirements in this chapter, or fails to comply with a corrective action plan submitted in accordance with this chapter, a civil penalty of not more than \$500 for each violation.

(1) Each day a violation continues constitutes a separate violation for the purpose of this section.

(2) DADS may request the attorney general to sue to collect the penalty. DADS may recover reasonable expenses incurred in obtaining relief under this section, including court costs, reasonable attorney fees, investigation costs, witness fees, and deposition expenses.

§15.1407. Opportunity to Show Compliance.

(a) Before revocation or suspension of a center's license or denial of an application for the renewal of a center's license, DADS gives the license holder:

(1) a notice by personal service, facsimile transmission, or by registered or certified mail of the facts or conduct alleged to warrant the proposed action, with a copy sent to the center; and

(2) an opportunity to show compliance with all requirements of law to retain the license by sending DADS a written request. The request must:

(A) be postmarked no later than 10 days after the date of DADS notice and be received in DADS office no later than 10 days after the date of the postmark; and

(B) contain specific documentation refuting DADS allegations.

(b) DADS limits its review to the documentation submitted by the license holder and information DADS used as the basis for its proposed action. A license holder or center representative may not attend

DADS meeting to review the opportunity to show compliance documents. DADS gives a license holder a written affirmation or reversal of the proposed action.

(c) After an opportunity to show compliance, DADS sends a license holder a written notice that:

(1) informs the license holder of DADS decision; and

(2) provides the license holder with an opportunity to appeal DADS decision through a formal hearing process, if DADS affirms the proposed action.

§15.1408. Administrative Penalties.

(a) Assessing penalties. DADS may assess an administrative penalty against a person who violates:

(1) THSC Chapter 248A; or

(2) a provision in this chapter for which a penalty may be assessed.

(b) Criteria for assessing penalties. DADS assesses administrative penalties in accordance with the schedule of appropriate and graduated penalties established in this section. The schedule of appropriate and graduated penalties for each violation is based on the following criteria:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;

(2) the threat to the health or safety caused by the violation;

(3) any previous violations;

(4) the amount necessary to deter future violations;

(5) efforts made by the violator to correct the violation; and

(6) any other matters that justice may require.

(c) Penalty calculation and assessment. The amount of the penalty may not exceed \$500 for each violation. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

(d) Schedule of appropriate and graduated penalties.

(e) The penalty range for a Severity Level A violation is \$400 - \$500 per violation.

(f) A Severity Level A violation is a violation that results in serious harm to or death of a minor.

(g) DADS may assess a separate Severity Level A administrative penalty for each of the rules listed in the table in subsection (p) of this section.

(h) The penalty range for a Severity Level B violation is \$300 - \$400 per violation.

(i) A Severity Level B violation constitutes a serious threat to the health or safety of a minor.

(j) DADS may assess a separate Severity Level B administrative penalty for each of the rules listed in the table in subsection (p) of this section.

(k) The penalty range for a Severity Level C violation is \$200 - \$300 per violation.

(l) A Severity Level C violation substantially limits the center's capacity to provide care.

(m) DADS may assess a separate Severity Level C administrative penalty for each of the rules listed in the table in subsection (p) of this section.

(n) The penalty range for a Severity Level D violation is \$100 - \$200 per violation.

(o) A Severity Level D violation has or had minimal or no health or safety significance.

(p) DADS may assess a separate Severity Level D administrative penalty for each of the rules listed in the following table.
Figure: 40 TAC §15.1408(p)

(q) Proposal of administrative penalties. If DADS assesses an administrative penalty, DADS provides a written notice of violation letter to a center. The notice includes:

- (1) a brief summary of the violation;
- (2) the amount of the proposed penalty; and

(3) a statement of the center's right to a formal administrative hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(r) A center may accept DADS determination and recommended penalty not later than 20 days after the date on which the center receives the notice of violation letter, including the proposed penalty, or make a written request for a formal administrative hearing on the occurrence of the violation, the amount of the penalty, or both.

(1) If a center that is notified of a violation accepts DADS determination and recommended penalty or fails to respond to the notice, the DADS commissioner or designee issues an order approving the determination and ordering that the center pay the proposed penalty.

(2) If a center that is notified of a violation does not accept DADS determination, the center must submit to the Health and Human Services Commission a written request for a formal administrative hearing on the determination and must not pay the proposed penalty. Remittance of the penalty to DADS is deemed acceptance by the center of DADS determination, is final, and waives the center's right to a formal administrative hearing.

(3) If a center requests a formal administrative hearing, the hearing is held in accordance with THSC §248A.255.

§15.1409. Operation of a Center without a License.

(a) If a person operates a center without a license issued in accordance with this chapter, the person is liable for a civil penalty of \$500 for each day of violation.

(b) A person commits an offense if the person knowingly establishes or operates a center without the appropriate license in accordance with this chapter.

(c) An offense under this section is a Class B misdemeanor.

(d) Each day a violation continues constitutes a separate offense.

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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Department of Aging and Disability Services
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For further information, please call: (512) 438-4162

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PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 819. TEXAS WORKFORCE COMMISSION CIVIL RIGHTS DIVISION

The Texas Workforce Commission (Commission) proposes the following new section to Chapter 819, relating to the Texas Workforce Commission Civil Rights Division:

Subchapter E, Equal Employment Opportunity Deferrals, §819.75

The Commission proposes amendments to the following sections of Chapter 819, relating to the Texas Workforce Commission Civil Rights Division:

Subchapter A, General Provisions, §819.2 and §819.3

Subchapter B, Equal Employment Opportunity Provisions, §819.11

Subchapter C, Equal Employment Opportunity Reports, Training, and Reviews, §§819.22 - 819.24

Subchapter D, Equal Employment Opportunity Complaints and Appeals Process, §§819.41, 819.43, and 819.45 - 819.50

Subchapter E, Equal Employment Opportunity Deferrals, §819.73

Subchapter F, Equal Employment Opportunity Records and Recordkeeping, §819.93

Subchapter G, Texas Fair Housing Act Provisions, §819.111 and §819.112

Subchapter H, Discriminatory Housing Practices, §§819.122, 819.130, and 819.132

Subchapter I, Texas Fair Housing Act Complaints and Appeals Process, §§819.151, 819.153, and 819.156

Subchapter K, Fair Housing Administrative Hearings and Judicial Review, §819.199

The Commission proposes the following repeal to Chapter 819, relating to the Texas Workforce Commission Civil Rights Division:

Subchapter E, Equal Employment Opportunity Deferrals, §819.75

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

PART III. IMPACT STATEMENTS

PART IV. COORDINATION ACTIVITIES

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

Texas Government Code §2001.039 requires that every four years each state agency review and consider for re-adoption, revision, or repeal each rule adopted by that agency. The

Commission has conducted a rule review of Chapter 819, Texas Workforce Commission Civil Rights Division, and proposes amendments to the following:

- Definition of "disability";
- Methods of communication; and
- Investigation of a complaint.

The Commission also proposes to make necessary technical changes throughout the chapter.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

(Note: Minor editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

SUBCHAPTER A. GENERAL PROVISIONS

The Commission proposes the following amendments to Subchapter A:

§819.2. Definitions.

Section 819.2(4), the definition of "CRD director," clarifies that the authorized designee refers to "the director's" authorized designee.

§819.3. Roles and Responsibilities of Commission on Human Rights, CRD, and CRD Director.

Section 819.3(a)(4)(C) and (5)(C), regarding the responsibilities of the Commission on Human Rights, specifies that CRD, as the state Fair Employment Practices agency and state Fair Housing Assistance Program agency, is authorized to institute "civil" proceedings, not criminal proceedings.

Section 819.3(b)(1), regarding the responsibilities of CRD, adds a reference to Texas Government Code, Chapter 437, which CRD is responsible for administering.

SUBCHAPTER B. EQUAL EMPLOYMENT OPPORTUNITY PROVISIONS

The Commission proposes the following amendments to Subchapter B:

§819.11. Definitions.

Section 819.11(2), the definition of "Civil Rights Act," adds a reference to Texas Labor Code, Chapter 21, regarding Employment Discrimination, which CRD is charged with enforcing.

Section 819.11(7), the definition of "local commission," updates the citation from U.S. Civil Rights Act, Title VII, §717(c) to §706.

SUBCHAPTER C. EQUAL EMPLOYMENT OPPORTUNITY REPORTS, TRAINING, AND REVIEWS

The Commission proposes the following amendments to Subchapter C:

§819.22. Review of Firefighter Tests.

Texas Government Code §419.102(b) requires CRD to establish in rule an objective system to determine when and how to select fire departments for review.

New §819.22(a) specifies that CRD will:

- (1) consult resources of the Texas Commission on Fire Protection and other appropriate entities to determine the departments to be reviewed; and

- (2) notify each fire department of its review at the beginning of the fiscal year in which CRD conducts the review.

New §819.22(b) specifies that CRD must review firefighter tests of each fire department, as defined in Texas Government Code, Chapter 419, Subchapter F, at least once every six years.

New §819.22(g) adds that CRD can notify fire departments of their selection for a desk audit by electronic communication upon agreement of the department.

Section 819.22(h) adds that CRD can notify a fire department selected for expanded review by electronic communication upon agreement of the department.

Certain subsections have been relettered to reflect additions.

§819.23. Review of State Agency Policies and Procedures.

Section 819.23(b) adds that CRD can notify a state agency of its review of the agency's personnel policies and procedures by electronic communication upon agreement of the agency.

§819.24. Standard Employment Discrimination Training.

Section 819.24(b)(1) clarifies that in employment discrimination training, participants must "identify" an unlawful employment practice according to the Civil Rights Act.

SUBCHAPTER D. EQUAL EMPLOYMENT OPPORTUNITY COMPLAINTS AND APPEALS PROCESS

The Commission proposes the following amendments to Subchapter D:

§819.41. Filing a Complaint.

Section 819.41(b)(1) clarifies that CRD must "confer" with the complainant about the facts and circumstances that "may" constitute the alleged unlawful employment practice.

Section 819.41(c) adds that a written complaint must be either signed under oath or subscribed by the person making the declaration as true under penalty of perjury and in substantially the form prescribed by Texas Civil Practice and Remedies Code, Chapter 132, or its successor statute. It also adds electronic communication as a method by which a complaint may be filed with CRD.

Section 819.41(i) clarifies that complainants and respondents must be "advised upon request" of the status of their perfected complaint, unless "doing so" would jeopardize an undercover investigation by another state, federal, or local government.

§819.43. Investigation of a Perfected Complaint.

New §819.43(d)(7) adds that as part of the perfected complaint investigation, CRD may request a written statement of position or information provided by the complainant or the respondent that is either under oath or subscribed in conformity with this section regarding the allegations in the complaint.

Section 819.43(f), which states that as part of the complaint investigation, CRD may accept a statement of position or information from the complainant or respondent, is removed. The contents of this subsection are now contained in subsection (d)(7) of this section.

Certain paragraphs have been renumbered to reflect additions.

§819.45. Subpoena.

Section 819.45(b) adds that CRD can provide a petitioner with the final determination on the petition by electronic communication upon agreement of the petitioner.

§819.46. Dismissal of Complaint.

Section 819.46(b) adds certified mail as the method by which CRD must provide notification of its dismissal of a complaint to the complainant as required by the Texas Labor Code.

§819.47. Cause Determination.

Section 819.47(b) adds that CRD can send the cause determination letter by electronic communication upon agreement of the person or entity.

§819.48. Conciliation.

Section 819.48(c) is rewritten for better clarity and adds that CRD must provide notification of an unsuccessful conciliation agreement to the complainant by "certified" mail.

Section 819.48(c) removes the statement that "CRD shall then inform the complainant by mail of the complainant's right to file a civil action against the respondent named in the perfected complaint, pursuant to Texas Labor Code §§21.208 - 21.252" because it duplicates information located in §819.50 of this subchapter.

§819.49. No Cause Determination.

Section 819.49 adds that the CRD director can send the no cause determination letter by electronic communication upon agreement of the person or entity.

§819.50. Right to File a Civil Action.

Section 819.50(a) adds certified mail as the method by which CRD must inform the complainant of:

- (1) the dismissal of the complaint; or
- (2) the failure to resolve a complaint in writing that was filed with CRD 180 days previously. CRD must inform the complainant of the complainant's right to request from CRD a notice of right to file a civil action against the respondent.

Section 819.50(c) adds certified mail sent no later than the fifth business day after receipt of the complainant's request as the method by which CRD must send an expedited notice of right to file a civil action.

Section 819.50(c) adds that CRD must issue notice under subsection (b) of this section by certified mail.

New §819.50(d) adds that the complainant's written request must include the respondent's name, CRD complaint number, and EEOC complaint number if the complaint has been deferred by EEOC. This information was formerly located in §819.50(c).

SUBCHAPTER E. EQUAL EMPLOYMENT OPPORTUNITY DEFERRALS

The Commission proposes the following amendments to Subchapter E:

§819.75. Final Determination of a Local Commission.

Section 819.75 is repealed because there is no direct statutory requirement to make local commissions take the actions stated in subsections (a) or (b), and it is inefficient to require them to do so.

New §819.75 requires that if a local commission does not intend to act on a complaint deferred by CRD, the local commission

shall notify CRD by mail or electronic communication within 60 working days.

SUBCHAPTER F. EQUAL EMPLOYMENT OPPORTUNITY RECORDS AND RECORDKEEPING

The Commission proposes the following amendments to Subchapter F:

§819.93. Disposal of Files and Related Documents.

Section 819.93 updates the retention period for case files and related documents from two years to seven years in accordance with TWC's record retention schedule for investigations and reports.

SUBCHAPTER G. TEXAS FAIR HOUSING ACT PROVISIONS

The Commission proposes the following amendments to Subchapter G:

§819.112. Definitions.

Section 819.112(1), the definition of "accessible or readily accessible to and usable by," replaces the reference to Texas Property Code §301.025(c) with Texas Property Code §301.025(c)(3) to accurately reflect the requirements of the statute.

Section 819.112(7), the definition of "controlled substance," replaces the reference to Controlled Substances Act §102 with Controlled Substances Act, 21 U.S.C. §802 to accurately reflect the requirements of the statute.

Section 819.112(8) defines "disability." With only minor variations in structure and formatting, the Agency's current definition aligns with the content of the US Department of Housing and Urban Development's (HUD) definition of "handicap" at 24 Code of Federal Regulations (CFR) §100.201. Although the term handicap is no longer used, the definition of disability should align directly with the definition used by HUD. Additionally, both the Agency and HUD use the term "mentally retarded" in their respective definitions. That term, as well, is no longer used.

Section 819.112(8):

--reformats and restructures the definition of disability to align with the format and structure of HUD's definition of handicap, thus providing better clarity; and

--replaces the term mental retardation with the more precise term intellectual disability.

Certain subparagraphs in this section have been relettered to reflect reformatting.

SUBCHAPTER H. DISCRIMINATORY HOUSING PRACTICES

The Commission proposes the following amendments to Subchapter H:

§819.122. Exemptions Based on Familial Status.

Section 819.122(a) is amended to make nonsubstantive editorial changes to improve clarity.

§819.132. Discrimination Based on Disability.

Section 819.132(a) is amended to make nonsubstantive editorial changes to improve clarity.

SUBCHAPTER I. TEXAS FAIR HOUSING ACT COMPLAINTS AND APPEALS PROCESS

The Commission proposes the following amendments to Subchapter I:

§819.151. Filing a Complaint.

Section 819.151(b)(1) clarifies that CRD must "confer" with the complainant about the facts and circumstances that "may" constitute the alleged unlawful employment practice.

Section 819.151(c) adds electronic communication as a method by which a complaint can be filed with CRD.

Section 819.151(j) adds that the CRD director can notify each complainant on whose behalf the complaint was filed by electronic communication upon agreement of the complainant.

§819.153. Investigation of a Complaint.

Section 819.153(d) adds that the CRD director can serve a notice on each respondent by electronic communication upon agreement of the respondent.

Section 819.153(f) requires an answer to be signed and affirmed by the respondent, and specifies the content of the affirmation. However, Texas Civil Practice and Remedies Code, Chapter 132, sets forth new requirements for an unsworn declaration under penalty of perjury.

Section 819.153(f):

--specifies that the answer must be written;

--removes the requirement that the answer must be signed and affirmed by the respondent; and

--adds, as required by Chapter 132, that the answer must be signed under oath or subscribed by the person making the declaration as true under penalty of perjury and in substantially the form set forth in Chapter 132.

Section 819.153(g) removes the requirement for the CRD director's consent to amend an answer. Texas Property Code §301.082(c) states that an "answer may be amended at any time" and does not require the approval of the CRD director.

New §819.153(i)(7) adds that, as part of the complaint investigation, CRD may accept a written statement of position or information provided by the complainant or the respondent that is either under oath or subscribed in conformity with this section regarding the allegations in the complaint.

Section 819.153(k), which states that as part of the complaint investigation, CRD may accept a statement of position or information from the complainant or respondent, is removed. The contents of this subsection are now contained in subsection (i)(7) of this section.

Certain subsections and paragraphs in this section have been relettered and renumbered to reflect additions and deletions.

§819.156. Reasonable Cause Determination and Issuance of a Charge.

Section 819.156(e) clarifies that:

--the CRD director "shall not" issue a charge; and

--if a charge "is not issued," the CRD director must notify the complainant and respondent.

Section 819.156(h) replaces the citation to Texas Property Code §301.131(b) with Texas Property Code §301.131 to accurately reflect the requirements of statute.

PART III. IMPACT STATEMENTS

Randy Townsend, Chief Financial Officer, has determined that for each year of the first five years the rules will be in effect, the following statements will apply:

There are no additional estimated costs to the state and local governments expected as a result of enforcing or administering the rules.

There are no estimated cost reductions to the state and to local governments as a result of enforcing or administering the rules.

There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules.

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rules.

There are no anticipated economic costs to persons required to comply with the rules.

There is no anticipated adverse economic impact on small or microbusinesses as a result of enforcing or administering the rules.

Economic Impact Statement and Regulatory Flexibility Analysis

The Agency has determined that the proposed rules will not have an adverse economic impact on small businesses as these proposed rules place no requirements on small businesses.

Richard C. Froeschle, Director of Labor Market and Career Information, has determined that there is no significant negative impact upon employment conditions in the state as a result of the rules.

Lowell Keig, Director, Civil Rights Division, has determined that for each year of the first five years the rules are in effect, the proposed rules will not have an adverse fiscal impact on the division. There may be an insignificant public benefit realized in cost savings for postage if parties opt to allow the division to send electronic communications when not inconsistent with a statutory requirement.

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

PART IV. COORDINATION ACTIVITIES

In the development of these rules for publication and public comment, the Commission sought the involvement of Texas' 28 Boards. The Commission provided the concept paper regarding these rule amendments to the Boards for consideration and review on January 21, 2014. The Commission also conducted a conference call with Board executive directors and Board staff on January 31, 2014, to discuss the concept paper. During the rulemaking process, the Commission considered all information gathered in order to develop rules that provide clear and concise direction to all parties involved.

Comments on the proposed rules may be submitted to TWC Policy Comments, Workforce Policy and Service Delivery, attn: Workforce Editing, 101 East 15th Street, Room 440T, Austin, Texas 78778; faxed to (512) 475-3577; or e-mailed to TWCPolicyComments@twc.state.tx.us. The Commission must receive comments postmarked no later than 30 days from the date this proposal is published in the *Texas Register*.

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §819.2, §819.3

The rules are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The proposed rules affect Texas Government Code, Chapter 552.

§819.2. Definitions.

In addition to the definitions contained in §800.2 of this title, the following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Commission on Human Rights--The body of governance of the Texas Workforce Commission Civil Rights Division composed of seven members appointed by the Governor, as established under Texas Labor Code §301.153.

(2) Complainant--A person claiming to be aggrieved by a violation of Texas Labor Code, Chapter 21, or Texas Property Code, Chapter 301, and who files a complaint under one of these chapters.

(3) CRD--Texas Workforce Commission Civil Rights Division

(4) CRD director--The director, or the director's authorized designee, of the Texas Workforce Commission Civil Rights Division, as established under Texas Labor Code §301.154.

(5) Fair Employment Practices Agency--A state or local government agency designated by the U.S. Equal Employment Opportunity Commission (EEOC) to investigate perfected employment discrimination complaints in the state or local government agency's jurisdiction.

(6) Fair Housing Assistance Program Agency--A state or local government agency designated by the U.S. Department of Housing and Urban Development (HUD) to investigate Fair Housing Act complaints in the state or local government agency's jurisdiction.

(7) Party--A person who, having a justiciable interest in a matter before CRD, is admitted to full participation in a proceeding concerning that matter.

(8) Person--One or more individuals or an association, corporation, joint stock company, labor organization, legal representative, mutual company, partnership, receiver, trust, trustee, trustee in bankruptcy, unincorporated organization, the state, or a political subdivision or agency of the state.

(9) Respondent--A person against whom a complaint has been filed in accordance with Texas Labor Code, Chapter 21, or Texas Property Code, Chapter 301.

§819.3. Roles and Responsibilities of Commission on Human Rights, CRD, and CRD Director.

(a) Responsibilities of Commission on Human Rights:

- (1) Establish policies for CRD;
- (2) Appoint CRD director;
- (3) Supervise CRD director in administering the activities

of CRD;

(4) Serve as the state Fair Employment Practices Agency that is authorized, with respect to unlawful employment practices, to:

- (A) seek relief;
- (B) grant relief; and

(C) institute civil [~~eriminal~~] proceedings; and

(5) Serve as the state Fair Housing Assistance Program Agency, with respect to unlawful housing practices, to:

- (A) seek relief;
- (B) grant relief; and
- (C) institute civil [~~eriminal~~] proceedings.

(b) Responsibilities of CRD:

(1) Administer Texas Labor Code, Chapter 21; Texas Property Code, Chapter 301; and Texas Government Code, Chapter 419, Subchapter F, and Chapter 437; and

(2) Collect, analyze, and report statewide information regarding employment and housing discrimination complaints filed with CRD, EEOC, HUD, local commissions, and municipalities in Texas to be included in CRD's annual report to the Governor and the Texas Legislature.

(c) Agency Personnel Policies Applicable to CRD Director:

(1) The CRD director is an appointee of the Commission on Human Rights and an employee of the Agency, and therefore accountable to both.

(2) The Agency executive director and the chair of the Commission on Human Rights shall consult on all personnel matters impacting the employment status of the CRD director.

(3) The Commission on Human Rights has the authority to appoint, supervise, and terminate the CRD director.

(4) The Agency executive director, in consultation with the chair of the Commission on Human Rights, has the authority to take any personnel action pursuant to Agency personnel policy, excluding termination.

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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Laurie Biscoe

Deputy Director, Workforce Development Division Programs

Texas Workforce Commission

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For further information, please call: (512) 475-0829



SUBCHAPTER B. EQUAL EMPLOYMENT OPPORTUNITY PROVISIONS

40 TAC §819.11

The rule is proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The proposed rule affects Texas Government Code, Chapter 552.

§819.11. Definitions.

The following words and terms, when used in Subchapter B, Equal Employment Opportunity Provisions; Subchapter C, Equal Employment

Opportunity Reports, Training, and Reviews; Subchapter D, Equal Employment Opportunity Complaints and Appeals Process; Subchapter E, Equal Employment Opportunity Deferrals; and Subchapter F, Equal Employment Opportunity Records and Recordkeeping shall have the following meanings, unless the context clearly indicates otherwise.

(1) Bona fide occupational qualification--A qualification:

(A) that is reasonably related to the satisfactory performance of the duties of a job; and

(B) for which there is a factual basis for believing that no members of the excluded group would be able to satisfactorily perform the duties of the job with safety and efficiency.

(2) Civil Rights Act--The Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972 and the Civil Rights Act of 1991; the Age Discrimination in Employment Act of 1976, as amended; the Rehabilitation Act of 1973, as amended; ~~and~~ the Americans with Disabilities Act of 1990, as amended; and Texas Labor Code, Chapter 21, regarding Employment Discrimination.

(3) Complaint--A written statement made under oath stating that an unlawful employment practice has been committed, setting forth the facts on which the complaint is based, and received within 180 days of the alleged unlawful employment practice.

(4) Conciliation--The settlement of a dispute by mutual written agreement in order to avoid litigation where a determination has been made that there is reasonable cause to believe an unlawful employment practice has occurred.

(5) Disability--A mental or physical impairment that substantially limits at least one major life activity of an individual, a record of such mental or physical impairment, or being regarded as having such an impairment as set forth in §3(2) of the Americans with Disabilities Act of 1990, as amended, and Texas Labor Code §21.002(6).

(6) Employer--A person who is engaged in an industry affecting commerce and who has 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year and any agent of that person. The term includes an individual elected to public office in Texas or a political subdivision of Texas, or a political subdivision and any state agency or instrumentality, including public institutions of higher education, regardless of the number of individuals employed.

(7) Local commission--Created by one or more political subdivisions acting jointly, pursuant to Texas Labor Code §21.152, and recognized as a Fair Employment Practices Agency by EEOC pursuant to ~~[Title VII of the]~~ U.S. Civil Rights Act, Title VII, §706 [§717(e)], as amended by the Equal Employment Opportunity Act of 1972, the Civil Rights Act of 1991, and the Americans With Disabilities Act of 1990, as amended.

(8) Mediation--A process to settle a dispute by mutual written agreement among the complainant, respondent, and CRD prior to reasonable cause determination or dismissal of a perfected complaint.

(9) Perfected complaint--An employment discrimination complaint that CRD has determined meets all of the requirements of Texas Labor Code, Chapter 21, and for which CRD will initiate an investigation.

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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Texas Workforce Commission

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SUBCHAPTER C. EQUAL EMPLOYMENT OPPORTUNITY REPORTS, TRAINING, AND REVIEWS

40 TAC §§819.22 - 819.24

The rules are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The proposed rules affect Texas Government Code, Chapter 552.

§819.22. *Review of Firefighter Tests.*

(a) CRD shall:

(1) consult resources of the Texas Commission on Fire Protection and other appropriate entities to determine the departments to be reviewed; and

(2) notify each fire department of its review at the beginning of the fiscal year in which CRD conducts the review.

(b) ~~[(a)]~~ CRD shall review the initial tests administered by a fire department, as provided in Texas Government Code, Chapter 419, Subchapter F, at least every six years. The initial tests, defined as written tests, physical tests, and assessment center tests for firefighter positions, are used to measure the ability of a person to perform the essential functions of the position.

(c) ~~[(b)]~~ CRD shall use the Uniform Guidelines on Employee Selection Procedures, 29 C.F.R. 1607, to conduct the review of the administration of initial tests by fire departments.

(d) ~~[(c)]~~ CRD shall develop a list of recommended tests for firefighter positions that are nationally recognized tests by independent authorities. The tests will be available on the Agency's Web site.

(e) ~~[(d)]~~ Fire departments that use tests from CRD's list of recommended tests are presumed to be in compliance with the law. However, if CRD perceives the need to review a fire department that is using such recommended tests, nothing shall prevent such review.

(f) ~~[(e)]~~ Fire departments that use a test not included on the recommended list shall submit, upon request by CRD, documentation regarding the reliability and validity of the chosen test.

(g) ~~[(f)]~~ Each fire department shall submit documentation concerning the administration of its initial tests, as required in this section. CRD shall perform a desk audit by reviewing these documents using risk-assessment criteria. Fire departments selected for a desk audit shall receive notice by mail, or electronic communication upon agreement of the department. Documents to be submitted for a desk audit include, but are not limited to:

(1) a copy of the initial test used. If it is not from CRD's recommended list of tests, then documentation regarding the reliability and validity of the test used;

(2) a description of how such test is administered and a copy of applicable policies and procedures governing the administration of such test; and

(3) information and documentation of prior complaints lodged against the fire department concerning discrimination in selection of personnel for a firefighter position.

(h) ~~[(g)]~~ CRD shall evaluate the requested information set forth in subsection (g) ~~[(f)]~~ of this section as part of its risk-assessment analysis. Based on the analysis, fire departments may be selected for expanded review, including on-site investigation. CRD shall notify a fire department selected for expanded review by mail, or electronic communication upon agreement of the department.

§819.23. *Review of State Agency Policies and Procedures.*

(a) CRD shall review the personnel policies and procedures of each state agency once every six years on a staggered schedule to determine compliance with Texas Labor Code, Chapter 21.

(b) CRD shall notify a state agency of its review of the agency's personnel policies and procedures by mail, or electronic communication upon agreement of the agency, at the beginning of the fiscal year in which CRD is to conduct the review. The review of each state agency shall be completed and recommendations issued on or before the one-year anniversary date on which CRD issued its notification letter to the agency head.

§819.24. *Standard Employment Discrimination Training.*

(a) Each state agency shall provide its employees with standard employment discrimination training no later than the 30th day after the date the employee is hired by the agency, with supplemental training every two years thereafter. Each state agency shall provide the standard training using a training program from CRD's preapproved list of training programs that have been reviewed and certified by CRD as compliant with its training standards, including the standards set forth in this subchapter.

(b) The minimum standards for the content of standard employment discrimination training shall include, but not be limited to, requiring participants to:

- (1) identify ~~define~~ an unlawful employment practice according to the Civil Rights Act;
- (2) apply knowledge of the applicable laws by correctly identifying whether individual case studies would be considered violations;
- (3) identify the protected classes under federal and state law;
- (4) list a complainant's rights and remedies;
- (5) identify the agency personnel to whom a complaint shall be addressed; and
- (6) describe the general stages involved in processing a complaint.

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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SUBCHAPTER D. EQUAL EMPLOYMENT OPPORTUNITY COMPLAINTS AND APPEALS PROCESS

40 TAC §§819.41, 819.43, 819.45 - 819.50

The rules are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The proposed rules affect Texas Government Code, Chapter 552.

§819.41. *Filing a Complaint.*

(a) A person may telephone, write, visit, e-mail, fax, or otherwise contact CRD or a local commission office recognized by EEOC as a Fair Employment Practices Agency to obtain information on filing a complaint with CRD.

(b) At the complainant's request, CRD:

(1) shall confer ~~consult~~ with the complainant about the facts and circumstances that may constitute the alleged unlawful employment practice;

(2) shall assist the complainant in perfecting the complaint if the facts and circumstances appear to constitute an alleged unlawful employment practice; or

(3) may advise the complainant if the facts and circumstances presented to CRD do not appear to constitute an unlawful employment practice.

(c) The complaint shall be filed in writing and either signed under oath or subscribed by the person making the declaration as true under penalty of perjury and in substantially the form prescribed by Texas Civil Practice and Remedies Code, Chapter 132, or its successor statute. It[, and] may be filed with CRD by mail, electronic communication, fax, or in person with:

(1) the CRD office on a CRD-provided form;

(2) an EEOC office; or

(3) a local commission office recognized by EEOC as a Fair Employment Practices Agency.

(d) The complaint shall set forth the following information:

(1) Harm experienced by the complainant as a result of the alleged unlawful employment practice;

(2) Explanation, if any, given by the employer to the complainant for the alleged unlawful employment practice;

(3) A declaration of unlawful discrimination under federal or state law;

(4) Facts upon which the complaint is based, including the date, place, and circumstances of the alleged unlawful employment practice; and

(5) Sufficient information to enable CRD to identify the employer, e.g., employer ID, business address, and business phone.

(e) A complaint shall be filed within 180 days after the date on which the alleged unlawful employment practice occurred.

(f) A complaint may be withdrawn by a complainant only with the consent of the CRD director.

(g) A perfected complaint may be amended by the complainant to cure technical defects or omissions, or to clarify and amplify allegations made therein. Such amendment or amendments alleging additional acts that constitute unlawful employment practices related to or growing out of the subject matter of the original complaint shall relate back to the date the complaint was first filed. CRD shall provide a copy of the perfected complaint to the respondent. An amended perfected complaint shall be subject to the procedures set forth in applicable law.

(h) A respondent shall be mailed a copy of the perfected complaint within 10 days after CRD receives the perfected complaint. If CRD receives a complaint that is not perfected within 180 days of the alleged unlawful employment practice, CRD shall notify the respondent that a complaint has been filed and the process of perfecting the complaint is in progress.

(i) The complainant and respondent shall be advised upon request [~~notified periodically~~] by CRD of the status of their perfected complaint, unless doing so [~~the notice~~] would jeopardize an undercover investigation by another state, federal, or local government.

§819.43. Investigation of a Perfected Complaint.

(a) The CRD director shall determine the nature and scope of the investigation within the context of the allegations set forth in the perfected complaint.

(b) CRD may, as part of a perfected complaint investigation, require a fact-finding conference with the complainant and the respondent prior to a determination on a perfected complaint. A fact-finding conference primarily is an investigative forum intended to define the issues, determine which elements are undisputed, and solicit information regarding the allegations.

(c) At all reasonable times in the perfected complaint investigation, the CRD director shall have access to:

- (1) necessary witnesses for examination under oath or affirmation; and
- (2) records, documents, and other information relevant to the investigation of alleged violations of Texas Labor Code, Chapter 21, for inspection and copying.

(d) As part of the perfected complaint investigation, CRD may request information relevant to the alleged violations of Texas Labor Code, Chapter 21. In obtaining this information, CRD may use, but is not limited to using, any of the following:

- (1) Oral and video interviews and depositions;
- (2) Written interrogatories;
- (3) Production of documents and records;
- (4) Requests for admissions;
- (5) On-site inspection of respondent's facilities;
- (6) Written statements or affidavits; [~~or~~]

(7) A written statement of position or information provided by the complainant or the respondent that is either under oath or sub-

scribed in conformity with this section regarding the allegations in the complaint; or

(8) [~~(7)~~] Other forms of discovery authorized by the Administrative Procedure Act, Texas Government Code §§2001.081 - 2001.103, or the Texas Rules of Civil Procedure.

(e) CRD may establish time requirements regarding responses to requests for information relevant to an investigation of alleged violations of Texas Labor Code, Chapter 21. The CRD director may extend such time requirements for good cause shown.

~~[(f) As part of a perfected complaint investigation, CRD may accept from the complainant or respondent a statement of position or information regarding the allegations in the perfected complaint. CRD shall accept only a sworn or affirmed written statement of position submitted by the respondent setting forth the facts and circumstances relevant to an investigation of alleged violations of Texas Labor Code, Chapter 21.]~~

§819.45. Subpoena.

(a) The CRD director shall have the authority to sign and issue a subpoena to compel the attendance of necessary witnesses for examination or testimony under oath or affirmation, and to compel the production of records, documents, and other evidence relevant to the investigation of alleged violations of Texas Labor Code, Chapter 21, for inspection and copying. Neither the complainant nor the respondent shall have the right to demand that a subpoena be issued.

(b) A person served with a subpoena issued by the CRD director who does not intend to comply may petition CRD in writing to revoke or modify the subpoena within five working days after receipt of the subpoena. Such petition shall identify separately each portion of the subpoena with which the petitioner does not intend to comply, and for each portion shall state the grounds upon which the petitioner relies. A copy of the subpoena shall be attached to the petition. The CRD director shall review the petition and make a final determination on revoking or modifying the subpoena. CRD shall provide [mail] a copy of the final determination on the petition to the petitioner by mail, or electronic communication upon agreement of the petitioner.

(c) If a person fails to comply with a subpoena, CRD may apply to the district court of the county in which the person is found, resides, or transacts business for an order directing compliance pursuant to Texas Labor Code §21.306(b).

§819.46. Dismissal of Complaint.

(a) The CRD director may dismiss a complaint if:

- (1) it is not filed timely;
- (2) it fails to state a claim under Texas Labor Code, Chapter 21;
- (3) a complainant fails to perfect a complaint within 10 days of the receipt of the complaint; or
- (4) a complainant fails to cooperate, fails or refuses to appear or to be available for interviews or conferences, or fails or refuses to provide requested information. Prior to dismissing the complaint, the complainant shall be notified and given a reasonable time to respond.

(b) CRD shall notify the complainant and the respondent, and any agencies, as required by law, by certified mail of its dismissal of a complaint.

(c) CRD shall notify the complainant, by mail, of the complainant's right to file a civil action against the respondent named in the perfected complaint pursuant to Texas Labor Code §21.208 and §21.252, and §819.50 of this subchapter.

§819.47. *Cause Determination.*

(a) The CRD director shall review the investigation report and record of evidence to determine if there is reasonable cause to believe the respondent has engaged in an unlawful employment practice.

(b) If after the review, the CRD director determines that reasonable cause exists, the CRD director shall confer with a panel of three commissioners of the Commission on Human Rights, as identified by the chair of the Commission on Human Rights. If at least two of the three commissioners concur with the CRD director's determination that the respondent has engaged in an unlawful employment practice, the CRD director shall issue a letter of cause determination. The cause determination letter shall be provided by mail, or electronic communication upon agreement of the person or entity, [mailed] to the complainant, respondent, and any agency as required by law and shall contain the CRD director's finding that the evidence supports the perfected complaint and include an invitation to participate in conciliation.

§819.48. *Conciliation.*

(a) When a letter of cause determination has been issued, CRD shall attempt to eliminate such unlawful employment practice by conciliation, and to secure a just resolution through a conciliation agreement signed by the complainant, respondent, and the CRD director.

(b) CRD shall obtain proof of the respondent's compliance with a conciliation agreement before the case is closed.

(c) CRD shall provide notification of an unsuccessful conciliation agreement to: [notify]

(1) the complainant by certified mail; and

(2) the respondent by mail [of an unsuccessful conciliation agreement. CRD shall then inform the complainant by mail of the complainant's right to file a civil action against the respondent named in the perfected complaint, pursuant to Texas Labor Code §§21.208 - 21.252].

§819.49. *No Cause Determination.*

A completed investigation may result in a determination that there is no reasonable cause to believe that the respondent has engaged in an unlawful employment practice as alleged in the perfected complaint. If after the review, the CRD director determines that no reasonable cause exists, the CRD director shall issue a letter of no cause determination. The no cause determination letter shall be sent by mail, or electronic communication upon agreement of the person or entity, [mailed] to the complainant, respondent, and any agency as required by law and shall contain the CRD director's finding that the evidence does not support the perfected complaint.

§819.50. *Right to File a Civil Action.*

(a) CRD shall inform the complainant by certified mail of:

(1) the dismissal of a complaint filed with CRD; or

(2) the failure to resolve a complaint in writing that was filed with CRD [expiration of] 180 days previously. CRD shall inform the complainant of [after the date of filing of an unresolved complaint and] the complainant's right to request from CRD a notice of right to file a civil action against the respondent. Upon receipt of a written request, CRD shall issue a notice of right to file a civil action.

(b) Before the expiration of 180 days after filing the complaint and upon a written request from a complainant, CRD shall issue a notice of right to file a civil action if:

(1) written confirmation by a physician licensed to practice medicine in Texas states that the complainant has a life threatening illness; or

(2) certification by the CRD director states that the administrative processing of the perfected complaint cannot be completed

before the expiration of the 180th day after the complaint was filed. The certification shall take into account the exigent circumstances of the complainant.

(c) [The complainant's written request shall include the respondent's name, CRD complaint number, and EEOC complaint number if the complaint has been deferred by EEOC.] CRD shall issue notice under subsection (b) of this section by certified mail no later than the fifth business day after receipt of the complainant's request.

(d) The complainant's written request shall include the respondent's name, CRD complaint number, and EEOC complaint number if the complaint has been deferred by EEOC.

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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Texas Workforce Commission

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SUBCHAPTER E. EQUAL EMPLOYMENT OPPORTUNITY DEFERRALS

40 TAC §819.73

The rule is proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The proposed rule affects Texas Government Code, Chapter 552.

§819.73. *Deferral to Local Commission.*

(a) Texas Labor Code §21.155[⁵] grants to a local commission the exclusive right to take appropriate action within the scope of its power and jurisdiction to process a complaint deferred by CRD pursuant to the requirements of Texas Labor Code §21.155, and this chapter.

(b) CRD shall not assume jurisdiction over a complaint deferred to a local commission, pursuant to Texas Labor Code §21.155, except:

(1) where the local commission defers a complaint under its jurisdiction to CRD;

(2) where the complaint is received by CRD within 180 days of the alleged violation but beyond the period of limitation of the appropriate local commission; and

(3) where the local commission has not acted on the complaint pursuant to the requirements of Texas Labor Code §21.155(c), and this chapter.

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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40 TAC §819.75

(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 Workforce Commission or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The rule is repealed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The proposed repeal affects Texas Government Code, Chapter 552.

§819.75. Final Determination of a Local Commission.

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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40 TAC §819.75

The rule is proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The proposed rule affects Texas Government Code, Chapter 552.

§819.75. Final Determination of a Local Commission.

If a local commission does not intend to act on a complaint deferred by CRD, the local commission shall notify CRD by mail or electronic communication within 60 working days.

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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SUBCHAPTER F. EQUAL EMPLOYMENT OPPORTUNITY RECORDS AND RECORDKEEPING

40 TAC §819.93

The rule is proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The proposed rule affects Texas Government Code, Chapter 552.

§819.93. Disposal of Files and Related Documents.

Pursuant to a certified records retention schedule, CRD shall retain case files and related documents that have not been forwarded to EEOC for seven [two] years after the administrative review procedures have been completed, except when a civil action has been filed in state court under Texas Labor Code, Chapter 21. When a civil action has been filed in state court, case files and related documents shall be retained until the final disposition of the lawsuit. At the end of the retention [two-year] period, CRD may dispose of the case files and related documents.

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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SUBCHAPTER G. TEXAS FAIR HOUSING ACT PROVISIONS

40 TAC §819.111, §819.112

The rules are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The proposed rules affect Texas Government Code, Chapter 552.

§819.111. Purpose.

The purpose of Subchapters G - L of this chapter is to establish procedures for CRD to execute its responsibilities in the administration and enforcement of the Texas Fair Housing Act. Texas provides, within constitutional limitations, for fair housing throughout the state and provides rights and remedies substantially equivalent to those granted under federal law. No person shall be subject to discriminatory housing practices based on race, color, disability, religion, sex, national origin, or familial status in the sale, rental, advertising of dwellings, inspection of dwellings, entry into a neighborhood, [or] in the provision of brokerage services, or in the availability of residential real estate-related transactions.

§819.112. *Definitions.*

The following words and terms, when used in Subchapter G, Texas Fair Housing Act Provisions; Subchapter H, Discriminatory Housing Practices; Subchapter I, Texas Fair Housing Act Complaints and Appeals Process; Subchapter J, Fair Housing Deferral to Municipalities; Subchapter K, Fair Housing Administrative Hearings and Judicial Review; and Subchapter L, Fair Housing Fund, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Accessible or readily accessible to and usable by--A public or common use area that is accessible by individuals with disabilities, as set forth in Texas Property Code §301.025(c)(3) [§301.025(e)]. Compliance with the appropriate requirements of the American National Standards Institute (ANSI) for buildings and facilities providing accessibility and usability for persons having physical disabilities, commonly cited as ANSI A117.1, satisfies this requirement.

(2) Accessible building entrance--A building entrance that is accessible by individuals with disabilities, as set forth in Texas Property Code §301.025(c). Compliance with the appropriate requirements of ANSI for buildings and facilities providing accessibility and usability for persons having physical disabilities, commonly cited as ANSI A117.1, satisfies this requirement.

(3) Accessible route--A route that is accessible by individuals with disabilities, as set forth in Texas Property Code §301.025(c). Compliance with the appropriate requirements of ANSI for buildings and facilities providing accessibility and usability for persons having physical disabilities, commonly cited as ANSI A117.1, satisfies this requirement.

(4) Building--A structure, facility, or the portion thereof that contains or serves one or more dwelling units.

(5) Common use areas--Rooms, spaces, or elements inside or outside of a building that are made available for the use of residents or the guests of a building. These areas include, but are not limited to, hallways, lounges, lobbies, laundry rooms, refuse rooms, mailrooms, recreational areas, and passageways among and between buildings.

(6) Complaint--A written statement made under oath stating that an unlawful housing practice has been committed, setting forth the facts on which the complaint is based, and received within one year of the date the alleged unlawful housing practice occurred or terminated, whichever is later, and for which CRD shall initiate an investigation.

(7) Controlled substance--Any drug or other substance or immediate precursor as defined in the Controlled Substances Act [§102], 21 U.S.C. §802.

(8) Disability--A mental or physical impairment that substantially limits at least one major life activity, a record of such an impairment, or being regarded as having such an impairment. The term does not include current illegal use of or addiction to any drug or illegal or federally controlled substance; and reference to "an individual with a disability" or perceived as "disabled" does not apply to an individual based on that individual's sexual orientation or because that individual is a transvestite. [As used in this definition, physical or mental impairment includes:]

(A) Mental or physical impairment includes:

(i) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory, including speech organs, cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine; or

(ii) [(B)] any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, human immunodeficiency virus infection, intellectual disability [mental retardation], emotional illness, drug addiction (other than addiction caused by current, illegal use of a controlled substance) and alcoholism.[:]

(B) [(C)] Major [any major] life activity means a function [activities] such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.[:]

(C) [(D)] A [having a] record of having such an impairment means [such as] a history of, or misclassification as having, a mental or physical impairment that substantially limits one or more major life activity.[: and]

(D) [(E)] Being [being] regarded as having an impairment means having:

(i) a physical or mental impairment that does not substantially limit one or more major life activity but that is treated by another person as constituting such a limitation;

(ii) [having] a physical or mental impairment that substantially limits one or more major life activity only as a result of the attitudes of others toward such impairment; or

(iii) none of the impairments in subparagraph (A) of this paragraph [having no physical or mental impairment] but is treated by another person as having such an impairment.

(9) Discriminatory housing practice--An action prohibited by Texas Fair Housing Act, Subchapter B, or conduct that is an offense under Texas Fair Housing Act, Subchapter I.

(10) Entrance--Any access point to a building or portion of a building used by residents for the purpose of entering the building.

(11) Exterior--All areas of the premises outside of an individual dwelling unit.

(12) Ground floor--Within a building, any floor with an entrance on an accessible route. A building may have more than one ground floor.

(13) Interior--The spaces, parts, components, or elements of an individual dwelling unit.

(14) Modification--Any change to the public or common use areas of a building or any change to a dwelling unit.

(15) Premises--The interior or exterior spaces, parts, components, or elements of a building, including individual dwelling units and the public and common use areas of a building.

(16) Public use areas--Interior or exterior rooms or spaces of a building that are made available to the general public. Public use may be provided at a building that is privately or publicly owned.

(17) Site--A parcel of land bounded by a property line or a designated portion of a public right of way.

(18) Texas Fair Housing Act--Texas Property Code, Chapter 301.

(19) United States Fair Housing Act--Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988.

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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SUBCHAPTER H. DISCRIMINATORY HOUSING PRACTICES

40 TAC §§819.122, 819.130, 819.132

The rules are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The proposed rules affect Texas Government Code, Chapter 552.

§819.122. Exemptions Based on Familial Status.

(a) Discrimination prohibitions under the Texas Fair Housing Act [~~The Texas Fair Housing Act regarding discrimination~~] based on familial status do [~~does~~] not apply to housing designed and operated specifically to assist elderly individuals.

(b) The Texas Fair Housing Act does not apply to housing intended for and solely occupied by individuals 62 years of age or older. This exemption shall apply regardless of the fact that:

(1) there were individuals residing in such housing on September 13, 1988, who were under 62 years of age, provided that all new occupants are 62 years of age or older;

(2) there are unoccupied units, provided that such units are reserved for occupancy for individuals 62 years of age or older; or

(3) there are units occupied by employees of the housing (and family members residing in the same unit) who are under 62 years of age provided they perform substantial duties directly related to the management or maintenance of the housing.

(c) The Texas Fair Housing Act does not apply to housing intended and operated for occupancy by individuals 55 years of age or older if:

(1) at least 80% of the units in the housing facility are occupied by at least one person 55 years of age or older. However:

(A) a newly constructed housing facility for first occupancy after March 12, 1989, need not comply with this 80% occupancy requirement until 25% of the units in the facility are occupied; and

(B) a housing facility or community may not evict, refuse to renew leases, or otherwise penalize families with children in order to achieve occupancy of at least 80% of the occupied units by at least one person 55 years of age or older;

(2) the owner or manager of a housing facility publishes and adheres to policies and procedures that demonstrate an intent by the owner or manager to provide housing for individuals 55 years of age or

older. The following factors, among others, are relevant in determining whether the owner or manager of a housing facility has complied with the requirements of this paragraph:

(A) The manner in which the housing facility is described to prospective residents;

(B) The nature of any advertising designed to attract prospective residents;

(C) Age verification procedures;

(D) Lease provisions;

(E) Written rules and regulations;

(F) Actual practices of the housing facility or community; and

(G) Public posting in common areas of statements describing the facility or community as housing for individuals 55 years of age or older; and

(3) the housing facility satisfies the requirements of this section regardless of the fact that:

(A) as of September 13, 1988, under 80% of the occupied units in the housing facility were occupied by at least one person 55 years of age or older, provided that at least 80% of the units that were occupied by new occupants after September 13, 1988, were occupied by at least one person 55 years of age or older;

(B) there are unoccupied units, provided that at least 80% of such units are reserved for occupancy by at least one person 55 years of age or older; and

(C) there are units occupied by employees of the housing facility (and family members residing in the same unit) who are under 55 years of age provided they perform substantial duties directly related to the management or maintenance of the housing.

§819.130. Discrimination in Making Loans and in the Provision of Other Financial Assistance.

(a) It is unlawful for a person whose business includes engaging in residential real estate-related transactions to discriminate based on race, color, disability, religion, sex, national origin, or familial status in making loans or other financial assistance available for a dwelling, or which is or is to be secured by a dwelling.

(b) It is unlawful for a person engaged in making loans or in the provision of other financial assistance relating to the purchase, construction, improvement, repair, or maintenance of dwellings [øf] that are secured by residential real estate to impose different terms or conditions for the availability of such loans or other financial assistance based on race, color, disability, religion, sex, national origin, or familial status.

(c) Prohibited practices under this section include, but are not limited to:

(1) failing or refusing to provide to a person, in connection with a residential real estate-related transaction, information regarding the availability of loans or other financial assistance, application requirements, procedures, or standards for the review and approval of loans or financial assistance, or providing information that is inaccurate or different from that provided to others based on race, color, disability, religion, sex, national origin, or familial status;

(2) using different policies, practices, or procedures in evaluating or determining creditworthiness of any person in connection with the provision of a loan or other financial assistance for a dwelling or for a loan or other financial assistance that is secured by

residential real estate based on race, color, disability, religion, sex, national origin, or familial status; and

(3) determining the type of loan or other financial assistance to be provided with respect to a dwelling, or fixing the amount, interest rate, duration, or other terms of a loan or other financial assistance for a dwelling or for a loan or other financial assistance that is secured by residential real estate based on race, color, disability, religion, sex, national origin, or familial status.

§819.132. *Discrimination Based on Disability.*

(a) It is unlawful to discriminate by refusing to sell or rent, or otherwise make unavailable, or deny [in the sale, rental, terms, conditions, or privileges of the sale or rental, or to otherwise make unavailable or deny,] a dwelling to a potential buyer or renter based on a disability of:

- (1) the potential buyer or renter;
- (2) a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or
- (3) any person associated with that person.

(b) It is unlawful to discriminate against any person in the terms, conditions, or privileges of the sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a disability of:

- (1) that buyer or renter;
- (2) a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or
- (3) any person associated with that person.

(c) It is unlawful to make an inquiry to determine whether a potential buyer or renter of a dwelling, a person intending to reside in that dwelling after it is sold, rented, or made available, or any person associated with that potential buyer or renter has a disability. However, this section does not prohibit the following inquiries, provided they are made of each potential buyer or renter, whether or not the person has a disability:

- (1) Whether the potential buyer or renter is able to meet the requirements of ownership or tenancy;
- (2) Whether the potential buyer or renter qualifies for a dwelling available only to individuals with disabilities or to people with a particular type of disability;
- (3) Whether the potential buyer or renter qualifies for a priority available to individuals with disabilities or to people with a particular type of disability;
- (4) Whether the potential buyer or renter is a current illegal abuser or addict of a controlled substance; or
- (5) Whether the potential buyer or renter has been convicted of the illegal manufacture or distribution of a controlled substance.

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SUBCHAPTER I. TEXAS FAIR HOUSING ACT COMPLAINTS AND APPEALS PROCESS

40 TAC §§819.151, 819.153, 819.156

The rules are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The proposed rules affect Texas Government Code, Chapter 552.

§819.151. *Filing a Complaint.*

(a) A person may telephone, write, visit, e-mail, fax, or otherwise contact CRD to obtain information on filing a complaint with CRD.

(b) At the complainant's request, CRD:

(1) shall confer [eounsel] with the complainant about the facts and circumstances that may constitute the alleged unlawful housing practice; and

(2) shall assist the complainant with preparation of the complaint if the facts and circumstances constitute an alleged unlawful housing practice; or

(3) may advise the complainant if the facts and circumstances presented to CRD do not appear to constitute an unlawful housing practice.

(c) The complaint shall be filed in writing and under oath with CRD by electronic communication, mail, fax, or in person with:

- (1) the CRD office on a CRD-provided form;
- (2) a HUD office; or
- (3) a local municipality certified by HUD.

(d) The CRD director may require complaints to be made in writing, under oath, on a prescribed form. The complaint shall include the following information:

- (1) The name and address of the complainant;
- (2) The name and address of the respondent;
- (3) A description and address of the dwelling that is involved, if appropriate;
- (4) The basis for the alleged discriminatory housing practices, which may include any of the following: race, color, disability, religion, sex, national origin, or familial status;
- (5) A concise statement of the facts and circumstances that constitute alleged discriminatory housing practices under the Texas Fair Housing Act, including identification of personal harm, reason given to complainant by respondent for the action taken; and
- (6) A declaration of unlawful discrimination under federal or state law.

(e) A complaint shall be filed on or before the first anniversary of the date the alleged discriminatory housing practice occurs or terminates, whichever is later.

(f) The date of the filing of the complaint is the date when it is received by CRD or dual-filed with HUD, except when the CRD director determines that a complaint is timely filed for the purposes of the one-year period for filing of complaints upon submission of written information (including information provided by telephone by the complainant and documented by CRD) that is substantially equivalent to the information identified in subsection (d) of this section. When a complaint alleges discriminatory housing practices that are continuing, as manifested in a number of incidents of such conduct, the complaint shall be timely when filed within one year of the last alleged occurrence.

(g) A complaint may be amended to cure technical defects or omissions, or to clarify and amplify allegations made therein. Such amendment or amendments alleging additional acts that constitute unlawful housing practices related to or growing out of the subject matter of the original complaint shall relate back to the date the complaint was first filed. CRD shall provide a copy of the complaint to the respondent. An amended complaint shall be subject to the procedures set forth in applicable law.

(h) The CRD director may file a complaint when the CRD director receives information from a credible source that one or more individuals may have violated the rights of one or more individuals protected by the Texas Fair Housing Act. A complaint filed by the CRD director shall be considered for approval by the Commission on Human Rights at its first regularly scheduled meeting following the filing of the complaint. Upon a majority vote of the Commission on Human Rights, the complaint is approved and any investigation of the complaint shall continue. If the Commission on Human Rights does not approve the complaint, such complaint shall be withdrawn by CRD.

(i) The complainant and respondent shall be notified periodically by CRD of the status of their complaint, unless the notice would jeopardize an undercover investigation by another state, federal, or local government.

(j) Upon the acceptance of a complaint, the CRD director shall notify[;] by mail, or electronic communication upon agreement of the complainant, each complainant on whose behalf the complaint was filed. The notice shall:

- (1) acknowledge the filing of the complaint and state the date that the complaint was accepted for filing;
- (2) include a copy of the complaint;
- (3) advise the complainant of the time limits applicable to complaint processing and of the procedural rights and obligations of the complainant under the Texas Fair Housing Act and this chapter;
- (4) advise the complainant of his or her right to commence a civil action under the Texas Fair Housing Act, Subchapter H, and federal law, not later than two years after the occurrence or termination of the alleged discriminatory housing practice. The notice shall state that the computation of this two-year period excludes any time during which an administrative hearing is pending under this chapter and Texas Fair Housing Act, Subchapter E, with respect to a complaint or charge based on the alleged discriminatory housing practice; and
- (5) advise the complainant that retaliation against any person because he or she made a complaint or testified, assisted, or participated in an investigation, conciliation, or an administrative proceeding under this chapter is a discriminatory housing practice that is prohibited under the Texas Fair Housing Act and this chapter.

§819.153. Investigation of a Complaint.

(a) Upon the acceptance of a complaint under this chapter, CRD shall initiate an investigation. The CRD director may initiate an investigation to determine whether a complaint should be filed under this chapter and the Texas Fair Housing Act, Subchapter E. Such investigations shall be conducted in accordance with the procedures set forth in this chapter.

(b) The CRD director shall determine the scope and nature of the investigation within the context of the allegations set forth in the complaint.

(c) At all reasonable times in the complaint investigation, the CRD director shall have access to:

- (1) necessary witnesses for examination under oath or affirmation; and
- (2) records, documents, and other information relevant to the investigation of alleged violations of the Texas Fair Housing Act, for inspection and copying.

(d) Within 20 days of the acceptance of a complaint or amended complaint under this chapter, the CRD director shall serve a notice on each respondent by regular mail, or electronic communication upon agreement of the respondent. A person who is not named as a respondent in a complaint, but who is identified in the course of the investigation under the Texas Fair Housing Act, Subchapter E, and this chapter, as a person who is alleged to be engaged or to have engaged in the discriminatory housing practice upon which the complaint is based, may be joined as an additional or substitute respondent by service of a notice on the person under this section within 10 days of identification.

(e) The notice to a respondent shall include, but not be limited to, the following:

- (1) Identification of the alleged discriminatory housing practice upon which the complaint is based, and a copy of the complaint;
- (2) Date that the complaint was accepted for filing;
- (3) Time limits applicable to complaint processing under this chapter and the procedural rights and obligations of the respondent under the Texas Fair Housing Act, and this chapter, including the opportunity to submit an answer to the complaint within 10 days of the receipt of the notice;
- (4) Complainant's right to commence a civil action under the Texas Fair Housing Act, Subchapter H, and federal law, not later than two years after the occurrence or termination of the alleged discriminatory housing practice; an explanation that the computation of the two-year period excludes any time during which an administrative hearing is pending under this chapter or the Texas Fair Housing Act, Subchapter E, with respect to a complaint or charge based on the alleged discriminatory housing practice;
- (5) If the person is not named in the complaint, but is being joined as an additional or substitute respondent, an explanation of the basis for the CRD director's belief that the joined person is properly joined as a respondent;
- (6) Instruction that retaliation against any person because he or she made a complaint or testified, assisted, or participated in an investigation, conciliation, or an administrative proceeding under this chapter is a discriminatory housing practice that is prohibited under the Texas Fair Housing Act;
- (7) Invitation to enter into a conciliation agreement for the purpose of resolving the complaint; and

(8) Initial request for information and documentation concerning the facts and circumstances surrounding the alleged discriminatory housing practice set forth in the complaint.

(f) The respondent may file an answer not later than 10 days after receipt of the notice described in this section. The respondent may assert any defense that might be available to a defendant in a court of law. The written answer shall either be signed under oath or subscribed by the person making the declaration as true under penalty of perjury and in substantially the form prescribed by Texas Civil Practice and Remedies Code, Chapter 132, or its successor statute. [and affirmed by the respondent. The affirmation shall state: "I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge."]

(g) An answer may be reasonably and fairly amended at any time ~~[with the consent of the CRD director].~~

(h) CRD may conduct discovery in aid of the investigation by the same methods and to the same extent that parties may conduct discovery in an administrative proceeding under the Texas Fair Housing Act, Subchapter E. The CRD director shall have the power to issue subpoenas described under the Texas Fair Housing Act, Subchapter D, in support of the investigation.

(i) As part of the complaint investigation, CRD may request information relevant to the alleged violations of the Texas Fair Housing Act. In obtaining this information, CRD may use, but is not limited to using, any of the following:

- (1) Oral and video interviews and depositions;
- (2) Written interrogatories;
- (3) Production of documents and records;
- (4) Requests for admissions;
- (5) On-site inspection of respondent's facilities;
- (6) Written statements or affidavits; ~~[or]~~

(7) A written statement of position or information provided by the complainant or the respondent that is either under oath or subscribed in conformity with this section regarding the allegations in the complaint; or

~~(8) [(7)]~~ Other forms of discovery authorized by the Administrative Procedure Act, Texas Government Code §§2001.081 - 2001.103, or the Texas Rules of Civil Procedure.

(j) CRD may establish time requirements regarding responses to requests for information relevant to an investigation of alleged violations of the Texas Fair Housing Act. The CRD director may extend such time requirements for good cause shown.

~~[(k) As part of a complaint investigation, CRD may accept from the complainant or respondent a statement of position or information regarding the allegations in the complaint. CRD shall accept only a sworn or affirmed written statement of position submitted by the respondent setting forth the facts and circumstances relevant to an investigation of alleged violations of the Texas Fair Housing Act.]~~

~~(k) [(4)]~~ CRD shall complete the initial investigation of the alleged discriminatory housing practice within 100 days of the filing of the complaint.

~~(l) [(4)]~~ The complaint shall remain open until a no reasonable cause determination is made, a charge is made, or a conciliation agreement is executed and approved under this chapter and the Texas Fair Housing Act, Subchapter E.

~~(m) [(4)]~~ At the end of each investigation under this chapter, CRD shall prepare a final investigative report. The investigative report shall contain:

(1) the names and dates of contacts with witnesses. The report shall not disclose the names of witnesses that request anonymity; however, the names of such witnesses may be required to be disclosed in the course of an administrative hearing or a civil action;

(2) a summary and the dates of correspondence and other contacts with the complainant and the respondent;

(3) a summary description of other pertinent records;

(4) a summary of witness statements; and

(5) answers to interrogatories.

~~(n) [(4)]~~ A final investigative report may be amended if additional evidence is discovered.

~~(o) [(4)]~~ CRD shall provide a summary of the final determination and shall make available the full investigative report to the complainant and the respondent.

§819.156. Reasonable Cause Determination and Issuance of a Charge.

(a) If a conciliation agreement under this chapter and the Texas Fair Housing Act, Subchapter E, has not been executed by the complainant and the respondent, and approved by the CRD director, the CRD director on behalf of the Commission on Human Rights, within the time limits set forth in subsection (f) of this section, shall determine whether, based on the totality of the factual circumstances known at the time of the decision, reasonable cause exists to believe that a discriminatory housing practice has occurred. The reasonable cause determination shall be based solely on the facts concerning the alleged discriminatory housing practice, provided by complainant and respondent and otherwise disclosed during the investigation. In making the reasonable cause determination, the CRD director shall consider whether the facts concerning the alleged discriminatory housing practice are sufficient to warrant the initiation of a civil action in state district court.

(b) If the CRD director determines that reasonable cause exists, the CRD director shall immediately issue a charge under the Texas Fair Housing Act, Subchapter E, and this chapter on behalf of the complainant, and shall notify the complainant and the respondent of this determination by certified mail or personal service.

(c) If the CRD director determines that no reasonable cause exists, the CRD director shall issue a short written statement of the facts upon which the CRD director has based the no reasonable cause determination; dismiss the complaint; notify the complainant and the respondent of the dismissal (including the written statement of facts) by certified mail or personal service; and make public disclosure of the dismissal.

(d) If the CRD director determines that the matter involves the legality of local zoning or land use laws or ordinances, the CRD director, in lieu of making a determination regarding reasonable cause, shall refer the investigative materials to the Office of the Attorney General for appropriate action under the Texas Fair Housing Act, Subchapter G, and shall notify the complainant and the respondent of this action by certified mail or personal service.

(e) The CRD director shall ~~[may]~~ not issue a charge under this chapter and the Texas Fair Housing Act, Subchapter E, regarding an alleged discriminatory housing practice, if a complainant has commenced a civil action under federal or state law seeking relief with respect to the alleged discriminatory housing practice. If a charge is ~~[may]~~ not ~~[be]~~ issued because of the commencement of a civil action,

the CRD director shall notify the complainant and the respondent by certified mail or personal service.

(f) The CRD director shall make a reasonable cause determination within 100 days after filing of the complaint.

(g) If the CRD director is unable to make the determination within the 100-day period, the CRD director shall notify the complainant and the respondent, by certified mail or personal service, of the reasons for the delay.

(h) The CRD director shall notify the complainant and respondent, and any aggrieved person on whose behalf a complaint has been filed, that they may elect to have the claims asserted in the charge decided in a civil action, as provided in Texas Property Code §301.131 [~~§301.131(b)~~], or an administrative hearing pursuant to §819.191 of this chapter.

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

Filed with the Office of the Secretary of State on March 18, 2014.

TRD-201401203

Laurie Biscoe

Deputy Director, Workforce Development Division Programs

Texas Workforce Commission

Earliest possible date of adoption: May 4, 2014

For further information, please call: (512) 475-0829



SUBCHAPTER K. FAIR HOUSING ADMINISTRATIVE HEARINGS AND JUDICIAL REVIEW

40 TAC §819.199

The rule is proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The proposed rule affects Texas Government Code, Chapter 552.

§819.199. *Rehearing.*

(a) A motion for rehearing is not required to exhaust all administrative remedies. A motion for rehearing shall be made before

the expiration of 21 calendar days after the date of the Commission on Human Rights' final order, as set forth in §819.198 of this subchapter. Any reply to a motion for rehearing shall be filed with the Commission on Human Rights before the expiration of 30 calendar days after the date of the Commission on Human Rights' final order, as set forth in §819.198 of this subchapter. A party filing a motion for rehearing or a reply to a motion for rehearing shall serve a copy on each party within the filing deadline.

(b) The Commission on Human Rights may, by written order, extend the time for filing motions and replies and for taking Commission on Human Rights action. No extension may extend the period for Commission on Human Rights action beyond 90 days after the date of the final order, as set forth in §819.198 of this subchapter. In the event of an extension, a motion for rehearing is denied on the date fixed by the written order or, in the absence of a fixed date, 90 days from the date of the final order, as set forth in §819.198 of this subchapter.

(c) If a party files a motion for rehearing, the Commission on Human Rights [Rights'] may:

(1) grant such motion and remand for rehearing;

(2) deny such motion as set forth in §819.198 of this subchapter, either expressly or by operation of law; or

(3) render a decision and issue an order that no rehearing shall be necessary because imminent peril to the public health, safety, or welfare requires immediate effect be given to the final order.

(d) If the Commission on Human Rights does not act on the motion for rehearing within 45 calendar days, the motion is denied by operation of law and the order is final.

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

Filed with the Office of the Secretary of State on March 18, 2014.

TRD-201401204

Laurie Biscoe

Deputy Director, Workforce Development Division Programs

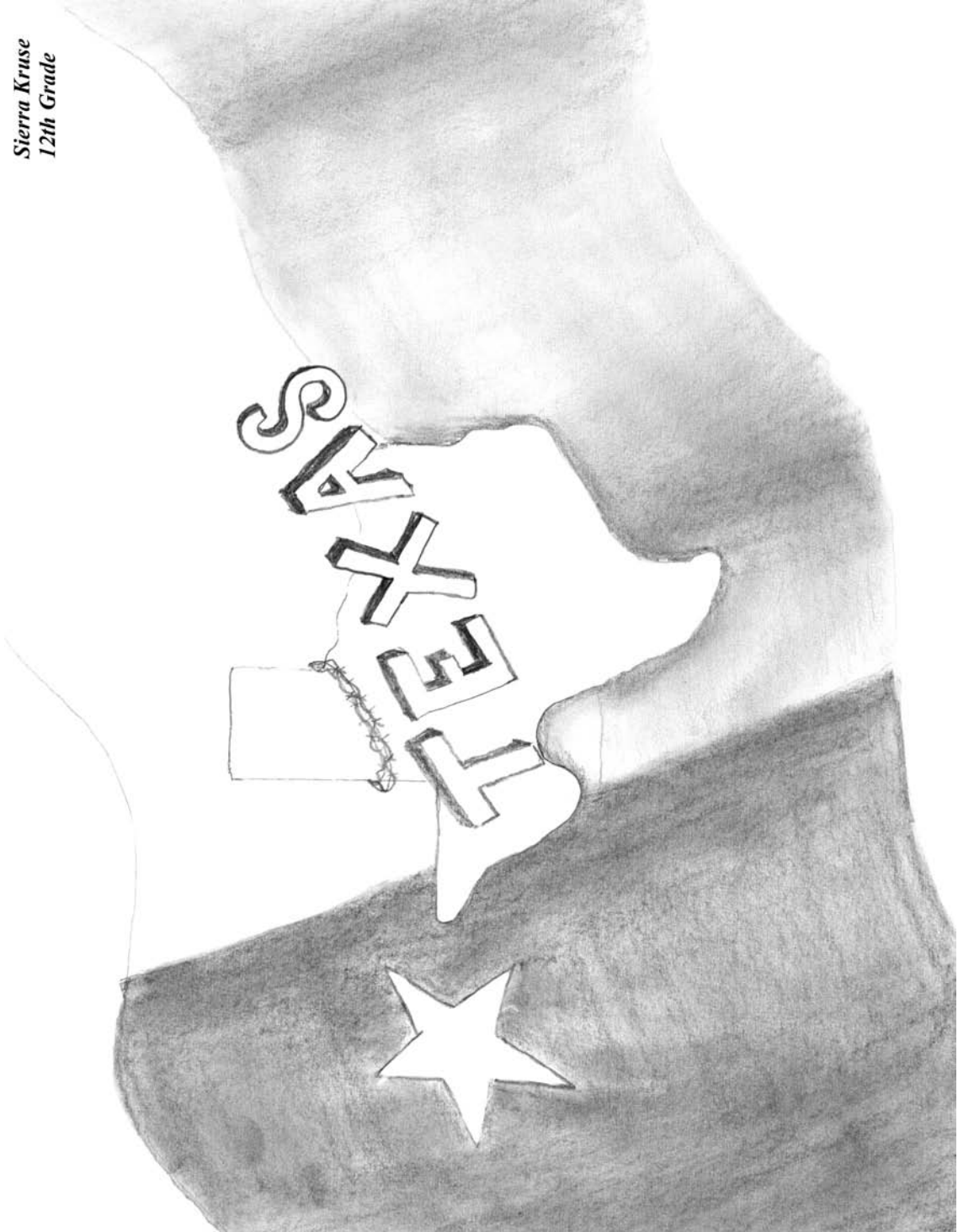
Texas Workforce Commission

Earliest possible date of adoption: May 4, 2014

For further information, please call: (512) 475-0829



Sierra Kruse
12th Grade



WITHDRAWN RULES

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

TITLE 1. ADMINISTRATION

PART 4. OFFICE OF THE SECRETARY OF STATE

CHAPTER 81. ELECTIONS

SUBCHAPTER E. ELECTION DAY PROCEDURES

1 TAC §81.71

The Office of the Secretary of State withdraws the emergency amendment to §81.71 which appeared in the October 11, 2013, issue of the *Texas Register* (38 TexReg 7007).

Filed with the Office of the Secretary of State on March 20, 2014.

TRD-201401252

Wroe Jackson

General Counsel

Office of the Secretary of State

Effective date: April 3, 2014

For further information, please call: (512) 463-5650



SUBCHAPTER I. IMPLEMENTATION OF THE HELP AMERICA VOTE ACT OF 2002

1 TAC §§81.172 - 81.174, 81.176

The Office of the Secretary of State withdraws the emergency repeal of §§81.172 - 81.174 and 81.176 which appeared in the October 11, 2013, issue of the *Texas Register* (38 TexReg 7008).

Filed with the Office of the Secretary of State on March 20, 2014.

TRD-201401253

Wroe Jackson

General Counsel

Office of the Secretary of State

Effective date: April 3, 2014

For further information, please call: (512) 463-5650



1 TAC §§81.172 - 81.176

The Office of the Secretary of State withdraws the emergency adoption of new §§81.172 - 81.176 which appeared in the October 11, 2013, issue of the *Texas Register* (38 TexReg 7008).

Filed with the Office of the Secretary of State on March 20, 2014.

TRD-201401254

Wroe Jackson

General Counsel

Office of the Secretary of State

Effective date: April 3, 2014

For further information, please call: (512) 463-5650



TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 19. QUARANTINES AND NOXIOUS AND INVASIVE PLANTS

SUBCHAPTER E. DATE PALM LETHAL DECLINE QUARANTINE

4 TAC §19.51

The Texas Department of Agriculture withdraws the emergency adoption of the amendment to §19.51 which appeared in the December 27, 2013, issue of the *Texas Register* (38 TexReg 9423).

Filed with the Office of the Secretary of State on March 20, 2014.

TRD-201401256

Dolores Alvarado Hibbs

General Counsel

Texas Department of Agriculture

Effective date: March 20, 2014

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



TITLE 22. EXAMINING BOARDS

PART 24. TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS

CHAPTER 573. RULES OF PROFESSIONAL CONDUCT

SUBCHAPTER C. RESPONSIBILITIES TO CLIENTS

22 TAC §573.27

Proposed amended §573.27, published in the September 20, 2013, issue of the *Texas Register* (38 TexReg 6167), is withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Filed with the Office of the Secretary of State on March 21, 2014.

TRD-201401258



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 351. COORDINATED PLANNING AND DELIVERY OF HEALTH AND HUMAN SERVICES

1 TAC §351.3

The Texas Health and Human Services Commission (HHSC) adopts an amendment to §351.3, concerning Purpose, Task and Duration of Advisory Committees, without changes to the proposed text as published in the January 24, 2014, issue of the *Texas Register* (39 TexReg 338). The text of the rule will not be republished.

Background and Justification

The adopted rule 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 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 adopted to comply with Texas 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.

Comments

During the 30-day comment period, which ended February 23, 2014, staff received no comments concerning the proposed amendment.

Legal Authority

The amendment is adopted under Texas Government Code §531.0055, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which 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 March 24, 2014.

TRD-201401291

Jack Stick

Chief Counsel

Texas Health and Human Services Commission

Effective date: April 13, 2014

Proposal publication date: January 24, 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 Service Commission (HHSC) adopts new §354.1177, concerning the Medicaid Electronic Visit Verification (EVV) System, without changes to the proposed text as published in the January 24, 2014, issue of the *Texas Register* (39 TexReg 343). The text of the rule will not be republished.

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). 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 and Human Services Section, Health and Human Services Commission); General Appropriations Act, 82nd Legislature, Regular Session, Chapter 1355, Article II, Rider 61(b)(8), at II-94 (Health and Human Services Section, Health and Human Services Commission).

The new rule establishes requirements applicable to contractors providing EVV services for Medicaid-enrolled providers and guidelines for Medicaid 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, which will verify the service occurred.

Comments

The 30-day comment period ended February 23, 2014. During this period, HHSC received comments regarding the new rule from Personal Attendant Coalition of Texas (PACT); ADAPT; the Consumer Direction Workgroup; Texas Visiting Nurse Service; and Helping the Aging, Needy and Disabled, Inc. (H.A.N.D.). All of the commenters were generally opposed to the rule or to implementation at this time. A summary of comments related to the proposed new rule and HHSC's responses follow.

Comment: One commenter questioned the propriety of the public hearing, as the organization she represents has raised issues about compliance with the Americans with Disabilities Act (ADA), and HHSC has not yet responded to those concerns.

Response: HHSC disagrees that the hearing was improper. The public hearing was conducted in compliance with all pertinent state statutes. Nothing in any statute bars HHSC from conducting a hearing on a rule that is the subject of a complaint to the Office of Civil Rights.

Comment: One commenter stated that the EVV system is out of compliance with the ADA, a statement that her organization also expressed at the November 2013 Medical Care Advisory Committee (MCAC) meeting, and in a letter submitted to the HHSC Office of Civil Rights. The commenter stated that the savings associated with EVV is understandable, but not if the system is out of compliance with the ADA.

Response: HHSC did not change the rule in response to this comment. The proposed rule requires that EVV vendors meet minimum standard requirements developed by an EVV workgroup to participate in EVV. The minimum standard requirements as set forth in the EVV Request for Proposal (RFP) includes a requirement that EVV systems must be ADA-compliant.

Comment: A commenter suggested that HHSC is rushing too much to implement the EVV requirements. In the view of his organization, HHSC should resolve the issues raised by commenters before implementing.

Response: HHSC did not change the rule in response to this comment and will not delay implementation of the rule. Since 2011, the Texas Legislature has required HHSC to implement an EVV system upon a finding that such a system is cost-effective and feasible. HHSC has determined that it is cost-effective and feasible, and HHSC is therefore following the Legislature's directive.

Nevertheless, HHSC has worked very closely with an EVV workgroup, consisting of both internal and external stakeholders, with EVV experience to address issues, impacts, and operational considerations for statewide implementation of EVV.

The EVV workgroup developed the minimum standard requirements to which all EVV vendors must adhere. Additionally, HHSC will continue to work with all stakeholders on pre-implementation work plans and considerations to ensure successful EVV implementation. HHSC has planned a phased-in approach for EVV implementation (STAR+PLUS, STAR Health, and FFS

in Phase 1; STAR in Phase 2) to address and work through any issues that may occur during initial implementation.

Comment: One commenter emphasized the importance of personal attendants helping other people who cannot help themselves and stated that EVV is making personal attendants' jobs harder with more bureaucracy, which will drive people away from being personal attendants.

Response: HHSC did not change the rule in response to this comment. HHSC disagrees that the EVV system will necessarily increase attendants' burdens; rather, HHSC anticipates that EVV will reduce the incidence of time-keeping and record-keeping errors, which will result in less administrative burden to attendants.

Comment: Two commenters expressed concern that the 90% compliance requirement and contract sanctions currently required in the Department of Aging and Disability Services (DADS) EVV program will require providers to hire additional staff and will, at the same time, make it harder to recruit and retain staff.

Response: HHSC did not change the rule in response to these comments. HHSC disagrees that the DADS 90% compliance requirement, which will also apply to the HHSC EVV Program, will result in extra burden for providers, that providers will have to hire additional staff, or that staff retention will be difficult. Rather, HHSC anticipates that EVV will reduce the incidence of time-keeping and record-keeping errors, which will result in less administrative burden to providers.

Comment: One commenter stated that providers must make many phone calls to attendants to verify errors and timing issues with EVV. Attendants are frustrated because every exception must be noted and changes to a schedule, such as a client wanting to suddenly go to the store, are restricted by the system. The system is very time-consuming and frustrating.

Response: HHSC did not change the rule in response to this comment. HHSC will use the same standard EVV reason codes currently in use for DADS EVV Program; these codes are used to provide documentation to clear an exception in the EVV system and complete the visit data. HHSC will continue to work with all stakeholders on pre-implementation work plans and considerations to ensure successful EVV implementation and on-going operations.

Comment: A commenter stated that nothing in the rule allows an individual who receives Consumer Directed Services (CDS) to opt out of EVV and that clarification is needed in the rule.

Response: HHSC did not change the rule in response to this comment. HHSC has communicated to stakeholders, both orally and in writing, that it has no plans at this time to change the requirement for CDS. Thus, each CDS provider continues to have the choice to participate in, or to opt out of, EVV.

Comment: One commenter stated that EVV is a deterrent to consumer-directed services and EVV should not be required for CDS. According to the commenter, using EVV in CDS is problematic; for example, if changes in an attendant's schedule occurs, the attendant must make a special effort to meet EVV requirements.

Response: HHSC did not change the rule in response to this comment. HHSC has communicated to stakeholders, both orally and in writing, that it has no plans at this time to change the re-

quirement for CDS. Thus, each CDS provider continues to have the choice to participate in, or opt out of, EVV.

Comment: A commenter feels that the State will need to increase provider rates for management of EVV.

Response: HHSC did not change the rule in response to this comment. HHSC anticipates that EVV will achieve cost savings by reducing the incidence of time-keeping and record-keeping errors, improving provider's ability to manage field staff more effectively, and improving individual access to services and reliability of service delivery, which overall will result in less administrative burden to providers.

Comment: A commenter stated that the State has not addressed EVV and liability regarding claims. If there is an error in time reported, there is no longer a signed time sheet and the only method to document time is to record and maintain every call. The commenter wonders if the State will provide assistance or protection to providers for claimed hours that no longer require an attendant's signature.

Response: HHSC did not change the rule in response to this comment. In programs or services where EVV is mandatory, EVV eliminates the need or requirements for written record-keeping. In CDS, participation in the EVV program is not mandatory and if a provider opts to partially use EVV or not use it at all, attendants must sign a time sheet. However, there is nothing that prohibits a provider from requiring a signed time sheet in addition to EVV.

Comment: One commenter suggested that the new system will require training, particularly because, according to the commenter, turnover rates at call centers are high.

Response: HHSC did not change the rule in response to this comment. The rule requires every EVV vendor to meet minimum standard requirements developed by the EVV workgroup. At a minimum, an EVV vendor must, among other things, provide initial and on-going training on the EVV system. As part of the statewide implementation of EVV, EVV vendors will educate providers and attendants on the use of EVV systems.

Comment: One commenter voiced a concern that auditors may not be aware of EVV changes that have occurred through letter notification and concerns of whether claims will be recouped.

Response: HHSC did not change the rule in response to this comment. As with any audit conducted for HHSC agencies, programs, or services, HHSC program staff work very closely with auditors to provide subject matter expertise and ensure that audits are conducted according to current policies, rules, and regulations.

Statutory Authority

The new rule is adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.117, which requires HHSC to establish a Medicaid recovery audit contractor program.

The new rule also is adopted in accordance with HHSC's authority under Texas Government Code §531.024172 and Rider 51 of the current appropriations act. See Texas Government Code §531.024172; General Appropriations Act, 83rd Legislature, Regular Session, Chapter 1411, Art. II, Rider 51(b)(8), at

II-100 (Health and Human Services Section, Health and Human Services Commission).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 24, 2014.

TRD-201401292

Jack Stick

Chief Counsel

Texas Health and Human Services Commission

Effective date: April 13, 2014

Proposal publication date: January 24, 2014

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

TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

The Public Utility Commission of Texas (commission) adopts amendments to §§26.5, 26.22, 26.23, 26.25, 26.27, 26.28, 26.30, 26.31, 26.34, 26.51, 26.79, 26.80, 26.85, 26.89, 26.123, 26.128, 26.133, 26.142, 26.143, 26.211, 26.272, 26.311, 26.313, 26.317, 26.319, 26.321, 26.342, 26.417, 26.418, and 26.421 - 26.423 with changes to the proposed text as published in the November 29, 2013, issue of the *Texas Register* (38 TexReg 8532) and adopts amendments to §§26.52, 26.53, 26.73, 26.225 - 26.230, 26.406, and 26.420 and the repeal of §26.431 without changes to the proposed text as published in the November 29, 2013, issue of the *Texas Register* (38 TexReg 8532).

The amendments amend commission substantive rules relating to telecommunications service to conform to 2013 legislation, which includes Senate Bills 259, 512, 583, and 809 of the 83rd Legislature, Regular Session (Telecom Legislation). Project Number 41609 is assigned to this proceeding.

The commission received comments on the proposed amendments from the Office of Public Utility Counsel (OPUC), Southwestern Bell Telephone Company d/b/a AT&T Texas (AT&T), Sprint Communications L.P., tw telecom of Texas, LLC, and the Texas Cable Association (Joint Commenters), Verizon (GTE Southwest Incorporated d/b/a Verizon Southwest, Verizon Enterprise Solutions LLC, Verizon Long Distance LLC, MCI-metro Access Transmission Services LLC d/b/a Verizon Access Transmission Services and MCI Communications Services, Inc. d/b/a Verizon Business Services), and TEXALTEL.

ISSUES APPLICABLE TO MULTIPLE RULE SECTIONS

(1) Definition of "Exempt Carrier"

Joint Commenters proposed a definition of "Exempt Carrier" be added to §26.5 and proposed that the defined term be used in place of the undefined term "qualified nondominant telecommunications utility" in several rules: §§26.22, 26.23, 26.25, 26.27, 26.28, 26.31, 26.34, 26.51, 26.79, 26.80, 26.85, 26.123, 26.128,

26.133, 26.143, 26.211, 26.272, 26.311, 26.313, 26.317, 26.319, 26.321, 26.342, 26.418, 26.421, 26.422 and 26.423. Joint Commenters also proposed the term "exempt carrier" be added to Substantive Rule §26.30. In its reply comments, AT&T did not oppose Joint Commenters' proposal. Verizon, in its reply, did not oppose defining the term "exempt carrier," but proposed slightly different wording. TEXALTEL on reply also proposed its own definition of "exempt carrier."

Commission response

The commission agrees with Joint Commenters that the term "Exempt Carrier" should be defined and used in place of the commission's proposed language. The commission adopts wording that strikes a balance between the various definitions as proposed and adds clarity to its rules. Sections 26.5, 26.22, 26.23, 26.25, 26.27, 26.28, 26.30, 26.31, 26.34, 26.51, 26.79, 26.80, 26.85, 26.123, 26.128, 26.133, 26.143, 26.211, 26.272, 26.311, 26.313, 26.317, 26.319, 26.321, 26.342, 26.418, 26.421, 26.422 and 26.423 are revised accordingly.

(2) Addition of "nonbasic"

Joint Commenters suggested that "nonbasic" be added before "services of an electing company" in §§26.51, 26.52, 26.225, 26.226, and 26.227, in order to track the language in PURA §58.156, which provides that §§55.001 - 55.004 do not apply to retail nonbasic services offered by an electing company.

AT&T disagreed with Joint Commenters and argued that the proposed amendments rely on the relief provided by PURA §58.156 as well as the deregulatory effect of PURA §58.052(a)(2)(E)(ii).

Verizon also opposed Joint Commenters' suggested addition. Verizon pointed out that §§55.001 - 55.004 also do not apply to basic services of an electing company. Verizon stated that because these sections do not apply to the basic and nonbasic retail services of an electing company, the proposed insertion of "nonbasic" should not be adopted.

Commission response

The commission does not agree that the addition of the word "nonbasic" is necessary to comply with the amendments to PURA. The commission adopts the rule language as proposed.

ISSUES APPLICABLE TO INDIVIDUAL RULE SECTIONS

Section 26.30

Joint Commenters opposed the commission's proposed revision for two reasons: (1) as proposed it failed to implement PURA §52.154 because it limits commission authority over deregulated Incumbent Local Exchange Carriers (ILECs) but it does not limit commission authority over Competitive Local Exchange Carriers (CLECs) operating in their territories; and (2) it was unnecessary. Joint Commenters further expressed concern that jurisdictional matters could be determined in informal complaints by non-attorneys not familiar with the scope of the commission's jurisdiction under PURA §65.102.

In its reply, AT&T agreed with Joint Commenters as to the first rationale, but not the second. AT&T stated SB 259 reflected the Legislature's intent to confine the commission's jurisdiction on specific activities of deregulated companies (the "enforceable provisions list" in PURA §65.102(b)). AT&T further stated PURA §65.102(d) then provided that the commission's complaint jurisdiction is limited to those same activities. As to Joint Commenters' jurisdictional concern, AT&T stated that since both informal and formal complaints are permissible only

where the commission has jurisdiction over the subject matter of the complaint, informal complaints will continue to exist, and in most cases required, as provided in §22.242(c). AT&T opined that §26.30 incorporated the language and intent of PURA §65.102(d) and should be adopted with the modifications previously discussed to reflect the relief provided by PURA §52.154.

In its reply, Verizon supported adoption of the commission proposed amendment to the rule.

Commission response

The commission agrees with Joint Commenters that "exempt carriers" should be added to the rule, but otherwise adopts the rule as proposed.

Section 26.51

Joint Commenters opposed the commission's proposed amendment to the rule because they said the requirement to maintain a reliable network will continue to apply to deregulated ILECs as part of their wholesale and interconnection obligations retained under PURA §65.102(b).

AT&T explained in its reply that it has just one public switched telephone network, but that the exemption of deregulated exchanges or companies from the retail quality of service standards and some network reporting does not diminish the obligations that wholesale providers have to their carrier customers under the Federal Telecommunications Act of 1996 (FTA 96), interconnection agreements or PURA. AT&T argued that the obligation under the FTA 96 that requires a wholesale carrier to provide requesting telecommunications carriers with just, reasonable and nondiscriminatory access to specific aspects of its network, only requires that the wholesale carrier provide the same reliable network the wholesale carrier uses to provide services to its own customers. Accordingly, AT&T opined that a CLEC is not entitled to higher quality service than a carrier's own retail customers and that the proposed rules should be approved without further modification.

Verizon concurred with the commission's proposal for publication. It said PURA §§55.001 - 55.004 did not apply to deregulated companies and did not apply to retail services of a chapter 58 electing company or to the retail nonbasic services of a transitioning company and thus did not agree with the Joint commenters assertion that §26.51 should apply to the aforementioned types of companies.

Commission response

The commission agrees with AT&T and Verizon and adopts the rule amendments as proposed.

Section 26.52

Joint Commenters opposed the rule amendments, which provided that these sections did not apply to the retail services of an electing company or to the retail nonbasic services offered by a transitioning company, because they say the amendments will add ambiguity. They question if the requirements of the two rules can be segregated between basic and nonbasic retail services.

In its reply, Verizon disagreed with the Joint Commenters position. Verizon concurred with the commission's proposed amendment clarifying that the rules did not apply to retail services of an electing company and the retail nonbasic services offered by a

transitioning company and are authorized by PURA §55.001 and §55.002.

AT&T reply comments for §26.51 also apply to these rule amendments.

Commission response

The commission agrees with AT&T and Verizon and adopts the rule amendments as proposed.

Section 26.89

Joint Commenters suggested the rule title be changed to "Nondominant Carriers' Obligations Regarding Information on Rates and Services," to better reflect the proposed amended language that addresses nondominant carriers' obligations. Verizon did not oppose the Joint Commenters' suggestion.

Commission response

The commission agrees with Joint Commenters and revises the rule title to read "Nondominant Carriers' Obligations Regarding Information on Rates and Services."

Section 26.272

Joint Commenters opposed the commission amendment that added subparagraph (E), which provided that subsection (i)(2) (Requirements for CTUs ceasing operations) and subsection (i)(3) (Requirements for service installations) of the rule did not apply to deregulated companies holding a COA or to qualified nondominant telecommunications utilities.

AT&T replied that the amendments reflect the legislature's intent to exempt deregulated companies from retail quality of service standards. AT&T further explained that the proposed language reflects a conforming change made to §26.54 and that changes to Chapter 26 network rules do not diminish wholesale obligations under the Federal Telecommunications Act of 1996 (FTA 96), interconnection agreements or Chapter 60. AT&T stated that Staff's proposed amendment should be approved. AT&T also replied that, since the source of the notification requirement in subsection (i)(2) is PURA §54.253, and since that provision is not in the enforceable provisions list, the commission amendment is consistent with the intent of the legislature.

Verizon concurred with the commission's proposal that these sections did not apply to a deregulated company holding COA or to qualified nondominant telecommunications utility. Verizon said Joint commenters failed to cite any authority for continuing to apply §26.272(i)(2) to deregulated companies. Verizon also argued that the dominant certificated telecommunications utility (DCTU) provisions of §26.272(i)(3) do not apply to deregulated companies because, by definition, a deregulated company holding a COA is not a DCTU.

Verizon also stated that the nondominant certificated telecommunications utility (NCTU) retail service objectives in §26.272(i)(3) may not be applied to deregulated companies because: (1) PURA §65.102(a)(2) provides that deregulated companies are not subject to retail service standards; and (2) PURA §54.104(a) and §§55.001 - 55.004, which authorize retail service objectives, did not apply to deregulated companies. Joint Commenters cited PURA §60.124 and §60.203 which concern general interconnection obligations that do not authorize retail service standards.

Commission response

The amendments to PURA change the commission's authority with respect to the retail services of deregulated companies. Federal requirements governing the ILECs' wholesale obligations remain in effect. The commission agrees with AT&T and Verizon and adopts the rule amendments as proposed.

All comments, including any not specifically referenced herein, were fully considered by the commission.

SUBCHAPTER A. GENERAL PROVISIONS

16 TAC §26.5

The amendments are adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (West 2007 and Supp. 2013) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, and the amendments to PURA made by Senate Bills 259, 512, 583, and 809 of the 83rd Legislature, Regular Session.

Cross Reference to Statutes: PURA §14.002 and the amendments to PURA made by Senate Bills 259, 512, 583, and 809 of the 83rd Legislature, Regular Session.

§26.5. Definitions.

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

- (1) Access customer--Any user of access services which are obtained from a certificated telecommunications utility (CTU).
- (2) Access services--CTU services which provide connections for or are related to the origination or termination of intrastate telecommunications services that are generally, but not limited to, interexchange services.
- (3) Administrative review--A process under which an application may be approved without a formal hearing.
- (4) Affected person--
 - (A) a public utility affected by an action of a regulatory authority;
 - (B) a person whose utility service or rates are affected by a proceeding before a regulatory authority; or
 - (C) a person who:
 - (i) is a competitor of a public utility with respect to a service performed by the utility; or
 - (ii) wants to enter into competition with a public utility.
- (5) Affiliate--
 - (A) a person who directly or indirectly owns or holds at least 5.0% of the voting securities of a public utility;
 - (B) a person in a chain of successive ownership of at least 5.0% of the voting securities of a public utility;
 - (C) a corporation that has at least 5.0% of its voting securities owned or controlled, directly or indirectly, by a public utility;
 - (D) a corporation that has at least 5.0% of its voting securities owned or controlled, directly or indirectly, by:
 - (i) a person who directly or indirectly owns or controls at least 5.0% of the voting securities of a public utility; or
 - (ii) a person in a chain of successive ownership of at least 5.0% of the voting securities of a public utility;

(E) a person who is an officer or director of a public utility or of a corporation in a chain of successive ownership of at least 5.0% of the voting securities of a public utility; or

(F) a person determined to be an affiliate under Public Utility Regulatory Act §11.006.

(6) Aggregate customer proprietary network information (CPNI)--A configuration of customer proprietary network information that has been collected by a telecommunications utility and organized such that none of the information will identify an individual customer.

(7) Alternate 9-1-1 routing--The routing of 9-1-1 calls to a designated alternate location if all dedicated 9-1-1 trunks to a primary public safety answering point are busy or out of service.

(8) Assumed name--Has the meaning assigned by Texas Business and Commerce Code, §36.10.

(9) Automatic dial announcing device (ADAD)--Any automated equipment used for telephone solicitation or collection that:

(A) is capable of storing numbers to be called, or has a random or sequential number generator capable of producing numbers to be called; and

(B) alone or in conjunction with other equipment, can convey a prerecorded or synthesized voice message to the number called without the use of a live operator.

(10) Automatic location identification (ALI)--The automatic display at a public safety answering point of a caller's telephone number, the address/location of the telephone number, and supplementary emergency services information for the location from which a call originates.

(11) Automatic number identification (ANI)--The telephone number associated with an access line, connection, or station from which a call originates that is automatically transmitted by the local switching system to an interexchange or other communications carrier or to the operator of a 9-1-1 system.

(12) Base rate area--A specific area within an exchange area, as set forth in the dominant certificated telecommunications utilities' tariffs, maps or descriptions, wherein local exchange service is furnished at uniform rates without extra mileage charges.

(13) Basic local telecommunications service--Flat rate residential and business local exchange telephone service, including primary directory listings; tone dialing service; access to operator services; access to directory assistance services; access to 911 service where provided by a local authority or dual party relay service; the ability to report service problems seven days a week; lifeline services; and any other service the commission, after a hearing, determines should be included in basic local telecommunications service.

(14) Basic network services (BNS)--Those services identified in Public Utility Regulatory Act §58.051.

(15) Baud--Unit of signaling speed reflecting the number of discrete conditions or signal elements transmitted per second.

(16) Bellcore--Bell Communications Research, Inc.

(17) Billing agent--Any entity that submits charges to a billing telecommunications utility on behalf of itself or any service provider.

(18) Billing telecommunications utility--Any telecommunications provider, as defined in the Public Utility Regulatory Act §51.002 that issues a bill directly to a customer for any telecommunications product or service.

(19) Bit Error Ratio (BER)--The ratio of the number of bits received in error to the total number of bits transmitted in a given time interval.

(20) Bit Rate--The rate at which data bits are transmitted over a communications path, normally expressed in bits per second.

(21) Bona fide request--A written request to an incumbent local exchange company (ILEC) from a CTU or an enhanced service provider, requesting that the ILEC unbundle its network/services to the extent ordered by the Federal Communications Commission. A bona fide request indicates an intent to purchase the service subject to the purchaser being able to obtain acceptable rates, terms, and conditions.

(22) Business service--A telecommunications service provided a customer where the use is primarily of a business, professional, institutional or otherwise occupational nature.

(23) Busy hour--The clock hour each day during which the greatest usage occurs.

(24) Busy season--That period of the year during which the greatest volume of traffic is handled in a switching office.

(25) Call aggregator--Any person or entity that owns or otherwise controls telephones intended to be utilized by the public, which control is evidenced by the authority to post notices on and/or unblock access at the telephone.

(26) Call splashing--Call transferring (whether caller-requested or operator service provider-initiated) that results in a call being rated and/or billed from a point different from that where the call originated.

(27) Call transferring--Handing off a call from one operator service provider (OSP) to another OSP.

(28) Caller identification materials (caller ID materials)--Any advertisements, educational materials, training materials, audio and video marketing devices, and any information disseminated about caller ID services.

(29) Caller identification service (caller ID service)--A service offered by a telecommunications provider that provides calling party information to a device capable of displaying the information.

(30) Calling area--The area within which telecommunications service is furnished to customers under a specific schedule of exchange rates. A "local" calling area may include more than one exchange area.

(31) Calling party information--

(A) the telephone listing number and/or name of the customer from whose telephone instrument a telephone number is dialed; or

(B) other information that may be used to identify the specific originating number or originating location of a wire or electronic communication transmitted by a telephone instrument.

(32) Capitalization--Long-term debt plus total equity.

(33) Carrier of choice--An option that allows an individual to choose an interexchange carrier for long distance calls made through Telecommunications Relay Service.

(34) Carrier-initiated change--A change in the telecommunications utility serving a customer that was initiated by the telecommunications utility to which the customer is changed, whether the switch is made because a customer did or did not respond to direct mail solicitation, telemarketing, or other actions initiated by the carrier.

(35) Central office--A switching unit in a telecommunications system which provides service to the general public, having the necessary equipment and operating arrangements for terminating and interconnecting customer lines and trunks or trunks only.

(36) Census block group (CBG)--A United States Census Bureau geographic designation that generally contains between 250 and 550 housing units.

(37) Certificated service area--The geographic area within which a company has been authorized to provide basic local telecommunications services pursuant to a certificate of convenience and necessity (CCN), a certificate of operating authority (COA), or a service provider certificate of operating authority (SPCOA) issued by the commission.

(38) Certificated telecommunications utility--A telecommunications utility that has been granted either a CCN, a COA, or a SPCOA.

(39) Class of service or customer class--A description of utility service provided to a customer which denotes such characteristics as nature of use (business or residential) or type of rate (flat rate or message rate). Classes may be further subdivided into grades, denoting individual or multiparty line or denoting quality of service.

(40) Commercial mobile radio service (CMRS)--

(A) As defined in 47 C.F.R. §20.3, a mobile service that is:

(i) provided for profit with, i.e., the intent of receiving compensation or monetary gain;

(ii) an interconnected service; and

(iii) available to the public, or to such classes of eligible users as to be effectively available to a substantial portion of the public; or

(B) the functional equivalent of such a mobile service described in subparagraph (A) of this paragraph.

(41) Commission--The Public Utility Commission of Texas.

(42) Commission on State Emergency Communications (CSEC)--The state commission with the responsibilities and authority as specified in Texas Health and Safety Code, Chapter 771.

(43) Competitive exchange service--Any of the following services, when provided on an inter- or intrastate basis within an exchange area: central office based PBX-type services for systems of 75 stations or more; billing and collection services; high speed private line services of 1.544 megabits or greater; customized services; private line and virtual private line services; resold or shared local exchange telephone services if permitted by tariff; dark fiber services; non-voice data transmission service when offered as a separate service and not as a component of basic local telecommunications service; dedicated or virtually dedicated access services; services for which a local exchange company has been granted authority to engage in pricing flexibility pursuant to §26.211 of this title (relating to Rate-Setting Flexibility for Services Subject to Significant Competitive Challenges); any service initially provided within an exchange after October 26, 1992, if first provided by an entity other than the incumbent local exchange company (companies) certificated to provide service within that exchange; and any other service the commission declares is not local exchange telephone service.

(44) Competitive services (CS)--Those services as defined in Public Utility Regulatory Act §58.151, and any other service the commission subsequently categorizes as a competitive service.

(45) Completed call--A call that is answered by the called party.

(46) Complex service--The provision of a circuit requiring special treatment, special equipment, or special engineering design, including but not limited to private lines, WATS, PBX trunks, rotary lines, and special assemblies.

(47) Consumer good or service--

(A) Real property or tangible or intangible personal property that is normally used for personal, family, or household purposes, including personal property intended to be attached to or installed in any real property;

(B) A cemetery lot;

(C) A time-share estate; or

(D) A service related to real or personal property.

(48) Consumer telephone call--An unsolicited call made to a residential telephone number to:

(A) solicit a sale of a consumer good or service;

(B) solicit an extension of credit for a consumer good or service; or

(C) obtain information that will or may be used to directly solicit a sale of a consumer good or service or to extend credit for the sale.

(49) Cooperative--An incumbent local exchange company that is a cooperative corporation.

(50) Cooperative corporation--

(A) An electric cooperative corporation organized and operating under the Electric Cooperative Corporation Act, Texas Utilities Code Annotated, Chapter 161, or a predecessor statute to Chapter 161 and operating under that chapter; or

(B) A telephone cooperative corporation organized under the Telephone Cooperative Act, Texas Utilities Code, Chapter 162, or a predecessor statute to Chapter 162 and operating under that chapter.

(51) Corporate name--Has the meaning assigned by Texas Business Corporation Act, Article §2.05.

(52) Corporation--A domestic or foreign corporation, joint-stock company, or association, and each lessee, assignee, trustee, receiver or other successor in interest of the corporation, company, or association, that has any of the powers or privileges of a corporation not possessed by an individual or partnership. The term does not include a municipal corporation, except as expressly provided by the Public Utility Regulatory Act.

(53) Custom calling-type services--Call management services available from a central office switching system including, but not limited to, call forwarding, call waiting, caller ID, or automatic recall.

(54) Customer access line--A unit of measurement representing a telecommunications circuit or, in the case of ISDN, a telecommunications channel designated for a particular customer. One customer access line shall be counted for each circuit which is capable of generating usage on the line side of the switched network or a private line circuit, regardless of the quantity or ownership of customer

premises equipment connected to each circuit. In the case of multi-party lines, each party shall be counted as a separate customer access line.

(55) Customer-initiated change--A change in the telecommunications utility serving a customer that is initiated by the customer and is not the result of direct mail solicitation, telemarketing, or other actions initiated by the carrier.

(56) Customer premises equipment (CPE)--Telephone terminal equipment located at a customer's premises. This does not include overvoltage protection equipment, inside wiring, coin-operated (or pay) telephones, "company-official" equipment, mobile telephone equipment, "911" equipment, equipment necessary for provision of communications for national defense, or multiplexing equipment used to deliver multiple channels to the customer.

(57) Customer proprietary network information (CPNI), customer-specific--Any information compiled about a customer by a telecommunications utility in the normal course of providing telephone service that identifies the customer by matching such information with the customer's name, address, or billing telephone number. This information includes, but is not limited to: line type(s), technical characteristics (e.g., rotary service), class of service, current telephone charges, long distance billing record, local service billing record, directory assistance charges, usage data, and calling patterns.

(58) Customer trouble report--Any oral or written report from a customer or user of telecommunications service received by any telecommunications utility relating to a physical defect, difficulty, or dissatisfaction with the service provided by the telecommunications utility's facilities. Each telephone or PBX switchboard position reported in trouble shall be counted as a separate report when several items are reported by one customer at the same time, unless the group of troubles so reported is clearly related to a common cause.

(59) dBrn--A unit used to express noise power relative to one Pico watt (-90 dBm).

(60) dBrnC--Noise power in dBrn, measured with C-message weighting.

(61) dBrnCO--Noise power in dBrnC referred to or measured at a zero transmission level point.

(62) D-Channel--The integrated-services-digital-network out-of-band signaling channel.

(63) Dedicated signaling transport--Transmission of out-of-band signaling information between an access customer's common channel signaling network and a CTU's signaling transport point on facilities dedicated to the use of a single customer.

(64) Dedicated 9-1-1 trunk--Refers to either:

(A) a single purpose telephone circuit, or Internet Protocol (IP) equivalent, that originates at a CTU's (CTU's) switching office or point of presence and connects to a port of termination at an E9-1-1 selective router, 9-1-1 tandem, IP-based 9-1-1 system, or next generation 9-1-1 system, as described to the CTU by the appropriate 9-1-1 administrative entity or entities in its 9-1-1 service arrangement requirements for each applicable rate center (direct dedicated 9-1-1 trunk); or

(B) any other single purpose telephone circuit, or IP equivalent, that is used by a CTU to provide 9-1-1 service consistent with the 9-1-1 administrative entity's or entities' 9-1-1 service arrangement requirements that does not connect directly to a port of termination as described in subparagraph (A) of this paragraph (indirect ded-

icated 9-1-1 trunk). A direct dedicated 9-1-1 trunk includes transport, port usage, and termination.

(65) Default routing--The capability to route a 9-1-1 call to a designated public safety answering point when the incoming 9-1-1 call cannot be selectively routed due to an automatic number identification failure or other cause.

(66) Depreciation expenses--The charges based on the depreciation accrual rates designed to spread the cost recovery of the property over its economic life.

(67) Deregulated company--An incumbent local exchange company (ILEC) for which all of the company's markets have been deregulated.

(68) Direct-trunked transport--Transmission of traffic between the serving wire center and another CTU's office, without intermediate switching. It is charged on a flat-rate basis.

(69) Disconnection of telephone service--The event after which a customer's telephone number is deleted from the central office switch and databases.

(70) Discretionary services (DS)--Those services as defined in the Public Utility Regulatory Act §58.101, and any other service the commission subsequently categorizes as a discretionary service.

(71) Distance learning--Instruction, learning, and training that is transmitted from one site to one or more sites by telecommunications services that are used by an educational institution predominantly for such instruction, learning, or training--including: video, data, voice, and electronic information.

(72) Distribution lines--Those lines from which the end user may be provided direct service.

(73) Dominant carrier--A provider of a communication service provided wholly or partly over a telephone system who the commission determines has sufficient market power in a telecommunications market to control prices for that service in that market in a manner adverse to the public interest. The term includes a provider who provided local exchange telephone service within certificated exchange areas on September 1, 1995, as to that service and as to any other service for which a competitive alternative is not available in a particular geographic market. In addition with respect to:

(A) intraLATA long distance message telecommunications service originated by dialing the access code "1-plus," the term includes a provider of local exchange telephone service in a certificated exchange area for whom the use of that access code for the origination of "1-plus" intraLATA calls in the exchange area is exclusive; and

(B) interexchange services, the term does not include an interexchange carrier that is not a certificated local exchange company.

(74) Dominant certificated telecommunications utility (DCTU)--A CTU that is also a dominant carrier. Unless clearly indicated otherwise, the rules applicable to a DCTU apply specifically to only those services for which the DCTU is dominant.

(75) Dual-party relay service--A service using oral and printed translations, by either a person or an automated device, between hearing- or speech-impaired individuals who use telecommunications devices for the deaf, computers, or similar automated devices, and others who do not have such equipment.

(76) Educational institution--Accredited primary or secondary schools owned or operated by state and local government entities or by private entities; institutions of higher education as de-

fined by the Texas Education Code, §61.003(13); the Texas Education Agency, its successors and assigns; regional education service centers established and operated pursuant to the Texas Education Code, Chapter 8; and the Texas Higher Education Coordinating Board, its successors and assigns.

(77) Electing local exchange company (LEC)--A CTU electing to be regulated under the terms of the Public Utility Regulatory Act, Chapter 58.

(78) Electric utility--Except as provided in Chapter 25, Subchapter I, Division 1 of this title (relating to Open-Access Comparable Transmission Service for Electrical Utilities in the Electric Reliability Council of Texas), an electric utility is: A person or river authority that owns or operates for compensation in this state equipment or facilities to produce, generate, transmit, distribute, sell, or furnish electricity in this state. The term includes a lessee, trustee, or receiver of an electric utility and a recreational vehicle park owner who does not comply with Texas Utilities Code, Chapter 184, Subchapter C, with regard to the metered sale of electricity at the recreational vehicle park. The term does not include:

- (A) a municipal corporation;
- (B) a qualifying facility;
- (C) a power generation company;
- (D) an exempt wholesale generator;
- (E) a power marketer;
- (F) a corporation described by Public Utility Regulatory Act §32.053 to the extent the corporation sells electricity exclusively at wholesale and not to the ultimate consumer;
- (G) an electric cooperative;
- (H) a retail electric provider;
- (I) the state of Texas or an agency of the state; or
- (J) a person not otherwise an electric utility who:

(i) furnishes an electric service or commodity only to itself, its employees, or its tenants as an incident of employment or tenancy, if that service or commodity is not resold to or used by others;

(ii) owns or operates in this state equipment or facilities to produce, generate, transmit, distribute, sell or furnish electric energy to an electric utility, if the equipment or facilities are used primarily to produce and generate electric energy for consumption by that person; or

(iii) owns or operates in this state a recreational vehicle park that provides metered electric service in accordance with Texas Utilities Code, Chapter 184, Subchapter C.

(79) Element--Unbundled network elements, including: interconnection, physical-collocation, and virtual-collocation elements.

(80) Eligible telecommunications provider (ETP) service area--The geographic area, determined by the commission, containing high cost rural areas which are eligible for Texas Universal Service Funds support under §26.403 or §26.404 of this title (relating to Texas High Cost Universal Service Plan (THCUSP) and Small and Rural Incumbent Local Exchange Company (ILEC) Universal Service Plan).

(81) Embedded customer premises equipment--All customer premises equipment owned by a telecommunications utility, including inventory, which was tariffed or subject to the separations process of January 1, 1983.

(82) Emergency service number (ESN)--A three to five digit number representing a unique combination of emergency service agencies designated to serve a specific range of addresses within a particular geographic area. The ESN facilitates any required selective routing and selective transfer to the appropriate public safety answering point and the dispatching of the proper service agencies.

(83) Emergency service zone (ESZ)--A geographic area that has common law enforcement, fire, and emergency medical services personnel that respond to 9-1-1 calls.

(84) End user choice--A system that allows the automatic routing of interexchange, operator-assisted calls to the billed party's chosen carrier without the use of access codes.

(85) Enhanced service provider--A company that offers computer-based services over transmission facilities to provide the customer with value-added telephone services.

(86) Entrance facilities--The transmission path between the access customer's (such as an interexchange carrier) point of demarcation and the serving wire center.

(87) Equal access--Access which is equal in type, quality and price to Feature Group C, and which has unbundled rates. From an end user's perspective, equal access is characterized by the availability of "1-plus" dialing with the end user's carrier of choice.

(88) Exchange area--The geographic territory delineated as an exchange area by official commission boundary maps. An exchange area usually embraces a city or town and its environs. There is usually a uniform set of charges for telecommunications service within the exchange area. An exchange area may be served by more than one central office and/or one certificated telephone utility. An exchange area may also be referred to as an exchange.

(89) Exempt Carrier--A nondominant telecommunications utility that satisfies any of the criteria of PURA §52.154.

(90) Expenses--Costs incurred in the provision of services that are expensed, rather than capitalized, in accordance with the Uniform System of Accounts applicable to the carrier.

(91) Experimental service--A new service that is proposed to be offered on a temporary basis for a specified period not to exceed one year from the date the service is first provided to any customer.

(92) Extended area service (EAS)--A telephone switching and trunking arrangement which provides for optional calling service by DCTUs within a local access and transport area and between two contiguous exchanges or between an exchange and a contiguous metropolitan exchange local calling area. For purposes of this definition, a metropolitan exchange local calling area shall include all exchanges having local or mandatory EAS calling throughout all portions of any of the following exchanges: Austin metropolitan exchange, Corpus Christi metropolitan exchange, Dallas metropolitan exchange, Fort Worth metropolitan exchange, Houston metropolitan exchange, San Antonio metropolitan exchange, or Waco metropolitan exchange. EAS is provided at rate increments in addition to local exchange rates, rather than at toll message charges.

(93) Extended local calling service (ELCS)--Service provided pursuant to §26.219 and §26.221 of this title (relating to Administration of Expanded Local Calling Requests; and Applications to Establish or Increase Expanded Local Calling Service Surcharges).

(94) E911 or E9-1-1--9-1-1 service that is capable of providing automatic number identification, automatic location identification, selective routing, and selective transfer.

(95) Facilities--All the plant and equipment of a public utility, including all tangible and intangible real and personal property without limitation, and any and all means and instrumentalities in any manner owned, operated, leased, licensed, used, controlled, furnished, or supplied for, by, or in connection with the business of any public utility, including any construction work in progress allowed by the commission.

(96) Facilities-based provider--A telecommunications provider that provides telecommunications services using facilities that it owns or leases or a combination of facilities that it owns and leases, including unbundled network elements.

(97) Foreign exchange (FX)--Exchange service furnished by means of a circuit connecting a customer's station to a primary serving office of another exchange.

(98) Foreign serving office (FSO)--Exchange service furnished by means of a circuit connecting a customer's station to a serving office of the same exchange but outside of the serving office area in which the station is located.

(99) Forward-looking common costs--Economic costs efficiently incurred in providing a group of elements or services that cannot be attributed directly to individual elements or services.

(100) Forward-looking economic cost--The sum of the total element long-run incremental cost of an element and a reasonable allocation of its forward-looking common costs.

(101) Forward-looking economic cost per unit--The forward-looking economic cost of the element as defined in this section, divided by a reasonable projection of the sum of the total number of units of the element that the DCTU is likely to provide to requesting telecommunications carriers and the total number of units of the element that the DCTU is likely to use in offering its own services, during a reasonable time period.

(102) Geographic scope--The geographic area in which the holder of a COA or of a SPCOA is authorized to provide service.

(103) Grade of service--The number of customers a line is designated to serve.

(104) Health Center--A federally qualified health center service delivery site.

(105) Hearing--Any proceeding at which evidence is taken on the merits of the matters at issue, not including prehearing conferences.

(106) Hearing carryover--A technology that allows an individual who is speech-impaired to hear the other party in a telephone conversation and to use specialized telecommunications devices to send communications through the telecommunications relay service operator.

(107) High cost area--A geographic area for which the costs established using a forward-looking economic cost methodology exceed the benchmark levels established by the commission.

(108) High cost assistance (HCA)--A program administered by the commission in accordance with the provisions of §26.403 of this title.

(109) Identity--The name, address, telephone number, and/or facsimile number of a person, whether natural, partnership, municipal corporation, cooperative corporation, corporation, association, governmental subdivision, or state agency and the relationship of the person to the entity being represented.

(110) Impulse noise--Any momentary occurrence of the noise on a channel significantly exceeding the normal noise peaks. It is evaluated by counting the number of occurrences that exceed a threshold. This noise degrades voice and data transmission.

(111) Incumbent local exchange company (ILEC)--A local exchange company that had a CCN on September 1, 1995.

(112) Informational notice--Notice that is filed in connection with nonbasic services, new service offerings, and pricing and packaging flexibility if required by Public Utility Regulatory Act Chapter 52, 58, or 59.

(113) Information sharing program--Instruction, learning, and training that is transmitted from one site to one or more sites by telecommunications services that are used by a library predominantly for such instruction, learning, or training, including video, data, voice, and electronic information.

(114) Integrated services digital network (ISDN)--A digital network architecture that provides a wide variety of communications services, a standard set of user-network messages, and integrated access to the network. Access methods to the ISDN are the Basic Rate Interface (BRI) and the Primary Rate Interface (PRI).

(115) Interactive multimedia communications--Real-time, two-way, interactive voice, video, and data communications conducted over networks that link geographically dispersed locations. This definition includes interactive communications within or between buildings on the same campus or library site.

(116) Intercept service--A service arrangement provided by the local exchange carrier whereby calls placed to a disconnected or discontinued telephone number are intercepted and the calling party is informed by an operator or by a recording that the called telephone number has been disconnected, discontinued, changed to another number, or otherwise is not in service.

(117) Interconnection--Generally means: The point in a network where a customer's transmission facilities interface with the dominant carrier's network under the provisions of this section. More particularly it means: The termination of local traffic including basic telecommunications service as delineated in §26.403 of this title or integrated services digital network (ISDN) as defined in this section and/or EAS/ELCS traffic of a CTU using the local access lines of another CTU, as described in §26.272(d)(4)(A) of this title (relating to Interconnection). Interconnection shall include non-discriminatory access to signaling systems, databases, facilities and information as required to ensure interoperability of networks and efficient, timely provision of services to customers without permitting access to network proprietary information or customer proprietary network information, as defined in this section, unless otherwise permitted in §26.272 of this title.

(118) Interconnector--A customer that interfaces with the dominant carrier's network under the provisions of §26.271 of this title (relating to Expanded Interconnection).

(119) Interexchange carrier (IXC)--A carrier providing any means of transporting intrastate telecommunications messages between local exchanges, but not solely within local exchanges, in the State of Texas. The term may include a CTU or CTU affiliate to the extent that it is providing such service. An entity is not an IXC solely because of:

(A) the furnishing, or furnishing and maintenance of a private system;

(B) the manufacture, distribution, installation, or maintenance of customer premises equipment;

(C) the provision of services authorized under the FCC's Public Mobile Radio Service and Rural Radio Service rules; or

(D) the provision of shared tenant service.

(120) Internet Protocol (IP)--A data communication protocol used in communicating data from one computer to another on the Internet or other networks.

(121) Internet Protocol enabled service--A service, capability, functionality, or application that uses Internet Protocol or a successor protocol to allow an end user to send or receive a data, video, or voice communication in Internet Protocol or a successor protocol.

(122) Interoffice trunks--Those communications circuits which connect central offices.

(123) IntraLATA equal access--The ability of a caller to complete a toll call in a local access and transport area (LATA) using his or her provider of choice by dialing "1" or "0" plus an area code and telephone number.

(124) Intrastate--Refers to communications which both originate and terminate within Texas state boundaries.

(125) Least cost technology--The technology or mix of technologies that would be chosen in the long run as the most economically efficient choice. The choice of least cost technologies, however, shall:

(A) be restricted to technologies that are currently available on the market and for which vendor prices can be obtained;

(B) be consistent with the level of output necessary to satisfy current demand levels for all services using the basic network function in question; and

(C) be consistent with overall network design and topology requirements.

(126) License--The whole or part of any commission permit, certificate, approval, registration, or similar form of permission required by law.

(127) Licensing--The commission process respecting the granting, denial, renewal, revocation, suspension, annulment, withdrawal, or amendment of a license.

(128) Lifeline Service--A program certified by the Federal Communications Commission to provide for the reduction or waiver of the federal subscriber line charge for residential consumers.

(129) Line--A circuit or channel extending from a central office to the customer's location to provide telecommunications service. One line may serve one customer, or all customers served by a multiparty line.

(130) Local access and transport area (LATA)--A geographic area established for the provision and administration of communications service. It encompasses one or more designated exchanges, which are grouped to serve common social, economic and other purposes. For purposes of these rules, market areas, as used and defined in the Modified Final Judgment and the GTE Final Judgment, are encompassed in the term local access and transport area.

(131) Local call--A call within the certificated telephone utility's toll-free calling area including calls which are made toll-free through a mandatory EAS or expanded local calling (ELC) proceeding.

(132) Local calling area--The area within which telecommunications service is furnished to customers under a specific schedule of exchange rates. A local calling area may include more than one exchange area.

(133) Local exchange carrier (LEC)--A telecommunications utility that has been granted either a certificate of convenience and necessity or a COA to provide local exchange telephone service, basic local telecommunications service, or switched access service within the state. A local exchange company is also referred to as a local exchange carrier.

(134) Local exchange telephone service or local exchange service--A telecommunications service provided within an exchange to establish connections between customer premises within the exchange, including connections between a customer premises and a long distance provider serving the exchange. The term includes tone dialing service, service connection charges, and directory assistance services offered in connection with basic local telecommunications service and interconnection with other service providers. The term does not include the following services, whether offered on an intra-exchange or inter-exchange basis:

(A) central office based PBX-type services for systems of 75 stations or more;

(B) billing and collection services;

(C) high-speed private line services of 1.544 megabits or greater;

(D) customized services;

(E) private line or virtual private line services;

(F) resold or shared local exchange telephone services if permitted by tariff;

(G) dark fiber services;

(H) non-voice data transmission service offered as a separate service and not as a component of basic local telecommunications service;

(I) dedicated or virtually dedicated access services;

(J) a competitive exchange service; or

(K) any other service the commission determines is not a "local exchange telephone service."

(135) Local message--A completed call between customer access lines located within the same local calling area.

(136) Local message charge--The charge that applies for a completed telephone call that is made when the calling customer access line and the customer access line to which the connection is established are both within the same local calling area, and a local message charge is applicable.

(137) Local service charge--The charge for furnishing facilities to enable a customer to send or receive telecommunications within the local calling area. This local calling area may include more than one exchange area.

(138) Local telecommunications traffic--

(A) Telecommunications traffic between a DCTU and a telecommunications carrier other than a commercial mobile radio service (CMRS) provider that originates and terminates within the mandatory single or multi-exchange local calling area of a DCTU including the mandatory EAS areas served by the DCTU; or

(B) Telecommunications traffic between a DCTU and a CMRS provider that, at the beginning of the call, originates and terminates within the same major trading area.

(139) Long distance telecommunications service--That part of the total communication service rendered by a telecommuni-

cations utility which is furnished between customers in different local calling areas in accordance with the rates and regulations specified in the utility's tariff.

(140) Long run--A time period long enough to be consistent with the assumption that the company is in the planning stage and all of its inputs are variable and avoidable.

(141) Long run incremental cost (LRIC)--The change in total costs of the company of producing an increment of output in the long run when the company uses least cost technology. The LRIC should exclude any costs that, in the long run, are not brought into existence as a direct result of the increment of output.

(142) Mandatory minimum standards--The standards established by the Federal Communications Commission, outlining basic mandatory telecommunication relay services.

(143) Market--An exchange in which an incumbent local exchange company provides residential local exchange telephone service.

(144) Master street address guide (MSAG)--A database maintained by each 9-1-1 administrative entity of street names and house number ranges within their associated communities defining emergency service zones and their associated emergency service numbers to enable proper routing of 9-1-1 calls.

(145) Meet point billing--An access billing arrangement for services to access customers when local transport is jointly provided by more than one CTU.

(146) Message--A completed customer telephone call.

(147) Message rate service--A form of local exchange service under which all originated local messages are measured and charged for in accordance with the utility's tariff.

(148) Minor rate change--A change, including the restructuring of rates of existing services, that decreases the rates or revenues of the small local exchange company (SLEC) or that, together with any other rate or proposed or approved tariff changes in the 12 months preceding the date on which the proposed change will take effect, results in an increase of the SLEC's total regulated intrastate gross annual revenues by not more than 5.0%. Further, with regard to a change to a basic local access line rate, a minor change may not, together with any other change to that rate that went into effect during the 12 months preceding the proposed effective date of the proposed change, result in an increase of more than 50%.

(149) Municipality--A city, incorporated village, or town, existing, created, or organized under the general, home rule, or special laws of the state.

(150) National integrated services digital network (ISDN)--The standards and services promulgated for integrated services digital network by Bellcore.

(151) Negotiating party--A CTU or other entity with which a requesting CTU seeks to interconnect in order to complete all telephone calls made by or placed to a customer of the requesting CTU.

(152) Next generation 9-1-1 system (NG9-1-1 system)--A system of securely managed IP-based 9-1-1 networks and elements that augment and are capable of interoperating with present-day E9-1-1 features and functions and add new capabilities. NG9-1-1 may replace or complement the present E9-1-1 system. NG9-1-1 is designed to provide access to emergency services from all sources, and to provide multimedia data capabilities for public safety answering positions and other emergency service organizations.

(153) New service--Any service not offered on a tariffed basis prior to the date of the application relating to such service and specifically excludes basic local telecommunications service including local measured service. If a proposed service could serve as an alternative or replacement for a service offered prior to the date of the new-service application and does not provide significant improvements (other than price) over, or significant additional services not available under, a service offered prior to the date of such application, it shall not be considered a new service.

(154) Nonbasic services--Those services identified in Public Utility Regulatory Act §58.151, including any service reclassified by the commission pursuant to Public Utility Regulatory Act §58.024.

(155) Non-discriminatory--Type of treatment that is not less favorable than that an interconnecting CTU provides to itself or its affiliates or other CTUs.

(156) Non-dominant certificated telecommunications utility (NCTU)--A CTU that is not a DCTU and has been granted a CCN (after September 1, 1995, in an area already certificated to a DCTU), a COA, or a SPCOA to provide local exchange service.

(157) Nondominant carrier--

(A) An interexchange telecommunications carrier (including a reseller of interexchange telecommunications services).

(B) Any of the following that is not a dominant carrier:

(i) a specialized communications common carrier;

(ii) any other reseller of communications;

(iii) any other communications carrier that conveys, transmits, or receives communications in whole or in part over a telephone system; or

(iv) a provider of operator services that is not also a subscriber.

(C) A deregulated company that holds a COA.

(158) North American Numbering Plan (NANP)--Use of 10-digit dialing in the format of a 3-digit "NPA" followed by a 3-digit "NXX" and a 4-digit line number, NPA-NXX-XXXX.

(159) Numbering plan area (NPA)--The first three digits of a ten-digit North American Numbering Plan (NANP) local telephone number uniquely identifying a Numbering Plan area. Generally referred to as the area code of a NANP telephone number.

(160) NXX--A 3-digit code in which N is any digit 2 through 9 and X is any digit 0 through 9. Typically used in describing the "Exchange Code" fields of a North American Numbering Plan telephone number.

(161) Open network architecture--The overall design of an ILEC's network facilities and services to permit all users of the network, including the enhanced services operations of an ILEC and its competitors, to interconnect to specific basic network functions on an unbundled and non-discriminatory basis.

(162) Operator service--Any service using live operator or automated operator functions for the handling of telephone service, such as local collect, toll calling via collect, third number billing, credit card, and calling card services. The transmission of "1-800" and "1-888" numbers, where the called party has arranged to be billed, is not operator service.

(163) Operator service provider (OSP)--Any person or entity that provides operator services by using either live or automated operator functions. When more than one entity is involved in processing

an operator service call, the party setting the rates shall be considered to be the OSP. However, subscribers to customer-owned pay telephone service shall not be deemed to be OSPs.

(164) Originating line screening (OLS)--A two digit code passed by the local switching system with the automatic number identification (ANI) at the beginning of a call that provides information about the originating line.

(165) Out-of-service trouble report--An initial customer trouble report in which there is complete interruption of incoming or outgoing local exchange service. On multiple line services a failure of one central office line or a failure in common equipment affecting all lines is considered out of service. If an extension line failure does not result in the complete inability to receive or initiate calls, the report is not considered to be out of service.

(166) P.01 grade of service--A standard of service quality intended to measure the probability (P), expressed as a decimal fraction, of a telephone call being blocked. P.01 is the grade of service reflecting the probability that one call out of one hundred during the average busy house will be blocked.

(167) Packaged Service--The combination of any regulated service with any other regulated or unregulated service or with any service of an affiliate, offered to customers at a packaged rate or rates.

(168) Partial deregulation--The ability of a cooperative to offer new services on an optional basis and/or change its rates and tariffs under the provisions of the Public Utility Regulatory Act, §§53.351 - 53.359.

(169) Pay-per-call-information services--Services that allow a caller to dial a specified 1-900-XXX-XXXX or 976-XXXX number. Such services routinely deliver, for a predetermined (sometimes time-sensitive) fee, a pre-recorded or live message or interactive program. Usually a telecommunications utility will transport the call and bill the end-user on behalf of the information provider.

(170) Pay telephone access service (PTAS)--A service offered by a CTU which provides a two-way, or optionally, a one-way originating-only business access line composed of the serving central office line equipment, all outside plant facilities needed to connect the serving central office with the customer premises, and the network interface; this service is sold to pay telephone service providers.

(171) Pay telephone service (PTS)--A telecommunications service utilizing any coin, coinless, credit card reader, or cordless instrument that can be used by members of the general public, or business patrons, employees, and/or visitors of the premises' owner, provided that the end user pays for local or toll calls from such instrument on a per call basis. Pay per call telephone service provided to inmates of confinement facilities is PTS. For purposes of this section, coinless telephones provided in guest rooms by a hotel/motel are not pay telephones. A telephone that is primarily used by business patrons, employees, and/or visitors of the premises' owner is not a pay telephone if all local calls and "1-800" and "1-888" type calls from such telephone are free to the end user.

(172) Per-call blocking--A telecommunications service provided by a telecommunications provider that prevents the transmission of calling party information to a called party on a call-by-call basis.

(173) Per-line blocking--A telecommunications service provided by a telecommunications utility that prevents the transmission of calling party information to a called party on every call, unless the calling party acts affirmatively to release calling party information.

(174) Percent interstate usage (PIU)--An access customer-specific ratio or ratios determined by dividing interstate access minutes by total access minutes. The specific ratio shall be determined by the CTU unless the CTU's network is incapable of determining the jurisdiction of the access minutes. A PIU establishes the jurisdiction of switched access usage for determining rates charged to switched access customers and affects the allocation of switched access revenue and costs by CTUs between the interstate and intrastate jurisdictions.

(175) Person--Any natural person, partnership, municipal corporation, cooperative corporation, corporation, association, governmental subdivision, or public or private organization of any character other than an agency.

(176) Pleading--A written document submitted by a party, or a person seeking to participate in a proceeding, setting forth allegations of fact, claims, requests for relief, legal argument, and/or other matters relating to a proceeding.

(177) Prepaid local telephone service (PLTS)--Prepaid local telephone service means:

(A) voice grade dial tone residential service consisting of flat rate service or local measured service, if chosen by the customer and offered by the DCTU;

(B) if applicable, mandatory services, including EAS, extended metropolitan service, or ELCS;

(C) tone dialing service;

(D) access to 911 service;

(E) access to dual party relay service;

(F) the ability to report service problems seven days a week;

(G) access to business office;

(H) primary directory listing;

(I) toll blocking service; and

(J) non-published service and non-listed service at the customer's option.

(178) Premises--A tract of land or real estate including buildings and other appurtenances thereon.

(179) Pricing flexibility--Discounts and other forms of pricing flexibility may not be preferential, prejudicial, or discriminatory. Pricing flexibility includes:

(A) customer specific contracts;

(B) volume, term, and discount pricing;

(C) zone density pricing, with zone to be defined as an exchange;

(D) packaging of services; and

(E) other promotional pricing flexibility.

(180) Primary interexchange carrier (PIC)--The provider chosen by a customer to carry that customer's toll calls.

(181) Primary interexchange carrier (PIC) freeze indicator--An indicator that the end user has directed the CTU to make no changes in the end user's PIC.

(182) Primary rate interface (PRI) integrated services digital network (ISDN)--One of the access methods to ISDN, the 1.544-Mbps PRI comprises either twenty-three 64 Kbps B-channels and one 64 Kbps D-channel (23B+D) or twenty-four 64 Kbps B-channels (24B)

when the associated call signaling is provided by another PRI in the group.

(183) Primary service--The initial provision of voice grade access between the customer's premises and the switched telecommunications network. This includes the initial connection to a new customer or the move of an existing customer to a new premises but does not include complex services.

(184) Print translations--The temporary storage of a message in an operator's screen during the actual process of relaying a conversation.

(185) Privacy issue--An issue that arises when a telecommunications provider proposes to offer a new telecommunications service or feature that would result in a change in the outflow of information about a customer. The term privacy issue is to be construed broadly. It includes, but is not limited to, changes in the following:

- (A) the type of information about a customer that is released;
- (B) the customers about whom information is released;
- (C) the entity or entities to whom the information about a customer is released;
- (D) the technology used to convey the information;
- (E) the time at which the information is conveyed; and
- (F) any other change in the collection, use, storage, or release of information.

(186) Private line--A transmission path that is dedicated to a customer and that is not connected to a switching facility of a telecommunications utility, except that a dedicated transmission path between switching facilities of interexchange carriers shall be considered a private line.

(187) Proceeding--A hearing, investigation, inquiry, or other procedure for finding facts or making a decision. The term includes a denial of relief or dismissal of a complaint. It may be rulemaking or non-rulemaking; rate setting or non-rate setting.

(188) Promotional rate--A temporary tariff, fare, toll, rental or other compensation charged by a certificated telecommunications utility (CTU) to new or new and existing customers and designed to induce customers to test a service. A promotional rate shall incorporate a reduction or a waiver of some rate element in the tariffed rates of the service, or a reduction or waiver of the service's installation charge and/or service connection charges, and shall not incorporate any charge for discontinuance of the service by the customer. Such rates may not be offered for basic local telecommunications service, including local measured service.

(189) Promotional Service--A service offered to customers at a promotional rate or rates.

(190) Provider of pay telephone service--The entity that purchases PTAS from a CTU and registers with the Public Utility Commission as a provider of PTS to end users.

(191) Public safety answering point (PSAP)--A continuously operated communications facility established or authorized by local government authorities that answers 9-1-1 calls originating within a given service area, as further defined in Texas Health and Safety Code Chapters 771 and 772.

(192) Public utility or utility--A person or river authority that owns or operates for compensation in this state equipment or facilities to convey, transmit, or receive communications over a telephone

system as a dominant carrier. The term includes a lessee, trustee, or receiver of any of those entities, or a combination of those entities. The term does not include a municipal corporation. A person is not a public utility solely because the person:

- (A) furnishes or furnishes and maintains a private system;
- (B) manufactures, distributes, installs, or maintains customer premises communications equipment and accessories; or
- (C) furnishes a telecommunications service or commodity only to itself, its employees, or its tenants as an incident of employment or tenancy, if that service or commodity is not resold to or used by others.

(193) Public Utility Regulatory Act (PURA)--The enabling statute for the Public Utility Commission of Texas, located in the Texas Utilities Code Annotated, §§11.001 - 66.016 (West 2007, Supplement 2013).

(194) Qualifying low-income consumer--A consumer that participates in one of the following programs: Medicaid, food stamps, Supplemental Security Income, federal public housing assistance, or Low-Income Home Energy Assistance Program.

(195) Qualifying services--

- (A) residential flat rate basic local exchange service;
- (B) residential local exchange access service; and
- (C) residential local area calling usage.

(196) Rate--Includes:

(A) any compensation, tariff, charge, fare, toll, rental, or classification that is directly or indirectly demanded, observed, charged, or collected by a public utility for a service, product, or commodity, described in the definition of utility in the Public Utility Regulatory Act §31.002 or §51.002; and

(B) a rule, practice, or contract affecting the compensation, tariff, charge, fare, toll, rental, or classification.

(197) Reciprocal compensation--An arrangement between two carriers in which each of the two carriers receives compensation from the other carrier for the transport and termination on each carrier's network facilities of local telecommunications traffic that originates on the network facilities of the other carrier.

(198) Reclassification area--The geographic area within the electing ILEC's territory, consisting of one or more exchange areas, for which it seeks reclassification of a service.

(199) Redirect the call--A procedure used by operator service providers (OSPs) that transmits a signal back to the originating telephone instrument that causes the instrument to disconnect the OSP's connection and to redial the digits originally dialed by the caller directly to the local exchange carrier's network.

(200) Regional planning commission--The meaning established in Texas Health and Safety Code §771.001(10).

(201) Regulatory authority--In accordance with the context where it is found, either the commission or the governing body of a municipality.

(202) Relay Texas Advisory Committee (RTAC)--The committee authorized by the Public Utility Regulatory Act, §56.110 and 1997 Texas General Laws Chapter 149.

(203) Relay Texas--The name by which telecommunications relay service in Texas is known.

(204) Relay Texas administrator--The individual employed by the commission to oversee the administration of statewide telecommunications relay service.

(205) Repeated trouble report--A customer trouble report regarding a specific line or circuit occurring within 30 days or one calendar month of a previously cleared trouble report on the same line or circuit.

(206) Residual charge--The per-minute charge designed to account for historical contribution to joint and common costs made by switched transport services.

(207) Retail service--A telecommunications service is considered a retail service when it is provided to residential or business end users and the use of the service is other than resale. Each tariffed or contract offering which a customer may purchase to the exclusion of other offerings shall be considered a service. For example: the various mileage bands for standard toll services are rate elements, not services; however, individual optional calling plans that can be purchased individually and which are offered as alternatives to each other are services, not rate elements.

(208) Return-on-assets--After-tax net operating income divided by total assets.

(209) Reversal of partial deregulation--The ability of a minimum of 10% of the members of a partially deregulated cooperative to request, in writing, that a vote be conducted to determine whether members prefer to reverse partial deregulation. Ten percent shall be calculated based upon the total number of members of record as of the calendar month preceding receipt of the request from members for reversal of partial deregulation.

(210) Rule--A statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedure or practice requirements of the commission. The term includes the amendment or repeal of a prior rule but does not include statements concerning only the internal management or organization of the commission and not affecting private rights or procedures.

(211) Rulemaking proceeding--A proceeding conducted pursuant to the Administrative Procedure Act, Texas Government Code, Chapter 2001, Subchapter B, to adopt, amend, or repeal a commission rule.

(212) Rural incumbent local exchange company (ILEC)--An ILEC that qualifies as a "rural telephone company" as defined in 47 United States Code §3(37) and/or 47 United States Code §251(f)(2).

(213) Selective routing--The feature provided with 9-1-1 or 311 service by which 9-1-1 or 311 calls are automatically directed to the appropriate answering point for serving the location from which the call originates.

(214) Selective transfer--A public safety answering point initiating the routing of a 9-1-1 call to a response agency by operation of one of several buttons typically designated as police, fire, and emergency medical, based on the emergency service number of the caller.

(215) Separation--The division of plant, revenues, expenses, taxes, and reserves applicable to exchange or local service if these items are used in common to provide public utility service to both local exchange telephone service and other service, such as interstate or intrastate toll service.

(216) Service--Has its broadest and most inclusive meaning. The term includes any act performed, anything supplied, and any facilities used or supplied by a public utility in the performance of the utility's duties under the Public Utility Regulatory Act to its patrons,

employees, other public utilities, and the public. The term also includes the interchange or facilities between two or more public utilities. The term does not include the printing, distribution, or sale of advertising in a telephone directory.

(217) Service connection charge--A charge designed to recover the costs of non-recurring activities associated with connection of local exchange telephone service.

(218) Service order system--The system used by a telecommunications provider that, among other functions, tracks customer service requests and billing data.

(219) Service provider--Any entity that offers a product or service to a customer and that directly or indirectly charges to or collects from a customer's bill an amount for the product or service on a customer's bill received from a billing telecommunications utility.

(220) Service provider certificate of operating authority (SPCOA) reseller--A holder of a service provider certificate of operating authority that uses only resold telecommunications services provided by an ILEC or by a COA holder or by a SPCOA holder.

(221) Service restoral charge--A charge applied by the DCTU to restore service to a customer's telephone line after it has been suspended by the DCTU.

(222) Serving wire center (SWC)--The CTU designated central office which serves the access customer's point of demarcation.

(223) Signaling for tandem switching--The carrier identification code (CIC) and the OZZ code or equivalent information needed to perform tandem switching functions. The CIC identifies the interexchange carrier and the OZZ digits identify the call type and thus the interexchange carrier trunk to which traffic should be routed.

(224) Small certificated telecommunications utility (CTU)--A CTU with fewer than 2.0% of the nation's subscriber lines installed in the aggregate nationwide.

(225) Small local exchange company (SLEC)--Any incumbent CTU as of September 1, 1995, that has fewer than 31,000 access lines in service in this state, including the access lines of all affiliated incumbent local exchange companies within the state, or a telephone cooperative organized pursuant to the Telephone Cooperative Act, Texas Utilities Code Annotated, Chapter 162.

(226) Small incumbent local exchange company (Small ILEC)--An ILEC that is a cooperative corporation or has, together with all affiliated ILECs, fewer than 31,000 access lines in service in Texas.

(227) Spanish speaking person--A person who speaks any dialect of the Spanish language exclusively or as their primary language.

(228) Special access--A transmission path connecting customer designated premises to each other either directly or through a hub or hubs where bridging, multiplexing or network reconfiguration service functions are performed and includes all exchange access not requiring switching performed by the dominant carrier's end office switches.

(229) Specialized Telecommunications Assistance Program (STAP)--The program described in §26.415 of this title (relating to Specialized Telecommunications Assistance Program (STAP)).

(230) Specialized Telecommunications Assistance Program (STAP) voucher--A voucher issued by the Texas Department of Assistive and Rehabilitative Services under the equipment distribution program, in accordance with its rules, that an eligible individual may

use to acquire eligible specialized telecommunications devices from a vendor of such equipment.

(231) Stand-alone costs--The stand-alone costs of an element or service are defined as the forward-looking costs that an efficient entrant would incur in providing only that element or service.

(232) Station--A telephone instrument or other terminal device.

(233) Study area--An incumbent local exchange company's (ILEC's) existing service area in a given state.

(234) Supplemental services--Telecommunications features or services offered by a CTU for which analogous services or products may be available to the customer from a source other than a DCTU. Supplemental services shall not be construed to include optional extended area calling plans that a DCTU may offer pursuant to §26.217 of this title (relating to Administration of Extended Area Service (EAS) Requests), or pursuant to a final order of the commission in a proceeding pursuant to the Public Utility Regulatory Act, Chapter 53.

(235) Suspension of service--That period during which the customer's telephone line does not have dial tone but the customer's telephone number is not deleted from the central office switch and databases.

(236) Switched access--Access service that is provided by CTUs to access customers and that requires the use of CTU network switching or common line facilities generally, but not necessarily, for the origination or termination of interexchange calls. Switched access includes all forms of transport provided by the CTU over which switched access traffic is delivered.

(237) Switched access demand--Switched access minutes of use, or other appropriate measure where not billed on a minute of use basis, for each switched access rate element, normalized for out of period billings. For the purposes of this section, switched access demand shall include minutes of use billed for the local switching rate element.

(238) Switched access minutes--The measured or assumed duration of time that a CTU's network facilities are used by access customers. Access minutes are measured for the purpose of calculating access charges applicable to access customers.

(239) Switched transport--Transmission between a CTU's central office (including tandem-switching offices) and an interexchange carrier's point of presence.

(240) Tandem-switched transport--Transmission of traffic between the serving wire center and another CTU office that is switched at a tandem switch and charged on a usage basis.

(241) Tariff--The schedule of a utility containing all rates, tolls, and charges stated separately by type or kind of service and the customer class, and the rules and regulations of the utility stated separately by type or kind of service and the customer class.

(242) Telecommunications provider--As defined in the Public Utility Regulatory Act §51.002(10).

(243) Telecommunications relay service (TRS)--A service using oral and print translations by either live or automated means between individuals who are hearing-impaired or speech-impaired who use specialized telecommunications devices and others who do not have such devices. Unless specified in the text, this term shall refer to intrastate telecommunications relay service only.

(244) Telecommunications relay service (TRS) carrier--The telecommunications carrier selected by the commission to provide statewide telecommunications relay service.

(245) Telecommunications utility--

(A) a public utility;

(B) an interexchange telecommunications carrier, including a reseller of interexchange telecommunications services;

(C) a specialized communications common carrier;

(D) a reseller of communications;

(E) a communications carrier who conveys, transmits, or receives communications wholly or partly over a telephone system;

(F) a provider of operator services as defined by §55.081, unless the provider is a subscriber to customer-owned PTS; and

(G) a separated affiliate or an electronic publishing joint venture as defined in the Public Utility Regulatory Act, Chapter 63.

(246) Telephones intended to be utilized by the public--Telephones that are accessible to the public, including, but not limited to, pay telephones, telephones in guest rooms and common areas of hotels, motels, or other lodging locations, and telephones in hospital patient rooms.

(247) Telephone solicitation--An unsolicited telephone call.

(248) Telephone solicitor--A person who makes or causes to be made a consumer telephone call, including a call made by an automatic dialing/announcing device.

(249) Test year--The most recent 12 months, beginning on the first day of a calendar or fiscal year quarter, for which operating data for a public utility are available.

(250) Texas Universal Service Fund (TUSF)--The fund authorized by the Public Utility Regulatory Act, §56.021 and 1997 Texas General Laws Chapter 149.

(251) Tier 1 local exchange company--A local exchange company with annual regulated operating revenues exceeding \$100 million.

(252) Title IV-D Agency--The office of the attorney general for the state of Texas.

(253) Toll blocking--A service provided by telecommunications carriers that lets consumers elect not to allow the completion of outgoing toll calls from their telecommunications channel.

(254) Toll control--A service provided by telecommunications carriers that allows consumers to specify a certain amount of toll usage that may be incurred on their telecommunications channel per month or per billing cycle.

(255) Toll limitation--Denotes both toll blocking and toll control.

(256) Total element long-run incremental cost (TELRIC)--The forward-looking cost over the long run of the total quantity of the facilities and functions that are directly attributable to, or reasonably identifiable as incremental to, such element, calculated taking as a given the CTU's provision of other elements.

(257) Transitioning company--An incumbent local exchange company for which at least one, but not all, of the company's markets has been deregulated.

(258) Transport--The transmission and/or any necessary tandem and/or switching of local telecommunications traffic from the interconnection point between the two carriers to the terminating carrier's end office switch that directly serves the called party, or equivalent facility provided by a carrier other than a DCTU.

(259) Trunk--A circuit facility connecting two switching systems.

(260) Two-primary interexchange carrier (Two-PIC) equal access--A method that allows a telephone subscriber to select one carrier for all 1+ and 0+ interLATA calls and the same or a different carrier for all 1+ and 0+ intraLATA calls.

(261) Unauthorized charge--Any charge on a customer's telephone bill that was not consented to or verified in compliance with §26.32 of this title (relating to Protection Against Unauthorized Billing Charges ("Cramming")).

(262) Unbundling--The disaggregation of the ILEC's network/service to make available the individual network functions or features or rate elements used in providing an existing service.

(263) Unit cost--A cost per unit of output calculated by dividing the total long run incremental cost of production by the total number of units.

(264) Usage sensitive blocking--Blocking of a customer's access to services which are charged on a usage sensitive basis for completed calls. Such calls shall include, but not be limited to, call return, call trace, and auto redial.

(265) Virtual private line--Circuits or bandwidths, between fixed locations, that are available on demand and that can be dynamically allocated.

(266) Voice carryover--A technology that allows an individual who is hearing-impaired to speak directly to the other party in a telephone conversation and to use specialized telecommunications devices to receive communications through the telecommunications relay service operator.

(267) Voice over Internet Protocol (VoIP)--The technology used to transmit voice communications using Internet Protocol.

(268) Voice over Internet Protocol service--A service that:

(A) uses Internet Protocol or a successor protocol to enable a real-time, two-way voice communication that originates from or terminates to the user's location in Internet Protocol or a successor protocol;

(B) requires a broadband connection from the user's location; and

(C) permits a user generally to receive a call that originates on the public switched telephone network and to terminate a call to the public switched telephone network.

(269) Volume insensitive costs--The costs of providing a basic network function (BNF) that do not vary with the volume of output of the services that use the BNF.

(270) Volume sensitive costs--The costs of providing a basic network function (BNF) that vary with the volume of output of the services that use the BNF.

(271) Wireless provider--A provider that:

(A) provides commercial mobile radio service as defined in paragraph (40) of this section; or

(B) utilizes fixed wireless technology to provide local exchange service.

(272) Wholesale service--A telecommunications service is considered a wholesale service when it is provided to a telecommunications utility and the use of the service is to provide a retail service to residence or business end-user customers.

(273) Working capital requirements--The additional capital required to fund the increased level of accounts receivable necessary to provide telecommunications service.

(274) "0-" call--A call made by the caller dialing the digit "0" and no other digits within five seconds. A "0-" call may be made after a digit (or digits) to access the local network is (are) dialed.

(275) "0+" call--A call made by the caller dialing the digit "0" followed by the terminating telephone number. On some automated call equipment, a digit or digits may be dialed between the "0" and the terminating telephone number.

(276) 311 answering point--A communications facility that:

(A) is operated, at a minimum, during normal business hours;

(B) is assigned the responsibility to receive 311 calls and, as appropriate, to dispatch the non-emergency police or other governmental services, or to transfer or relay 311 calls to the governmental entity;

(C) is the first point of reception by a governmental entity of a 311 call; and

(D) serves the jurisdictions in which it is located or other participating jurisdictions.

(277) 311 service--A telecommunications service provided by a certificated telecommunications provider through which the end user of a public telephone system has the ability to reach non-emergency police and other governmental services by dialing the digits 3-1-1. 311 service must contain the selective routing feature or other equivalent state-of-the-art feature.

(278) 311 service request--A written request from a governmental entity to a CTU requesting the provision of 311 service. A 311 service request must:

(A) be in writing;

(B) contain an outline of the program the governmental entity will pursue to adequately educate the public on the 311 service;

(C) contain an outline from the governmental entity for implementation of 311 service;

(D) contain a description of the likely source of funding for the 311 service (i.e., from general revenues, special appropriations, etc.); and

(E) contain a listing of the specific departments or agencies of the governmental entity that will actually provide the non-emergency police and other governmental services.

(279) 311 system--A system of processing 311 calls.

(280) 9-1-1 administrative entity--A regional planning commission as defined in Texas Health and Safety Code §771.001(10) or an emergency communication district as defined in Texas Health and Safety Code §771.001(3).

(281) 9-1-1 database management services provider--An entity designated by a 9-1-1 administrative entity to provide 9-1-1 database management services that support the provision of 9-1-1 services.

(282) 9-1-1 database services--Services purchased by a 9-1-1 administrative entity that accepts, processes, and validates subscriber record information of telecommunications providers for purposes of selective routing and automatic location identification, and that may also provide statistical performance measures.

(283) 9-1-1 network services--Services purchased by a 9-1-1 administrative entity that routes 9-1-1 calls from an E9-1-1 selective router, 9-1-1 tandem, next generation 9-1-1 system, Internet Protocol-based 9-1-1 system or its equivalent to public safety answering points or a public safety answering point network.

(284) 9-1-1 network services provider--A CTU designated by the appropriate 9-1-1 administrative entity to provide 9-1-1 network services in a designated area.

(285) 911 system--A system of processing emergency 911 calls, as defined in Texas Health and Safety Code §772.001, as may be subsequently amended.

(286) 9-1-1 selective routing tandem switch--A switch located in a telephone central office that is equipped to accept, process, and route 9-1-1 calls to a predetermined, specific location. Also known as E9-1-1 control office or E9-1-1 selective router.

(287) 9-1-1 service--As defined in Texas Health and Safety Code §771.001(6) and §772.001(6).

(288) 9-1-1 service agreement--A contract addressing the 9-1-1 service arrangements for a local area that the appropriate 9-1-1 administrative entity enters into.

(289) 9-1-1 service arrangement--Each particular arrangement for 9-1-1 emergency service specified by the appropriate 9-1-1 administrative entity for the relevant rate centers within its jurisdictional area and that is subject to a 9-1-1 service agreement.

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 B. CUSTOMER SERVICE AND PROTECTION

16 TAC §§26.22, 26.23, 26.25, 26.27, 26.28, 26.30, 26.31, 26.34

The amendments are adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (West 2007 and Supp. 2013) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, and the

amendments to PURA made by Senate Bills 259, 512, 583, and 809 of the 83rd Legislature, Regular Session.

Cross Reference to Statutes: PURA §14.002 and the amendments to PURA made by Senate Bills 259, 512, 583, and 809 of the 83rd Legislature, Regular Session.

§26.22. Request for Service.

(a) Dominant certificated telecommunications utility (DCTU).

(1) Every DCTU shall provide local telecommunications service to each qualified applicant for service and to each of its customers within its certificated area in accordance with §26.54(c)(1) of this title (relating to Service Objectives and Performance Benchmarks). A deregulated company that holds a certificate of operating authority is not obligated to be a provider of last resort. A transitioning company is not obligated to be a provider of last resort in a deregulated market.

(2) If construction, such as line extensions or facilities, is required for installation of local telecommunications service:

(A) the DCTU shall complete the construction within 90 days or within a time period agreed to by the customer and the DCTU after the applicant has established satisfactory credit in accordance with §26.24 of this title (relating to Credit Requirements and Deposits), made satisfactory payment arrangements for construction charges, and complied with state and municipal regulations;

(B) the DCTU shall contact the applicant for service within ten work days of receipt of the application and give the applicant an estimated completion date and an estimated cost for all charges to be incurred by the applicant; and

(C) following the assessment of any necessary construction, the DCTU shall explain to the applicant any construction cost options such as rebates, sharing of construction costs between the DCTU and the applicant, or sharing of costs between the applicant and other applicants.

(3) A DCTU may require an applicant for service to establish satisfactory credit or to pay a deposit in accordance with §26.24 of this title.

(b) Nondominant certificated telecommunications utility (NCTU).

(1) This subsection does not apply to a deregulated company holding a certificate of operating authority or to an exempt carrier under PURA §52.154.

(2) Every NCTU shall provide local telecommunications service to applicants within its certificated area who have accepted the NCTU's terms and conditions of service and in accordance with the customer safeguards in §26.272(i) of this title (relating to Interconnection).

(3) If construction, such as line extensions or facilities, is required for installation of local telecommunications service:

(A) the NCTU shall contact the applicant for service within ten work days of receipt of the application and give the applicant an estimated completion date and an estimated cost for all charges to be incurred by the applicant; and

(B) following the assessment of any necessary construction, the NCTU shall explain to the applicant any construction cost options such as rebates, sharing of construction costs between the NCTU and the applicant, or sharing of costs between the applicant and other applicants.

§26.23. Refusal of Service.

(a) Dominant certificated telecommunications utility (DCTU).

(1) A DCTU is relieved of its provider of last resort (POLR) obligations in a market if the market has been deregulated pursuant to Public Utility Regulatory Act Chapter 65. A DCTU with POLR obligations may refuse to provide an applicant with basic local telecommunications service only for one or more of the following reasons:

(A) Applicant's facilities inadequate. The applicant's installation or equipment is known to be hazardous or of such character that satisfactory service cannot be given.

(B) Use of prohibited equipment or attachments. The applicant fails to comply with the DCTU's tariffs pertaining to operation of nonstandard equipment or unauthorized attachments that interfere with the service of others.

(C) Failure to pay guarantee. The applicant has acted as a guarantor for another customer of the DCTU and fails to pay the guaranteed amount, where such guarantee was made in writing to the DCTU and was a condition of service.

(D) Intent to deceive. The applicant requests service at a location where another customer received or continues to receive service, the other customer's bill from the DCTU is unpaid at that location, and the DCTU can prove that the change of account holder and billing name is made to avoid or evade payment of an outstanding bill owed to the DCTU.

(E) For indebtedness.

(i) If a residential applicant owes a debt to any DCTU for:

(I) tariffed local telecommunications service, except as provided in §26.29 of this title (relating to Prepaid Local Telephone Service (PLTS)); or

(II) long distance charges after toll blocking was imposed as provided in §26.28 of this title (relating to Suspension or Disconnection of Service).

(ii) If a non-residential applicant owes a debt to any DCTU for tariffed non-residential local telecommunications service, including long distance charges.

(iii) If an applicant's indebtedness is in dispute, basic local telecommunications service shall be provided upon the applicant's compliance with the deposit requirements in §26.24 of this title (relating to Credit Requirements and Deposits).

(F) Refusal to pay a deposit. The applicant refuses to pay a deposit if the applicant is required to do so under §26.24 of this title.

(G) Failure to comply with regulations. The applicant fails to comply with all applicable state and municipal regulations.

(2) Applicant's recourse.

(A) If a DCTU has refused to serve a residential applicant, the DCTU must send the applicant notice in writing within five work days of the determination to refuse service:

(i) of the reason or reasons for its refusal;

(ii) that the applicant will be eligible for service if the applicant remedies the reason or reasons for refusal and complies with the DCTU's tariffs and terms and conditions of service;

(iii) that the applicant may request a supervisory review by the DCTU and may file a complaint with the commission as described in §26.30 of this title (relating to Complaints); and

(iv) that no telecommunications utility is permitted to:

(I) refuse service on the basis of race, color, sex, nationality, religion, marital status, income level, or source of income; nor

(II) unreasonably refuse service on the basis of geographic location.

(B) Additionally, the DCTU must inform applicants eligible for prepaid local telephone service under §26.29 of this title that this service is available if they are not otherwise eligible for basic local telecommunications service.

(3) Insufficient grounds for refusal to serve. The following are not sufficient grounds for refusal of basic local telecommunications service to an applicant by a DCTU:

(A) delinquency in payment for service by a previous occupant of the premises to be served;

(B) failure to pay for any charges that are not provided in the DCTU's tariffs on file at the commission;

(C) failure to pay a bill that includes more than six months of underbilling unless the underbilling is the result of theft of service by the applicant;

(D) failure to pay the bill of another customer at the same address except where the change of account holder and billing name is made to avoid or evade payment of that bill; and

(E) failure of a residential applicant to pay for any charges other than for local telecommunications service except for long distance charges incurred after toll blocking was imposed as provided in §26.28 of this title.

(b) Nondominant certificated telecommunications utility (NCTU).

(1) This subsection does not apply to a deregulated company holding a certificate of operating authority or to an exempt carrier under PURA §52.154.

(2) An NCTU may refuse to provide an applicant with basic local telecommunications service for:

(A) the applicant's failure to comply with all applicable federal, state, and municipal regulations; or

(B) any other reason that does not violate applicable federal, state, or municipal statutes, rules, or regulations.

(3) Applicant's recourse.

(A) If an NCTU who offers residential service has refused to provide a residential applicant with basic local telecommunications service, the NCTU must inform the applicant of the determination to refuse service:

(i) of the reason or reasons for its refusal; and

(ii) that the applicant will be eligible for service if the applicant remedies the reason or reasons for refusal and complies with the NCTU's terms and conditions of service.

(B) The information required by subparagraph (A) of this paragraph shall be sent to the applicant in writing within five working days, if required by the federal Equal Credit Opportunity Act, 15 U.S.C. §1691 et seq., or if it is requested by the applicant. The NCTU shall inform the applicant that the applicant may request a supervisory review by the NCTU and may file a complaint with the commission as described in §26.30 of this title.

(4) Insufficient grounds for refusal to serve. The following are not sufficient grounds for refusal of basic local telecommunications service to an applicant by an NCTU:

(A) delinquency in payment for service by a previous occupant of the premises to be served;

(B) failure to pay for any charges that are not provided in the NCTU's tariffs;

(C) failure to pay a bill that includes more than six months of underbilling unless the underbilling is the result of theft of service by the applicant;

(D) failure to pay the bill of another customer at the same address except where the change of account holder and billing name is made to avoid or evade payment of that bill; and

(E) failure of a residential applicant to pay for any charges other than for local telecommunications service except for long distance charges incurred after toll blocking was imposed as provided in §26.28 of this title.

§26.25. *Issuance and Format of Bills.*

(a) Application. The provisions of this section apply to residential-customer bills issued by all certificated telecommunications utilities (CTUs). Only subsections (d)(3), (e)(1)(C) and (e)(7) of this section apply to a deregulated company holding a certificate of operating authority or to an exempt carrier under PURA §52.154.

(b) Purpose. The purpose of this section is to specify the information that should be included in a user-friendly, simplified format for residential customer bills that include charges for local exchange telephone service.

(c) Frequency of bills and billing detail. Bills of CTUs shall be issued monthly for any amount unless the bill covers service that is for less than one month, or unless through mutual agreement between the company and the customer a less frequent or more frequent billing interval is established. Through mutual agreement with the CTU, a customer may request and receive a bill with more detailed or less detailed information than otherwise would be required by the provisions of this section if the CTU also will provide the customer with detailed information on request.

(d) Billing information.

(1) All residential customers shall receive their bills via the United States mail, or other mail service, unless the customer agrees with the CTU to receive a bill through different means, such as electronically via the Internet.

(2) Customer billing sent through the United States mail, or other mail service, shall be sent in an envelope or by any other method that ensures the confidentiality of the customer's telephone number and/or account number.

(3) A CTU shall maintain by billing cycle the billing records for each of its accounts for at least two years after the date the bill is mailed. The billing records shall contain sufficient data to reconstruct a customer's billing for a given month. A copy of a customer's billing records may be obtained by the customer on request.

(e) Bill content requirements. The following requirements apply to bills sent via the U.S. mail, or other mail service. Bills rendered via the Internet shall provide the information specified in this subsection in a readily discernible manner.

(1) The first page of each residential customer's bill containing charges for local exchange telephone service shall include the following information, clearly and conspicuously displayed:

(A) the grand total amount due for all services being billed;

(B) the payment due date; and

(C) a notification of any change in the identity of a service provider. The notification should describe the nature of the relationship with the customer, including the description of whether the new service provider is the presubscribed local exchange or interexchange carrier. For purposes of this subparagraph, "new service provider" means a service provider that did not bill the customer for services during the service provider's last billing cycle. This definition shall include only providers that have continuing relationships with the customer that will result in periodic charges on the customer's bill, unless the service is subsequently canceled. This notification may be accomplished with a sentence that directs the customers to details of this change located elsewhere on the bill.

(D) If possible, the first page of the bill shall list each applicable telephone number or account number for which charges are being summarized on the bill. If such inclusion is not possible, the first page shall show the main telephone number or account number, and subsequent pages shall clearly identify the additional numbers.

(2) Each residential customer's bill shall include the following information in a clear and conspicuous manner that provides customers sufficient information to understand the basis and source of the charges in the bill:

(A) the service descriptions and charges for local service provided by the billing CTU;

(B) the service descriptions and charges for non-local services provided by the billing CTU;

(C) the service description, service provider's name, and charges for any services provided by parties other than the billing CTU, with a separate line for each different provider;

(D) applicable taxes, fees and surcharges, showing the specific amount associated with each charge;

(E) the billing period or billing end date; and

(F) an identification of those charges for which non-payment will not result in disconnection of basic local telecommunications service, along with an explicit statement that failure to pay these charges will not result in the loss of basic local service; or an identification of those charges that must be paid to retain basic local telecommunications service, along with an explicit statement that failure to pay these charges will result in the loss of basic local service.

(3) Charges must be accompanied by a brief, clear, non-misleading, plain-language description of the service being rendered. The description must be sufficiently clear in presentation and specific enough in content to enable customers to accurately assess the services for which they are being billed. Additionally, explanations shall be provided for any non-obvious abbreviations, symbols, or acronyms used to identify specific charges. The CTU shall use the term or acceptable abbreviation, in paragraph (7) of this subsection to the extent they apply to the customer's bill. If an abbreviation other than the acceptable abbreviation is used for the term, then the term must also be identified on the customer's bill. Terms and abbreviations may be completely capitalized, partially capitalized, not capitalized, hyphenated, or not hyphenated.

(4) Charges for bundled-service packages that include basic local telecommunications service are not required to be separately stated. However, a brief, clear, non-misleading, plain-language de-

scription of the services included in a bundled-service package is required to be provided either in the description or as a footnote.

(5) Each customer's bill shall include specific per-call detail for time-sensitive charges, itemized by service provider and by telephone or account number (if the customer's bill is for more than one such number). Each customer's bill shall include the rate and specific number of billing occurrences for per-use services, itemized by service provider and by telephone or account number. Additionally, time-sensitive charges and per-use charges may be displayed as subtotals in summary sections of the bill.

(6) Bills shall provide a clear and conspicuous toll-free number that a customer can call to resolve disputes and obtain information from the CTU. If the CTU is billing the customer for any services from another service provider, the bill shall identify the name of the service provider and provide a toll-free number that the customer can call to resolve disputes or obtain information from that service provider.

(7) Defined terms.

(A) Federal excise tax--Federal tax assessed on non-usage sensitive basic local service that is billed separately from long distance service. Acceptable abbreviation: Fed excise tax.

(B) Federal subscriber line charge--A charge that the Federal Communications Commission (FCC) allows a CTU to impose on its customers to recover costs associated with interstate access to the local telecommunications networks. The FCC does not require a CTU company to impose this charge, and the CTU does not remit the charge to the federal government. The charge may be used by the CTU to pay for a part of the cost of lines, wires, poles, conduit, equipment and facilities that provide interstate access to the local telecommunications network. Acceptable abbreviation: Fed subscriber line chg.

(C) Federal universal service fee--A federal fee for a fund that supports affordable basic phone service to all Americans, including low-income customers, schools, libraries, and rural health care providers. CTUs impose this fee to cover their required support for the fund. The fee is set by the FCC. Acceptable abbreviation: Fed universal svc fee.

(D) Municipal right-of-way fee--A fee used to compensate municipalities for the use of their rights-of-way. Acceptable abbreviation: Municipal ROW fee.

(E) Texas universal service--A state fee for a fund that supports affordable service to customers in high-cost rural areas, funds the Relay Texas service and related assistance for the hearing-disabled, and funds telecommunications services discounts for low-income customers (Lifeline). The fee is set by the Public Utility Commission.

(F) 9-1-1 fee--A fee used to fund the 9-1-1 telephone network that allows callers to reach a public safety agency when they dial the digits "9-1-1." The amount of the fee varies by region and is set by the Texas Commission on State Emergency Communications.

(G) 9-1-1 equalization fee--A fee used to provide financial support for regions where the 9-1-1 fee does not fully offset the cost of 9-1-1 service. The fee is imposed on each customer receiving intrastate long-distance service. The fee is set by the Texas Commission on State Emergency Communications.

(f) Compliance review of bill formats. A CTU shall file for review a copy of any portion of its bill format that has not previously been reviewed and approved by the commission pursuant to this section. The CTU will be advised if the format does or does not comply with the requirements of this section. Two alternative projects will be

established for such reviews. CTUs may submit new or altered bill formats in either of these projects as follows:

(1) Expedited review. The commission staff shall establish a project for expedited reviews. CTUs may submit proposed new bills or bill format changes prior to implementation in the expedited review project. A notice of sufficiency or a notice of deficiency will be issued to the CTU within 15 business days. The CTU may appeal a notice of deficiency by requesting its submission be docketed for further review or may respond with a revised submission that corrects the deficiency within ten business days of the deficiency notice. The CTU's revised submission will be reviewed and either a notice of sufficiency or a notice of deficiency will be issued within 15 business days. This process will be repeated until the CTU's submission has received a notice of sufficiency or the CTU has requested that its submission be docketed as a contested case. A contested case may also be requested by commission staff to resolve disputes regarding the CTU's submission.

(2) Annual review. The commission staff shall establish a project for annual reviews. CTUs may choose to file bill format changes in the annual review project. If the CTU's bill format change has already been approved pursuant to paragraph (1) of this subsection, the CTU does not need to file the same changes under the annual review process. Submissions for annual review must be made between September 1st and October 1st each year. All submissions shall be responded to with a notice of sufficiency or deficiency issued no later than November 15th of that year. A CTU may appeal a notice of deficiency by requesting its submission be docketed for further review or may respond with a revised submission that corrects the deficiency within ten business days of the deficiency notice. Revised submissions will be reviewed within 15 business days and a new notice of either sufficiency or deficiency will be issued. This process will be repeated until the CTU's submission has received a notice of sufficiency or the CTU has requested that its submission be docketed as a contested case. A contested case may also be requested by commission staff to resolve disputes regarding the CTU's submission.

(g) Effective date. The effective date of this section is June 1, 2010.

§26.27. *Bill Payment and Adjustments.*

(a) Dominant certificated telecommunications utility (DCTU).

(1) Bill due date. The bill provided to the customer shall include the payment due date, which shall not be less than 16 days after issuance.

(A) The issuance date is the postmark date on the envelope containing the bill or the issuance date on the bill if there is no postmark or envelope.

(B) Payment for service is delinquent if not received at the DCTU or at the DCTU's authorized payment agency by close of business on the due date.

(C) If the sixteenth day falls on a holiday or weekend, then the due date shall be the next work day after the sixteenth day.

(2) Penalty on delinquent bills for retail service. A DCTU providing any service to the state, including service to an agency in any branch of government, shall not assess a fee, penalty, interest, or other charge to the state for delinquent payment of a bill.

(3) Billing adjustments.

(A) Service interruptions. In the event a customer's service is interrupted other than by the negligence or willful act of the customer, and it remains interrupted for 24 hours or longer after being reported and after access to the premises is made available, an appropriate refund shall be made to the customer.

(i) The amount of refund shall be:

(I) determined on the basis of the known period of interruption, generally beginning from the time the service interruption is first reported; and

(II) the refund to the customer shall be the proportionate part of the month's flat rate charges for the period of days and that portion of the service facilities rendered useless or inoperative.

(ii) The refund may be made by a credit on a subsequent bill.

(B) Overbilling. If charges are found to be higher than authorized by the DCTU's tariffs or the terms and conditions of service, an appropriate refund shall be made to the customer.

(i) The refund shall be made for the entire period of the overbilling.

(ii) If the overbilling is corrected within three billing cycles of the initial bill in error, interest is not required to be paid on the overcharge.

(iii) If the overbilling is not corrected within three billing cycles of the initial bill in error, interest shall be paid on the amount of the overcharges. The minimum interest to be paid shall be based on the rate set by the commission on December 1 of the preceding year, compounded monthly, and accruing from the date of payment or the initial date of the bill in error.

(iv) The refund may be made by a credit on a subsequent bill, unless the customer requests otherwise.

(C) Underbilling. If charges are found to be lower than authorized by the DCTU's tariffs or terms and conditions of service, or if the DCTU failed to bill the customer for service, then:

(i) The customer may be backbilled for the amount that was underbilled for no more than six months from the date the error was discovered unless underbilling is a result of theft of service by the customer.

(ii) Service may be disconnected if the customer fails to pay charges arising from an underbilling.

(iii) If the underbilling is \$50 or more, the DCTU shall offer the customer a deferred payment plan option for the same length of time as that of the underbilling. A deferred payment plan need not be offered to a customer whose underpayment is due to theft of service.

(iv) Interest on underbilled amounts shall:

(I) not be charged unless such amounts are found to be the result of theft of service by the customer; and

(II) not exceed an amount based on the rate set by the commission on December 1 of the preceding year, compounded monthly, and accruing from the day the customer is found to have first tampered with, bypassed, or diverted service.

(4) Disputed bills. If there is a dispute between a customer and a DCTU about any bill for DCTU service, the DCTU shall:

(A) investigate and report the results to the customer; and

(B) inform the customer of the complaint procedures of the commission in accordance with §26.30 of this title (relating to Complaints), if the dispute is not resolved.

(5) Notice of alternative payment programs or payment assistance. When a customer contacts a DCTU and indicates inability to

pay a bill or need of assistance with payment, the DCTU shall inform the customer of all alternative payment options and payment assistance programs available from the DCTU, such as payment arrangements, deferred payment plans, and disconnection moratoriums for the ill, as applicable, and of the eligibility requirements and application procedure for each.

(6) Payment arrangement. A payment arrangement is any agreement between the DCTU and a customer that allows the customer to pay the outstanding bill after its due date but before the due date of the next bill.

(A) A payment arrangement may be established in person or by telephone.

(B) If the DCTU issued a suspension or disconnection notice before the payment arrangement was made, that suspension or disconnection shall be suspended until after the due date for the payment arrangement.

(C) If a customer does not fulfill the obligations of the payment arrangement, the DCTU may suspend or disconnect service after the later of the due date for the payment arrangement or the suspension or disconnection date indicated in the notice in accordance with §26.28 of this title (relating to Suspension or Disconnection of Service), without issuing an additional notice.

(7) Deferred payment plan. A deferred payment plan is any written agreement between the DCTU and a customer that allows a customer to pay an outstanding bill in installments that extend beyond the due date of the next bill.

(A) The terms of a deferred payment plan may be established in person or by telephone, but must be put in writing to be effective.

(B) The DCTU shall offer a deferred payment plan to any residential customer, including a guarantor of any residential customer, who has expressed an inability to pay all of the bill, if that customer has not been issued more than two suspension or disconnection notices during the preceding 12 months.

(C) Every deferred payment plan shall provide that the delinquent amount may be paid in equal installments over at least three billing cycles.

(D) When a residential customer has received service from its current DCTU for less than three months, the DCTU is not required to offer a deferred payment plan if the residential customer lacks:

(i) sufficient credit; or

(ii) a satisfactory history of payment for service from a previous DCTU.

(E) Every deferred payment plan offered by a DCTU:

(i) shall state, immediately preceding the space provided for the customer's signature and in boldface type no smaller than 14 point size, the following: "THIS IS A BINDING CONTRACT" followed by "If you are not satisfied with this contract, or if agreement was made by telephone and you feel this contract does not reflect your understanding of that agreement, contact the utility immediately and do not sign this contract. If you do not contact the utility, or if you sign this agreement, you may give up your right to dispute the amount due under the agreement except for the utility's failure or refusal to comply with the terms of this agreement."

(I) In addition, if the customer and the DCTU representative or agent meet in person, the DCTU representative shall read the preceding statement to the customer.

(II) The DCTU shall provide information to the customer as necessary in accordance with §26.26 of this title (relating to Foreign Language Requirements) to make the preceding statement understandable to the customer;

(ii) may include a 5.0% penalty for late payment but shall not include a finance charge;

(iii) shall state the length of time covered by the plan;

(iv) shall state the total amount to be paid;

(v) shall state the specific amount of each installment;

(vi) shall allow the DCTU to disconnect service if a customer does not fulfill the terms of the deferred payment plan;

(vii) shall not refuse a customer participation in such a program on the basis of race, nationality, religion, color, sex, marital status, income level, or source of income and shall not unreasonably refuse a customer participation in such a program on the basis of geographic location;

(viii) shall be signed by the customer and a copy of the signed plan shall be provided to the customer; and

(ix) shall allow either the customer or the DCTU to renegotiate the deferred payment plan, if the customer's economic or financial circumstances change substantially during the time of the plan.

(F) A DCTU may disconnect a customer who does not meet the terms of a deferred payment plan.

(i) The DCTU may not disconnect service until a disconnection notice in accordance with §26.28 of this title has been issued to the customer indicating that the customer has not met the terms of the plan.

(ii) The DCTU may renegotiate the deferred payment plan agreement before disconnection.

(iii) No additional notice is required if the customer:

(I) did not sign the deferred payment plan;

(II) is not otherwise fulfilling the terms of the plan; and

(III) was previously provided a disconnection notice for the outstanding amount.

(8) Residential partial payments. Residential service payment shall first be allocated to basic local telecommunications service.

(b) Nondominant certificated telecommunications utility (NCTU).

(1) Application: Only paragraphs (3), (5) and (6) of this subsection apply to a deregulated company holding a certificate of operating authority or to an exempt carrier under PURA §52.154.

(2) Bill due date. The bill provided to the customer shall include the payment due date, which shall not be less than 16 days after issuance.

(A) The issuance date is the postmark date on the envelope containing the bill or the issuance date on the bill if there is no postmark or envelope.

(B) Payment for service is delinquent if not received at the NCTU or at the NCTU's authorized payment agency by close of business on the due date.

(C) If the sixteenth day falls on a holiday or weekend, then the due date shall be the next work day after the sixteenth day.

(D) If the due date shown on the bill falls on a holiday or weekend, an NCTU shall include a statement on the bill or in the terms and conditions of service that informs the customer that the due date is extended to the next work day.

(3) Penalty on delinquent bills for retail service. An NCTU providing any service to the state, including service to an agency in any branch of government, shall not assess a fee, penalty, interest, or other charge to the state for delinquent payment of a bill.

(4) Billing adjustments.

(A) Overbilling. If charges are higher than the NCTU's tariff, schedule, or price list terms and conditions of service, or a customer-specific contract, an appropriate refund shall be made to the customer:

(i) The refund shall be made for the entire period of the overbilling.

(ii) If the overbilling is corrected within three billing cycles of the initial bill in error, interest is not required to be paid on the overcharge.

(iii) If the overbilling is not corrected within three billing cycles of the initial bill in error, interest shall be paid on the amount of the overcharges. The minimum interest to be paid shall be based on the rate set by the commission on December 1 of the preceding year, compounded monthly, and accruing from the date of payment or the initial date of the bill in error.

(iv) The refund may be made by a credit on a subsequent bill, unless the customer requests otherwise.

(B) Underbilling. If charges are found to be lower than authorized by the NCTU's tariff, schedule, or price list, terms and conditions of service, or a customer-specific contract, or if the NCTU failed to bill the customer for service, then:

(i) The customer may be backbilled for the amount that was underbilled for no more than six months from the date the initial error was discovered unless underbilling is a result of theft of service by the customer.

(ii) Service may be disconnected if the customer fails to pay charges arising from an underbilling.

(iii) If the underbilling is \$50 or more, the NCTU shall offer the customer a payment plan option for the same length of time as that of the underbilling. A payment plan need not be offered to a customer whose underpayment is due to theft of service.

(iv) Interest on underbilled amounts shall:

(I) not be charged unless such amounts are found to be the result of theft of service by the customer; and

(II) not exceed an amount based on the rate set by the commission on December 1 of the preceding year, compounded monthly, and accruing from the day the customer is found to have first tampered with, bypassed, or diverted service.

(5) Disputed bills. If there is a dispute between a customer and an NCTU about any bill for NCTU service, the NCTU shall:

(A) investigate and report the results to the customer; and

(B) inform the customer of the complaint procedures of the commission in accordance with §26.30 of this title if the dispute is not resolved.

(6) Notice of alternative payment programs or payment assistance. When a customer contacts an NCTU and indicates inability to pay a bill or need of assistance with payment, the NCTU shall inform the customer of any alternative payment options and payment assistance programs available to the customer.

(7) Residential partial payments. Residential service payment shall first be allocated to basic local telecommunications service.

(c) NCTU implementation. NCTUs shall implement this section no later than March 1, 2001.

§26.28. *Suspension or Disconnection of Service.*

(a) Dominant certificated telecommunications utility (DCTU).

(1) Suspension or disconnection policy. If a DCTU chooses to suspend or disconnect a customer's basic local telecommunications service, it must follow the procedures in this subsection or modify them in ways that are more generous to the customer in terms of the cause for suspension or disconnection, the timing of the suspension or disconnection notice, and the period between notice and suspension or disconnection. Each DCTU is encouraged to develop specific policies for suspension and disconnection that treat its customers with dignity and respect for customers' or members' circumstances and payment history, and to implement those policies in ways that are consistent and non-discriminatory. Suspension or disconnection are options allowed by the commission, not requirements placed upon the DCTU by the commission.

(2) Suspension or disconnection with notice. After proper notice pursuant to paragraph (7) of this subsection, a DCTU may suspend or disconnect basic local telecommunications service for any of the following reasons:

(A) failure to pay tariffed charges for local telecommunications services or make deferred payment arrangements by the date of suspension or disconnection;

(B) failure of a residential customer to pay long distance charges incurred after toll blocking was imposed;

(C) failure of a non-residential customer to pay long distance charges only where the DCTU bills those charges to the customer pursuant to its tariffs or billing and collection contracts, or make deferred payment arrangements by the date of suspension or disconnection;

(D) failure to comply with the terms of a deferred payment agreement except as provided in §26.29 of this title (relating to Prepaid Local Telephone Service (PLTS));

(E) violation of the DCTU's rules on the use of service in a manner which interferes with the service of others or the operation of nonstandard equipment, if a reasonable attempt has been made to notify the customer and the customer has a reasonable opportunity to remedy the situation;

(F) failure to pay a deposit pursuant to §26.24 of this title (relating to Credit Requirements and Deposits); or

(G) failure of the guarantor to pay the amount guaranteed, when the DCTU has a written agreement, signed by the guarantor, that allows for disconnection of the guarantor's service for nonpayment.

(3) Suspension or disconnection without notice. Basic local telecommunications service may be suspended or disconnected without notice, except as provided in §26.29 of this title, for any of the following reasons:

(A) where service is connected without authority;

(B) where service was reconnected without authority; or

(C) where there are instances of tampering with the DCTU's equipment, evidence of theft of service, or other acts to defraud the DCTU.

(4) Suspension or disconnection prohibited. Basic local telecommunications service may not be suspended or disconnected for any of these reasons:

(A) failure to pay for any charges that are not provided for in a DCTU's tariffs;

(B) failure to pay for a different type or class of utility service unless charges were included on the bill at the time service was initiated;

(C) failure to pay charges resulting from underbilling that is more than six months before the current billing, except for theft of service;

(D) failure to pay disputed charges until a determination is made on the accuracy of the charges; or

(E) failure of a residential customer to pay for any charges other than for tariffed residential local telecommunications services, except for the nonpayment of long distance charges incurred after toll blocking was imposed.

(5) Suspension or disconnection on holidays or weekends. A DCTU shall not suspend or disconnect service on holidays or weekends, or the day before a holiday or weekend, unless DCTU personnel are available on those days to take payments and reconnect service. A DCTU may suspend or disconnect service on holidays or weekends, or the day before a holiday or weekend, when:

(A) a dangerous condition exists;

(B) notice is not required pursuant to paragraph (3) of this subsection; or

(C) the customer requests disconnection.

(6) Suspension or disconnection for ill and disabled. No DCTU may suspend or disconnect service at the permanent residence of a delinquent customer if that customer establishes that such action will prevent the customer from summoning emergency medical help for someone who is seriously ill residing at that residence.

(A) Each time a customer seeks to avoid suspension or disconnection of service under this subsection, the customer before the date of suspension or disconnection shall:

(i) have the person's attending physician (for purposes of this subsection, the term "physician" shall mean any public health official, including, but not limited to, medical doctors, doctors of osteopathy, nurse practitioners, registered nurses, and any other similar public health official) contact the DCTU by the stated date of disconnection;

(ii) have the person's attending physician submit a written statement to the DCTU; and

(iii) enter into a deferred payment plan.

(B) The prohibition against suspension or disconnection provided by this subsection shall last 63 days from the issuance of the DCTU bill or a shorter period agreed upon by the DCTU and the customer or physician.

(7) Suspension and disconnection notices. Any suspension or disconnection notice issued by a DCTU to a customer shall:

(A) not be issued to the customer before the first day after the bill is due. Payment of the delinquent bill at a DCTU's authorized payment agency is considered payment to the DCTU;

(B) be a separate mailing or hand delivery or sent electronically if requested by the customer, with a stated date of suspension or disconnection and with the words "suspension notice," or "disconnection notice," or similar language prominently displayed on the notice;

(C) have a suspension or disconnection date that is not less than ten days after the notice is issued;

(D) be in English and Spanish;

(E) for residential customers, indicate the specific amount owed for tariffed local telecommunications services required to maintain basic local telecommunications service; and

(F) include a statement notifying customers that if they need assistance paying their bill, or are ill and unable to pay their bill, they may be able to make some alternative payment arrangement or establish a deferred payment plan. The notice shall advise customers to contact the DCTU for more information.

(8) Residential customer payment allocations. Payment allocations related to basic local telecommunications service suspension or disconnection are as follows:

(A) Payments shall first be allocated to basic local telecommunications service.

(B) If services are bundled, the rate of basic local telecommunications service shall be the DCTU's charge for stand-alone basic local telecommunications service.

(9) Toll blocking.

(A) The DCTU may toll block a residential customer for the nonpayment of long distance charges.

(B) Access to toll-free numbers. Where technically capable, toll blocking shall allow access to toll-free numbers.

(C) Nondiscriminatory application. The DCTU shall not apply toll blocking in an unreasonably preferential, prejudicial, or discriminatory manner.

(D) Notice requirement. The DCTU shall notify the customer within 24 hours of initiating toll blocking.

(10) Release of telephone line.

(A) Upon a request to switch a current customer to another local service provider, the DCTU shall release the customer's telephone line and number to the preferred provider in a manner to expedite the switch without disruption in service.

(B) Upon a request to switch a suspended customer to another local service provider, the DCTU shall release the customer's telephone line and number within five days after the request is received. Upon a request to switch a disconnected customer to another local service provider, the DCTU shall release the customer's telephone line within five days after the request is received.

(C) A DCTU shall not refuse to release a customer's telephone line and number due to the non-payment of a bill.

(b) Nondominant certificated telecommunications utility (NCTU).

(1) Application. Only paragraphs (2) - (4), (7)(A) - (D) and (10) of this subsection apply to a deregulated company holding a certificate of operating authority or to an exempt carrier under PURA §52.154.

(2) Suspension or disconnection policy. If an NCTU chooses to suspend or disconnect a customer's basic local telecommunications service, it must follow the procedures in this subsection or modify them in ways that are more generous to the customer in terms of the cause for suspension or disconnection, the timing of the suspension or disconnection notice, and the period between notice and suspension or disconnection. Each NCTU is encouraged to develop specific policies for suspension and disconnection that treat its customers with dignity and respect for customers' or members' circumstances and payment history, and to implement those policies in ways that are consistent and non-discriminatory. Suspension or disconnection are options allowed by the commission, not requirements placed upon the NCTU by the commission.

(3) Suspension or disconnection with notice. After proper notice pursuant to paragraph (7) of this subsection, an NCTU may suspend or disconnect basic local telecommunications service for any legal reason that is clearly disclosed in the customer's terms and conditions of service.

(4) Suspension or disconnection without notice. Basic local telecommunications service may be suspended or disconnected without notice for any of the following reasons:

(A) where service is connected without authority;

(B) where service was reconnected without authority;

or

(C) where there are instances of tampering with the NCTU's equipment, evidence of theft of service, or other acts to defraud the NCTU.

(5) Suspension or disconnection prohibited. Basic local telecommunications service may not be suspended or disconnected for any of the following reasons:

(A) failure to pay for any charges that are not provided for in an NCTU's tariff, schedule, list, terms and conditions of service, or customer-specific contract;

(B) failure to pay for a different type or class of utility service unless charges were included on the bill at the time service was initiated;

(C) failure to pay charges resulting from underbilling that is more than six months before the current billing, except for theft of service;

(D) failure to pay disputed charges until a determination is made on the accuracy of the charges; or

(E) failure of a residential customer to pay for any charges other than for residential local telecommunications services, except for the nonpayment of long distance charges incurred after toll blocking was imposed.

(6) Suspension or disconnection on holidays or weekends. An NCTU shall not suspend or disconnect on holidays or weekends, or the day before a holiday or weekend, unless NCTU personnel are available on those days to take payments and reconnect service. An

NCTU may suspend or disconnect service on holidays or weekends, or the day before a holiday or weekend, when:

(A) a dangerous condition exists;

(B) notice is not required pursuant to paragraph (4) of this subsection; or

(C) the customer requests disconnection.

(7) Suspension and disconnection notices. Any suspension or disconnection notice issued by an NCTU to a customer must:

(A) not be issued to the customer before the first day after the bill is due. Payment of the delinquent bill at an NCTU's authorized payment agency is considered payment to the NCTU;

(B) be a separate mailing or hand delivery or sent electronically if requested by the customer, with a stated date of suspension or disconnection and with the words "suspension notice," or "disconnection notice," or similar language prominently displayed on the notice;

(C) have a suspension or disconnection date that is not less than ten days after the notice is issued;

(D) be in English and Spanish; and

(E) for residential customers, indicate the specific amount owed for local telecommunications services required to maintain basic local telecommunications service.

(8) Residential customer payment allocations. Payment allocations related to basic local telecommunications service suspension or disconnection are as follows:

(A) Payments shall first be allocated to basic local telecommunications service.

(B) If services are bundled, the rate of basic local telecommunications service shall be the NCTU's charge for stand-alone basic local telecommunications service.

(9) Toll blocking.

(A) The NCTU may toll block a residential customer for the nonpayment of long distance charges.

(B) Access to toll-free numbers. Where technically capable, toll blocking shall allow access to toll-free numbers.

(C) Nondiscriminatory application. The NCTU shall not apply toll blocking in an unreasonably preferential, prejudicial, or discriminatory manner.

(D) Notice requirement. The NCTU shall notify the customer within 24 hours of initiating toll blocking.

(10) Release of telephone line.

(A) Upon a request to switch a current customer to another local service provider, the NCTU shall release, or cause to release, the customer's telephone line and number to the preferred provider in a manner to expedite the switch without disruption in service.

(B) Upon a request to switch a suspended customer to another local service provider, the NCTU shall release, or cause to release, the customer's telephone line and number within five days after the request is received. Upon a request to switch a disconnected customer to another local service provider, the NCTU shall release, or cause to release, the customer's telephone line within five days after the request is received.

(C) An NCTU shall not refuse to release a customer's or former customer's telephone line and number due to the non-payment of a bill.

(c) NCTU implementation. NCTUs shall implement this section no later than March 1, 2001.

§26.30. Complaints.

(a) Complaints to a certificated telecommunications utility (CTU). A customer or applicant for service (complainant) may submit a complaint to a CTU either in person, by letter, telephone, or any other means determined by the CTU.

(1) Initial investigation. The CTU shall investigate and advise the complainant of the results of the investigation within 21 days of receipt of the complaint. A CTU shall inform customers of the right to receive these results in writing.

(2) Supervisory review by the CTU. If a complainant is not satisfied with the initial response to the complaint, the complainant may request a supervisory review by the CTU.

(A) A CTU supervisor shall conduct the review and shall inform the complainant of the results of the review within ten days of receipt of the complainant's request for a review. A CTU shall inform customers of the right to receive these results in writing.

(B) A complainant who is dissatisfied with a CTU's supervisory review shall be informed of:

(i) the right to file a complaint with the commission;

(ii) the commission's informal complaint resolution process;

(iii) the following contact information for the commission:

(I) Mailing Address: Public Utility Commission of Texas, Customer Protection Division, P.O. Box 13326, Austin, Texas 78711-3326;

(II) Phone Number: (512) 936-7120 or in Texas (toll-free) 1-888-782-8477;

(III) FAX: (512) 936-7003;

(IV) E-mail address: customer@puc.texas.gov;

(V) Internet address: <http://www.puc.texas.gov>;

(VI) Telecommunications Device for the Deaf (TTY): (512) 936-7136; and

(VII) Relay Texas (toll-free): 1-800-735-2989.

(b) Complaints to the commission. Notwithstanding anything to the contrary, the commission may only hear a complaint of a retail or wholesale customer against a deregulated company or exempt carrier that is within the scope of the commission's authority provided in Public Utility Regulatory Act (PURA) §65.102.

(1) Informal complaints.

(A) The complaint to the commission should include:

(i) The complainant's name, address, and telephone number.

(ii) The name of the CTU or subsidiary company against which the complaint is being made.

(iii) The customer's account or phone number.

(iv) An explanation of the facts relevant to the complaint.

(v) Any other information or documentation which supports the complaint.

(B) Upon receipt of a complaint from the commission, a CTU shall investigate and advise the commission in writing of the results of its investigation within 21 days of the date forwarded by the commission.

(C) The commission shall:

- (i) review the CTU's investigative results;
- (ii) determine a resolution for the complaint; and
- (iii) notify the complainant and the CTU in writing

of the resolution.

(D) While any informal complaint process is ongoing at the commission:

(i) basic local telecommunications service may not be suspended or disconnected for the nonpayment of disputed charges; and

(ii) a customer is obligated to pay any undisputed portion of the bill.

(E) The CTU shall keep a record of any informal complaint forwarded to it by the commission for two years after the determination of that complaint.

(i) This record shall show the name and address of the complainant, and the date, nature, and adjustment or disposition of the complaint.

(ii) Protests regarding commission-approved rates or charges that require no further action by the CTU need not be recorded.

(2) Formal complaints. If the complainant is not satisfied with the results of the informal complaint process, the complainant may file a formal complaint with the commission. This process may include the formal docketing of the complaint as provided in the commission's Procedural Rules, §22.242 of this title (relating to Complaints).

§26.31. Disclosures to Applicants and Customers.

(a) Application. Subsection (b)(4)(C)(viii) of this section does not apply to a deregulated company holding a certificate of operating authority or to an exempt carrier under Public Utility Regulatory Act (PURA) §52.154.

(b) Certificated telecommunications utilities (CTU). These disclosure requirements shall apply only to residential customers and business customers with five or fewer customer access lines.

(1) Promotional requirements. Promotions, including, but not limited to advertising and marketing, conducted by any CTU shall comply with the following:

(A) If any portion of a promotion is translated into another language, then all portions of the promotion shall be translated into that language. Promotions containing a single informational line or sentence in another language to advise persons how to obtain the same promotional information in a different language are exempt from this requirement.

(B) Promotions shall not be fraudulent, unfair, misleading, deceptive, or anti-competitive as prohibited by federal and state law.

(2) Prior to acceptance of service. Each CTU shall provide the following information to applicants before any acceptance of service:

(A) notice that the customer will receive the information packet described in paragraphs (3) and (4) of this subsection;

(B) an explanation of each product or service being offered;

(C) a description of how each charge will appear on the telephone bill;

(D) any applicable minimum contract service terms;

(E) disclosure of any and all money that must be paid prior to installation of new service or transfer of existing service to a new location and whether or not the money is refundable;

(F) disclosure of construction charges in accordance with §26.22 of this title (relating to Request for Service);

(G) information about any necessary change in the applicant's telephone number;

(H) disclosure of the company's cancellation policy; and

(I) information on whom to call and a working toll-free number for customer inquiries.

(3) Terms and conditions of service. A CTU shall provide information regarding terms and conditions of service to customers in writing and free of charge at the initiation of service. Upon request, customers are entitled to receive an additional copy of the terms and conditions of service once annually free of charge. Any contract offered by a CTU must include the terms and conditions of service statement. A CTU may not offer a customer a contract or terms and conditions of service statement which waives the customer's rights under law or commission rule.

(A) The information shall be:

(i) sent to new customers before payment for a full bill is due;

(ii) clearly labeled to indicate it contains the terms and conditions of service;

(iii) provided in a readable format written in plain, non-technical language; and

(iv) provided in the same languages in which the CTU markets service to a customer.

(B) The following information shall be included:

(i) all rates and charges as they will appear on the telephone bill;

(ii) an itemization of any charges which may be imposed on the customer, including but not limited to, charges for late payments and returned checks;

(iii) a full description of each product or service to which the customer has subscribed;

(iv) any applicable minimum contract service terms and any fees for early termination;

(v) any and all money that must be paid prior to installation of new service or transfer of existing service to a new location and whether or not the money is refundable;

(vi) applicable construction charges in accordance with §26.22 of this title;

(vii) any necessary change in the applicant's telephone number;

- (viii) the company's cancellation policy;
- (ix) a working toll-free number for customer inquiries; and
- (x) the provider's legal or "doing business as" name used for providing telecommunications services in the state.

(4) Customer rights. A CTU shall provide information regarding customer rights to customers in writing and free of charge at the initiation of service.

(A) The information in subparagraph (C) of this paragraph shall be:

- (i) sent to new customers before payment for a full bill is due;
- (ii) clearly labeled to indicate it contains the customer rights;
- (iii) provided in a readable format written in plain, non-technical language; and
- (iv) provided in the same languages in which the CTU markets service to a customer.

(B) The CTU shall also provide:

- (i) the information in subparagraph (C) of this paragraph to customers at least every other year at no charge; or
- (ii) a printed statement on the bill or a billing insert identifying the location of the information in subparagraph (C) of this paragraph. The statement shall be provided to customers every six months.

(C) The following information shall be included:

- (i) the CTU's credit requirements and the circumstances under which a deposit or an additional deposit may be required, how a deposit is calculated, the interest paid on deposits, and the time frame and requirement for return of the deposit to the customer and any other terms and conditions related to deposits;
- (ii) the time allowed to pay outstanding bills and the amount and conditions under which penalties may be applied to delinquent bills;
- (iii) grounds for suspension and/or disconnection of service;
- (iv) the steps that must be taken before a CTU may suspend and/or disconnect service;
- (v) the steps for resolving billing disputes with the CTU and how disputes affect suspension and/or disconnection of service;
- (vi) information on alternative payment plans offered by the CTU, including, but not limited to, payment arrangements and deferred payment plans, as well as a statement that a customer has the right to request these alternative payment plans;
- (vii) the steps necessary to have service restored and/or reconnected after involuntary suspension or disconnection;
- (viii) a customer's right to continue local service as long as full payment for local service is timely made;
- (ix) information regarding protections against unauthorized billing charges ("cramming") and selection of telecommunications utilities ("slamming") as required by §26.32 of this title (relating to Protection Against Unauthorized Billing Charges ("Cramming"))

and §26.130 of this title (relating to Selection of Telecommunications Utilities), respectively;

(x) the customer's right to file a complaint with the CTU, the procedures for a supervisory review, and right to file a complaint with the commission regarding any matter concerning the CTU's service. The commission's contact information: Public Utility Commission of Texas, Customer Protection Division, P.O. Box 13326, Austin, Texas 78711-3326, (512) 936-7120 or in Texas (toll-free) 1-888-782-8477, fax (512) 936-7003, e-mail address: customer@puc.texas.gov, Internet address: www.puc.texas.gov, TTY (512) 936-7136, and Relay Texas (toll-free) 1-800-735-2989, shall accompany this information;

(xi) the hours, addresses, and telephone numbers of CTU offices where bills may be paid and information may be obtained, or a toll-free number at which the customer may obtain this information;

(xii) a toll-free telephone number or the equivalent (such as use of WATS or acceptance of collect calls) that customers may call to report service problems or make billing inquiries;

(xiii) a statement that CTU services are provided without discrimination as to a customer's race, color, sex, nationality, religion, marital status, income level, source of income, or from unreasonable discrimination on the basis of geographic location;

(xiv) a summary of the company's policy regarding the provision of credit history based upon the credit history of a customer's former spouse;

(xv) notice of any special services such as readers or notices in Braille, if available, and the telephone number of the text telephone for the deaf or hard of hearing at the commission;

(xvi) how customers with physical disabilities, and those who care for them, can identify themselves to the CTU so that special action can be taken to appropriately inform these persons of their rights; and

(xvii) if a CTU is offering Lifeline, how information about customers who qualify for Lifeline may be shared between state agencies and their local phone service provider.

(5) Notice of changes. A CTU shall provide customers written notice between 30 and 60 calendar days in advance of a material change in the terms and conditions of service or customer rights and shall give the customer the option to decline any material change in the terms and conditions of service and cancel service without penalty due to the material change in the terms and conditions of service. This paragraph does not apply to changes that are beneficial to the customer such as a price decrease or mandated regulatory changes.

(6) Right of cancellation.

(A) A CTU shall provide all of its residential applicants and customers the right of rescission in accordance with applicable law.

(B) If a residential applicant or customer will incur an obligation exceeding 31 days, a CTU shall promptly provide the applicant or customer with the terms and conditions of service after the applicant or customer has provided authorization to CTU. The CTU shall offer the applicant or customer a right to cancel the contract without penalty or fee of any kind for a period of six business days after the terms and conditions of service are mailed or sent electronically to the applicant or customer.

(c) Dominant certificated telecommunications utility (DCTU). In addition to the requirements of subsection (b) of this section, the fol-

lowing requirements shall apply to residential customers and business customers with five or fewer customer access lines.

(1) Prior to acceptance of service. Before signing applicants or accepting any money for new residential service or transferring existing residential service to a new location, each DCTU shall provide to applicants information:

(A) about the DCTU's lowest-priced alternatives, beginning with the least cost option, and the range of service offerings available at the applicant's location with full consideration to applicable equipment options and installation charges; and

(B) that clearly informs applicants about the availability of Lifeline service.

(2) Customer rights.

(A) If a DCTU provides its customers with the same information as required by subsection (b)(4)(C) of this section in the telephone directories provided to each customer pursuant to §26.128 of this title (relating to Telephone Directories), the DCTU shall provide a printed statement on the bill or a billing insert identifying the location of the information. The statement or billing insert shall be provided to customers every six months.

(B) The information required by subsection (b)(4)(C) of this section and this subsection shall be provided in English and Spanish; however, a DCTU is exempt from the Spanish language requirement if 10% or fewer of its customers are exclusively Spanish-speaking. If the DCTU is exempt from the Spanish language requirement, it shall notify all customers through a statement in both English and Spanish, in the customer rights, that the information is available in Spanish from the DCTU, both by mail and at the DCTU's offices.

(C) The information required in subsection (b)(4)(C) of this section shall also include:

(i) the customer's right to information about rates and services;

(ii) the customer's right to inspect or obtain at reproduction cost a copy of the applicable tariffs and service rules;

(iii) information on prohibitions for disconnection of local service for the ill and disabled;

(iv) information on the availability of prepaid local telephone service as required by §26.29 of this title (relating to Prepaid Local Telephone Service (PLTS)); and

(v) information regarding privacy issues as required by §26.121 of this title (relating to Privacy Issues).

(d) Nondominant certificated telecommunications utility (NCTU) implementation. NCTUs shall implement this section no later than March 1, 2001.

§26.34. Telephone Prepaid Calling Services.

(a) Purpose. The provisions of this section are intended to prescribe standards for the information a prepaid calling services provider shall disclose to customers about the rates and terms of service for prepaid calling services offered in this state.

(b) Application. This section applies to any "telecommunications utility" as that term is defined in §26.5 of this title (relating to Definitions). This section does not apply to a deregulated company holding a certificate of operating authority or to an exempt carrier utility under Public Utility Regulatory Act (PURA) §52.154. This section also does not apply to a credit calling card in which a customer pays for a service after use and receives a monthly bill for such use.

(c) Liability. The prepaid calling services company shall be responsible for ensuring, either through its contracts with its network provider, distributors and marketing agents or other means, that:

(1) end-user purchased prepaid calling services remain usable in accordance with the requirements of this section; and

(2) compliance requirements of all disclosure provisions of this section are met.

(d) Definitions. The following terms used in this section shall have the following meanings, unless the context indicates otherwise:

(1) Access telephone number--The number that allows a prepaid calling services customer to access the services of a telecommunications utility to place telephone calls.

(2) Billing increment--A unit of time used to charge customers for prepaid calling services.

(3) Personal identification number (PIN)--A number assigned as an authorization code that ensures system security for a prepaid calling services customer and allows the prepaid calling services company to track minutes used.

(4) Prepaid calling services account--An amount of money paid by a customer in advance to access the services of a telecommunications utility to place telephone calls. When the customer makes completed telephone calls, the value of the account decreases at a predetermined rate.

(5) Prepaid calling card--A card or any other device purchased to establish a prepaid calling services account.

(6) Prepaid calling services--Any telecommunications transaction in which:

(A) a customer pays in advance for telecommunications services;

(B) the customer's prepaid calling services account is depleted at a predetermined rate as the customer uses the service; and

(C) the customer must use a PIN and an access telephone number to use the telecommunications services.

(7) Prepaid calling services company--A company that provides prepaid calling or other telecommunications services to the public using its own telecommunications network or resold telecommunications services, or distributors who purchase PINs or telecommunications services to resell to the end-user customer.

(8) Recharge--A transaction in which the value of the prepaid calling services account is renewed. The customer must be informed verbally or electronically of the new rates and surcharges at the time of recharge.

(9) Surcharge--Any fee or cost charged against a prepaid calling services account in addition to a per-minute rate or billing increment, including but not limited to connection, payphone, and maintenance fees.

(e) Billing requirements for prepaid calling services.

(1) Billing increments shall be defined and disclosed in the prepaid calling services company's published tariffs or price list on file with the commission and on any display at the point of sale as well as on any prepaid calling card, or on any prepaid calling card packaging.

(2) A prepaid calling services account may be decreased only for a completed call. Station busy signals and unanswered calls shall not be considered completed calls and shall not be charged against the account.

(3) A surcharge may not be levied more than once on a given call.

(4) Prepaid calling services companies may not reduce the value of a prepaid calling services account by more than the company's published domestic tariffs or price list on file with the commission and any surcharges filed at the commission. Domestic rates and surcharges shall be disclosed at the time of purchase. Current international rates shall be disclosed at the time of purchase with an explanation, if applicable, that these prices may be subject to change.

(5) The prepaid calling services account may be recharged by the customer at a different domestic rate from the original domestic rate or the last domestic recharge rate as long as the new domestic rate and any domestic or international surcharges conform with the company's published tariff or price list on file with the commission at the time of recharge. The customer must be informed of the rates at the time of recharge. A prepaid calling services company shall keep internal records of changes to its international rates and shall provide customers with the appropriate international rate information through a toll-free telephone number. International prepaid calling services rates shall continue to be updated annually in accordance with §26.89 of this title (relating to Information Regarding Rates and Services of Nondominant Carriers).

(6) Upon verbal or written request, prepaid calling services companies must be capable of providing customers the following call detail data information at no charge:

- (A) Dialing and signaling information that identifies the inbound access telephone number called;
- (B) The number of the originating telephone;
- (C) The date and time the call originated;
- (D) The date and time the call terminated;
- (E) The called telephone number; and
- (F) The PIN and/or account number associated with the call.

(7) Prepaid calling services companies shall maintain call detail data records for at least two years.

(f) Written disclosure requirements for all prepaid calling services.

(1) Information required on prepaid calling cards. Cards must be issued with all information required by subparagraphs (A) and (B) of this paragraph in at least the same language in which the card is marketed. Bilingual cards are permitted as long as all the information in subparagraphs (A) and (B) of this paragraph is printed in both languages.

(A) At a minimum, a card must contain the following information printed in a legible font no smaller than eight-point:

- (i) The toll-free number as required by subsection (i) of this section;
- (ii) The maximum rate per minute shall be shown for local, intrastate, and interstate calls. International call prices shall be provided to the customer through a toll-free number printed on the card. If the cost for a one minute call is higher than the maximum rate per minute, it must be printed on the prepaid calling card; and

(iii) The words "VOID" or "SAMPLE" or sequential numbers, such as "999999999" on both sides of the card if the card was produced as a "non-active" card so that it is obvious to the customer that

the card is not usable. If the card is not so labeled, the card is considered active and the issuing company shall honor it.

(B) At a minimum, a card must contain the following information printed in legible font no smaller than five-point:

(i) The value of the card and any applicable surcharges shall be expressed in the same format (i.e. a card whose value is expressed in minutes shall express surcharges in minutes). If the value of a card is expressed in minutes, the minutes must be identified as domestic or international and the identification must be printed on the same line or next line as the value of the card in minutes;

(ii) The prepaid calling services company's name as registered with the commission. A "doing business as" name may only be used if officially filed with the commission. The language shall clearly indicate that the company is providing the prepaid calling services;

(iii) Instructions on using the card correctly; and

(iv) Expiration date or policy, if the card cannot be used after a date certain. If an expiration date or policy is not disclosed on the card, it will be considered active indefinitely.

(2) Information required at a point of sale. All the following information shall be legibly printed on or in any packaging in a minimum eight point font and displayed visibly in a prominent area at the point of sale so that the customer may make an informed decision before purchase. Bilingual information may be made available as long as all the information below is printed in both languages.

(A) A listing of applicable surcharges;

(B) The company's name as registered with the commission. A "doing business as" name may only be used if officially filed with the commission. The language shall clearly indicate that the company is providing the prepaid calling card services;

(C) The toll-free number as required by subsection (i) of this section;

(D) The billing increment expressed in minutes or fractions of minutes and maximum charge per billing increment for prepaid calling card services for local, intrastate, interstate, and international calls will be provided to the customer through a toll-free number printed on the card;

(E) The expiration policy, if the card cannot be used after a date certain. If an expiration date is not disclosed at the time of purchase, the prepaid calling services will be considered active until the prepaid calling services account is completely depleted;

(F) The recharge policy, if applicable. If an expiration date is not disclosed at the time prepaid calling services are recharged, the services will be considered active until the prepaid calling services account is completely depleted;

(G) The policy for rounding billing increments, if applicable;

(H) A statement that if a customer is unable to resolve a complaint with the company that the customer has the right to contact the state regulatory agency which has jurisdiction within the state where the prepaid calling services were purchased; and

(I) A statement that:

(i) Notifies a customer of the customer's extent of liability for lost or stolen cards, if there is liability; and

(ii) Warns a customer to safeguard the card against loss or theft.

(3) If a customer asks a prepaid calling services company how to file a complaint, the company must provide the following contact information: Public Utility Commission of Texas, Office of Customer Protection, P.O. Box 13326, Austin, Texas 78711-3326; phone: (512) 936-7120 or in Texas (toll-free) 1-888-782-8477; fax: (512) 936-7003; e-mail address: customer@puc.texas.gov; Internet address: www.puc.texas.gov; TTY: (512) 936-7136; and Relay Texas (toll-free): 1-800-735-2989.

(g) Verbal disclosure requirements for prepaid calling services. Prepaid calling services companies shall provide an announcement:

(1) At the beginning of each call indicating the domestic minutes, billing increments, or dollars remaining on the prepaid calling services account or prepaid calling card; and

(2) When the prepaid account or card balance is about to be completely depleted. This announcement must be made at least one minute or billing increment before the time expires.

(h) Registration requirements for prepaid calling services companies. All prepaid calling services companies shall register with the commission in accordance with §26.107 of this title (relating to Registration of Nondominant Telecommunications Carriers).

(i) Business and technical assistance requirements for prepaid calling services companies. A prepaid calling services company shall provide a toll-free number with a live operator to answer incoming calls 24 hours a day, seven days a week or electronically voice record customer inquiries or complaints. A combination of live operators or recorders may be used. If a recorder is used, the prepaid calling services company shall attempt to contact each customer no later than the next business day following the date of the recording. Personnel must be sufficient in number and expertise to resolve customer inquiries and complaints. If an immediate resolution is not possible, the prepaid calling services company shall resolve the inquiry or complaint by calling the customer or, if the customer so requests, in writing within ten working days of the original request. In the event a complaint cannot be resolved within ten working days of the request, the prepaid calling services provider shall advise the complainant in writing of the status and subsequently complete the investigation within 21 working days of the original request.

(j) Requirements for refund of unused balances. If a prepaid calling services company fails to provide services at the rates disclosed at the time of initial purchase or at the time an account is recharged, or fails to meet technical standards, the prepaid calling services company shall either refund the customer for any unused prepaid calling services or provide equivalent services.

(k) Requirements when a prepaid calling services company terminates operations in this state.

(1) When a prepaid calling services company expects to terminate operations in this state for any reason, the company shall at least 30 days prior to the termination of operations:

(A) Notify the commission in writing:

(i) That operations will be ending;

(ii) Of the date of the termination of operations; and

(iii) That the company certifies that the actions required by this subsection have been completed;

(B) Notify each customer at the address on file with the company, if applicable, that operations will be ending the date of the termination of operations, and explain how customers may receive a refund or equivalent services for any unused services;

(C) Announce the termination of operations at the beginning of each call, including the date of termination and a toll-free number to call for more information; and

(D) Provide to customers via its toll-free customer service number the procedure for obtaining refunds and continue to provide this information for at least 60 days after the date the company terminates operations.

(2) Within 24 hours after ceasing operations, the prepaid calling services company shall deliver to the commission a list of names, if known, and account numbers of all customers with unused balances. For each customer, the list shall include the following:

(A) The identification number used by the company for billing and debit purposes; and

(B) The unused time, stated in minutes, as applicable, and the unused dollar amount of the prepaid calling services account.

(1) Date of compliance for prepaid calling card services companies. All prepaid calling services offered for sale in the state of Texas and all prepaid calling services companies shall be in compliance with this rule within six months of the effective date of this section.

(m) Compliance and enforcement.

(1) Administrative penalties. If the commission finds that a prepaid calling services company has violated any provision of this section, the commission shall order the company to take corrective action, as necessary, and the company may be subject to administrative penalties and other enforcement actions pursuant to the Public Utility Regulatory Act, Chapter 15.

(2) Enforcement. The commission shall coordinate its enforcement efforts against a prepaid calling services company for fraudulent, unfair, misleading, deceptive, or anticompetitive business practices with the Office of the Attorney General in order to ensure consistent treatment of specific alleged violations.

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 C. INFRASTRUCTURE AND RELIABILITY

16 TAC §§26.51 - 26.53

The amendments are adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (West 2007 and Supp. 2013) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, and the amendments to PURA made by Senate Bills 259, 512, 583, and 809 of the 83rd Legislature, Regular Session.

Cross Reference to Statutes: PURA §14.002 and the amendments to PURA made by Senate Bills 259, 512, 583, and 809 of the 83rd Legislature, Regular Session.

§26.51. *Reliability of Operations of Telecommunications Providers.*

(a) Application. Unless the context clearly indicates otherwise, in this section the term "utility," insofar as it relates to telecommunications utilities, shall refer to local exchange companies that are facilities-based providers, as defined in §26.5 of this title (relating to Definitions). This section does not apply to a deregulated company holding a certificate of operating authority or to an exempt carrier under Public Utility Regulatory Act (PURA) §52.154. This section also does not apply to the retail services of an electing company, as defined by PURA §58.002, or to the retail nonbasic services offered by a transitioning company, as defined by PURA §65.002.

(b) Emergency Operations Plan. Each utility shall file with the commission a copy of its emergency operations plan or a comprehensive summary of its emergency operations plan by May 1, 2008.

(1) Filing requirements. The filing shall include an affidavit from the utility's operations officer indicating that all relevant operating personnel within the utility are familiar with the contents of the emergency operations plan; and such personnel are committed to following the plans and the provisions contained therein in the event of a system-wide or local emergency that arises from natural or man-made disasters, except to the extent deviations are appropriate under the circumstances during the course of an emergency. To the extent the utility makes changes in its emergency operations plan, the utility shall file the revised plan or a revision to the comprehensive summary that appropriately addresses the changes to the plan no later than 30 days after such changes take effect.

(2) Information to be included in the emergency operations plan. Each emergency operations plan maintained by a utility shall include, but is not limited to, the following:

(A) A communications plan that describes the procedures for contacting the media, customers, and service users as soon as reasonably possible either before or at the onset of an emergency. The communications plan should also:

(i) address how the utility's telephone system and complaint-handling procedures will be augmented during an emergency;

(ii) identify key personnel and equipment that will be required to implement the plan when an emergency occurs;

(B) priorities for restoration of service;

(C) a plan for disaster recovery and continuity of operations;

(D) a plan to provide continuous and adequate service during a pandemic; and

(E) a hurricane plan, including evacuation and re-entry procedures (for a utility providing service within a hurricane evacuation zone, as defined by the Governor's Division of Emergency Management).

(3) Drills. Each utility is required to train its operating personnel in the proper procedures for implementing its emergency plan. Each utility shall conduct or participate in an annual drill to test its emergency procedures unless it has implemented its emergency procedures in response to an actual event within the last 12 months. If a utility is in a hurricane evacuation zone (as defined by the Governor's Division of Emergency Management), this drill shall also test its hurricane plan/storm recovery plan. The commission should be notified no

later than 21 days prior to the date of the drill. Following the annual drill, the utility shall assess the effectiveness of the drill and modify its emergency operations plan as needed.

(4) Emergency contact information. Each utility shall submit emergency contact information in a form prescribed by commission staff by May 1 of each calendar year. Notification to commission staff regarding changes to the emergency contact list shall be made within 30 days. This information will be used to contact utilities prior to and during an emergency event.

(5) Reporting requirements. Upon request by the commission staff during a SOC inquiry or declared emergency event, affected utilities shall provide updates on the status of operations, outages and restoration efforts. Updates shall continue until all event-related outages are restored or unless otherwise notified by commission staff.

(6) Copy available for inspection. A complete copy of the above plans shall be made available at the utility's main office for inspection by the commission or commission staff upon request.

(c) Continuity of service.

(1) Every utility shall make all reasonable efforts to prevent interruptions of service. When interruptions occur, the utility shall restore service as soon as practicable, with priority of restoration taking into account such matters as the extent of repairs necessary, needs of the community and minimization of danger to the public, emergency personnel and the utility's workers.

(2) Each utility shall make reasonable provisions to manage emergencies resulting from failure of service.

(3) In the event of a national emergency or local disaster resulting in disruption of normal service, the utility may, in the public interest, deliberately interrupt service to selected customers to provide necessary service for the civil defense or other emergency service agencies temporarily until normal service to these agencies can be restored.

(d) Record of interruption. Except for momentary interruptions caused by automatic equipment operations, each utility shall keep a complete record of all interruptions, both emergency and scheduled. This record shall show the cause for interruptions, date, time, duration, location, approximate number of customers affected, and, in cases of emergency interruptions, the remedy and steps taken to prevent recurrence.

(e) Report to commission. The following guidelines are a minimum basis for reporting service interruptions. Any report of service interruption shall state the cause(s) of the interruption. Utilities should report major outages lasting less than four hours in a timely manner or as soon as reasonably possible. Utilities shall notify the commission in a timely manner in writing of interruptions in service lasting four or more hours affecting:

(1) 50% of the toll circuits serving an exchange;

(2) 50% of the extended area service circuits serving an exchange;

(3) 50% of a central office;

(4) 20% or more of an exchange's access lines; or

(5) any component of the 9-1-1 system that results in an outage to the 9-1-1 service.

(f) Change in character of service.

(1) If any change is planned or made by the utility in the type of service rendered by the utility that would adversely affect the efficiency or operation of the customer equipment connected to the util-

ity's network, the utility shall notify the affected customer at least 60 days in advance of the change or within a reasonable time as practicable.

(2) This paragraph applies only to local exchange companies that are dominant carriers, as defined in §26.5 of this title. Where change in service requires dominant carriers to adjust or replace standard equipment, these changes shall be made to permit use under such changed conditions, adjustment shall be made by the dominant carrier without charge to the customers, or in lieu of such adjustments or replacements, the dominant carrier may make cash or credit allowances based on the duration of the change and the degree of efficiency loss.

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SUBCHAPTER D. RECORDS, REPORTS, AND OTHER REQUIRED INFORMATION

16 TAC §§26.73, 26.79, 26.80, 26.85, 26.89

The amendments are adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (West 2007 and Supp. 2013) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, and the amendments to PURA made by Senate Bills 259, 512, 583, and 809 of the 83rd Legislature, Regular Session.

Cross Reference to Statutes: PURA §14.002 and the amendments to PURA made by Senate Bills 259, 512, 583, and 809 of the 83rd Legislature, Regular Session.

§26.79. *Equal Opportunity Reports.*

(a) This section does not apply to a deregulated company that holds a certificate of operating authority or to an exempt carrier under Public Utility Regulatory Act (PURA) §52.154.

(b) The term "minority group members," when used within this section, shall include only members of the following groups:

- (1) African-Americans;
- (2) American Indians;
- (3) Asian-Americans;
- (4) Hispanic-Americans and other Americans of Hispanic origin; and
- (5) women.

(c) Each utility that files any form with local, state or federal governmental agencies relating to equal employment opportunities for minority group members, (e.g., EEOC Form EEO-1, FCC Form 395, RUS Form 268, etc.) shall file copies of such completed form with the commission. If such form submitted by a multi-jurisdictional utility

does not indicate Texas-specific numbers, the utility shall also prepare, and file with the commission, a form indicating Texas-specific numbers, in the same format and based on the numbers contained in the form previously filed with local, state or federal governmental agencies. Each utility shall also file copies of any other forms required to be filed with local, state or federal governmental agencies which contain the same or similar information, such as personnel data identifying numbers and occupations of minority group members employed by the utility, and employment goals relating to them, if any.

(d) Any additional information relating to the matters described in this section may be submitted at the utility's option.

(e) Any utility filing with the commission any documents described in subsections (c) and (d) of this section shall file four copies of such documents with the commission's filing clerk under the project number assigned by the Public Utility Commission's Central Records Office for that year's filings. Utilities shall obtain the project number by contacting Central Records.

(f) A utility that files a report with local, state or federal governmental agencies and that is required by this section to file such report with the commission must file the report by December 30 of the year it is filed with the local, state or federal agencies.

(g) A utility that files a report pursuant to §26.85(f)(1) of this title (relating to Report of Workforce Diversity and Other Business Practices) satisfies the requirements of subsection (c) of this section.

§26.80. *Annual Report on Historically Underutilized Businesses.*

(a) This section does not apply to a deregulated company that holds a certificate of operating authority or to an exempt carrier under Public Utility Regulatory Act (PURA) §52.154.

(b) In this section, "historically underutilized business" has the same meaning as in Texas Government Code, §481.191, as it may be amended.

(c) Every utility shall report its use of historically underutilized businesses (HUBs) to the commission on a form approved by the commission. A utility may submit the report on paper, or on paper and on a diskette (in Lotus 1-2-3 (*utility name.wk*) or Microsoft Excel (*utility name.xls*) format).

(1) Each small local exchange company and telephone cooperative utility shall on or before December 30 of each year submit to the commission a comprehensive annual report detailing its use of HUBs for the four quarters ending on September 30 of the year the report is filed, using the Small Utilities HUB Report form.

(2) Every utility other than those specified in paragraph (1) of this subsection, shall on or before December 30 of each year submit to the commission a comprehensive annual report detailing its use of HUBs for the four prior quarters ending on September 30 of the year the report is filed, using the Large Utilities HUB Report form.

(3) Each utility wishing to report indirect HUB procurements or HUB procurements made by a contractor of the utility may use the Supplemental HUB report form.

(4) Each utility shall submit a text description of how it determined which of its vendors is a HUB.

(5) Each utility that has more than 1,000 customers in a state other than Texas, or that purchases more than 10% of its goods and services from vendors not located in Texas, shall separately report by total and category all utility purchases, all utility purchases from Texas vendors, and all utility purchases from Texas HUB vendors. A vendor is considered a Texas vendor if its physical location is situated within the boundaries of Texas.

(6) Each utility shall also file any other documents it believes appropriate to convey an accurate impression of its use of HUBs.

(d) This section may not be used to discriminate against any citizen on the basis of race, nationality, color, religion, sex, or marital status.

(e) This section does not create a new cause of action, either public or private.

§26.85. *Report of Workforce Diversity and Other Business Practices.*

(a) Purpose. This section establishes annual reporting requirements for telecommunications utilities to report its progress and efforts to improve workforce diversity and contracting opportunities for small and historically underutilized businesses from its five-year plan filed pursuant to the Public Utility Regulatory Act (PURA) §52.256(b).

(b) Application. This section applies to all telecommunications utilities, as defined in PURA §51.002(11), doing business in the State of Texas. This section does not apply to a deregulated company that holds a certificate of operating authority or to an exempt carrier under PURA §52.154.

(c) Terminology. In this section, "small business" and "historically underutilized business" have the meanings assigned by the Texas Government Code §481.191.

(d) Annual progress report of workforce and supplier contracting diversity. An "Annual Progress Report on Five-Year Plan to Enhance Supplier and Workforce Diversity" shall be filed annually with the commission. The report shall be filed on or before December 30 of each year for the four prior quarters ending on September 30 of the year the report is filed. A telecommunications utility that was not operational on January 1, 2000, and is required to file pursuant to PURA §52.256(b), shall file a plan in Project Number 21170 by December 30 of the year in which an annual report is due under this subsection.

(e) Filing requirements. Four copies of the Annual Progress Report on Five-Year Plan to Enhance Supplier and Workforce Diversity shall be filed with the commission's filing clerk under the project number assigned by the Public Utility Commission's Central Records Office for that year's filings. Telecommunications utilities shall obtain the project number by contacting Central Records. A copy of the report shall also be sent to the Governor, the Lieutenant Governor, the Speaker of the House of Representatives, and the African-American and Hispanic Caucus offices of the Texas Legislature.

(f) Contents of the report. The annual report filed with the commission pursuant to this section may be filed using the Workforce and Supplier Contracting Diversity form or an alternative format and shall contain at a minimum the following information:

(1) An illustration of the diversity of the telecommunications utility's workforce in the State of Texas at the time of the report. If the telecommunications utility is required to file an Equal Opportunity Report pursuant to §26.79 of this title (relating to Equal Opportunity Reports), a copy of that document may be attached to this report to satisfy the requirements of this paragraph.

(2) A description of the specific progress made under the workforce diversity plan filed pursuant to PURA §52.256(b), including:

(A) the specific initiatives, programs, and activities undertaken during the preceding year; and

(B) an assessment of the success of each of those initiatives, programs, and activities.

(3) An explanation of the telecommunications utility's level of contracting with small and historically underutilized businesses in the State of Texas.

(4) The extent to which the telecommunications utility has carried out its initiatives to facilitate opportunities for contracts or joint ventures with small and historically underutilized businesses.

(5) A description of the initiatives, programs, and activities the telecommunications utility will pursue during the next year to increase the diversity of its workforce and contracting opportunities for small and historically underutilized businesses in the State of Texas.

(g) This section may not be used to discriminate against any citizen on the basis of race, nationality, color, religion, sex, or marital status.

(h) This section does not create a new cause of action, either public or private.

(i) Waiver. A telecommunications utility that has less than sixteen employees in the State of Texas satisfies the requirements of this rule by completing subsection (f)(1) of this section.

§26.89. *Nondominant Carriers' Obligations Regarding Information on Rates and Services.*

(a) All nondominant carriers, including those holding a certificate of operating authority or a service provider certificate of operating authority, may, but are not required to file the information set forth in paragraphs (1) - (3) of this subsection. This information shall be updated and kept current at all times.

(1) A description of the type(s) of communications service provided;

(2) For each service listed in response to paragraph (1) of this subsection, the locations in the state (by city) in which service is originated and/or terminated. If service is provided statewide, either origination or termination, the carrier shall so state; and

(3) A tariff, schedule or list showing all recurring and non-recurring rates for each service provided.

(b) By June 30 of each year, each nondominant carrier that during the previous 12 months has not filed changes to the information filed pursuant to subsection (a) of this section shall file with the commission a letter informing the commission that no changes have occurred. An uncertificated nondominant carrier failing to file either this letter or the updates pursuant to subsection (a) of this section during the 12-month period ending June 30 may no longer be considered to be registered with the commission.

(c) All nondominant carriers shall comply with the registration requirements in §26.107 of this title (relating to Registration of Interexchange Carriers (IXCs), Prepaid Calling Services Companies (PPC), and Other Nondominant Telecommunications Carriers).

(d) A nondominant carrier:

(1) may, but is not required to maintain on file with the commission tariffs, price lists, or customer service agreements governing the terms of providing service;

(2) may cross-reference its federal tariff in its state tariff if its intrastate switched access rates are the same as its interstate switched access rate;

(3) may withdraw a tariff, price list, or customer service agreement not required to be filed or maintained with the commission under this section if it:

(A) files written notice of the withdrawal with the commission; and

(B) notifies its customers of the withdrawal and posts the current tariffs, price lists, or generic customer service agreements on its Internet website;

(4) is not required to obtain advance approval for a filing with the commission or a posting on the nondominant carrier's Internet website that adds, modifies, withdraws, or grandfathers a retail service or the service's rates, terms, or conditions;

(5) is not subject to any rule or regulatory practice that is not imposed on:

(A) a holder of a certificate of convenience and necessity serving the same area; or

(B) a deregulated company that:

(i) has 500,000 or more access lines in service at the time it becomes a deregulated company; or

(ii) serves an area also served by the nondominant telecommunications utility.

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SUBCHAPTER F. REGULATION OF TELECOMMUNICATIONS SERVICE

16 TAC §§26.123, 26.128, 26.133

The amendments are adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (West 2007 and Supp. 2013) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, and the amendments to PURA made by Senate Bills 259, 512, 583, and 809 of the 83rd Legislature, Regular Session.

Cross Reference to Statutes: PURA §14.002 and the amendments to PURA made by Senate Bills 259, 512, 583, and 809 of the 83rd Legislature, Regular Session.

§26.123. *Caller Identification Services.*

(a) Application. Unless the context clearly indicates otherwise, this section applies to all telecommunications utilities and providers of commercial mobile radio services otherwise herein referred to as "Providers of Caller ID." This section does not apply to a deregulated company holding a certificate of operating authority or to an exempt carrier under Public Utility Regulatory Act (PURA) §52.154.

(b) Caller identification services ("caller ID").

(1) Application. This subsection shall not be construed to apply to:

(A) an identification service that is used within the customer's own system, including a central office based PBX-type system;

(B) information that is used on a public agency's emergency telephone line or on a line that receives the primary emergency telephone number (9-1-1, or E9-1-1);

(C) information passed between telecommunications utilities, enhanced service providers, or other entities that is necessary for the set-up, processing, transmission, or billing of telecommunications or related services;

(D) information provided in compliance with applicable law or legal process; or

(E) an identification service provided in connection with a "700," "800," "888," "900," or similar access code telecommunications service.

(2) Caller ID blocking.

(A) Per-call blocking. All providers of caller ID shall provide per-call blocking at no charge to each telephone subscriber in the specific area in which caller ID is offered.

(B) Per-line blocking.

(i) A provider of caller ID may offer and provide per-line blocking to any customer at any time without any notification to the commission by the customer or the provider. The telecommunications provider is encouraged to notify the customer by mail of the effective date that per-line blocking will be instituted.

(ii) All providers of caller ID, with the exception of commercial mobile radio service providers, shall provide per-line blocking at no charge to a particular customer in the specific area in which caller ID is offered if the commission receives from the customer written certification that the customer has a compelling need for per-line blocking. Commercial mobile radio service providers shall provide per-line blocking to a particular customer in the specific area in which caller ID is offered if the commission receives from the customer written certification that the customer has a compelling need for per-line blocking.

(I) When a customer requests per-line blocking through the commission, the provider of caller ID shall notify the customer by mail of the effective date that per-line blocking will be instituted.

(II) The commission may prescribe and assess fees and assessments from providers of caller ID in an amount sufficient to cover the additional expenses incurred by the commission in implementing the customer certification provisions of this clause.

(III) Reports, records, and information received under this clause by the commission or by a provider of caller ID are confidential and may be used only for the purposes of administering this subparagraph.

(iii) A provider of caller ID may assess a service order charge relating to administrative costs to reinstate per-line blocking on a line, if the customer initially received the per-line block at no charge and then later asked the provider to remove it. The service charge authorized by this clause must be approved by the commission except where the provider of Caller ID is a commercial mobile radio service provider.

(3) Blocking failures and provider responsibilities. When a provider of caller ID service to a customer originating a call becomes

aware of a failure to block the delivery of calling party information from a line equipped with per-line blocking or per-call blocking (and the caller had attempted to block the call), it shall report such failure to the Caller ID Consumer Education Panel, the commission, and the affected customer if that customer did not report the failure. The provider shall report such failure to the commission by contacting the commission liaison to the panel. A reasonable effort shall be made to notify the affected customer within 24 hours after the provider becomes aware of such failure.

(4) Public policy statement. A provider of caller ID services shall inform all of its telephone subscribers of how the subscriber can unblock a line equipped with per-line blocking.

(5) Caller ID Consumer Education Panel. The Caller ID Consumer Education Panel shall consist of one person appointed by the Governor, one person appointed by the chair of the commission, after consultation with the Texas Council on Family Violence, and one person appointed by the Public Counsel of the Office of Public Utility Counsel. A commission staff member shall serve as liaison between the panel and the commission.

(A) Role of the Caller ID Consumer Education Panel. The panel shall meet at least quarterly to:

(i) review the level of effort and effectiveness of consumer education materials;

(ii) investigate whether educational materials are distributed in as effective a manner as marketing materials; and

(iii) develop recommendations for the commission related to the safe use of caller ID services, promotion and preservation of privacy for both the called and calling customers, and efforts to decrease the likelihood of harm resulting from caller ID services.

(B) Reporting. The panel shall file an annual report with the commission detailing its findings and recommendations pursuant to subparagraph (A) of this paragraph. The commission may implement the recommendations of the panel, as well as those of any interested party, to the extent consistent with the public interest.

(C) Evaluation of the panel. The commission shall evaluate the panel annually. The evaluation shall be conducted by an evaluation team appointed by the executive director of the commission. The commission liaison, members of the panel, and any other commission employee who works either directly or indirectly with the panel shall not be eligible to serve on the evaluation team. The evaluation team will report to the commission in open meeting each August of its findings regarding:

(i) the panel's work;

(ii) the panel's usefulness; and

(iii) if the panel is reimbursed for its costs by the state, the costs related to the panel's existence, including the cost of agency staff time spent in support of the panel's activities.

(D) Duration of the panel. The panel shall disband on September 1, 1999, unless reauthorized by statute.

(E) Filing of caller ID materials. A provider of caller ID services shall provide all existing caller ID materials used as well as all future materials (when they become available) as follows:

(i) One copy of all such material shall be mailed to each member of the panel.

(ii) Two copies of all such material shall be filed in Central Records under Project Number 14505.

(c) Usage of calling party information in other services. A dominant certificated telecommunications utility may not use calling party information to allow the called party to contact the calling party, when that calling party had indicated a desire for privacy in the initial call by blocking the delivery of his or her calling party information through the use of either a per-call or per-line blocking option, as those terms are defined in §26.5 of this title (relating to Definitions).

§26.128. Telephone Directories.

(a) Application. The provisions of this section shall apply to all telephone directory providers to the extent outlined in this section. This section does not apply to a deregulated company holding a certificate of operating authority or to an exempt carrier under Public Utility Regulatory Act (PURA) §52.154. For purposes of this section, the term "a private for-profit publisher" shall mean a publisher, other than a telecommunications utility or its affiliate, of a telephone directory that contains residential listings and that is distributed to the public at minimal or no cost.

(b) Telephone directory requirements for all providers. Any private for-profit publisher and any telecommunications utility or its affiliate that publishes a residential telephone directory shall comply with the following requirements:

(1) A telephone directory shall contain a listing of each toll-free and local telephone number for each of the following:

(A) state agencies;

(B) state public services; and

(C) elected state officials who represent all or part of the geographical area for which the directory contains listings.

(2) The directory shall include the information required in paragraph (1) of this subsection from the most current edition of the State of Texas Telephone Directory prepared and issued by the Department of Information Services and those modifications to the State of Texas Telephone Directory that are available upon request from the Department of Information Resources.

(3) All publishers shall contact the Department of Information Resources in writing to determine which issue of the State of Texas Telephone Directory is most current and to obtain the modifications referred to in paragraph (2) of this subsection. The Department of Information Resources shall respond within 30 days of receiving the request.

(4) The listings required by paragraph (1) of this subsection:

(A) may be located at the front of the directory or, if not located at the front of the directory, shall be referenced clearly on the inside page of the cover or on the first page following the cover before the main listing of residential and business telephone numbers;

(B) shall be labeled "GOVERNMENT OFFICES - STATE" in 24 point type;

(C) shall be bordered or shaded in such a way (on the three unbound sides with a border) that will distinguish the state listings from the other listings;

(D) shall be included in the directory at no cost to the agency or official;

(E) shall be in compliance with the categorization developed by the Records Management Interagency Coordinating Council. The categorization shall be available upon request from the Department of Information Resources. The listings shall be arranged in two ways:

and (i) alphabetically by subject matter of state agencies;

(ii) alphabetically by agency and public service name;

(F) shall include the telephone number for state government information: (512) 463-4630.

(c) Private for-profit publisher. Any private for-profit publisher that publishes a residential telephone directory shall include in the directory a prominently displayed toll-free number and Internet mail address, established by the commission, through which a person may order a form to request to be placed on the Texas no-call list in order to avoid unwanted telemarketing calls.

(d) Additional requirement for telecommunications utilities or affiliates that publish telephone directories.

(1) A telecommunications utility or an affiliate of that utility that publishes a business telephone directory that is distributed to the public shall publish a listing of each toll-free and local telephone number of each elected official who represents all or part of the geographical area for which the directory contains listings.

(2) A telecommunications utility or an affiliate of that utility that publishes and causes to be distributed to the public a residential or business telephone directory shall prominently list in the directory the following information: "The Specialized Telecommunications Assistance Program (STAP) provides financial assistance to help Texas residents with disabilities purchase basic specialized equipment or services needed to access the telephone network. For more information, contact the Texas Department of Assistive and Rehabilitative Services, the Office for Deaf and Hard of Hearing Services at (512) 407-3250 (Voice) or (512) 407-3251 (TTY) or www.dars.state.tx.us/dhhs/. This program is open to all individuals who are residents of Texas and have a disability."

(e) Requirements for telecommunications utilities found to be dominant. This subsection applies to any telecommunications utility found to be dominant as to local exchange telephone service or its affiliate that publishes a directory on behalf of such telecommunications utility.

(1) Annual publication. Telephone directories shall be published annually. Except for customers who request that information be unlisted, directories shall list the names, addresses, and telephone numbers of all customers receiving local phone service, including customers of other certificated telecommunications utilities (CTUs) in the geographic area covered by that directory. Numbers of pay telephones need not be listed.

(2) Distribution. Upon issuance, a copy of each directory shall be distributed at no charge for each customer access line served by the telecommunications utility in the geographic area covered by that directory and, if requested, one extra copy per customer access line shall be provided at no charge. Notwithstanding any other law, a telecommunications provider or telecommunications utility may publish on its website a telephone directory or directory listing instead of providing for general distribution to the public of printed directories or listings. A provider or utility that publishes a telephone directory or directory listing electronically shall provide a print or digital copy of the directory or listing to a customer on request. If a provider or utility chooses to publish its telephone directory or directory listings electronically, it shall notify its customers that the first print or digital copy requested by a customer in each calendar year will be provided at no charge to the customer. A printed or digital copy of each directory shall be furnished to the commission. A telecommunications util-

ity shall also distribute copies of directories pursuant to any agreement reached with another CTU.

(3) Front cover requirements. The name of the telecommunications utility, an indication of the area included in the directory, and the month and the year of issue shall appear on the front cover. Information pertaining to emergency calls such as for the police and fire departments shall appear conspicuously in the front part of the directory pages.

(4) Required instructions. The directory shall contain instructions concerning:

(A) placing local and long distance calls on the network of the telecommunications utility for which the directory is issued;

(B) calls to the telecommunications utility's repair and directory assistance services, and locations; and

(C) telephone numbers of the business offices of the telecommunications utility as may be appropriate to the area served by the directory.

(5) Sample long distance rates. It shall also contain a section setting out sample long distance rates within the long distance service area, if any, on the network of the telecommunications utility for which the directory is issued, applicable at the time the directory is compiled for publication, with a clear statement that the published rates are effective as of the date of compilation.

(6) Customer addresses. At the customer's option the directory shall list either the customer's street address, a post office box number, or no address. A charge can be imposed upon those customers who desire more than one address listing.

(f) References to other sections relating to directory notification. The requirements of this section are in addition to the requirements referenced in paragraphs (1) - (4) of this subsection, or any other applicable section in this title. The applicability of each of the sections referenced in paragraphs (1) - (4) of this subsection is unaffected by the inclusion of the reference in this subsection.

(1) Section 26.29 of this title (relating to Prepaid Local Telephone Service (PLTS)) concerning consumer education;

(2) Section 26.31 of this title (relating to Disclosures to Applicants and Customers) concerning information to customers;

(3) Section 26.121 of this title (relating to Privacy Issues) concerning notice of number delivery over 800, 888, and other toll-free prefixes and 900 services;

(4) Section 26.130 of this title (relating to Selection of Telecommunications Utilities) concerning notice of customer rights.

(g) Additional requirements. The following requirements apply to telecommunications utilities found to be dominant as to local exchange telephone service or its affiliate that publishes a directory on behalf of such telecommunications utility.

(1) Directory assistance. Each telecommunications utility shall list each customer with its directory assistance within 72 hours after service connection (except those numbers excluded from listing in subsection (e)(1) of this section) in order that the directory assistance operators can provide the requested telephone numbers based on customer names and addresses.

(2) Non-assigned numbers. All non-assigned telephone numbers in central offices serving more than 300 customer access lines shall be intercepted unless otherwise approved by the commission.

(3) Disconnected numbers. Disconnected residence telephone numbers shall not be reassigned for 30 days and disconnected business numbers shall not be reassigned, unless requested by the customer, for 30 days or the life of the directory, whichever is longer, unless no other numbers are available to provide service to new customers.

(4) Incorrect listings. If a customer's number is incorrectly listed in the directory and if the incorrect number is a working number and if the customer to whom the incorrect number is assigned requests, the number of the customer to whom the incorrect number is assigned shall be changed at no charge. If the incorrect number is not a working number and is a usable number, the customer's number shall be changed to the listed number at no charge if requested.

(5) Changing telephone numbers to a group of customers. When additions or changes in plant or changes to any other CTU's operations necessitate changing telephone numbers to a group of customers, at least 30 days' written notice shall be given to all customers so affected even though the addition or changes may be coincident with a directory issue.

§26.133. Business and Marketing Code of Conduct for Certificated Telecommunications Utilities (CTUs).

(a) Purpose. The purpose of this section is to establish a code of conduct in order to implement Public Utility Regulatory Act (PURA) §51.001 and §64.001 relating to fair business practices and safeguards against fraudulent, unfair, misleading, deceptive, or anticompetitive practices in order to ensure quality service and a competitive market.

(b) Application. This section applies to all certificated telecommunications utilities (CTUs), as defined in §26.5 of this title (relating to Definitions), and CTU employees. This section also applies to all authorized agents of the CTU. This section does not apply to a deregulated company holding a certificate of operating authority or to an exempt carrier under Public Utility Regulatory Act (PURA) §52.154.

(c) Communications.

(1) A CTU employee or authorized agent shall conduct communications with competitors and competitors' end-user customers with the same degree of professionalism, courtesy, and efficiency as that performed on behalf of their employer and end-user customers.

(2) A CTU employee or authorized agent, while engaged in the installation of equipment or the rendering of services (including the processing of an order for the installation, repair or restoration of service, or engaged in the actual repair or restoration of service) on behalf of a competitor shall not make statements regarding the service of any competitor and shall not promote any of the CTU's services to the competitor's end-user customers.

(d) Corporate advertising and marketing.

(1) A CTU, CTU employee or authorized agent shall not engage in false, misleading or deceptive practices, advertising or marketing with respect to the offering of any telecommunications service.

(2) A CTU, CTU employee or authorized agent shall not falsely state or falsely imply that the services provided by the CTU on behalf of a competitor are superior when purchased directly from the CTU.

(3) A CTU, CTU employee or authorized agent shall not falsely state or falsely imply that the services offered by a competitor cannot be reliably rendered, or that the quality of service provided by a competitor is of a substandard nature.

(4) A CTU, CTU employee or authorized agent shall not falsely state nor falsely imply to any end-user customer that the continuation of any telecommunications service provided by the CTU is contingent upon ordering any other telecommunications service offered by the CTU. This section is not intended to prohibit a CTU from offering, or enforcing the terms of, any bundled or packaged service or any other form of pricing flexibility permitted by PURA and commission rules.

(e) Information sharing and disclosure.

(1) Pursuant to the federal Telecommunications Act §222(a), each CTU has a duty to protect the confidentiality of proprietary information of, and relating to, other CTUs.

(2) Pursuant to the federal Telecommunications Act §222(b), each CTU that receives or obtains proprietary information from another CTU for purposes of providing any telecommunications service shall use such information only for such purpose, and shall not use such information for its own marketing efforts or any other unauthorized purpose.

(f) References to other Chapter 26 substantive rules. The following commission rules also affect the conduct of CTU employees and authorized agents. All CTU employees and agents must be trained to comply with the specific substance of these rules which affect their employment responsibilities. Copies of specific commission rules shall be made available by the CTU to any employee or agent upon their request. The applicability of each of the following sections is unaffected by the reference in this section and does not relieve any CTU of its responsibility to abide by other applicable commission rules.

(1) Section 26.21 of this title (relating to General Provisions of Customer Service and Protection Rules);

(2) Section 26.31 of this title (relating to Disclosures to Applicants and Customers);

(3) Section 26.32 of this title (relating to Protection Against Unauthorized Billing Charges ("Cramming"));

(4) Section 26.37 of this title (relating to Texas No-Call List); and

(5) Section 26.130 of this title (relating to Selection of Telecommunications Utilities).

(g) Adoption and dissemination.

(1) Every CTU or authorized agent shall formally adopt and implement all applicable provisions of this section as company policy, or modify existing company policy as needed to incorporate all applicable provisions, within 90 days of the effective date of this section. A CTU shall provide a copy of its internal code of conduct required by this section to the commission upon request.

(2) Every CTU or authorized agent shall disseminate the applicable provisions of this section to all existing and new employees and agents, and take appropriate actions to both train employees and enforce compliance with this section on an ongoing basis. Every CTU shall document every employee's and agent's receipt and acknowledgement of its internal policies required by this section, and every CTU shall make such documentation available to the commission upon request.

(h) Investigation and enforcement.

(1) Administrative penalties. If the commission finds that a CTU has violated any provision of this section, the commission shall order the utility to take corrective action, as necessary, and the utility may be subject to administrative penalties and other enforcement actions pursuant to PURA, Chapter 15.

(2) Certificate revocation. If the commission finds that a CTU is repeatedly in violation of this section, and if consistent with the public interest, the commission may suspend, restrict, or revoke the registration or certificate of the CTU.

(3) Coordination with the Office of the Attorney General. The commission shall coordinate its enforcement efforts regarding the prosecution of fraudulent, misleading, deceptive, and anticompetitive business practices with the Office of the Attorney General in order to ensure consistent treatment of specific alleged violations.

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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For further information, please call: (512) 936-7223



SUBCHAPTER G. ADVANCED SERVICES

16 TAC §26.142, §26.143

The amendments are adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (West 2007 and Supp. 2013) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, and the amendments to PURA made by Senate Bills 259, 512, 583, and 809 of the 83rd Legislature, Regular Session.

Cross Reference to Statutes: PURA §14.002 and the amendments to PURA made by Senate Bills 259, 512, 583, and 809 of the 83rd Legislature, Regular Session.

§26.142. *Integrated Services Digital Network (ISDN).*

(a) Purpose. The commission finds that Integrated Services Digital Network (ISDN) is an alternative to "plain old telephone service." At this time, ISDN is not a replacement for "plain old telephone service," but rather ISDN provides the public switched telephone network with end-to-end digital connectivity. As such, ISDN should be made available to customers at a reasonable price, should be as accessible as possible to customers who want ISDN, should meet minimum standards of quality and consistency, and should be provided in such a manner that permits the dominant certificated telecommunications utility (DCTU) a reasonable opportunity to earn a reasonable return on invested capital. The provisions of this section are intended to establish the minimum criteria for the provision of ISDN.

(b) Application.

(1) This section applies to DCTUs.

(2) All DCTUs providing ISDN must do so in accordance with the requirements of this section.

(3) An application to make ISDN available under this section shall comply with the requirements of §26.121 of this title (relating to Privacy Issues) and §26.123 of this title (relating to Caller Identification Services).

(c) Availability of ISDN.

(1) Each DCTU shall make ISDN available to all customers in exchange areas having 50,000 or more access lines as of February 22, 1995. For purposes of this section, making ISDN available means providing ISDN to a customer within 30 days of that customer's request. Nothing in this section shall be construed as requiring a DCTU to provide ISDN to any customer prior to that customer's request for ISDN. The requirements of this paragraph shall not be met by making ISDN available to the customers of these exchange areas using a foreign exchange (FX) arrangement.

(2) Each DCTU subject to the requirements of paragraph (1) of this subsection shall make ISDN available to all customers in exchange areas having less than 50,000 access lines as of February 22, 1995. The requirements of this paragraph may be met by making ISDN available to the customers of these exchange areas using a FX arrangement, if that is the most economically efficient means for the DCTU to make ISDN available.

(3) It is the goal of the commission that ISDN should be made available to customers in all exchange areas not included in paragraphs (1) and (2) of this subsection. To this end, all telecommunications providers are encouraged to work together to make ISDN available to the customers of the DCTUs that do not have the facilities with which to make ISDN available to their customers. In the exchange areas not included in paragraph (1) of this subsection, the commission recognizes that ISDN may be made available using a FX arrangement, if that is the most economically efficient means for the DCTU to make ISDN available.

(d) ISDN standards and services.

(1) ISDN standards.

(A) At a minimum, all ISDN shall comply with National ISDN-1 and National ISDN-2 Standards as promulgated by Bellcore as of February 22, 1995.

(B) All ISDN shall be capable of providing end-to-end digital connectivity.

(2) ISDN services. At a minimum, the DCTU shall make available the ISDN services listed in the National ISDN-1 and National ISDN-2 Standards promulgated by Bellcore as of February 22, 1995.

(3) Existing customers. Existing customers as of February 22, 1995 may continue to receive ISDN irrespective of whether that ISDN complies with this subsection. Those customers may continue to receive such ISDN and shall be required to receive ISDN under the requirements of this subsection only if there is at least a 30 day customer-caused cessation of the ISDN service provided by the DCTU.

(4) Waiver provision. A DCTU may request, and the presiding officer may grant for good cause, modification or waiver of paragraphs (1) and/or (2) of this subsection. Such a request may be reviewed administratively. Any request for modification or waiver of the requirements of paragraphs (1) and/or (2) of this subsection shall include a complete statement of the DCTU's arguments and factual support for that request.

(e) Costing and pricing of ISDN.

(1) Costing of ISDN. The cost standard for ISDN shall be the long run incremental cost (LRIC) of providing ISDN.

(2) Pricing of ISDN.

(A) Rates and terms.

(i) The rates and terms of ISDN, including basic rate interface (BRI), primary rate interface (PRI) and other ISDN services, shall be just and reasonable and shall not be unreasonably preferential,

prejudicial, or discriminatory, subsidized directly or indirectly by regulated monopoly services, or predatory or anticompetitive.

(ii) The annual revenues for ISDN, including BRI, PRI, and other ISDN services, shall be sufficient to recover the annual long run incremental cost and a contribution for joint and/or common costs, in the second year after it is first offered under the tariffs approved pursuant to this section.

(B) Foreign serving office (FSO) rate. Where the DCTU makes ISDN available by designating a foreign serving office (FSO) arrangement, the DCTU shall not charge an FSO rate.

(C) Foreign exchange (FX) rate.

(i) Except as provided in clause (ii) of this subparagraph, where the DCTU is allowed to make ISDN available by designating a FX arrangement, the DCTU may charge an FX rate. A new FX rate shall be developed specifically for ISDN and this rate shall not be usage based. If the FX rate is priced at not less than 100% of LRIC and at not more than 105% of LRIC, there shall be a rebuttable presumption that the amount of joint and/or common costs recovered is appropriate.

(ii) Where the DCTU can make ISDN available to a customer by designating an FSO arrangement, the DCTU shall not charge a FX rate.

(D) Pricing of BRI. To further the commission's policy that ISDN be made available at a reasonable price and that ISDN be as accessible as possible to those customers who want ISDN, BRI should be priced to recover its LRIC plus a minimal amount of joint and/or common costs. If BRI is priced at not less than 100% of LRIC and at not more than 105% of LRIC, there shall be a rebuttable presumption that the amount of joint and/or common costs recovered is appropriate.

(E) Existing customers. Existing customers as of February 22, 1995 shall be subject to the rates set in compliance with this subsection, notwithstanding their choice to continue receiving ISDN under subsection (d) of this section.

(3) Pricing of ISDN for small LECs. After a Class A DCTU is in compliance with this section, a small local exchange carrier (SLEC) as defined in §26.5 of this title (relating to Definitions) may price ISDN services at plus or minus 25% of the rates approved by the commission for that Class A DCTU providing the service within the State of Texas or at the rates for ISDN services approved by the commission for a similar SLEC. For the purpose of this section a similar SLEC is defined as a SLEC having a total number of access lines within 5,000 access lines of the applying SLEC.

(f) Requirements for notice and contents of application in compliance with this section.

(1) Notice of application. The presiding officer may require notice to the public as required by the commission's Procedural Rules, Chapter 22, Subchapter D of this title, and shall require direct notice to all existing ISDN customers. Unless otherwise required by the presiding officer or by law, the notice shall include at a minimum a description of the service, the proposed rates and other terms of the service, the types of customers likely to be affected if the application is approved, the proposed effective date for the application, and the following language: "Persons who wish to comment on this application should notify the commission by (specified date, ten days before the proposed effective date). Requests for further information should be mailed to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or you may call the Public Utility Commission's Office of Customer Protection at (512) 936-7120 or toll free at

(888) 782-8477. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136."

(2) Contents of application for each DCTU not electing the SLEC pricing provisions of subsection (e)(3) of this section. A DCTU that makes ISDN available shall file with the commission an application complying with the requirements of this section. In addition to copies required by other commission rules, one copy of the application shall be delivered to the Office of Regulatory Affairs and one copy shall be delivered to the Office of Public Utility Counsel. The application shall contain the following:

(A) the proposed tariff sheets to implement the requirements of subsections (c), (d), and (e) of this section as required by subsection (g) of this section;

(B) a statement by the DCTU describing how it intends to comply with this section, including how it intends to comply with subsections (c), (d), and (e) of this section as required by subsection (g) of this section;

(C) a description of the proposed service(s) and the rates, terms, and conditions under which the service(s) are proposed to be offered and an explanation of how the proposed rates and terms of the service(s) are just and reasonable and are not unreasonably preferential, prejudicial, or discriminatory, subsidized directly or indirectly by regulated monopoly services, or predatory or anticompetitive;

(D) a statement by the DCTU of whether the application contains a rate change;

(E) the proposed effective date of the service;

(F) a statement detailing the method and content of the notice, if any, the utility has provided or intends to provide to the public regarding the application and a brief statement explaining why the DCTU's notice proposal is reasonable and that the DCTU's notice proposal complies with applicable law;

(G) a copy of the text of the notice, if any;

(H) a long run incremental cost study (LRIC) supporting the proposed rates;

(I) projections of revenues, demand, and costs demonstrating that in the second year after the ISDN service is first offered under the tariffs approved pursuant to this section, the proposed rates will generate sufficient annual revenues to recover the annual long run incremental costs of providing the service, as well as a contribution for joint and/or common costs;

(J) the information required by §26.121 and §26.123 of this title;

(K) a statement specifying the exchanges in which the DCTU proposes to offer ISDN, the exchanges in which the DCTU proposes to offer ISDN using an FSO arrangement, the exchanges in which the DCTU proposes to offer ISDN using an FX arrangement, and the exchanges in which the DCTU does not propose to offer ISDN; and

(L) any other information which the DCTU wants considered in connection with the commission's review of its application.

(3) Contents of application for a SLEC. A SLEC that makes ISDN available and elects to price ISDN services under subsection (e)(3) of this section shall file with the commission an application complying with the requirements of this section. In addition to copies required by other commission rules, one copy of the application shall be delivered to the Office of Regulatory Affairs and one copy shall be delivered to the Office of Public Utility Counsel. The application shall contain the following:

(A) contents of application required by paragraph (2)(A), (B), (D), (E), (F), (G), (J), (K), and (L) of this subsection;

(B) a description of the proposed service(s) and the rates, terms, and conditions under which the service(s) are proposed to be offered and an affidavit from the general manager or an officer of the SLEC approving the proposed ISDN service;

(C) a notarized affidavit from a representative of the SLEC:

(i) verifying the number of access lines, including the access lines of affiliates of such SLEC providing local exchange telephone service within the state, the SLEC has in service in the State of Texas;

(ii) verifying that the rates have been determined by the SLEC independently;

(iii) including a statement affirming that the rates are just and reasonable and are not unreasonably preferential, prejudicial, or discriminatory; subsidized directly or indirectly by regulated monopoly services; or predatory, or anticompetitive; and

(D) an explanation demonstrating that the rates for the proposed ISDN service are within the guidelines provided by subsection (e)(3) of this section; and

(E) projections of the amount of revenues that will be generated by the ISDN service.

(g) Timing of and requirements for each DCTU's compliance with this section.

(1) Each DCTU that is required to make ISDN available under subsection (c)(1) and (2) of this section shall file with the commission an application as described in subsection (f) of this section. Pursuant to subsection (f)(2)(A) and (B) of this section, the DCTU shall show its compliance with the requirements of:

(A) subsection (c)(1) and (2) of this section;

(B) subsections (d)(1)(A) and (B), (d)(2) and (d)(3) of this section or request a waiver pursuant to subsection (d)(4) of this section and provide sufficient justification for the good cause exception; and

(C) subsection (e)(2)(B), (C), and (D) of this section.

(2) Each DCTU having ISDN tariffs in effect as of February 22, 1995 and that is not subject to paragraph (1) of this subsection shall file with the commission an application as described in subsection (f) of this section. Pursuant to subsection (f)(2)(A) and (B) of this section, the DCTU shall show its compliance with the requirements of:

(A) subsections (d)(1)(A) and (B), (d)(2) and (d)(3) of this section or request a waiver pursuant to subsection (d)(4) of this section and provide sufficient justification for the good cause exception; and

(B) subsection (e)(2)(B), (C), and (D) of this section.

(3) Rates proposed for services pursuant to paragraphs (1)(B) and (2)(A) of this subsection that are not tariffed as of the effective date of this section and rates proposed under paragraphs (1)(C) and (2)(B) of this subsection shall comply with the requirements of subsection (e)(1), (2)(A) and (E) of this section.

(4) Each DCTU offering ISDN after the effective date of this section shall file with the commission an application as described in subsection (f) of this section. Pursuant to subsection (f)(2)(A) and (B) of this section the DCTU shall show its compliance with the requirements of:

(A) subsections (d)(1)(A) and (B) and (d)(2) of this section or request a waiver pursuant to subsection (d)(4) of this section and provide sufficient justification for the good cause exception; and

(B) subsection (e)(1) and (2) of this section for each DCTU not electing the SLEC pricing provisions of subsection (e)(3) of this section or subsection (e)(3) of this section for a SLEC.

(h) Commission processing of application.

(1) Administrative review. An application considered under this section may be reviewed administratively unless the DCTU requests the application be docketed or the presiding officer, for good cause, determines at any point during the review that the application should be docketed.

(A) The operation of the proposed rate schedule may be suspended for 35 days after the effective date of the application. The effective date shall be no earlier than 30 days after the filing date of the application or 30 days after public notice is completed, whichever is later.

(B) The application shall be examined for sufficiency. If the presiding officer concludes that material deficiencies exist in the application, the applicant shall be notified within ten working days of the filing date of the specific deficiency in its application, and the earliest possible effective date of the application shall be no less than 30 days after the filing of a sufficient application with substantially complete information as required by the presiding officer. Thereafter, any time deadlines shall be determined from the 30th day after the filing of the sufficient application and information or from the effective date if the presiding officer extends that date.

(C) While the application is being administratively reviewed, the staff of the Office of Regulatory Affairs and the staff of the Office of Public Utility Counsel may submit requests for information to the DCTU. Six copies of all answers to such requests for information shall be filed with Central Records and one copy shall be provided the Office of Public Utility Counsel within ten days after receipt of the request by the DCTU.

(D) No later than 20 days after the filing date of the sufficient application, interested persons may provide to the staff of the Office of Regulatory Affairs written comments or recommendations concerning the application. The staff of the Office of Regulatory Affairs shall and the Office of Public Utility Counsel may file with the presiding officer written comments or recommendations concerning the application.

(E) No later than 35 days after the effective date of the application, the presiding officer shall issue an order approving, denying, or docketing the DCTU's application.

(2) Approval or denial of application. The application shall be approved by the presiding officer if the proposed ISDN offered by the DCTU complies with each requirement of this section. If, based on the administrative review, the presiding officer determines that one or more of the requirements not waived have not been met, the presiding officer shall docket the application.

(3) Standards for docketing. The application may be docketed pursuant to Procedural Rule §22.33(b) of this title (relating to Tariff Filings).

(4) Review of the application after docketing. If the application is docketed, the operation of the proposed rate schedule shall be automatically suspended to a date 120 days after the applicant has filed all of its direct testimony and exhibits, or 155 days after the effective date, whichever is later. Affected persons may move to intervene in the docket, and the presiding officer may schedule a hearing on the

merits. The application shall be processed in accordance with the commission's rules applicable to docketed cases.

(5) Interim rates. For good cause, interim rates may be approved after docketing. If the service requires substantial initial investment by customers before they may receive the service, interim rates shall be approved only if the DCTU shows, in addition to good cause, that it will notify each customer prior to purchasing the service that the customer's investment may be at risk due to the interim nature of the service.

(i) Commission processing of waivers. Any request for modification or waiver of the requirements of this section shall include a complete statement of the DCTU's arguments and factual support for that request. The presiding officer shall rule on the request expeditiously.

(j) Limitation on filings and postings. Notwithstanding any provision in this section to the contrary, the commission may not require a transitioning company to obtain advance approval for a filing with the commission or a posting on the company's Internet website that adds, modifies, withdraws, or grandfathers services under this section.

§26.143. Provision of Advanced Services in Rural Areas.

(a) Purpose. The purpose of this section is to implement Public Utility Regulatory Act (PURA) §55.014 regarding the provision of advanced services to facilitate connection of end users to the Internet. This section is also intended to promote the policy, pursuant to PURA §51.001(g), that customers in all regions of this state have access to advanced telecommunications and information services.

(b) Application. This section applies to a company electing under PURA Chapter 58 or a company that holds a certificate of operating authority (COA) or service provider certificate of operating authority (SPCOA). This section does not apply to a deregulated company holding a certificate of operating authority or to an exempt carrier under PURA §52.154.

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

(1) Advanced services provider--Any entity that offers or deploys advanced services, such as a holder of a certificate of convenience and necessity, a COA, a SPCOA, a cable company, a fixed wireless company, a satellite company, or any other provider of an advanced service.

(2) Advanced telecommunications services--Any retail telecommunications services that, regardless of transmission medium or technology, are capable of originating and receiving data transmissions for the purpose of accessing the Internet with a speed of at least 200 kilobits per second in the last mile in one direction and with a speed of at least 128 kilobits a second in the last mile in the opposite direction.

(3) Advanced services--Any retail services that, regardless of transmission medium or technology, are capable of originating and receiving data transmissions for the purpose of accessing the Internet with a speed of at least 200 kilobits per second in the last mile in one direction and with a speed of at least 128 kilobits a second in the last mile in the opposite direction. An advanced service includes any advanced telecommunications service.

(4) Company--A telecommunications utility electing under PURA Chapter 58 or an entity that holds a COA or a SPCOA that provides advanced telecommunications services in urban areas of this

state and provides local exchange telephone services in a rural area seeking provision of advanced services.

(5) Reasonably comparable or similar services--Any services that meet the definition of an advanced service. Each advanced service is substitutable for any other advanced service.

(6) Rural area or rural service area--Any community located in a county not included within any Metropolitan Statistical Area (MSA) boundary, as defined by the United States Office of Management and Budget, and any community within an MSA with a population of 20,000 or fewer not adjacent to the primary MSA city.

(7) Urban area or urban service area--A municipality in this state with a population of more than 190,000.

(d) Provision of advanced services.

(1) Requirement to provide an advanced service.

(A) A company that provides advanced telecommunications services within the company's urban service areas shall, on a Bona Fide Retail Request for service, provide in rural areas served by the company advanced services that are reasonably comparable to the advanced telecommunications services provided in urban areas. The company shall provide such advanced services to the retail customer(s) seeking service through a Bona Fide Retail Request determined by the commission under this section:

(i) at reasonably comparable prices, terms, and conditions to the prices, terms, and conditions for similar advanced telecommunications services provided by the company in proximate urban areas; and

(ii) within 15 months after notice of the Bona Fide Retail Request for those services is published in the *Texas Register*.

(B) A company that provides advanced services in a rural area pursuant to a Bona Fide Retail Request shall provide advanced services to any subsequent retail customer(s) located within 14,000 26-gauge cable feet or its equivalent of the same central office as determined for the original Bona Fide Retail Request under this section:

(i) at reasonably comparable prices, terms, and conditions to the prices, terms and conditions for similar advanced services provided by the company in proximate urban areas; and

(ii) within a reasonably comparable period of time as the period of time a company provides advanced telecommunications services to the company's subsequent retail advanced services customers located in proximate urban areas.

(C) A company meets the requirement of providing a reasonably comparable advanced service if the company has provided the requested or a reasonably comparable advanced service in accordance with this section either:

(i) directly; or

(ii) through a business arrangement with an advanced services provider.

(D) A company shall not be required to provide advanced services in a rural area when an advanced services provider is already providing advanced services in the rural area seeking an advanced service at the time of the Bona Fide Retail Request or within 15 months after notice of the Bona Fide Retail Request is published in the *Texas Register*. When determining if another provider is already providing an advanced service in a rural area, the commission shall, with information available to the public, consider:

(i) whether an advanced services provider is actively marketing an advanced service in the rural area;

(ii) whether an advanced services provider is offering, directly or indirectly, installation and repair services for facilities and equipment necessary for the provision of the advanced service;

(iii) whether customers in the rural area are able to receive installation and repair services necessary for facilities and equipment;

(iv) whether the price of installation and repair services are reasonably comparable to prices in proximate urban areas; and

(v) whether an advanced services provider or distributor is located within or near the rural area.

(E) The absence of an Internet service provider is a factor to be considered, but necessarily an exception, when requiring a company to provide advanced services in a rural area.

(F) This section may not be construed to require a company to:

(i) begin providing services in a rural area in which the company does not provide local exchange telephone service;

(ii) provide advanced services in a rural area of this state unless the company provides advanced telecommunications services in urban areas of this state; or

(iii) provide a specific advanced service or technology in a rural area.

(2) Reasonably comparable price, terms, and conditions. Advanced services provided by a company to a rural area pursuant to paragraph (1) of this subsection must be provided at prices, terms, and conditions that are reasonably comparable to the prices, terms, and conditions for similar advanced telecommunications services provided by the company in proximate urban areas.

(A) Reasonably comparable prices.

(i) If a monthly retail price for an advanced service is within 140% of the monthly retail price of the advanced telecommunications service offered in the same company's proximate urban service area, there shall be a rebuttable presumption that the price is reasonably comparable. A promotional rate for an advanced telecommunications service shall not be considered a monthly retail price if it is offered for less than four months.

(ii) When considering whether a price is reasonably comparable, the commission shall consider the distance, terrain, and features of the rural area seeking the advanced service.

(iii) A company may rebut the 140% presumption by showing that a higher price is necessary to recover its reasonable costs in providing the advanced service.

(iv) Any interested person may rebut the 140% presumption by showing that a lower price will allow a company to recover its reasonable costs in providing the advanced service.

(v) Any company or interested person seeking to rebut the 140% presumption by showing that a higher or lower price is warranted must do so during the Commission Selection Proceeding under subsection (f)(4) of this section. Any dispute regarding a company's reasonably comparable price must be resolved during the Commission Selection Proceeding under subsection (f)(4) of this section.

(B) Reasonably comparable terms and conditions.

(i) Reasonably comparable terms and conditions are those terms and conditions applicable to the provision of advanced services in a rural area that are similar to the terms and conditions for advanced telecommunications services provided by the same company in proximate urban areas.

(ii) A company may require a term commitment for all persons seeking advanced services under a Bona Fide Retail Request. When considering whether a term commitment is reasonably comparable, the commission shall consider the distance, terrain, and features of the rural area seeking the advanced service.

(e) Requesting competitive response for provision of advanced services. A person(s) in a rural area seeking provision of an advanced service shall first submit a request for a competitive response for provision of those services. The request need not conform to the requirements of a Bona Fide Retail Request unless the requesting person(s) intends to seek provision of an advanced service under the Bona Fide Retail Request process in subsection (f) of this section.

(1) Requesting advanced services.

(A) Any person(s) in a rural area seeking the provision of advanced services shall submit a written request to the commission for posting on the commission website.

(B) The written request must include the name, address, and telephone number of a contact person.

(C) Within five working days after receipt, the commission shall post the request for advanced services on the commission's website.

(D) The commission shall post on the commission website:

(i) the name, address, and telephone number of the contact person;

(ii) the number of lines requested;

(iii) the number of customers requesting service;

(iv) the location of the rural area seeking the advanced service; and

(v) any other information the commission deems relevant.

(2) Competitive response.

(A) After posting on the website, any company or advanced service provider may submit to the contact person a proposal to provide advanced services to the person(s) seeking advanced services.

(B) Proposals must be submitted to the contact person within 50 days after the request was posted and provide for deployment of the advanced service within 15 months after the request was posted by the commission.

(C) The person(s) seeking advanced services may negotiate with and select a provider based upon all of the proposals received.

(D) If no advanced services provider has committed to provide advanced services to the person(s) submitting a request within 60 days after the request was posted by the commission, the contact person shall notify the commission. Upon notification, the contact person may ask that the commission establish a proceeding to determine that the request is a Bona Fide Retail Request.

(f) Bona Fide Retail Request process.

(1) Commission proceeding to determine a Bona Fide Retail Request.

(A) Upon request under subsection (e)(2)(D) of this section, the commission shall determine whether a request is a Bona Fide Retail Request. This request may be processed administratively.

(B) Any interested person may present written comments or objections, setting forth the basis of any facts in dispute, regarding whether the request is a Bona Fide Retail Request under this section.

(2) Bona Fide Retail Request. A Bona Fide Retail Request must:

(A) include a written request for at least 150 lines for service within 14,000 26-gauge cable feet or its equivalent of the same central office in a rural area;

(B) contain the name, address, telephone number, and signature of the retail customer(s) seeking service, the advanced service(s) requested, and the date of the request;

(C) contain the name, address, and telephone number of a contact person;

(D) state whether an advanced services provider is already providing, is contracted to provide, or is willing to provide advanced services in the rural area seeking the advanced service; and

(E) state whether an Internet service provider is providing or commits to provide functional Internet connectivity in the rural area seeking the advanced service.

(3) Notice of Bona Fide Retail Request. After determination that a request is a Bona Fide Retail Request, the commission shall:

(A) notify electronically or by mail all companies electing under PURA Chapter 58 and all COA and SPCOA holders of the Bona Fide Retail Request;

(B) post notice of the Bona Fide Retail Request on the commission website; and

(C) publish notice of the Bona Fide Retail Request in the *Texas Register*.

(D) The commission shall include in the notification, post on the commission website, and publish in the *Texas Register*:

(i) the name, address, and telephone number of the contact person;

(ii) the number of lines requested;

(iii) the number of customers requesting service;

(iv) the location of the rural area; and

(v) any other information the commission deems relevant.

(4) Commission selection proceeding. After notification of the Bona Fide Retail Request, the commission shall establish a proceeding to select the company or companies obligated to provide an advanced service.

(A) Company response. Each company subject to this section for the rural area seeking advanced services shall submit a proposal for the provision of one or more advanced services to the retail customer(s) seeking service through the Bona Fide Retail Request determined by the commission under this section.

(i) Each company shall submit its proposal within 30 days after publication of the Bona Fide Retail Request notice in the *Texas Register*.

(ii) All proposals shall comply with the requirements of subsection (d) of this section.

(iii) A company required to submit a proposal may contest the obligation to serve by setting forth the basis of its challenge. The company must, however, file its proposal as required by this subsection.

(B) Company response exemption. A company subject to this section for the rural area seeking advanced services is presumed to be exempt from the requirements of this subsection and is not required to submit a proposal for the provision of advanced services if, at the time the Bona Fide Retail Request is published in the *Texas Register*, the company served fewer than 150 local exchange telephone service lines within 14,000 26-gauge cable feet or its equivalent of the same central office as determined for the Bona Fide Retail Request under this section in the last month of the most recent quarterly reporting period submitted to the commission pursuant to Local Government Code, Chapter 283.

(C) Commission determination. Within 150 days after notice of the Bona Fide Retail Request is published in the *Texas Register*, the commission shall determine the selected company or companies obligated to serve the retail customer(s) seeking service through the Bona Fide Retail Request determined by the commission under this section.

(D) Selection criteria. When selecting the company or companies obligated to serve, among other factors the commission may deem relevant, the commission shall consider:

(i) the overall quality of telecommunications service in the rural area;

(ii) the characteristics and attributes of network facilities in the rural area;

(iii) the terrain and geographic features of the rural area;

(iv) the number of local exchange telephone service providers in the rural area;

(v) the population and population density of the rural area;

(vi) the number of local exchange telephone service customers the company serves in the rural area;

(vii) the manner or method by which the company provides local exchange telephone service in the rural area;

(viii) whether a company that provides local exchange service through resale or unbundled network element platform can purchase advanced services through resale or unbundled network element platform in the rural area;

(ix) the extent to which the selection may prohibit or have the practical effect of prohibiting the ability of any company to provide local exchange telephone service in rural areas;

(x) a company's planned response for subsequent requests for service within 14,000 26-gauge cable feet or its equivalent of the same central office as determined for the original Bona Fide Retail Request under this section;

(xi) the method by which the company would provide an advanced service in the rural area; and

(xii) whether a company provides service in proximate urban areas to the rural area seeking advanced services.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Public Utility Commission of Texas

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For further information, please call: (512) 936-7223



SUBCHAPTER J. COSTS, RATES AND TARIFFS

16 TAC §§26.211, 26.225 - 26.230

The amendments are adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (West 2007 and Supp. 2013) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, and the amendments to PURA made by Senate Bills 259, 512, 583, and 809 of the 83rd Legislature, Regular Session.

Cross Reference to Statutes: PURA §14.002 and the amendments to PURA made by Senate Bills 259, 512, 583, and 809 of the 83rd Legislature, Regular Session.

§26.211. Rate-Setting Flexibility for Services Subject to Significant Competitive Challenges.

(a) Application. The provisions of this section apply to incumbent local exchange companies (ILECs), as defined by §26.5 of this title (relating to Definitions). This section does not apply to a deregulated company holding a certificate of operating authority or to an exempt carrier under PURA §52.154.

(b) Purpose. The purpose of this section is to establish procedures for pricing flexibility for services subject to competition and a process for the review of pricing flexibility applications.

(c) Pricing flexibility.

(1) The types of pricing flexibility that an incumbent local exchange company (ILEC) may request are set forth in subparagraphs (A) - (C) of this paragraph.

(A) Banded rates. If an ILEC is granted the authority to charge banded rates, the minimum rates shall yield revenues that are equal to or greater than 105% of the long run incremental cost of the service in the geographic market in which the service will be provided. When an ILEC is granted the authority to charge banded rates, the ILEC shall file a tariff showing the minimum and maximum rates and specifying its current rate. The current rate, as specified in the ILEC's tariff, shall be applied uniformly to all customers of the service in each exchange for which the commission has approved banded rates. If the ILEC desires to charge a rate different from its current rate, but between the minimum and maximum rates, it shall file a revised tariff on or before the effective date of the rate change. The minimum and maximum rates may only be changed as provided for in the Public Utility Regulatory Act, Chapter 53, Subchapters C and D, or G.

(B) Detariffing. If an ILEC is granted the authority to detariff a service, the ILEC shall maintain at the commission a current

price list for the service, and the commission shall retain authority to regulate the quality, terms and conditions of the detariffed service, other than rates. The commission may determine the appropriate ratemaking treatment of any revenues from or costs of providing a detariffed service in a proceeding under the Public Utility Regulatory Act, Chapter 53, Subchapters C and D, or G.

(C) Other types of pricing flexibility. If an ILEC is granted the authority to engage in a type of pricing flexibility that the commission finds to be in the public interest other than those specified in subparagraphs (A) and (B) of this paragraph, that pricing flexibility shall be offered under such terms and conditions as the commission orders.

(2) ILECs have the authority to enter into customer-specific contracts for those services specified in subsection (d) of this section. For those services, ILECs may apply to the commission pursuant to this subsection to obtain a type of pricing flexibility specified in paragraph (1) of this subsection other than customer-specific contracts. For other services, ILECs may apply to the commission pursuant to this subsection to obtain any type of pricing flexibility specified in paragraph (1) of this subsection. However, nothing in this subsection shall permit an ILEC to obtain pricing flexibility for basic local telecommunications service, including local measured service, or for any service that includes as a component a service not subject to significant competitive challenge. Additionally, nothing in this subsection shall permit an ILEC to enter into customer-specific contracts or to obtain detariffing with respect to message telecommunications services, switched access services, or wide area telecommunications service.

(3) An application for pricing flexibility filed under this paragraph shall:

(A) include a statement of the ILEC's intention to use the procedures established in this subsection;

(B) specify the type of pricing flexibility requested and, if the type of pricing flexibility requested is either banded rates or some other type of pricing flexibility pursuant to paragraph (1)(C) of this subsection that involves rate-setting;

(i) state the proposed rates, and if the type of pricing flexibility is banded rates, state the maximum and minimum rates;

(ii) include detailed documentation demonstrating that the minimum rates yield revenues that are equal to or greater than 105% of the long run incremental cost of the service in the geographic market in which the service will be provided;

(iii) demonstrate that the rates are not unreasonably preferential, prejudicial or discriminatory;

(iv) demonstrate that the rates are such that the service identified pursuant to subparagraph (C) of this paragraph will not be subsidized directly or indirectly by regulated monopoly services; and

(v) demonstrate that the rates are not predatory or anticompetitive;

(C) identify the service for which the ILEC is requesting pricing flexibility, including each component thereof, and provide functional and technical descriptions of the service, including:

(i) the functions that the service is intended to perform for the customer;

(ii) the types of equipment used to provide the service (including, but not limited to, transmission facilities, switching facilities, customer equipment, software functions, and protocol);

(iii) the network configurations used to provide the service; and

(iv) schematics;

(D) identify each service that is not subject to significant competitive challenge but that, at the time the ILEC files its application for pricing flexibility, the ILEC intends to provide as a tariffed adjunct to the service identified in subparagraph (C) of this paragraph and, for each such service, provide:

(i) functional and technical descriptions; and

(ii) citations to the tariff provisions pursuant to which each such service will be provided;

(E) designate the exchange(s) as to which the ILEC is seeking pricing flexibility;

(F) include a map or maps of the exchange(s) designated pursuant to subparagraph (E) of this paragraph that can be coordinated with the official commission boundary maps;

(G) describe the products or services known to the ILEC that are currently available in the exchange(s) designated pursuant to subparagraph (E) of this paragraph, and that are the same, equivalent, or substitutable for the service identified pursuant to subparagraph (C) of this paragraph, and identify the providers of those products or services;

(H) with respect to the products or services described pursuant to subparagraph (G) of this paragraph, discuss:

(i) the number and size of telecommunications utilities or other persons providing such products or services;

(ii) the extent to which such products or services are available;

(iii) the ability of customers to obtain such products or services at rates, terms, and conditions comparable to those that the ILEC will offer;

(iv) the ability of telecommunications utilities or other persons to make such products or services readily available at rates, terms, and conditions comparable to those that the ILEC will offer; and

(v) the existence of any significant barrier to the entry or exit of a provider of such products or services;

(I) demonstrate that the level of competition with respect to all components of the ILEC's service identified pursuant to subparagraph (C) of this paragraph represents a significant competitive challenge within the exchange(s) designated pursuant to subparagraph (E) of this paragraph that warrants the pricing flexibility specified pursuant to subparagraph (B) of this paragraph;

(J) demonstrate that the service identified pursuant to subparagraph (C) of this paragraph is not basic local telecommunications service, including local measured service;

(K) if the type of pricing flexibility requested pursuant to subparagraph (B) of this paragraph is customer-specific pricing or detariffing, demonstrate that the service identified pursuant to subparagraph (C) of this paragraph is not message telecommunications service, switched access service, or wide area telecommunications service;

(L) to prevent the subsidization of the service identified pursuant to subparagraph (C) of this paragraph with revenues from regulated monopoly services, propose mechanisms to recover costs that may not be identified and recovered in a long run incremental cost study, including but not limited to costs associated with advertising,

unsuccessful bids, and all items of plant used in the provision of the service;

(M) identify and address the impact that approval of the application for pricing flexibility may have on universal service;

(N) for any type of pricing flexibility other than detariffing, include proposed tariffs and identify any tariff language that restricts the resale, sharing, or joint use of the service identified pursuant to subparagraph (C) of this paragraph and any component thereof and demonstrate why such restrictive tariff language is consistent with the policy established in the Public Utility Regulatory Act §52.001; and

(O) include any other information that the ILEC wants considered in connection with the review of its application.

(4) The commission shall allow an incumbent LEC that is not a Tier 1 LEC as of September 1, 1995, at that company's option, to adopt the cost studies approved by the commission for a Tier 1 LEC.

(5) An application for pricing flexibility shall be docketed and assigned to a presiding officer. No later than ten working days after the filing of an application for pricing flexibility, the presiding officer shall issue an order scheduling a prehearing conference for the purposes of determining notice requirements, establishing a procedural schedule, and addressing other matters as may be appropriate. The commission shall make a final decision no later than 180 days after the completion of notice, as ordered by the presiding officer. However, this 180-day period shall be extended two days for each one day of actual hearing on the merits of the case that exceeds 15 days. The presiding officer or commission, upon a showing of good cause relating to the applicant's failure or refusal to prosecute, including but not limited to the applicant's unreasonable resistance to discovery, may further extend the timeline, provided that the order shall specifically identify the facts found to constitute good cause. This deadline may be expressly waived by the applicant.

(6) For ILECs with less than 31,000 access lines, the commission shall not be limited under paragraph (7)(D)(i) - (x) of this subsection to considering only competition within the exchange(s) where the ILEC will provide the service. Pursuant to paragraph (3)(O) of this subsection, an ILEC with less than 31,000 access lines may provide information that addresses the criteria of paragraph (3)(G) - (I) of this subsection with respect to products or services available outside the exchange(s) designated in paragraph (3)(E) of this subsection.

(7) An application for pricing flexibility shall be approved if, after an evidentiary hearing, the commission finds, based on the evidence, that:

(A) no service for which pricing flexibility is sought is basic local telecommunications service, including local measured service;

(B) no service for which the ILEC requests detariffing of rates is message telecommunications service, switched access service, or wide area telecommunications service

(C) no service for which pricing flexibility is sought includes a component that is not subject to significant competitive challenge;

(D) the grant of pricing flexibility for the service identified pursuant to paragraph (3)(C) of this subsection within the exchange(s) designated pursuant to paragraph (3)(E) of this subsection is appropriate to allow the ILEC to respond to a significant competitive challenge, based upon consideration of the following:

(i) the number and size of telecommunications utilities or other persons providing the same, equivalent, or substitutable

service within the exchange(s) designated pursuant to paragraph (3)(E) of this subsection;

(ii) the extent to which the same, equivalent, or substitutable service is available within the exchange(s) designated pursuant to paragraph (3)(E) of this subsection;

(iii) the ability of customers to obtain the same, equivalent, or substitutable services at comparable rates, terms, and conditions within the exchange(s) designated pursuant to paragraph (3)(E) of this subsection;

(iv) the ability of telecommunications utilities or other persons to make the same, equivalent, or substitutable service readily available at comparable rates, terms, and conditions within the exchange(s) designated pursuant to paragraph (3)(E) of this subsection;

(v) the existence of any significant barrier to the entry or exit of a provider of the same, equivalent or substitutable services within the exchange(s) designated pursuant to paragraph (3)(E) of this subsection;

(vi) whether there are mechanisms to minimize potential anti-competitive practices, to the extent that any such practice has been identified in the record;

(vii) whether there are mechanisms to prevent the subsidization of the service with revenues from regulated monopoly services;

(viii) whether the ability of the ILEC to flexibly price the service within the designated exchange(s) would have any significant impact on universal service;

(ix) whether the type of pricing flexibility requested is appropriate in light of the level and nature of competition within the exchange(s) where the ILEC will provide the service; and

(x) any other relevant information contained in the record;

(E) the rates, if the type of pricing flexibility granted is either banded rates or some other type of pricing flexibility pursuant to paragraph (1)(C) of this subsection that involves rate-setting, are just and reasonable and:

(i) yield revenues that are equal to or greater than 105% of the long run incremental cost of the service in the geographic market in which the service will be provided;

(ii) are not unreasonably preferential, prejudicial or discriminatory;

(iii) are such that the service will not be subsidized directly or indirectly by regulated monopoly services; and

(iv) are not predatory or anticompetitive.

(8) Nothing in this subsection is intended to prevent the presiding officer from recommending, or the commission from approving based on the record evidence, relief other than that requested in the application.

(d) Customer-specific contracts. An ILEC shall have the authority to enter into customer-specific contracts for:

(1) central office based PBX-type services for systems of 200 stations or more, as those services compete with customer premises equipment provided by PBX vendors;

(2) billing and collection services;

(3) high-speed private line services of 1.544 megabits or greater;

(4) customized services that are unique because of size or configuration, provided that such customized services shall not include basic local telecommunications service, including local measured service, or message telecommunications services, switched access services, or wide area telecommunications service; and

(5) any other service for which the commission has authorized the ILEC to enter into customer-specific contracts pursuant to this section.

(e) Subsequent review. The commission may modify, or revoke, upon notice and hearing, the authorization of any type or types of pricing flexibility granted pursuant to this section.

(f) Severability. If any provision of this section or the application thereof to any person or any circumstances is held invalid, such invalidity shall not affect other provisions or applications of this section that can be given effect without the invalid provision or application. It is the intent of the commission that the provisions of this section are severable.

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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Rules Coordinator

Public Utility Commission of Texas

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SUBCHAPTER L. WHOLESALE MARKET PROVISIONS

16 TAC §26.272

The amendments are adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (West 2007 and Supp. 2013) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, and the amendments to PURA made by Senate Bills 259, 512, 583, and 809 of the 83rd Legislature, Regular Session.

Cross Reference to Statutes: PURA §14.002 and the amendments to PURA made by Senate Bills 259, 512, 583, and 809 of the 83rd Legislature, Regular Session.

§26.272. *Interconnection.*

(a) Purpose. The purpose of this section is to ensure that all providers of telecommunications services which are certificated to provide local exchange service, basic local telecommunications service, or switched access service within the state interconnect and maintain interoperable networks such that the benefits of local exchange competition are realized as envisioned under the provisions of the Public Utility Regulatory Act (PURA). The commission finds that interconnection is necessary to achieve competition in the local exchange market and is, therefore, in the public interest.

(b) Definition. The term "customer" when used in this section, shall mean an end-user customer.

(c) Application and Exceptions.

(1) Application. This section applies to all certificated telecommunications utilities (CTUs) providing local exchange service.

(2) Exceptions. Except as herein provided, all CTUs providing local exchange service must comply with the requirements of this section.

(A) Holders of a service provider certificate of operating authority (SPCOA).

(i) The holder of an SPCOA that does not provide dial tone and only resells the telephone services of another CTU shall be subject only to the requirements of subsection (e)(1)(B)(ii) and (D)(i) - (vii) of this section and subsection (i)(1) - (3) of this section.

(ii) The underlying CTU providing service to the holder of an SPCOA referenced in clause (i) of this subparagraph shall comply with the requirements of this section with respect to the customers of the SPCOA holder.

(B) Small incumbent local exchange companies (ILECs).

(i) This section shall apply to small ILECs to the extent required by 47 United States Code §251(f) (1996).

(ii) Notwithstanding the requirement in clause (i) of this subparagraph, small ILECs shall terminate traffic of a CTU which originates and terminates within the small ILEC's extended local calling service (ELCS) or extended area service (EAS) calling scope, where the small ILEC has an ELCS or EAS arrangement with another DCTU. The termination of this traffic shall be at rates, terms, and conditions as described in subsection (d)(4)(A) of this section.

(C) Rural telephone companies.

(i) This section shall also apply to rural telephone companies as defined in 47 United States Code §153 (1996) to the extent required by 47 United States Code §251(f) (1996).

(ii) Rural telephone companies shall terminate traffic of a CTU which originates and terminates within the rural telephone company's ELCS or EAS calling scope, where the rural telephone company has an ELCS or EAS arrangement with another DCTU. The termination of this traffic shall be at rates, terms, and conditions as described in subsection (d)(4)(A) of this section.

(D) Small CTUs.

(i) A small CTU may petition for a suspension or modification of the application of this section pursuant to 47 United States Code §251(f)(2) (1996).

(ii) Small CTUs shall terminate traffic of a CTU which originates and terminates within the small CTU's ELCS or EAS calling scope, where the small CTU has an ELCS or EAS arrangement with another DCTU. The termination of this traffic shall be at rates, terms, and conditions as described in subsection (d)(4)(A) of this section.

(E) Deregulated companies and nondominant telecommunications utilities. Subsection (i)(2) and (3) of this section does not apply to deregulated companies holding a certificate of operating authority or to exempt carriers under PURA §52.154.

(d) Principles of interconnection.

(1) General principles.

(A) Interconnection between CTUs shall be established in a manner that is seamless, interoperable, technically and economically efficient, and transparent to the customer.

(B) Interconnection between CTUs shall utilize nationally accepted telecommunications industry standards and/or mutually acceptable standards for construction, operation, testing and maintenance of networks, such that the integrity of the networks is not impaired.

(C) A CTU may not unreasonably:

(i) discriminate against another CTU by refusing access to the local exchange;

(ii) refuse or delay interconnections to another CTU;

(iii) degrade the quality of access provided to another CTU;

(iv) impair the speed, quality, or efficiency of lines used by another CTU;

(v) fail to fully disclose in a timely manner, on request, all available information necessary for the design of equipment that will meet the specifications of the local exchange network; or

(vi) refuse or delay access by any person to another CTU.

(D) Interconnecting CTUs shall negotiate rates, terms, and conditions for facilities, services, or any other interconnection arrangements required pursuant to this section.

(E) This section should not be construed to allow an interconnecting CTU access to another CTU's network proprietary information or customer proprietary network information, customer-specific as defined in §26.5 of this title (relating to Definitions) unless otherwise permitted in this section.

(2) Technical interconnection principles. Interconnecting CTUs shall make a good-faith effort to accommodate each other's technical requests, provided that the technical requests are consistent with national industry standards and are in compliance with §26.52 of this title (relating to Emergency Operations), §26.53 of this title (relating to Inspections and Tests), §26.54 of this title (relating to Service Objectives and Performance Benchmarks), §26.55 of this title (relating to Monitoring of Service), §26.57 of this title (relating to Requirements for a Certificate Holder's Use of an Alternate Technology to Meet Its Provider of Last Resort Obligation), §26.89 of this title (relating to Information Regarding Rates and Services of Nondominant Carriers), §26.107 of this title (relating to Registration of Interexchange Carriers, Prepaid Calling Services Companies, and Other Nondominant Telecommunications Carriers), §26.128 of this title (relating to Telephone Directories), §26.206 of this title (relating to Depreciation Rates), and implementation of the requests would not cause unreasonable inefficiencies, unreasonable costs, or other detriment to the network of the CTU receiving the requests.

(A) Interconnecting CTUs shall ensure that customers of CTUs shall not have to dial additional digits or incur dialing delays that exceed industry standards in order to complete local calls as a result of interconnection.

(B) Interconnecting CTUs shall provide each other non-discriminatory access to signaling systems, databases, facilities, and information as required to ensure interoperability of networks and efficient, timely provision of services to customers.

(C) Interconnecting CTUs shall provide each other Common Channel Signaling System Seven (SS7) connectivity where technically available.

(D) Interconnecting CTUs shall be permitted a minimum of one point of interconnection in each exchange area or group of contiguous exchange areas within a single local access and transport area (LATA), as requested by the interconnecting CTU, and may negotiate with the other CTU for additional interconnection points. Interconnecting CTUs shall agree to construct and/or lease and maintain the facilities necessary to connect their networks, either by having one CTU provide the entire facility or by sharing the construction and maintenance of the facilities necessary to connect their networks. The financial responsibility for construction and maintenance of such facilities shall be borne by the party who constructs and maintains the facility, unless the parties involved agree to other financial arrangements. Each interconnecting CTU shall be responsible for delivering its originating traffic to the mutually-agreed-upon point of interconnection or points of interconnection. Nothing herein precludes a CTU from recovering the costs of construction and maintenance of facilities if such facilities are used by other CTUs.

(E) Interconnecting CTUs shall establish joint procedures for troubleshooting the portions of their networks that are jointly used. Each CTU shall be responsible for maintaining and monitoring its own network such that the overall integrity of the interconnected network is maintained with service quality that is consistent with industry standards and is in compliance with §26.53 of this title.

(F) If a CTU has sufficient facilities in place, it shall provide intermediate transport arrangements between other interconnecting CTUs, upon request. A CTU providing intermediate transport shall not negotiate termination on behalf of another CTU, unless the terminating CTU agrees to such an arrangement. Upon request, DCTUs within major metropolitan areas will contact other CTUs and arrange meetings, within 15 days of such request, in an effort to facilitate negotiations and provide a forum for discussion of network efficiencies and inter-company billing arrangements.

(G) Each interconnecting CTU shall be responsible for ensuring that traffic is properly routed to the connected CTU and jurisdictionally identified by percent usage factors or in a manner agreed upon by the interconnecting CTUs.

(H) Interconnecting CTUs shall allow each other non-discriminatory access to all facility rights-of-way, conduits, pole attachments, building entrance facilities, and other pathways, provided that the requesting CTU has obtained all required authorizations from the property owner and/or appropriate governmental authority.

(I) Interconnecting CTUs shall provide each other physical interconnection in a non-discriminatory manner. Physical collocation for the transmission of local exchange traffic shall be provided to a CTU upon request, unless the CTU from which collocation is sought demonstrates that technical or space limitations make physical collocation impractical. Virtual collocation for the transmission of local exchange traffic shall be implemented at the option of the CTU requesting the interconnection.

(J) Each interconnecting CTU shall be responsible for contacting the North American Numbering Plan (NANP) administrator for its own NXX codes and for initiating NXX assignment requests.

(3) Principles regarding billing arrangements.

(A) Interconnecting CTUs shall cooperatively provide each other with both answer and disconnect supervision as well as accurate and timely exchange of information on billing records to facilitate billing to customers, to determine intercompany settlements for

local and non-local traffic, and to validate the jurisdictional nature of traffic, as necessary. Such billing records shall be provided in accordance with national industry standards. For billing interexchange carriers for jointly provided switched access services, such billing records shall include meet point billing records, interexchange carrier (IXC) billing name, IXC billing address, and Carrier Identification Codes (CICs). If exchange of CIC codes is not technically feasible, interconnecting CTUs shall negotiate a mutually acceptable settlement process for billing IXCs for jointly provided switched access services.

(B) CTUs shall enter into mutual billing and collection arrangements that are comparable to those existing between and/or among DCTUs, to ensure acceptance of each other's non-proprietary calling cards and operator-assisted calls.

(C) Upon a customer's selection of a CTU for his or her local exchange service, that CTU shall provide notification to the primary IXC through the Customer Account Record Exchange (CARE) database, or comparable means if CARE is unavailable, of all information necessary for billing that customer. At a minimum, this information should include the name and contact person for the new CTU and the customer's name, telephone number, and billing number. In the event a customer's local exchange service is disconnected at the option of the customer or the CTU, the disconnecting CTU shall provide notification to the primary IXC of such disconnection.

(D) All CTUs shall cooperate with IXCs to ensure that customers are properly billed for IXC services.

(4) Principles regarding interconnection rates, terms, and conditions.

(A) Criteria for setting interconnection rates, terms, and conditions. Interconnection rates, terms, and conditions shall not be unreasonably preferential, discriminatory, or prejudicial, and shall be non-discriminatory. The following criteria shall be used to establish interconnection rates, terms, and conditions.

(i) Local traffic of a CTU which originates and terminates within the mandatory single or multiexchange local calling area available under the basic local exchange rate of a single DCTU shall be terminated by the CTU at local interconnection rates. The local interconnection rates under this clause also apply with respect to mandatory EAS traffic originated and terminated within the local calling area of a DCTU if such traffic is between exchanges served by that single DCTU.

(ii) If a non-dominant certificated telecommunications utility (NCTU) offers, on a mandatory basis, the same minimum ELCS calling scope that a DCTU offers under its ELCS arrangement, a NCTU shall receive arrangements for its ELCS traffic that are not less favorable than the DCTU provides for terminating mandatory ELCS traffic.

(iii) With respect to local traffic originated and terminated within the local calling area of a DCTU but between exchanges of two or more DCTUs governed by mandatory EAS arrangements, DCTUs shall terminate local traffic of NCTUs at rates, terms, and conditions that are not less favorable than those between DCTUs for similar mandatory EAS traffic for the affected area. A NCTU and a DCTU may agree to terms and conditions that are different from those that exist between DCTUs for similar mandatory EAS traffic. The rates applicable to the NCTU for such traffic shall reflect the difference in costs to the DCTU caused by the different terms and conditions.

(iv) With respect to traffic that originates and terminates within an optional flat rate calling area, whether between exchanges of one DCTU or between exchanges of two or more DCTUs, DCTUs shall terminate such traffic of NCTUs at rates, terms, and con-

ditions that are not less favorable than those between DCTUs for similar traffic. A NCTU and a DCTU may agree to terms and conditions that are different from those that exist between DCTUs for similar optional EAS traffic. The rates applicable to the NCTU for such traffic shall reflect the difference in costs to the DCTU caused by the different terms and conditions.

(v) A DCTU with more than one million access lines and a NCTU shall negotiate new EAS arrangements in accordance with the following requirements.

(I) For traffic between an exchange and a contiguous metropolitan exchange local calling area, as defined in §26.5 of this title, the DCTU shall negotiate with a NCTU for termination of such traffic if the NCTU includes such traffic as part of its customers' local calling area. These interconnection arrangements shall be not less favorable than the arrangements between DCTUs for similar EAS traffic.

(II) For traffic that does not originate or terminate within a metropolitan exchange local calling area, the DCTU shall negotiate with a NCTU for the termination of traffic between the contiguous service areas of the DCTU and the NCTU if the NCTU includes such traffic as part of its customers' local calling area and such traffic originates in an exchange served by the DCTU. These interconnection arrangements shall be not less favorable than the arrangements between DCTUs for similar EAS traffic.

(III) A NCTU shall have the same obligation to negotiate similar EAS interconnection arrangements with respect to traffic between its service area and a contiguous exchange of the DCTU if the DCTU includes such traffic as part of its customers' local calling area.

(vi) NCTUs are not precluded from establishing their own local calling areas or prices for purposes of retail telephone service offerings.

(B) Establishment of rates, terms, and conditions.

(i) CTUs involved in interconnection negotiations shall ensure that all reasonable negotiation opportunities are completed prior to the termination of the first commercial call. The date upon which the first commercial call between CTUs is terminated signifies the beginning of a nine-month period in which each CTU shall reciprocally terminate the other CTU's traffic at no charge, in the absence of mutually negotiated interconnection rates. Reciprocal interconnection rates, terms, and conditions shall be established pursuant to the compulsory arbitration process in subsection (g) of this section. In establishing these initial rates and three years from termination of the first commercial call, no cost studies shall be required from a new CTU.

(ii) An ILEC may adopt the tariffed interconnection rates approved for a larger ILEC or interconnection rates of a larger ILEC resulting from negotiations without providing the commission any additional cost justification for the adopted rates. If an ILEC adopts the tariffed interconnection rates approved for a larger ILEC, it shall file tariffs referencing the appropriate larger ILEC's rates. If an ILEC adopts the interconnection rates of a larger ILEC, the new CTU may adopt those rates as its own rates by filing tariffs referencing the appropriate larger ILEC's rates. If an ILEC chooses to file its own interconnection tariff, the new CTU must also file its own interconnection tariff.

(C) Public disclosure of interconnection rates, terms, and conditions. Interconnection rates, terms, and/or conditions shall be made publicly available as provided in subsection (h) of this section.

(e) Minimum interconnection arrangements.

(1) Pursuant to mutual agreements, interconnecting CTUs shall provide each other non-discriminatory access to ancillary services such as repair services, E9-1-1, operator services, white pages telephone directory listing, publication and distribution, and directory assistance. The following minimum terms and conditions shall apply:

(A) Repair services. For purposes of this section, a CTU shall be required to provide repair services for its own facilities regardless of whether such facilities are used by the CTU for retail purposes, or provided by the CTU for resale purposes, or whether the facilities are ordered by another CTU for purposes of collocation.

(B) E-9-1-1 services. E-9-1-1 services include automatic number identification (ANI), ANI and automatic location identification (ALI) selective routing, and/or any combination of 9-1-1 features required by the 9-1-1 administrative entity or entities responsible for the geographic area involved.

(i) As a prerequisite to providing local exchange telephone service to any customer or any other service whereby a customer may dial 9-1-1 and thereafter, a CTU must meet the following requirements.

(I) The CTU is responsible for ordering the dedicated 9-1-1 trunk groups necessary to provide E9-1-1 service as approved by the appropriate 9-1-1 administrative entity or entities in the relevant 9-1-1 service agreement(s), and subject to the written process for documenting "unnecessary dedicated 9-1-1 trunks" in clause (vi)(I) of this subparagraph. Connection with the appropriate CTU in the provision of 9-1-1 service may be either directly or indirectly in a manner approved by the appropriate 9-1-1 administrative entity or entities.

(II) The CTU is responsible for enabling all its customers to dial the three digits 9,1,1 to access 9-1-1 service.

(III) The CTU is responsible for providing the ANI to the appropriate CTU operating the E911 selective routers, 9-1-1 tandems, IP-based 9-1-1 systems, NG9-1-1 systems, or appropriate PSAPs, as applicable. The ANI must include both the NPA or numbering plan digit (NPD), a component of the traditional 9-1-1 signaling protocol that identifies 1 of 4 possible NPAs, as appropriate, and the local telephone number of the 9-1-1 calling customer that can be used to successfully complete a return call to the customer.

(IV) The CTU is responsible for routing a 9-1-1 customer call, as well as interconnecting traffic on its network, to the appropriate E911 selective routers, 9-1-1 tandems, IP-based 9-1-1 systems, NG9-1-1 systems, or PSAPs, as applicable, based on the ANI and/or ALI. The appropriate 9-1-1 administrative entity or entities or the 9-1-1 network services provider, as applicable, shall provide specifications to the CTU for routing purposes.

(V) The CTU is responsible for providing the ALI for each of its customers. The ALI shall consist of the calling customer name, physical location, appropriate emergency service providers, and other similar standard ALI location data specified by the appropriate 9-1-1 administrative entity. For purposes of this subclause, other similar standard ALI data does not include supplemental data not part of the standard ALI location record.

(ii) Each CTU shall timely provide to the appropriate 911 administrative entity and the appropriate 9-1-1 database management services provider accurate and timely current information for all published, unpublished (nonpublished), and unlisted (nonlisted) information associated with its customers for the purposes of emergency or E-911 services.

(I) For purposes of this clause, a CTU timely provides the information if, within 24 hours of receipt, it delivers the information to the appropriate 9-1-1 database management services provider, or if the CTU is the appropriate 9-1-1 database management services provider, it places the information in the 9-1-1 database.

(II) For purposes of this clause, the information sent by a CTU to the 9-1-1 database management services provider and the information used by the 9-1-1 database management services provider shall be maintained in a fashion to ensure that it is accurate to a percentage as close to 100% as possible. "Accurate" means a record that correctly routes a 9-1-1 call and provides correct location information relating to the origination of such call. "Percentage" means the total number of accurate records in that database divided by the total number of records in that database. In determining the accuracy of records, a CTU shall not be held responsible for erroneous information provided to it by a customer or another CTU.

(III) Interconnecting CTUs shall execute confidentiality agreements with each other, as necessary, to prevent the unauthorized disclosure of unpublished/unlisted numbers. Interconnecting CTUs shall be allowed access to the ALI database or its equivalent by the appropriate 9-1-1 database management services provider for verification purposes. The appropriate 9-1-1 administrative entity shall provide non-discriminatory access to the master street address guide.

(iii) Each CTU is responsible for developing a 9-1-1 disaster recovery service restoration plan with input from the appropriate 9-1-1 administrative entities. This plan shall identify the actions to be taken in the event of a network-based 9-1-1 service failure. The goal of such actions shall be the efficient and timely restoration of 9-1-1 service. Each CTU shall notify the appropriate 9-1-1 administrative entity or entities of any changes in the CTU's network-based services and other services that may require changes to the plan.

(iv) Interconnecting CTUs shall provide each other and the appropriate 9-1-1 administrative entity or entities notification of scheduled outages for direct dedicated 9-1-1 trunks at least 48 hours prior to such outages. In the event of unscheduled outages for direct dedicated 9-1-1 trunks, interconnecting CTUs shall provide each other and the appropriate 9-1-1 administrative entity or entities immediate notification of such outages.

(v) Each NCTU's rates for 9-1-1 service to a public safety answering point shall be presumed to be reasonable if they do not exceed the rates charged by the ILEC for similar service.

(vi) Unless otherwise determined by the commission, nothing in this rule, any interconnection agreement, or any commercial agreement may be interpreted to supersede the appropriate 9-1-1 administrative entity's authority to migrate to newer functionally equivalent IP-based 9-1-1 systems or NG9-1-1 systems or the 9-1-1 administrative entity's authority to require the removal of unnecessary direct dedicated 9-1-1 trunks, circuits, databases, or functions.

(I) For purposes of this clause, "unnecessary direct dedicated 9-1-1 trunks" means those dedicated 9-1-1 trunks that generally would be part of a local interconnection arrangement but for the CTU's warrant in writing that the direct dedicated 9-1-1 trunks are unnecessary and all 9-1-1 traffic from the CTU will be accommodated by another 9-1-1 service arrangement that has been approved by the appropriate 9-1-1 administrative entity or entities; and written approval from the appropriate 9-1-1 entity or entities accepting the CTU's warrant. A 9-1-1 network services provider or CTU presented with such written documentation from the CTU and the appropriate 9-1-1 administrative entity or entities shall rely on the warrant of the CTU and the appropriate 9-1-1 entities.

(II) Subclause (I) of this clause is intended to promote and ensure collaboration so that 9-1-1 service architecture and provisioning modernization can proceed expeditiously for the benefit of improvements in the delivery of 9-1-1 emergency services. Subclause (I) of this clause is not intended to require or authorize a 9-1-1 administrative entity's rate center service plan specifications or a 9-1-1 network architecture deviation that causes new, material cost shifting between telecommunications providers or between telecommunications providers and 9-1-1 administrative entities. Examples of such a deviation would be points of interconnection different from current LATA configurations and requiring provisioning of the 9-1-1 network with a similar type deviation that may involve new material burdens on competition or the public interest.

(C) Operator services. Interconnecting CTUs shall negotiate to ensure the interoperability of operator services between networks, including but not limited to the ability of operators on each network to perform such operator functions as reverse billing, line verification, call screening, and call interrupt.

(D) White pages telephone directory and directory assistance. Interconnecting CTUs shall negotiate to ensure provision of white pages telephone directory and directory assistance services.

(i) The telephone numbers and other appropriate information of the customers of NCTUs shall be included on a non-discriminatory basis in the DCTU's white pages directory associated with the geographic area covered by the white pages telephone directory published by the DCTUs. Similarly, any white pages telephone directory provided by a NCTU to its customers shall have corresponding DCTU listings available on a non-discriminatory basis. The entries of NCTU customers in the DCTU white pages telephone directory shall be interspersed in correct alphabetical sequence among the entries of the DCTU customers and shall be no different in style, size, or format than the entries of the DCTU customers, unless requested otherwise by the NCTU. The CTU or its affiliate publishing a white pages telephone directory on behalf of the CTU shall not directly charge the customer of another CTU located in the geographic areas covered by the white pages telephone directory for white pages listings or directory.

(ii) Listings of all customers located within the local calling area of a NCTU, but not located within the local calling area of the DCTU publishing the white pages telephone directory, shall be included in a separate section of the DCTU's white pages telephone directory at the option of the NCTU.

(iii) CTUs shall provide directory listings and related updates to the CTU or its affiliate publishing a white pages telephone directory on behalf of the CTU or to any CTU providing directory assistance, in a timely manner to ensure inclusion in the annual white page listings and provision of directory assistance service that complies with §26.128 of this title. The CTU or its affiliate publishing a white pages telephone directory on behalf of the CTU shall be responsible for providing all other CTUs with timely information regarding deadlines associated with its published white pages telephone directory.

(iv) CTUs shall, upon request, provide accurate and current subscriber listings (name, address, telephone number) and updates in a readily usable format and in a timely manner, on a non-discriminatory basis, to publishers of yellow pages telephone directory. CTUs shall not provide listings of subscribers desiring non-listed status for publication purposes.

(v) White pages telephone directories shall be distributed to all customers located within the geographic area covered by the white pages telephone directory on non-discriminatory terms and

conditions by the CTU or its affiliate publishing the white pages telephone directory.

(vi) A CTU or its affiliate that publishes a white pages telephone directory on behalf of the CTU shall provide a single page per CTU in the information section of the white pages telephone directory, for the CTU to convey critical customer contact information regarding emergency services, billing and service information, repair services and other pertinent information. The CTU's pages shall be arranged in alphabetical order. Additional access to the information section of the white pages telephone directory shall be subject to negotiations.

(vii) CTUs must provide information that identifies customers desiring non-listed and/or non-published telephone numbers and/or non-published addresses to the CTU or its affiliate publishing a white pages telephone directory on behalf of the CTU and to the CTU maintaining the directory assistance database. The CTU or its affiliate publishing a white pages telephone directory on behalf of the CTU shall not divulge such non-listed and/or non-published telephone numbers or addresses and the CTU maintaining the directory assistance database shall not divulge such non-published telephone numbers or addresses.

(viii) CTUs shall provide each other non-discriminatory access to directory assistance databases.

(2) At a minimum, interconnecting CTUs shall negotiate to ensure the following:

(A) Non-discriminatory access to databases such as 800 and Line Information Data Base (LIDB) where technically feasible, to ensure interoperability between networks and the efficient, timely provision of service to customers;

(B) non-discriminatory access to Telecommunications Relay Service;

(C) Common Channel Signaling interconnection including transmission of privacy indicator where technically available;

(D) non-discriminatory access to all signaling protocols and all elements of signaling protocols used in routing local and interexchange traffic, including signaling protocols used to query call processing databases, where technically feasible;

(E) number portability and the inclusion of the NCTU's NXX code(s) in the Local Exchange Routing Guide and related systems;

(F) non-discriminatory handling, including billing, of mass announcement/audiotext calls including, but not limited to, 900 and 976 calls;

(G) provision of intercept services for a specific telephone number in the event a customer discontinues service with one CTU, initiates service with another CTU, and the customer's telephone number changes;

(H) cooperative engineering, operations, maintenance and billing practices and procedures; and

(I) non-discriminatory access to Advanced Intelligent Network (AIN), where technically available.

(f) Negotiations.

(1) CTUs and other negotiating parties shall engage in good-faith negotiations and cooperative planning as necessary to achieve mutually agreeable interconnection arrangements.

(2) Before terminating its first commercial telephone call, each CTU requesting interconnection shall negotiate with each CTU

or other negotiating party that is necessary to complete all telephone calls, including local service calls and EAS or ELCS calls, made by or placed to the customers of the requesting CTU. Upon request, DC-TUs within major metropolitan calling areas will contact other CTUs and arrange meetings, within 15 days of such request, in an effort to facilitate negotiations and provide a forum for discussions of network efficiencies and intercompany billing arrangements.

(3) Unless the negotiating parties establish a mutually agreeable date, negotiations are deemed to begin on the date when the CTU or other negotiating party from which interconnection is being requested receives the request for interconnection from the CTU seeking interconnection. The request shall:

(A) be in writing and hand-delivered; sent by certified mail or by facsimile;

(B) identify the initial specific issues to be resolved, the specific underlying facts, and the requesting CTU's proposed resolution of each issue;

(C) provide any other material necessary to support the request, included as appendices; and

(D) provide the identity of the person authorized to negotiate for the requesting CTU.

(4) The requesting CTU may identify additional issues for negotiation without causing an alteration of the date on which negotiations are deemed to begin.

(5) The CTU or negotiating party from which interconnection is sought shall respond to the interconnection request no later than 14 working days from the date the request is received. The response shall:

(A) be in writing and hand-delivered; sent by certified mail or by facsimile;

(B) respond specifically to the requesting party's proposed resolution of each initial issue identified by the requesting party, identify the specific underlying facts upon which the response is based and, if the response is not in agreement with the requesting party's proposed resolution of each issue, the responding party's proposed resolution of each issue;

(C) provide any other material necessary to support the response, included as appendices; and

(D) provide the identity of the person authorized to negotiate for the responding party.

(6) At any point during the negotiations required under this subsection, any CTU or negotiating party may request the commission designee(s) to participate in the negotiations and to mediate any differences arising in the course of the negotiation.

(7) Interconnecting CTUs may, by written agreement, accelerate the requirements of this subsection with respect to a particular interconnection agreement except that the requirements of subsection (g)(1)(A) of this section shall not be accelerated.

(8) Any disputes arising under or pertaining to negotiated interconnection agreements may be resolved pursuant to Chapter 21, Subchapter E of this title (relating to Post-Interconnection Agreement Dispute Resolution).

(g) Compulsory arbitration process.

(1) A negotiating CTU that is unable to reach mutually agreeable terms, rates, and/or conditions for interconnection with any CTU or negotiating party may petition the commission to arbitrate any

unresolved issues. In order to initiate the arbitration procedure, a negotiating CTU:

(A) shall file its petition with the commission during the period from the 135th to the 160th day (inclusive) after the date on which its request for negotiation under subsection (f) of this section was received by the other CTU involved in the negotiation;

(B) shall provide the identity of each CTU and/or negotiating party with which agreement cannot be reached but whose cooperation is necessary to complete all telephone calls made by or placed to the customers of the requesting CTU;

(C) shall provide all relevant documentation concerning the unresolved issues;

(D) shall provide all relevant documentation concerning the position of each of the negotiating parties with respect to those issues;

(E) shall provide all relevant documentation concerning any other issue discussed and resolved by the negotiating parties; and

(F) shall send a copy of the petition and any documentation to the CTU or negotiating party with which agreement cannot be reached, not later than the day on which the commission receives the petition.

(2) A non-petitioning party to a negotiation under subsection (f) of this section may respond to the other party's petition and provide such additional information as it wishes within 25 days after the commission receives the petition.

(3) The compulsory arbitration process shall be completed not later than nine months after the date on which a CTU receives a request for interconnection under subsection (f) of this section.

(4) Any disputes arising under or pertaining to arbitrated interconnection agreements may be resolved pursuant to Chapter 21, Subchapter E of this title.

(h) Filing of rates, terms, and conditions.

(1) Rates, terms and conditions resulting from negotiations, compulsory arbitration process, and statements of generally available terms.

(A) A CTU from which interconnection is requested shall file any agreement, adopted by negotiation or by compulsory arbitration, with the commission. The commission shall make such agreement available for public inspection and copying within ten days after the agreement is approved by the commission pursuant to subparagraphs (C) and (D) of this paragraph.

(B) An ILEC serving greater than five million access lines may prepare and file with the commission, a statement of terms and conditions that it generally offers within the state pursuant to 47 United States Code §252(f) (1996). The commission shall make such statement available for public inspection and copying within ten days after the statement is approved by the commission pursuant to subparagraph (E) of this paragraph.

(C) The commission shall reject an agreement (or any portion thereof) adopted by negotiation if it finds that:

(i) the agreement (or any portion thereof) discriminates against a telecommunications carrier not a party to the agreement; or

(ii) the implementation of such agreement or portion is not consistent with the public interest, convenience, and necessity.

(D) The commission shall reject an agreement (or any portion thereof) adopted by compulsory arbitration, under subsection (g) of this section, pursuant to guidelines found in 47 United States Code §252(e)(2)(B) (1996).

(E) The commission shall review the statement of generally available terms filed under subparagraph (B) of this paragraph, pursuant to guidelines found in 47 United States Code §252(f) (1996). The submission or approval of a statement under this paragraph shall not relieve an ILEC serving greater than five million access lines of its duty to negotiate the terms and conditions of an agreement pursuant to 47 United States Code §251 (1996).

(2) Rates, terms and/or conditions among DCTUs. Within 15 days of a request from a CTU negotiating interconnection arrangements with a DCTU, a non-redacted version of any agreement reflecting the rates, terms, and conditions between and/or among DCTUs which relate to interconnection arrangements for similar traffic shall be disclosed to the CTU, subject to commission-approved non-disclosure or protective agreement. A non-redacted version of the same agreement shall be disclosed to commission staff at the same time if requested, subject to commission-approved non-disclosure or protective agreement.

(i) Customer safeguards.

(1) Requirements for provision of service to customers. Nothing in this section or in the CTU's tariffs shall be interpreted as precluding a customer of any CTU from purchasing local exchange service from more than one CTU at a time. No CTU shall connect, disconnect, or move any wiring or circuits on the customer's side of the demarcation point without the customer's express authorization as specified in §26.130 of this title (relating to Selection of Telecommunications Utilities).

(2) Requirements for CTUs ceasing operations. In the event that a CTU ceases its operations, it is the responsibility of the CTU to notify the commission and all of the CTU's customers at least 61 working days in advance that their service will be terminated. The notification shall include a listing of all alternative service providers available to customers in the exchange and shall specify the date on which service will be terminated.

(3) Requirements for service installations. DCTUs that interconnect with NCTUs shall be responsible for meeting the installation of service requirements under §26.54 of this title in providing service to the NCTU. NCTUs shall make a good-faith effort to meet the requirements for installation in §26.54 of this title, and may negotiate with the DCTU to establish a procedure to meet this goal.

(A) For those customers for whom the NCTU provides dial tone but not the local loop, 95% of the NCTU's service orders shall be completed in no more than ten working days from request for service, unless a later date is agreed to by the customer.

(B) For those customers for whom the NCTU does not provide dial tone and resells the telephone services of a DCTU, 95% of the NCTU's service orders shall be completed in no more than seven working days from request for service, unless the customer agrees to a later date.

(C) For those customers where the NCTU uses facilities other than a DCTUs' resale facilities obtained through Public Utility Regulatory Act §60.041, the NCTU shall complete service orders within 30 calendar days from request of service, unless a later date is agreed to by the customer.

(D) The DCTU shall not discriminate between its customers and NCTUs if the DCTU is able to install service in less than the time permitted under §26.54 of this title.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER M. OPERATOR SERVICES

16 TAC §§26.311, 26.313, 26.317, 26.319, 26.321

The amendments are adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (West 2007 and Supp. 2013) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, and the amendments to PURA made by Senate Bills 259, 512, 583, and 809 of the 83rd Legislature, Regular Session.

Cross Reference to Statutes: PURA §14.002 and the amendments to PURA made by Senate Bills 259, 512, 583, and 809 of the 83rd Legislature, Regular Session.

§26.311. *Information Relating to Operator Services.*

(a) Purpose. The provisions of this subchapter are intended to ensure that competitive operator services are provided in a fair and reasonable manner and to maximize consumer choice by ensuring that consumers have access to their carriers of choice when using telephones intended for use by the public.

(b) Application. This section does not apply to a deregulated company holding a certificate of operating authority or to an exempt carrier under Public Utility Act (PURA) §52.154.

(c) Definition. The term "rate information," when used in this subchapter, shall mean all charges ultimately charged to the end user by the operator service provider (OSP), including any surcharges, fees, and any other form of compensation charged by the OSP on behalf of the call aggregator.

(d) Complaints relating to operator services.

(1) The OSP shall have a toll-free telephone number that callers may use, during normal business hours, to voice complaints and make inquiries. After normal business hours, the OSP shall have an answering machine/mechanism to receive complaints.

(2) Section 26.30 of this title (relating to Complaints) shall apply to all complaints under this subchapter.

(3) The commission may formally investigate any complaint against any OSP, interexchange carrier or dominant certificated telecommunications utility alleged to have violated the provisions of this subchapter. The company shall be given an opportunity to informally resolve any complaint involving violation of these rules. If no resolution is achieved informally, the commission may formally investigate

the complaint upon its own motion or upon request of the original complainant.

(e) Enforcement. Upon proper notice, evidentiary hearing, and determination that a violation has occurred or is about to occur, the commission may take action to stop, correct or prevent the violation. Any OSP found to be in violation of provisions of this subchapter is subject to administrative penalties, civil penalties, and injunctive relief pursuant to the PURA §§15.023, 15.028, and 15.021.

§26.313. *General Requirements Relating to Operator Services.*

(a) Application. This section does not apply to a deregulated company holding a certificate of operating authority or to an exempt carrier under Public Utility Act (PURA) §52.154.

(b) Requirements to provide operator service.

(1) An operator service provider (OSP) that provides end user operator services for a call aggregator through a telephone that is intended for public use must do so pursuant to a contract with the call aggregator, as a presubscribed interexchange carrier, or, in the case of a dominant certificated telecommunications utility (DCTU), pursuant to a tariff approved by the commission.

(2) Notwithstanding the provisions of paragraph (1) of this subsection, an OSP that owns or otherwise controls telephones that are intended for public use shall for those telephones comply with all provisions of this subchapter otherwise required to be included in contracts between OSPs and call aggregators, without the necessity of a contract.

(3) Where a different OSP is presubscribed for operator services at pay telephones owned by a DCTU, the DCTU shall for those telephones comply with all provisions of this subchapter otherwise required to be included in contracts between OSPs and call aggregators.

(4) If a DCTU or presubscribed interexchange carrier provides operator services through telephones that are intended for public use, other than those telephones subject to paragraphs (2) and (3) of this subsection, and pays fees or other forms of compensation to a call aggregator, the DCTU or presubscribed interexchange carrier shall do so pursuant to a contract with the call aggregator.

(c) Requirements before call is completed. The provider of operator services shall:

(1) audibly and distinctly identify itself to the customer upon answering calls;

(2) audibly and distinctly identify itself to the billed party if the billed party is different from the caller;

(3) quote rate information at the caller's request, without charge, 24 hours a day, seven days a week; and

(4) permit the caller to terminate the call at no charge prior to completion of the call by the OSP.

(d) Requirements for uncompleted call. There shall be no charge to the caller for any uncompleted call.

(1) No OSP shall knowingly bill for uncompleted calls.

(2) If the OSP cannot determine with certainty that a call was completed, it shall provide a full credit for any call of one minute or less upon being informed by a customer that the call was not completed.

(3) An uncompleted call includes, but shall not be limited to:

(A) calls terminating to an intercept recording, line intercept operator, or a busy tone; or

(B) calls that are not answered.

(4) An uncompleted call does not include calls using busy line interrupt, line status verification, or directory assistance services.

(e) Requirement to provide access to a live operator.

(1) Each telecommunications utility that provides operator services shall ensure that a caller may access a live operator at the beginning of all automated operator-assisted calls through a method designed to be easily and clearly understandable and accessible to the caller. This requirement applies only to "0-" calls where the caller reaches an automated operator. Within 30 days of initially providing operator services each such telecommunications utility shall file in the Central Records Office of the commission, for review, a document describing the method by which the utility is providing access to a live operator, as provided by the Public Utility Regulatory Act §55.088.

(2) This subsection applies regardless of the method by which the telecommunications utility provides the operator service.

(3) The requirements of this subsection shall not apply to telephones located in confinement facilities.

(f) Call splashing. Call splashing is call transferring (whether caller requested or OSP initiated) that results in a call being rated and/or billed from a point different from that where the call originated. Call splashing shall not be allowed unless a waiver of the access requirements in §26.319(1)(A) of this title (relating to Access to the Operator of a Local Exchange Company (LEC)) has been granted pursuant to §26.319(3) of this title and unless:

(1) the originating OSP first clearly and explicitly notifies the caller that the call will be splashed and may result in rating and/or billing of the call from a point different from that where the call originated; and

(2) the originating OSP allows the caller to abort the call without charge after notification that the call will be splashed.

(g) Other requirements.

(1) OSPs that are not DCTUs are subject to the requirements contained in the Public Utility Regulatory Act and the commission's substantive rules for nondominant telecommunications utilities.

(2) If an OSP provides a local exchange company with information regarding end-user access to the OCP, the OSP must provide a single access code; must detail, by NPA-NXX, where the access code can be used to access the OSP; and must provide the local exchange company with appropriate instructions for use of the access code. The OSP is responsible for ensuring that the access code specified is available for each NPA-NXX listed and for updating the information.

§26.317. Information to be Provided at the Telephone Set.

(a) This section does not apply to a deregulated company holding a certificate of operating authority or to an exempt carrier under Public Utility Act (PURA) §52.154.

(b) A contract between an operator service provider (OSP) and a call aggregator for the provision of operator services through telephones that are intended for public use shall require the call aggregator to attach to each telephone set that has access to the operator service and that is intended for public use, a card furnished by the OSP that provides:

(1) the name of the OSP;

(2) instructions for accessing the OSP, with a statement that the OSP will quote rate information upon request at no charge to the caller, 24 hours a day, seven days a week, or a statement that instructions for obtaining rate information are available at a designated toll-free telephone number, 24 hours a day, seven days a week;

(3) instructions for accessing the operator of a local exchange company that meets the requirements of §26.315(d) of this title (relating to Requirements for Dominant Certified Telecommunications Utilities (DCTUs)), or a statement that instructions for accessing such local exchange company operator are available at a designated toll-free telephone number, 24 hours a day, seven days a week, except local exchange companies meeting the requirements of §26.315(d) of this title are exempt from this paragraph if the local exchange company is the OSP for which instructions are posted pursuant to paragraph (2) of this subsection;

(4) instructions for registering a complaint about the service at a designated toll-free telephone number;

(5) instructions in English and Spanish for accessing emergency service; and

(6) a notice that states, "You may use another long distance carrier. Follow your carrier's instructions, or contact the local exchange company operator for assistance." or, in the case of telephones that directly route "0-" calls to the local exchange company operator, a notice that states, "You may use another long distance carrier. Follow your carrier's instructions, or dial "0" for assistance." (The local exchange company referred to in this paragraph must serve the area and meet the requirements of §26.315(d) of this title.) The notice required by this paragraph may use the term "local exchange carrier operator" in place of the term "local exchange company operator."

(c) Notwithstanding subsection (b) of this section, in the case of pay telephones owned by the DCTU, where the DCTU is the OSP for intraLATA operator service and another carrier is the OSP for interLATA operator service, the interLATA OSP shall inform the DCTU of the appropriate information to be posted, and the DCTU shall post the information required by subsection (b)(1), (2) and (4) of this section for the interLATA OSP. In addition, the DCTU shall post the information required by subsection (b)(5) and (6) of this section. After initial information cards are posted, DCTUs may file tariffs to recover from the OSPs presubscribed to pay telephones owned by the DCTUs the incremental cost for maintaining updated information cards plus a reasonable contribution.

(d) The commission may approve applications for modification of the requirements contained in this section upon showing of good cause. Applications for modification may be filed by the call aggregator or by the OSP. The commission shall process applications for modification using the following criteria and procedures:

(1) Each application for modification shall contain a certificate of service attesting that a copy of the request has been served upon the Office of Public Utility Counsel.

(2) Each application for modification shall clearly set forth the good cause for approval of the modification.

(3) Each application for modification shall initially be assigned a project control number, assigned to a presiding officer, and reviewed administratively.

(A) No later than 30 days after the filing date of the application, interested persons other than the commission staff and the Office of Public Utility Counsel may file written comments or recommendations concerning the application. No later than 60 days after the filing of the application, the commission staff shall, and the Office of Public Utility Counsel may, file written comments or recommendations concerning the application.

(B) Within 90 days of filing, after administrative review, the presiding officer shall approve, deny, or docket the application. The presiding officer may postpone a decision on the application

beyond the 90th day after filing if he or she finds that additional information is needed.

(4) Any participating party may request, within ten days of the presiding officer's order approving or denying the application, that the application be docketed, and upon such request, the application shall be docketed.

(5) If the presiding officer either approves or denies the application for modification and no participating party has requested that the application be docketed, a copy of the presiding officer's ruling shall be provided to the commission. The commission may, within 40 days of the presiding officer's ruling, overrule the approval or denial and order that the application for modification be docketed.

(e) The requirements of this section shall not apply to telephones located in confinement facilities.

§26.319. Access to the Operator of a Local Exchange Company (LEC).

(a) This section does not apply to a deregulated company holding a certificate of operating authority or to an exempt carrier under Public Utility Act (PURA) §52.154.

(b) A contract between an operator service provider (OSP) and a call aggregator for the provision of operator services through telephones that are intended for public use shall require that the call aggregator allow access to the operator of a local exchange company that meets the requirements enumerated in §26.315(d) of this title (relating to Requirements for Dominant Certificated Telecommunications Utilities (DCTUs)) and serves the area from which the call is made, and to other telecommunications utilities unless otherwise provided in paragraph (3) of this subsection.

(1) The access required by this subsection shall be provided subject to the conditions contained in subparagraphs (A) - (C) of this paragraph.

(A) Access to such local exchange company operator shall be accomplished either:

(i) by directly routing all "0-" calls to the local exchange company operator, without charge to the caller; or

(ii) by transfer or redirection of the call by the OSP, without charge to the caller, in accordance with the requirements of subclauses (I) - (III) of this clause:

(I) the OSP shall transfer or redirect the call to such local exchange company operator serving the originating area;

(II) the OSP shall transfer or redirect the call to such local exchange company operator in such a way that the local exchange company operator receives all signaling information (e.g., ANI and OLS) that would have been received by the local exchange operator if the call had been directly routed to the local exchange company; and

(III) the OSP shall be in compliance with the requirements of §26.321 of this title (relating to 9-1-1 Calls, "0-" Calls, and End User Choice).

(B) Access to interexchange carriers by "950-XXXX" and "1-800" numbers shall not be blocked.

(C) Access to interexchange carriers by "1010XXX+0" (whether "1010XXX+0+" or "1010XXX+0-") dialing shall not be blocked if the end office serving the originating line has originating line screening capability. A nonpresubscribed interexchange carrier shall not bill the call aggregator or the presubscribed interexchange carrier for local or toll messages originated at the call aggregator's facility by

use of "1010XXX+0" (whether "1010XXX+0+" or "1010XXX+0-") dialing, or where the calls originated at the call aggregator's facility and otherwise reached an operator, if the call aggregator has subscribed to the necessary local exchange company-provided outgoing call screening or has otherwise provided the necessary call screening to ensure that appropriate originating line screening is transmitted with each call.

(2) The local exchange company that provides local service to the call aggregator shall provide to the call aggregator, upon request, the names, with addresses or telephone numbers, of interexchange carriers that can be accessed by use of "1010XXX" dialing from the call aggregator's facilities.

(3) Waivers to the access requirement may be granted by the commission to prevent fraudulent use of telephone services or for other good cause. An application under subparagraph (B) of this paragraph is not required for any generic waiver granted by subparagraph (A) of this paragraph.

(A) The commission finds that the following generic waivers of the access requirement are required to prevent fraudulent use.

(i) Access to interexchange carriers by "1010XXX+0" (whether "1010XXX+0+" or "1010XXX+0-") dialing may be blocked if the end office serving the originating line does not have originating line screening capability.

(ii) Access to interexchange carriers by "1010XXX+1" dialing may be blocked.

(iii) Access to the local exchange carrier operator and to other telecommunications utilities from telephones located in confinement facilities may be blocked.

(B) Applications for waiver of the requirement for access to the local exchange carrier operator or to other telecommunications utilities to prevent fraudulent use of telephone service or for other good cause may be filed by the call aggregator or the OSP. The commission shall process such applications for waiver using the following criteria and procedures:

(i) Each application for waiver shall contain a certificate of service attesting that a copy of the application has been served upon the Office of Public Utility Counsel and affected telecommunications utilities, including those identified in paragraph (2) of this subsection and the local exchange companies serving the affected exchange. If the application for waiver pertains to technical limitations of certain equipment, the application for waiver shall contain a certificate of service attesting that a copy of the application has been served upon the Office of Public Utility Counsel and all telecommunications utilities registered with or certificated by the commission. The certificate shall list the telecommunications utilities on which copies of the application were served.

(ii) If the application for waiver pertains to technical limitations of certain equipment, the equipment shall be clearly identified in the application, including the manufacturer and the model. The application shall indicate the date of purchase of the equipment by the call aggregator, the extent to which equipment is available to allow the access requirements to be met, the associated costs, and the time requirements associated with equipment modifications.

(iii) The access requirement shall be enforced while the application for waiver is pending.

(iv) Each application for waiver shall initially be assigned a project control number, assigned to a presiding officer, and reviewed administratively.

(I) No later than 30 days after the filing date of the application, interested persons other than the commission staff and the Office of Public Utility Counsel may file written comments or recommendations concerning the application. No later than 60 days after the filing of the application, the commission staff shall, and the Office of Public Utility Counsel may, file written comments or recommendations concerning the application.

(II) Within 90 days of the filing, after administrative review, the presiding officer shall approve, deny, or docket the application. The presiding officer may postpone a decision on the application beyond the 90th day after filing if he or she finds that additional information is needed to determine whether good cause exists.

(v) A participating party may request, within ten days of the presiding officer's ruling approving or denying the application, that the application be docketed, and upon such request, the application shall be docketed.

(vi) If the presiding officer either approves or denies the application for waiver and no participating party has requested that the application be docketed, a copy of the presiding officer's ruling shall be provided to the commission. The commission may, within 40 days of the presiding officer's ruling, overrule the approval or denial and order that the request for waiver be docketed.

§26.321. 9-1-1 Calls, "0-" Calls, and End User Choice.

(a) This section does not apply to a deregulated company holding a certificate of operating authority or to an exempt carrier under Public Utility Act (PURA) §52.154.

(b) A contract between an operator service provider (OSP) and a call aggregator for the provision of operator services through telephones that are intended for public use shall require the call aggregator to allow 9-1-1 calls to be outpulsed directly to the public service answering point without requiring a coin or credit card.

(c) Where end user choice, as defined in §26.5 of this title (relating to Definitions), is not available, a contract between an OSP and a call aggregator for the provision of operator services through telephones that are intended for public use shall require the call aggregator to allow "0-" calls and to directly, without charge to the calling party, route all "0-" calls to an OSP that provides access to emergency services that meet the technical standards set forth in paragraphs (1) - (6) of this subsection. The OSP shall:

- (1) identify the originating telephone number and the location of the originating telephone, except dominant certificated telecommunications utilities (DCTUs) shall be allowed to identify the location using internal sources such as repair service or business office records if such internal sources are accessible to operators for emergency purposes 24 hours a day;
- (2) have a complete and current list of all emergency service provider telephone numbers for each NPA-NXX served, including, but not limited to, police or sheriff, fire, and ambulance;
- (3) be available 24 hours a day, seven days a week, without requiring a coin or credit card;
- (4) promptly connect the appropriate emergency service provider;
- (5) stay on the line until such time as the operator determines that the caller has been connected to the proper emergency service provider; and
- (6) require that the call aggregator make a test call when equipment providing access to the OSP is installed, serviced, or relocated and at least semi-annually from each originating telephone num-

ber subscribed to the OSP, in order to verify the originating telephone number and the location of the telephone, unless the OSP receives automatic number identification (ANI), as defined in §26.5 of this title for that telephone number.

(d) When and where available, use of end user choice is required.

(e) The requirements of this section shall not apply to telephones located in confinement facilities.

(f) Nothing in this section shall be deemed to require the initial routing of "0-" calls from pay telephones owned by a local exchange company that provides access to emergency service providers and that meets the requirements enumerated in §26.315 of this title (relating to Requirements for Dominant Certificated Telecommunications Utilities (DCTUs)) to any OSP other than the local exchange company itself.

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SUBCHAPTER N. PAY TELEPHONE SERVICE

16 TAC §26.342

The amendments are adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (West 2007 and Supp. 2013) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, and the amendments to PURA made by Senate Bills 259, 512, 583, and 809 of the 83rd Legislature, Regular Session.

Cross Reference to Statutes: PURA §14.002 and the amendments to PURA made by Senate Bills 259, 512, 583, and 809 of the 83rd Legislature, Regular Session.

§26.342. Pay Telephone Service Tariff Provisions.

(a) Application. This section does not apply to a deregulated company holding a certificate of operating authority or to an exempt carrier under Public Utility Act (PURA) §52.154.

(b) Available upon request. Upon formal request for service by any prospective provider of pay telephone service (PTS), a certificated telecommunications utility (CTU) is required to file a tariff providing for interconnection of customer-owned pay telephones, except as otherwise provided in subsection (c) of this section.

(c) Special assembly tariffs. A CTU with fewer than 50 pay telephone lines may provide pay telephone access service (PTAS) pursuant to existing special assembly tariffs; however, in no event may a CTU provide to more than ten special assembly arrangements. Special assembly rates must be computed in accordance with this section. CTUs that provide PTAS pursuant to special assembly tariffs must enter into a written agreement with the PTS provider that requires the provider to perform all functions and obligations specified in §26.344 of this title (relating to Pay Telephone Service Requirements). When a

CTU that holds a certificate of convenience and necessity (CCN) makes its initial filing to offer PTAS, the application must include the proposed tariff, cost studies or a commission approved rate for similar services offered by a larger CTU holding a CCN.

(d) Enforcement of tariff requirements. If a PTS provider is in violation of a tariff provision, the CTU must notify the PTS provider of the violation in writing. Such notice must refer to the specific tariff provisions being violated. The notice must state that the PTS provider is subject to disconnection by the CTU of the instrument(s) in violation of the tariff unless the PTS provider corrects the violation and notifies the CTU in writing, within 20 days of receipt of the notice of the violation, that the violation has been corrected. The CTU may disconnect the instrument(s) that are in violation of the tariff on or after the 20th day after receipt of the notice by the PTS provider, if the PTS provider did not notify the CTU in writing within 20 days of receipt of the notice that the violation was corrected. However, if the PTS provider has filed a complaint with the commission regarding the disconnection and has provided the CTU with a copy of the complaint that indicates that the complaint has been filed with the commission within 20 days of receipt of the notice of a violation from the CTU, the CTU may not disconnect the instrument(s) pending resolution of the complaint by the commission.

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SUBCHAPTER P. TEXAS UNIVERSAL SERVICE FUND

16 TAC §§26.406, 26.417, 26.418, 26.420 - 26.423

The amendments are adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (West 2007 and Supp. 2013) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, and the amendments to PURA made by Senate Bills 259, 512, 583, and 809 of the 83rd Legislature, Regular Session.

Cross Reference to Statutes: PURA §14.002 and the amendments to PURA made by Senate Bills 259, 512, 583, and 809 of the 83rd Legislature, Regular Session.

§26.417. *Designation as Eligible Telecommunications Providers to Receive Texas Universal Service Funds (TUSF).*

(a) Purpose. This section provides the requirements for the commission to designate telecommunications providers as eligible telecommunications providers (ETPs) to receive funds from the Texas Universal Service Fund (TUSF) under §26.403 of this title (relating to the Texas High Cost Universal Service Plan (THCUSP)) and §26.404 of this title (relating to the Small and Rural Incumbent Local Exchange Company (ILEC) Universal Service Plan). Only telecommunications

providers designated by the commission as ETPs shall qualify to receive universal service support under these programs.

(b) Requirements for establishing ETP service areas.

(1) THCUSP service area. THCUSP service area shall be based upon wire centers (WCs) or other geographic area as determined appropriate by the commission. A telecommunications provider may be designated an ETP for any or all WCs that are wholly or partially contained within its certificated service area. An ETP must serve an entire WC, or other geographic area as determined appropriate by the commission, unless its certificated service area does not encompass the entire WC, or other geographic area as determined appropriate by the commission.

(2) Small and Rural ILEC Universal Service Plan service area. A Small and Rural ILEC Universal Service Plan service area for an ETP serving in a small or rural ILEC's territory shall include the entire study area of such small or rural ILEC.

(c) Criteria for designation of ETPs.

(1) Telecommunications providers. A telecommunications provider, as defined in the Public Utility Regulatory Act (PURA) §51.002(10), shall be eligible to receive TUSF support pursuant to §26.403 or §26.404 of this title in each service area for which it seeks ETP designation if it meets the following requirements:

(A) the telecommunications provider has been designated an eligible telecommunications carrier, pursuant to §26.418 of this title (relating to the Designation of Common Carriers as Eligible Telecommunications Carriers to Receive Federal Universal Service Funds), and provides the federally designated services to customers in order to receive federal universal service support;

(B) the telecommunications provider defines its ETP service area pursuant to subsection (b) of this section and assumes the obligation to offer any customer within an exchange in its ETP service area, for which the provider receives support under this section, basic local telecommunications services, as defined in §26.403 of this title, at a rate not to exceed 150% of the ILEC's tariffed rate;

(C) the telecommunications provider offers basic local telecommunications services using either its own facilities, purchased unbundled network elements (UNEs), or a combination of its own facilities, purchased UNEs, and resale of another carrier's services;

(D) the telecommunications provider renders continuous and adequate service within an exchange in its ETP service area for which the provider receives support under this section, in compliance with the quality of service standards defined in §26.52 of this title (relating to Emergency Operations), §26.53 of this title (relating to Inspections and Tests), and §26.54 of this title (relating to Service Objectives and Performance Benchmarks);

(E) the telecommunications provider offers services in compliance with §26.412 of this title (relating to Lifeline Service Program); and

(F) the telecommunications provider advertises the availability of, and charges for, supported services using media of general distribution.

(2) ILECs. If the telecommunications provider is an ILEC, as defined in PURA §51.002(10), it shall be eligible to receive TUSF support pursuant to §26.403 of this title in each service area for which it seeks ETP designation if it meets the requirements of paragraph (1) of this subsection and the following requirements:

(A) If the ILEC is regulated pursuant to the Public Utility Regulatory Act (PURA) Chapter 58 or 59 it shall either:

(i) reduce rates for services determined appropriate by the commission to an amount equal to its THCUSP support amount; or

(ii) provide a statement that it agrees to a reduction of its THCUSP support amount equal to its CCL, RIC and intraLATA toll revenues.

(B) If the ILEC is not regulated pursuant to PURA Chapter 58 or 59 it shall reduce its rates for services determined appropriate by the commission by an amount equal to its THCUSP support amount.

(C) Any reductions in switched access service rates for ILECs with more than 125,000 access lines in service in this state on December 31, 1998, that are made in accordance with this section shall be proportional, based on equivalent minutes of use, to reductions in intraLATA toll rates, and those reductions shall be offset by equal disbursements from the universal service fund under PURA §56.021(1). This subparagraph expires August 31, 2007.

(d) Designation of more than one ETP.

(1) In areas not served by small or rural ILECs, as defined in §26.404(b) of this title, the commission may designate, upon application, more than one ETP in an ETP service area so long as each additional provider meets the requirements of subsection (c) of this section.

(2) In areas served by small or rural ILECs as defined in §26.404(b) of this title, the commission may designate additional ETPs if the commission finds that the designation is in the public interest.

(e) Proceedings to designate telecommunications providers as ETPs.

(1) At any time, a telecommunications provider may seek commission approval to be designated an ETP for a requested service area.

(2) In order to receive support under §26.403 or §26.404 of this title for exchanges purchased from an unaffiliated provider, the acquiring ETP shall file an application, within 30 days after the date of the purchase, to amend its ETP service area to include those geographic areas in the purchased exchanges that are eligible for support.

(3) If an ETP receiving support under §26.403 or §26.404 of this title sells an exchange to an unaffiliated provider, it shall file an application, within 30 days after the date of the sale, to amend its ETP designation to exclude, from its designated service area, those exchanges for which it was receiving support.

(f) Requirements for application for ETP designation and commission processing of application.

(1) Requirements for notice and contents of application for ETP designation.

(A) Notice of application. Notice shall be published in the *Texas Register*. The presiding officer may require additional notice. Unless otherwise required by the presiding officer or by law, the notice shall include at a minimum a description of the service area for which the applicant seeks designation, the proposed effective date of the designation, and the following language: "Persons who wish to comment on this application should notify the Public Utility Commission by (specified date, ten days before the proposed effective date). Requests for further information should be mailed to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or you may call the Public Utility Commission's Customer Protection Division at (512) 936-7120 or (888) 782-8477. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commis-

sion at (512) 936-7136, or use Relay Texas (800) 735-2989 to reach the commission's toll free number (888) 782-8477."

(B) Contents of application. A telecommunications provider seeking to be designated as an ETP for a high cost service area in this state shall file with the commission an application complying with the requirements of this section. In addition to copies required by other commission rules, one copy of the application shall be delivered to the commission staff and one copy shall be delivered to the Office of Public Utility Counsel.

(i) Telecommunications providers. The application shall:

(I) show that the applicant is a telecommunications provider as defined in PURA §51.002(10);

(II) show that the applicant has been designated by the commission as a telecommunications provider eligible for federal universal service support and show that the applicant offers federally supported services to customers pursuant to the terms of 47 United States Code §214(e) (relating to Provision of Universal Service) in order to receive federal universal service support;

(III) specify the THCUSP or small and rural ILEC service area in which the applicant proposes to be an ETP, show that the applicant offers each of the designated services, as defined in §26.403 of this title, throughout the THCUSP or small and rural ILEC service area for which it seeks an ETP designation, and show that the applicant assumes the obligation to offer the services, as defined in §26.403 of this title, to any customer in the THCUSP or small and rural ILEC service area for which it seeks ETP designation;

(IV) show that the applicant does not offer the designated services, as defined in §26.403 of this title, solely through total service resale;

(V) show that the applicant renders continuous and adequate service within the area or areas, for which it seeks designation as an ETP, in compliance with the quality of service standards defined in §§26.52, 26.53, and 26.54 of this title;

(VI) show that the applicant offers Lifeline and Link Up services in compliance with §26.412 of this title;

(VII) show that the applicant advertises the availability of and charges for designated services, as defined in §26.403 of this title, using media of general distribution;

(VIII) a statement detailing the method and content of the notice the applicant has provided or intends to provide to the public regarding the application and a brief statement explaining why the notice proposal is reasonable and that the notice proposal complies with applicable law;

(IX) provide a copy of the text of the notice;

(X) state the proposed effective date of the designation; and

(XI) provide any other information which the applicant wants considered in connection with the commission's review of its application.

(ii) ILECs. If the applicant is an ILEC, in addition to the requirements of clause (i) of this subparagraph, the application shall show compliance with the requirements of subsection (c)(2) of this section.

(2) Commission processing of application.

(A) Administrative review. An application considered under this section may be reviewed administratively unless the telecommunications provider requests the application be docketed or the presiding officer, for good cause, determines at any point during the review that the application should be docketed.

(i) The effective date of the ETP designation shall be no earlier than 30 days after the filing date of the application or 30 days after notice is completed, whichever is later.

(ii) The application shall be examined for sufficiency. If the presiding officer concludes that material deficiencies exist in the application, the applicant shall be notified within ten working days of the filing date of the specific deficiency in its application. The earliest possible effective date of the application shall be no less than 30 days after the filing of a sufficient application with substantially complete information as required by the presiding officer. Thereafter, any deadlines shall be determined from the 30th day after the filing of the sufficient application and information or from the effective date if the presiding officer extends that date.

(iii) While the application is being administratively reviewed, the commission staff and the staff of the Office of Public Utility Counsel may submit requests for information to the applicant. Three copies of all answers to such requests for information shall be provided to the commission staff and the Office of Public Utility Counsel within ten days after receipt of the request by the applicant.

(iv) No later than 20 days after the filing date of the application or the completion of notice, whichever is later, interested persons may provide written comments or recommendations concerning the application to the commission staff. The commission staff shall and the Office of Public Utility Counsel may file with the presiding officer written comments or recommendations regarding the application.

(v) No later than 35 days after the proposed effective date of the application, the presiding officer shall issue an order approving, denying, or docketing the application.

(B) Approval or denial of application. The application shall be approved by the presiding officer if it meets the following requirements.

(i) The provision of service constitutes basic local telecommunications service as defined in §26.403 of this title.

(ii) Notice was provided as required by this section.

(iii) The applicant has met the requirements contained in subsection (c) of this section.

(iv) The ETP designation is consistent with the public interest in a technologically advanced telecommunications system and consistent with the preservation of universal service.

(C) Docketing. If, based on the administrative review, the presiding officer determines that one or more of the requirements have not been met, the presiding officer shall docket the application. The requirements of subsection (c) of this section may not be waived.

(D) Review of the application after docketing. If the application is docketed, the effective date of the application shall be automatically suspended to a date 120 days after the applicant has filed all of its direct testimony and exhibits, or 155 days after the proposed effective date, whichever is later. Three copies of all answers to requests for information shall be filed with the commission within ten days after receipt of the request. Affected persons may move to intervene in the docket, and a hearing on the merits shall be scheduled. A hearing on the merits shall be limited to issues of eligibility. The ap-

plication shall be processed in accordance with the commission's rules applicable to docketed cases.

(g) Relinquishment of ETP designation. A telecommunications provider may seek to relinquish its ETP designation.

(1) Area served by more than one ETP. The commission shall permit a telecommunications provider to relinquish its ETP designation in any area served by more than one ETP upon:

(A) written notification not less than 90 days prior to the proposed effective date of the relinquishment;

(B) determination by the commission that the remaining ETP or ETPs can provide basic local service to the relinquishing telecommunications provider's customers; and

(C) determination by the commission that sufficient notice of relinquishment has been provided to permit the purchase or construction of adequate facilities by any remaining ETP or ETPs.

(2) Area where the relinquishing telecommunications provider is the sole ETP. In areas where the relinquishing telecommunications provider is the only ETP, the commission may permit it to relinquish its ETP designation upon:

(A) written notification that the telecommunications provider seeks to relinquish its ETP designation; and

(B) commission designation of a new ETP for the service area or areas through the auction procedure provided in subsection (h) of this section.

(3) Relinquishment for non-compliance. The TUSF administrator shall notify the commission when the TUSF administrator is aware that an ETP is not in compliance with the requirements of subsection (c) of this section.

(A) The commission shall revoke the ETP designation of any telecommunications provider determined not to be in compliance with subsection (c) of this section.

(B) The commission may revoke a portion of the ETP designation of any telecommunications provider determined not to be in compliance with the quality of service standards defined in §§26.52, 26.53, and 26.54 of this title, in that portion of its ETP service area.

(h) Auction procedure for replacing the sole ETP in an area. In areas where a telecommunications provider is the sole ETP and seeks to relinquish its ETP designation, the commission shall initiate an auction procedure to designate another ETP. The auction procedure will use a competitive, sealed bid, single-round process to select a telecommunications provider meeting the requirements of subsection (f)(1) of this section that will provide basic local telecommunications service at the lowest cost.

(1) Announcement of auction. Within 30 days of receiving a request from the last ETP in a service area to relinquish its designation, the commission shall provide notice in the *Texas Register* of the auction. The announcement shall at minimum detail the geographic location of the service area, the total number of access lines served, the forward-looking economic cost computed pursuant to §26.403 of this title, of providing basic local telecommunications service and the other services included in the benchmark calculation, existing tariffed rates, bidding deadlines, and bidding procedure.

(2) Bidding procedure. Bids must be received by the TUSF administrator not later than 60 days from the date of publication in the *Texas Register*.

(A) Every bid must contain:

(i) the level of assistance per line that the bidder would need to provide all services supported by universal service mechanisms;

(ii) information to substantiate that the bidder meets the eligibility requirements in subsection (c)(1) of this section; and

(iii) information to substantiate that the bidder has the ability to serve the relinquishing ETP's customers.

(B) The TUSF administrator shall collect all bids and within 30 days of the close of the bidding period request that the commission approve the TUSF administrator's selection of the successful bidder.

(C) The commission may designate the lowest qualified bidder as the ETP for the affected service area or areas.

(i) Requirements for annual affidavit of compliance to receive TUSF support. An ETP serving a rural or non-rural study area shall comply with the following requirements for annual compliance for the receipt of TUSF support.

(1) Annual Affidavit of Compliance. On or before September 1 of each year, an ETP that receives disbursements from the TUSF shall file with the commission an affidavit certifying that the ETP is in compliance with the requirements for receiving money from the universal service fund and requirements regarding the use of money from each TUSF program from which the telecommunications provider receives disbursements.

(2) Filing Affidavit. The affidavit used shall be the annual compliance affidavit approved by the commission.

§26.418. Designation of Common Carriers as Eligible Telecommunications Carriers to Receive Federal Universal Service Funds.

(a) Purpose. This section provides the requirements for the commission to designate common carriers as eligible telecommunications carriers (ETCs) to receive support from the federal universal service fund (FUSF) pursuant to 47 United States Code (U.S.C.) §214(e) (relating to Provision of Universal Service). In addition, this section provides guidelines for rural and non-rural carriers to meet the federal requirements of annual certification for FUSF support criteria and, if requested or ordered, for the disaggregation of rural carriers' FUSF support.

(b) Application. This section applies to a common carrier seeking designation as an ETC, except for commercial mobile radio service (CMRS) resellers. A CMRS reseller may not seek designation from the commission, but instead may seek designation as an ETC by the Federal Communications Commission (FCC). This section also applies to a common carrier that has been designated by the commission as an ETC, including a CMRS reseller. Subsection (i) of this section does not apply to a deregulated company holding a certificate of operating authority or to an exempt carrier under Public Utility Act (PURA) §52.154.

(c) Service areas. The commission may designate ETC service areas according to the following criteria.

(1) Non-rural service area. To be eligible to receive federal universal service support in non-rural areas, a carrier must provide federally supported services pursuant to 47 Code of Federal Regulations (C.F.R.) §54.101 (relating to Supported Services for Rural, Insular, and High Cost Areas) throughout the area for which the carrier seeks to be designated an ETC.

(2) Rural service area. In the case of areas served by a rural telephone company, as defined in §26.404 of this title (relating to Small and Rural Incumbent Local Exchange Company (ILEC) Univer-

sal Service Plan), a carrier must provide federally supported services pursuant to 47 C.F.R. §54.101 throughout the study area of the rural telephone company in order to be eligible to receive federal universal service support.

(d) Criteria for determination of ETCs. A common carrier shall be designated as eligible to receive federal universal service support if it:

(1) offers the services that are supported by the federal universal service support mechanisms under 47 C.F.R. §54.101 either using its own facilities or a combination of its own facilities and resale of another carrier's services; and

(2) advertises the availability of and charges for such services using media of general distribution.

(e) Criteria for determination of receipt of federal universal service support. In order to receive federal universal service support, a common carrier must:

(1) meet the requirements of subsection (d) of this section;

(2) offer Lifeline Service to qualifying low-income consumers in compliance with 47 C.F.R. Part 54, Subpart E (relating to Universal Service Support for Low-Income Consumers); and

(3) offer toll limitation services in accordance with 47 C.F.R. §54.400 (relating to Terms and Definitions) and §54.401 (relating to Lifeline Defined).

(f) Designation of more than one ETC.

(1) Non-rural service areas. In areas not served by rural telephone companies, as defined in §26.404 of this title, the commission shall designate, upon application, more than one ETC in a service area so long as each additional carrier meets the requirements of subsections (c)(1) and (d) of this section.

(2) Rural service areas. In areas served by rural telephone companies, as defined in §26.404 of this title, the commission may designate as an ETC a carrier that meets the requirements of subsections (c)(2) and (d) of this section if the commission finds that the designation is in the public interest.

(g) Proceedings to designate ETCs.

(1) At any time, a common carrier may seek commission approval to be designated an ETC for a requested service area.

(2) In order to receive support under this section for exchanges purchased from an unaffiliated carrier, the acquiring ETC shall file an application, within 30 days after the date of the purchase, to amend its ETC service area to include those geographic areas that are eligible for support.

(3) If an ETC receiving support under this section sells an exchange to an unaffiliated carrier, it shall file an application, within 30 days after the date of the sale, to amend its ETC designation to exclude from its designated service area those exchanges for which it was receiving support.

(h) Application requirements and commission processing of applications.

(1) Requirements for notice and contents of application.

(A) Notice of application. Notice shall be published in the *Texas Register*. The presiding officer may require additional notice. Unless otherwise required by the presiding officer or by law, the notice shall include at a minimum a description of the service area for which the applicant seeks eligibility, the proposed effective date of the

designation, and the following statement: "Persons who wish to comment on this application should notify the Public Utility Commission of Texas by (specified date, ten days before the proposed effective date). Requests for further information should be mailed to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or you may call the Public Utility Commission's Customer Protection Division at (512) 936-7120 or (888) 782-8477. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136, or use Relay Texas (800) 735-2989 to reach the commission's toll free number (888) 782-8477."

(B) Contents of application for each common carrier seeking ETC designation. A common carrier that seeks to be designated as an ETC shall file with the commission an application complying with the requirements of this section. In addition to copies required by other commission rules, one copy of the application shall be delivered to the commission's Regulatory Division and one copy shall be delivered to the Office of Public Utility Counsel. The application shall:

(i) show that the applicant offers each of the services that are supported by the FUSF support mechanisms under 47 U.S.C. §254(c) (relating to Universal Service) either using its own facilities or a combination of its own facilities and resale of another carrier's services throughout the service area for which it seeks designation as an ETC;

(ii) show that the applicant assumes the obligation to offer each of the services that are supported by the FUSF support mechanisms under 47 U.S.C. §254(c) to any consumer in the service area for which it seeks designation as an ETC;

(iii) show that the applicant advertises the availability of, and charges for, such services using media of general distribution;

(iv) show the service area in which the applicant seeks designation as an ETC;

(v) contain a statement detailing the method and content of the notice the applicant has provided or intends to provide to the public regarding the application and a brief statement explaining why the proposed notice is reasonable and in compliance with applicable law;

(vi) contain a copy of the text of the notice;

(vii) contain the proposed effective date of the designation; and

(viii) contain any other information which the applicant wants considered in connection with the commission's review of its application.

(C) Contents of application for each common carrier seeking ETC designation and receipt of federal universal service support. A common carrier that seeks to be designated as an ETC and receive federal universal service support shall file with the commission an application complying with the requirements of this section. In addition to copies required by other commission rules, one copy of the application shall be delivered to the commission staff and one copy shall be delivered to the Office of Public Utility Counsel. The application shall:

(i) comply with the requirements of subparagraph (B) of this paragraph;

(ii) show that the applicant offers Lifeline Service to qualifying low-income consumers in compliance with 47 C.F.R. Part 54, Subpart E; and

(iii) show that the applicant offers toll limitation services in accordance with 47 C.F.R. §54.400 and §54.401.

(2) Commission processing of application.

(A) Administrative review. An application considered under this section may be reviewed administratively unless the presiding officer, for good cause, determines at any point during the review that the application should be docketed.

(i) The effective date shall be no earlier than 30 days after the filing date of the application or 30 days after notice is completed, whichever is later.

(ii) The application shall be examined for sufficiency. If the presiding officer concludes that material deficiencies exist in the application, the applicant shall be notified within ten working days of the filing date of the specific deficiency in its application. The earliest possible effective date of the application shall be no less than 30 days after the filing of a sufficient application with substantially complete information as required by the presiding officer. Thereafter, any deadlines shall be determined from the 30th day after the filing of the sufficient application and information or from the effective date if the presiding officer extends that date.

(iii) While the application is being administratively reviewed, the commission staff and the staff of the Office of Public Utility Counsel may submit requests for information to the telecommunications carrier. Three copies of all answers to such requests for information shall be provided to the commission staff and the Office of Public Utility Counsel within ten days after receipt of the request by the telecommunications carrier.

(iv) No later than 20 days after the filing date of the application or the completion of notice, whichever is later, interested persons may provide the commission staff with written comments or recommendations concerning the application. The commission staff shall and the Office of Public Utility Counsel may file with the presiding officer written comments or recommendations regarding the application.

(v) No later than 35 days after the proposed effective date of the application, the presiding officer shall issue an order approving, denying, or docketing the application.

(B) Approval or denial of application.

(i) An application filed pursuant to paragraph (1)(B) of this subsection shall be approved by the presiding officer if the application meets the following requirements:

(I) the provision of service constitutes the services that are supported by the FUSF support mechanisms under 47 U.S.C. §254(c);

(II) the applicant will provide service using either its own facilities or a combination of its own facilities and resale of another carrier's services;

(III) the applicant advertises the availability of, and charges for, such services using media of general distribution;

(IV) notice was provided as required by this section;

(V) the applicant satisfies the requirements contained in subsection (c) of this section; and

(VI) if, in areas served by a rural telephone company, the ETC designation is consistent with the public interest.

(ii) An application filed pursuant to paragraph (1)(C) of this subsection shall be approved by the presiding officer if the application meets the following requirements:

(I) the applicant has satisfied the requirements set forth in clause (i) of this subparagraph;

(II) the applicant offers Lifeline Service to qualifying low-income consumers in compliance with 47 C.F.R. Part 54, Subpart E; and

(III) the applicant offers toll limitation services in accordance with 47 C.F.R. §54.400 and §54.401.

(C) Docketing. If, based on the administrative review, the presiding officer determines that one or more of the requirements have not been met, the presiding officer shall docket the application.

(D) Review of the application after docketing. If the application is docketed, the effective date of the application shall be automatically suspended to a date 120 days after the applicant has filed all of its direct testimony and exhibits, or 155 days after the proposed effective date, whichever is later. Three copies of all answers to requests for information shall be filed with the commission within ten days after receipt of the request. Affected persons may move to intervene in the docket, and a hearing on the merits shall be scheduled. A hearing on the merits shall be limited to issues of eligibility. The application shall be processed in accordance with the commission's rules applicable to docketed cases.

(E) Waiver. In the event that an otherwise ETC requests additional time to complete the network upgrades needed to provide single-party service, access to enhanced 911 service, or toll limitation, the commission may grant a waiver of these service requirements upon a finding that exceptional circumstances prevent the carrier from providing single-party service, access to enhanced 911 service, or toll limitation. The period for the waiver shall not extend beyond the time that the commission deems necessary for that carrier to complete network upgrades to provide single-party service, access to enhanced 911 service, or toll limitation services.

(i) Designation of ETC for unserved areas. If no common carrier will provide the services that are supported by federal universal service support mechanisms under 47 U.S.C. §254(c) to an unserved community or any portion thereof that requests such service, the commission, with respect to intrastate services, shall determine which common carrier or carriers are best able to provide such service to the requesting unserved community or portion thereof and shall order such carrier or carriers to provide such service for that unserved community or portion thereof.

(j) Relinquishment of ETC designation. A common carrier may seek to relinquish its ETC designation.

(1) Area served by more than one ETC. The commission shall permit a common carrier to relinquish its designation as an ETC in any area served by more than one ETC upon:

(A) written notification not less than 90 days prior to the proposed effective date that the common carrier seeks to relinquish its designation as an ETC;

(B) determination by the commission that the remaining eligible telecommunications carrier or carriers can offer federally supported services to the relinquishing carrier's customers; and

(C) determination by the commission that sufficient notice of relinquishment has been provided to permit the purchase or construction of adequate facilities by any remaining eligible telecommunications carrier or carriers.

(2) Area where the common carrier is the sole ETC. In areas where the common carrier is the only ETC, the commission may permit it to relinquish its ETC designation upon:

(A) written notification not less than 90 days prior to the proposed effective date that the common carrier seeks to relinquish its designation as an ETC; and

(B) commission designation of a new ETC for the service area or areas.

(k) Rural and non-rural carriers' requirements for annual certification to receive FUSF support. A common carrier serving a rural or non-rural study area shall comply with the following requirements for annual certification for the receipt of FUSF support.

(1) Annual certification. Common carriers must provide the commission with an affidavit annually, on or before September 1st of each year, which certifies that the carrier is complying with the federal requirements for the receipt of FUSF support. Upon receipt and acceptance of the affidavits filed on or before September 1st each year, the commission will certify these carriers' eligibility for FUSF to the FCC and the Federal Universal Service Fund Administrator by October 1st each year.

(2) Failure to file. Common carriers failing to file an affidavit by September 1st may still be certified by the commission for annual FUSF. However, the carrier is ineligible for support until the quarter following the federal universal service administrator's receipt of the commission's supplemental submission of the carrier's compliance with the federal requirements.

(3) Supplemental certification. For carriers not subject to the annual certification process, the schedule set forth in 47 C.F.R. §54.313 and 47 C.F.R. §54.314(d) for the filing of supplemental certifications shall apply.

(4) Recommendation for Revocation of FUSF support certification. The commission may recommend the revocation of the FUSF support certification of any carrier that it determines has not complied with the federal requirements pursuant to 47 U.S.C. §254(e) and will review any challenge to a carrier's FUSF support certification and make an appropriate recommendation as a result of any such review.

(l) Disaggregation of rural carriers' FUSF support. Common carriers serving rural study areas must comply with the following requirements regarding disaggregation of FUSF support.

(1) Election by May 15, 2002. On or before May 15, 2002, all rural incumbent local exchange carriers (ILECs) may notify the commission of one of the following elections regarding FUSF support. This election will remain in place for four years from the effective date of certification, pursuant to 47 C.F.R. §54.315, unless the commission, on its own motion, or upon the motion of the rural ILEC or an interested party, requires a change to the elected disaggregation plan:

(A) a rural ILEC may choose to certify to the commission that it will not disaggregate at this time;

(B) a rural ILEC may seek disaggregation of its FUSF support by filing a targeted plan with the commission that meets the criteria in paragraph (3) of this subsection, subject to the commission's approval of the plan;

(C) a rural ILEC may self-certify a disaggregation targeted plan that meets the criteria in paragraphs (3) and (4) of this subsection, disaggregate support to the wire center level or up to no more than two cost zones, or mirror a plan for disaggregation that has received prior commission approval; or

(D) if the rural ILEC serves a study area that is served by another carrier designated as an ETC prior to the effective date of 47 C.F.R. §54.315, (June 19, 2001), the ILEC may only self-certify the disaggregation of its FUSF support by adopting a plan for disaggregation that has received prior commission approval.

(2) Abstain from filing. If a rural ILEC abstains from filing an election on or before May 15, 2002, the carrier will not be permitted to disaggregate its FUSF support unless it is ordered to do so by the commission pursuant to the terms of paragraph (5) of this subsection.

(3) Requirements for rural ILECs' disaggregation plans. Pursuant to the federal requirements in 47 C.F.R. §54.315(e) a rural ILEC's disaggregation plan, whether submitted pursuant to paragraph (1)(B), (C) or (D) of this subsection, must meet the following requirements:

(A) the sum of the disaggregated annual support must be equal to the study area's total annual FUSF support amount without disaggregation;

(B) the ratio of the per line FUSF support between disaggregation zones for each disaggregated category of FUSF support shall remain fixed over time, except as changes are required pursuant to paragraph (5) of this subsection;

(C) the ratio of per line FUSF support shall be publicly available;

(D) the per line FUSF support amount for each disaggregated zone or wire center shall be recalculated whenever the rural ILEC's total annual FUSF support amount changes and revised total per line FUSF support and updated access line counts shall then be applied using the changed FUSF support amount and updated access line counts applicable at that point;

(E) each support category complies with subparagraphs (A) and (B) of this paragraph;

(F) monthly payments of FUSF support shall be based upon the annual amount of FUSF support divided by 12 months if the rural ILEC's study area does not contain a competitive carrier designated as an ETC; and

(G) a rural ILEC's disaggregation plan methodology and the underlying access line count upon which it is based will apply to any competitive carrier designated as an ETC in the study area.

(4) Additional requirements for self-certification of a disaggregation plan. Pursuant to 47 C.F.R. §54.315(d)(2), a rural ILEC's self-certified disaggregation plan must also include the following items in addition to those items required by paragraph (3) of this subsection:

(A) support for, and a description of, the rationale used, including methods and data relied upon, as well as a discussion of how the plan meets the requirements in paragraph (3) of this subsection and this paragraph;

(B) a reasonable relationship between the cost of providing service for each disaggregation zone within each disaggregation category of support proposed;

(C) a clearly specified per-line level of FUSF support for each category pursuant to 47 C.F.R. §54.315(d)(2)(iii);

(D) if the plan uses a benchmark, a detailed explanation of the benchmark and how it was determined that is generally consistent with how the level of support for each category of costs was derived so that competitive ETCs may compare the disaggregated costs for each cost zone proposed; and

(E) maps identifying the boundaries of the disaggregated zones within the study area.

(5) Disaggregation upon commission order. The commission on its own motion or upon the motion of an interested party may order a rural ILEC to disaggregate FUSF support under the following criteria:

(A) the commission determines that the public interest of the rural study area is best served by disaggregation of the rural ILEC's FUSF support;

(B) the commission establishes the appropriate disaggregated level of FUSF support for the rural ILEC; or

(C) changes in ownership or changes in state or federal regulation warrant the commission's action.

(6) Effective dates of disaggregation plans. The effective date of a rural ILEC's disaggregation plan shall be as specified in 47 C.F.R. §54.315.

§26.421. *Designation of Eligible Telecommunications Providers to Provide Service to Uncertificated Areas.*

(a) Purpose. The provisions of this section establish the procedures for the commission to designate an eligible telecommunications provider (ETP) to provide voice-grade services to permanent residential or business premises that are not included within the certificated area of a holder of a certificate of convenience and necessity (CCN), and for the reimbursement of costs from the Texas Universal Service Fund (TUSF).

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

(1) Designated provider--A telecommunications provider designated by the commission to provide services to premises located within an uncertificated area

(2) Eligible telecommunications provider (ETP)--A telecommunications provider designated by the commission pursuant to §26.417 of this title (relating to Designation as Eligible Telecommunications Providers to Receive Texas Universal Service Funds (TUSF)).

(3) Permanent residential or business premises--A premises that has permanent facilities for water, wastewater, and electricity.

(4) Preferred provider--A designated provider for any permanent residential or business premises within reasonable proximity to those petitioning premises for later petitions filed under §26.422 of this title (relating to Subsequent Petitions for Service in Uncertificated Areas).

(c) Application. This section applies to telecommunications providers that have been designated ETPs by the commission pursuant to §26.417 of this title. This section does not apply to a deregulated company holding a certificate of operating authority or to an exempt carrier under Public Utility Act (PURA) §52.154.

(d) Petition for service.

(1) Eligibility. Persons residing in permanent residential premises or owners of permanent residential or business premises that are not included within the certificated area of a holder of a CCN may petition the commission to designate an ETP to provide to those premises voice-grade services supported by state and federal universal service support mechanisms.

(2) Contents of petition. A petition for designation of an ETP must:

(A) State with reasonable particularity the locations of the permanent residential or business premises for which the petitioner(s) are requesting service;

(B) Establish that the premises are within reasonable proximity to one another so that the petitioners possess a sufficient community of interest;

(C) Nominate as potential providers of service, not more than five telecommunications providers serving territory that is contiguous to the location of the permanent residential or business premises using wireless or wireline facilities, resale, or unbundled network elements; and

(D) Include as an attachment or an appendix, documentation indicating the required residence or ownership, such as a state-issued license or identification, tax records, deeds, or voter registration materials.

(3) Eligibility of petitioner(s). Except as provided by paragraph (4) of this subsection, the petition must be signed by at least five persons who:

(A) Are not members of the same household;

(B) Reside in the permanent residential premises or are the owners of the permanent residential or business premises for which service is sought;

(C) Desire service to those premises;

(D) Commit to pay the aid to construction charges for service to those premises as determined by the commission; and

(E) Commit to enter into an assignable agreement for subscription to basic local service to the premises for a period of time determined by the commission.

(4) Number of petitioners. The commission may accept a petition that is signed by fewer than five persons if the petitioner(s) provides an affidavit stating that the petitioner(s) has taken all reasonable steps to secure the signatures of the residents of permanent residential premises or the owners of permanent residential or business premises within reasonably close proximity to the petitioner's premises who are not receiving telephone service when the petition is filed and who want telephone service initiated.

(5) Form. The petitioner(s) shall file the petition using the commission-approved forms.

(e) Completeness of petition.

(1) Commission action. Upon receipt of a petition, the commission shall review the petition for completeness. Within 15 working days from the date of receipt of the petition, the commission shall determine if the petition is complete and has been filed consistent with subsection (d) of this section.

(2) Petition complete. If the commission determines the petition is complete, the commission will send a notice of completeness to the petitioner(s), to all telecommunications providers identified in the petition, and if not otherwise notified, to the incumbent local exchange carriers serving the contiguous exchanges. In the notice, the commission shall seek volunteers to provide telecommunications services in the permanent residential or business premises. The commission shall also include with the notice a copy of the petition. The commission shall publish notice of the petition and the notice of completeness in the *Texas Register*.

(3) Petition denied. If a petition is denied, the commission shall send a notice of denial explaining the reason(s) for denial to the petitioner(s).

(f) Responding to notice of completeness.

(1) Response. Telecommunication providers shall respond to the commission's notice of completeness and request for volunteers within 30 days after receipt of the notice. A provider may respond by:

(A) Stating that it is not eligible to be designated to serve the premises under this section;

(B) Volunteering to provide service to the premises; or

(C) Refusing to volunteer to provide service to the premises.

(2) Volunteering to serve. A provider volunteering to provide service to the premises shall respond to the commission by providing a proposal that includes:

(A) An affidavit duly signed by an officer of the company;

(B) A description of the technology proposed for deployment;

(C) An estimate of the costs for deployment and the recurring monthly costs of service; and

(D) An estimated timeline for deployment of facilities and a date by which service will be extended to the premises.

(3) Commission action. Upon receipt of a volunteering provider's proposal, the commission may:

(A) Approve a proposal administratively and permit the ETP to serve the uncertificated area and recover its costs pursuant to subsection (j) of this section; or

(B) Reject a proposal and proceed to a hearing pursuant to subsection (g) of this section.

(g) Evidentiary hearing. If the petition cannot be processed administratively, the commission shall conduct an evidentiary hearing to determine:

(1) If an ETP is willing to be designated to provide service to the petitioner(s); or

(2) The ETP that is best able to serve the petitioner(s).

(h) Commission decision. The commission should consider all relevant factors, including, but not limited to:

(1) The original cost to be incurred by a designated provider to deploy service to the petitioning premises, and the effect of reimbursement of those costs on the state universal service fund;

(2) The number of access lines requested by the petitioners for the petitioning premises;

(3) The size of the geographic territory in which the petitioning premises are included;

(4) The proximity of existing facilities and the existence of a preferred designated provider under the Public Utility Regulatory Act (PURA) §56.213; and

(5) Any technical barriers to the provision of service.

(i) Commission order. The commission shall issue an order granting or denying a petition within 180 days of the filing of the petition. In any order granting a petition the commission shall include the following:

- (1) Description of the facilities to be deployed;
- (2) Estimated costs of deployment;
- (3) Aid to construction fee to be paid by the petitioner(s), not to exceed \$3,000;
- (4) Monthly recurring charge to be paid by the petitioner(s);
- (5) Estimated cost to be recovered from the TUSF;
- (6) Recurring, monthly per line fee to be recovered from the TUSF;
- (7) Date by which services must be extended to the premises; and
- (8) Schedule of cost recovery for the provider's original cost of deployment consistent with the following:

(A) Not later than the third anniversary of the date of the order, for a deployment with an estimated original cost of \$1 million or less;

(B) Not later than the fifth anniversary of the date of the order, for a deployment with an estimated original cost of more than \$1 million, but not more than \$2 million; and

(C) Not later than the seventh anniversary of the date of the order, for a deployment with an estimated original cost of more than \$2 million.

(j) Cost recovery. A designated provider may recover from the TUSF the provider's actual costs of providing service to the premises, including the provider's original cost of deployment not recovered from the petitioner(s) through an aid to construction charge and the provider's actual recurring costs not recovered from the petitioner(s) through a monthly recurring charge.

(1) The original cost of deployment includes the cost of the provider's facilities installed in, or upgraded to permit the provision of service to, the premises, as determined by the financial accounting standards applicable to the provider, including an amount for the recovery of all costs that are typically included as capital costs for accounting purposes.

(2) The provider is permitted to recover interest at the prevailing commercial lending rate on its original costs of deployment.

(3) Actual recurring costs include maintenance and the ongoing operational costs of providing service after deployment of the facilities to the premises and a reasonable operating margin.

(k) Submission of actual costs. Upon completion of the construction, the designated provider shall file the actual costs with the commission.

(1) No later than 30 days after filing the actual costs, commission staff shall file with the presiding officer written comments or recommendations concerning the actual costs.

(2) No later than 60 days after filing the actual costs, the presiding officer shall issue a notice stating whether the costs may be submitted to the TUSF administrator for recovery consistent with the order issued pursuant to subsection (i) of this section.

(3) The designated provider or the commission staff may appeal to the commission an administrative notice issued by a presiding officer within seven days after the date the notice is issued. The commission shall rule on any appeal added to an open meeting agenda, within 30 days after the date the appeal is filed. If the commission

or a presiding officer orders changes to the actual costs submitted, the designated provider shall be ordered to make those changes within a reasonable period of time before they may be submitted to the TUSF administrator for recovery.

(l) Cap on TUSF reimbursements. The commission may not authorize or require any services to be provided under this section during a fiscal year if the total amount of required reimbursements, together with interest and obligations from preceding years, would equal an amount that exceeds 0.02% of the annual gross revenues reported to the TUSF during the preceding fiscal year.

§26.422. Subsequent Petitions for Service in Uncertificated Areas.

(a) This section does not apply to a deregulated company holding a certificate of operating authority or to an exempt carrier under Public Utility Act (PURA) §52.154.

(b) If the commission approves a petition requesting service, residents of permanent residential premises or owners of permanent residential or business premises in reasonable proximity to the premises that were the subject of an approved petition who did not sign the prior petition requesting service are not entitled to receive service under the Public Utility Regulatory Act (PURA), Chapter 56, Subchapter F, prior to the fifth anniversary of the date the prior petition was filed, unless the residents or owners file a new petition and agree to pay aid to construction charges on the same terms as applicable to the prior petitioner(s).

(c) The designated provider shall receive reimbursement for the original cost of deployment and actual recurring costs of providing service to those additional residents in the same manner as the provider received reimbursement of those costs in relation to the prior petitioner(s). The provider may not receive reimbursement for the original cost of deployment under a subsequent petition if the provider previously received complete reimbursement for those costs from the Texas Universal Service Fund (TUSF). If the TUSF has completely reimbursed the original cost of deployment as provided by §26.421 of this title (relating to Designation of Eligible Telecommunications Providers to Provide Service to Uncertificated Areas), each subsequent petitioner must pay into the TUSF an amount equal to the aid to construction charge paid by each prior petitioner.

§26.423. High Cost Universal Service Plan for Uncertificated Areas where an Eligible Telecommunications Provider (ETP) Volunteers to Provide Basic Local Telecommunications Service.

(a) Purpose. This section establishes the guidelines for financial assistance to ETPs that serve uncertificated areas of the state where an ETP volunteers to provide basic voice-grade telecommunications service to permanent residential and single-line business premises.

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

(1) Eligible line--A residential line and a single-line business line as defined by §26.403 of this title (relating to Texas High Cost Universal Service Plan (THCUSP)).

(2) Eligible telecommunications provider (ETP)--A telecommunications provider designated by the commission pursuant to §26.417 of this title (relating to Designation as Eligible Telecommunications Providers to Receive Texas Universal Service Funds (TUSF)).

(3) Permanent residential or business premises--A premise as defined pursuant to §26.421 of this title (relating to Designation of Eligible Telecommunications Providers to Provide Service to Uncertificated Areas).

(4) Uncertificated areas--An area of the state that is not included within the certificated area of a holder of a certificate of convenience and necessity (CCN).

(c) Application. This section applies to telecommunications providers that have been designated ETPs by the commission pursuant to §26.417 of this title. This section does not apply to a deregulated company holding a certificate of operating authority or to an exempt carrier under Public Utility Act (PURA) §52.154.

(d) Service to be supported by the High Cost Universal Service Plan for uncertificated areas where an ETP volunteers to provide basic local telecommunications service. The High Cost Universal Service Plan for uncertificated areas shall support the provision by ETPs of basic local telecommunications services as defined in §26.403(d) of this title.

(e) Support for uncertificated areas where an ETP volunteers to provide service. The TUSF administrator shall disburse monthly support payments to ETPs qualified to receive support pursuant to this section. The amount of support available to each ETP shall be calculated using the base support amount available as provided under paragraph (1) of this subsection as adjusted by the requirements of paragraph (3)(B) of this subsection.

(1) Determining base support amount available to ETPs.

(A) The monthly per-line support available for uncertificated areas shall be determined by calculating the average of the per-line support amount approved for all local telephone company exchanges of CCN holder's that are contiguous to the uncertificated area for which reimbursement is requested. The per line support amounts used for this calculation shall include, as appropriate, support amounts approved for only those exchanges directly contiguous to the uncertificated area for which support is being requested. The resulting average support shall apply to a line at a premises in the uncertificated area regardless of the residential or business status of the line.

(B) Support under this section is portable with the consumer.

(2) Proceedings to determine support amount.

(A) Initial determination for uncertificated areas.

(i) Upon petition by an ETP, the commission shall establish a monthly per-line support amount for an uncertificated area as identified by the ETP where it has been determined that prospective telecommunications subscribers exist. The establishment of support for more than one uncertificated area may be requested within a single petition.

(ii) The review of the petition shall be accomplished in an administrative or docketed proceeding initiated by the ETP requesting support for the provision of single-line residential or business service within an uncertificated area or areas.

(iii) The commission, on its own motion, may initiate a proceeding to establish monthly per-line support amounts for uncertificated areas.

(B) Subsequent determination of support amount.

(i) The commission shall subsequently review the support for uncertificated areas consistent with the review provided for under §26.403 and §26.404 of this title (relating to Small and Rural Incumbent Local Exchange Company (ILEC) Universal Service Plan).

(ii) The commission may initiate review of the support for uncertificated areas and base support amounts under this section on its own motion at any time.

(3) Calculating amount of support payments to individual ETPs. After the monthly per-line amount is determined, the TUSF administrator shall make the following adjustments each month in order to determine the actual support payment that each ETP may receive each month.

(A) Payments. The payment to each ETP shall be computed by multiplying the per-line amount established by paragraph (1) of this subsection for a given uncertificated area by the number of eligible lines served by the ETP in such uncertificated area for the month.

(B) Adjustment for federal USF support. The base support amount an ETP is eligible to receive shall be decreased by the amount of federal universal service high cost support received by the ETP.

(f) Reporting requirements.

(1) An ETP eligible to receive support under this section shall provide the TUSF administrator with the following information:

(A) A report of the total number of eligible lines served by the ETP in a designated uncertificated area to the TUSF Administrator on a monthly basis;

(B) The telecommunications provider's residential and single-line business rates on file with the commission, as of the provisioning date for service;

(C) The average per-line assistance for each local exchange telephone company exchange contiguous to the area in question; and

(D) A calculation of the base support in accordance with the requirements of this subsection and subsection (e) of this section.

(2) Upon request by the commission, the telecommunications provider awarded support under this section shall explain the basis on which it is establishing rates under this section.

(3) An ETP shall report any other information required by the commission and the TUSF Administrator, including any information necessary to assess contributions to and disbursements from the TUSF.

(g) Initial support provided pursuant to this section. Initial payment of support under this section shall be retroactive to the latter of the date on which a telecommunications provider either:

(1) Petitions the commission for THCUSP assistance; or

(2) Begins providing basic local telephone service to the residential or business location approved for support.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 18, 2014.

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Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Effective date: April 7, 2014

Proposal publication date: November 29, 2013

For further information, please call: (512) 936-7223



SUBCHAPTER Q. 9-1-1 ISSUES

16 TAC §26.431

The repeal is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (West 2007 and Supp. 2013) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, and the amendments to PURA made by Senate Bills 259, 512, 583, and 809 of the 83rd Legislature, Regular Session.

Cross Reference to Statutes: PURA §14.002 and the amendments to PURA made by Senate Bills 259, 512, 583, and 809 of the 83rd Legislature, Regular Session.

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. CERTIFICATION, LICENSING AND REGISTRATION

16 TAC §26.111

The Public Utility Commission of Texas (commission) adopts an amendment to §26.111, relating to Certificate of Operating Authority (COA) and Service Provider Certificate of Operating Authority (SPCOA) Criteria, with changes to the proposed text as published in the October 18, 2013, issue of the *Texas Register* (38 TexReg 7231).

The amendment implements a renewal process for each holder of a COA and each holder of a SPCOA as required by Public Utility Regulatory Act (PURA) §52.1035 (relating to the Renewal of Certain Certificates). Failure to comply with the renewal process for a COA or SPCOA will result in the COA or SPCOA being invalidated after the end of an automatic extension period. This amendment is adopted under Project Number 41612.

No public hearing on this rulemaking project was held.

The commission received comments on the proposed amendment from AT&T Texas, Verizon Southwest, TEXALTEL, and Birch Communications, Cbeyond Communications LLC, TW Telecom of Texas, LLC, and the Texas Cable Association (collectively known as Joint Commenters). The commission also received reply comments from Verizon Southwest and Joint Commenters.

Due date of first renewal filing

Joint Commenters proposed the delay of the date for the first renewal filing until after April 30, 2014 to allow the commission time to initiate a project to determine whether there are other rules that are impacted by changes to this rule which should be revised.

Commission response

The commission agrees with Joint Commenters that the date for the first renewal filing should be after April 30, 2014. The commission has modified subsection (k)(2) to clarify that the first renewal filing shall be filed on or before June 1, 2014. While the commission agrees with delaying the date for the first renewal filing, the commission does not anticipate, at this time, the need for a project to determine whether other rules will be impacted by the renewal filing.

Senate Bill 259 (SB 259)

While Verizon did not oppose all of the proposed amendments, they requested additional changes be made to implement SB 259, and suggested republishing the Proposal for Publication in order to accomplish these changes. Verizon argued that PURA §65.101(c) provides that a deregulated company holding a COA is a nondominant carrier. Section 5 of SB 259 added PURA §65.102(b) which provides an exclusive list of statutory provisions which apply to deregulated companies. In addition, Verizon noted that section 2 of SB 259 amended PURA §52.154 to provide that the commission may not impose on a nondominant telecommunications utility (NTU) greater regulatory burdens than are imposed on a deregulated company under certain circumstances. Therefore, Verizon argued that any rule in Chapter 26 that applies to a NTU that is not authorized by one of the listed statutory provisions must be revised to state that it does not apply to a deregulated company or to another NTU exempted by PURA §52.154. It was Verizon's belief that several provisions in this rulemaking would impose obligations on a deregulated company seeking a COA that the commission is no longer authorized to require. Verizon suggested revisions be made to clarify that sections do not apply (in whole or in part, as applicable) to deregulated companies or NTUs exempted under PURA §52.154. Specifically, Verizon suggested adding the word "applicable" to subsections (g)(4)(A) and (B). In addition, Verizon stated subsections (m) and (n) should be modified to state "(t)his subsection does not apply to a deregulated company holding a certificate of operating authority or to a qualified nondominant telecommunications utility under PURA §52.154," as both subsections are authorized by PURA §54.253 which does not apply to deregulated companies.

Commission response

The commission declines to adopt Verizon's proposal to modify subsections (g), (m), and (n). The commission understands Verizon's reasoning for suggesting these changes but determines that editing the rule to implement SB 259 is beyond the scope of this rulemaking. This rulemaking is specifically intended to implement PURA §52.1035 and the commission does not agree that edits to subsection (g), (m), and (n) are a logical outgrowth of the intended purpose of this rulemaking. Therefore, the commission declines to adopt Verizon's requested changes.

AT&T Texas proposed amendments designed to reflect the impact of SB 259 - now incorporated into PURA §52.154. AT&T Texas noted that such changes might be outside of the scope of this particular rulemaking and therefore believes that either the rule should be re-published to include the proposed amendments or that a new rulemaking should be initiated. Specifically, AT&T Texas proposed that subsection (g)(4)(A) be modified to read "(t)he applicant must affirm that it will meet the commission's applicable quality-of-service standards..." and subsection (g)(4)(B) should likewise read "(t)he applicant must affirm that it is aware of and will comply with the applicable customer protection rules..." Additionally, AT&T Texas proposed amending subsection (k)(5) so it would read: "(a) certificate holder shall

file all reports to the extent required by PURA...." AT&T Texas proposed adding "(t)his section (l) does not apply to a deregulated company holding a certificate of operating authority or to a qualified nondominant telecommunications utility under PURA §52" to subsection (l). Finally, AT&T Texas argued subsection (m) should be amended to read "(t)his section (m) does not apply to a deregulated company holding a certificate of operating authority or to a qualified nondominant telecommunications utility under PURA §52.154."

Verizon agreed with AT&T Texas' recommendation that the commission amend proposed subsection (l)(5) to provide that certificate holders must file all reports "to the extent" required by PURA. Verizon argued this change is required by SB 259 because deregulated companies and qualified NTUs under PURA §52.154 are subject only to the statutory provisions listed in PURA §65.102(b), which this provision is not.

Joint Commenters disagreed with the modifications AT&T Texas and Verizon proposed to subsections (g), (m), and (n) regarding implementation of SB 259. Specifically, Joint Commenters argued these changes are outside of the scope of this rulemaking because they were not included in the notice published in the *Texas Register*. Joint Commenters argued that nothing in the published notice indicated that a change to these provisions is being considered and therefore cannot be considered under the Administrative Procedure Act (APA). Under the APA, Joint Commenters argued that when an agency revises a rule in response to comments received, an agency is required to republish the proposed rule for comment if the altered rule is not a logical outgrowth of the original rule. Joint Commenters argued that the published notice for this rule was narrowly focused and only included amendments to implement a specific statutory change altering reporting and recertification obligations. Joint Commenters classified AT&T Texas and Verizons' proposed changes as extending beyond this scope. Joint Commenters argued that if these changes are to be adopted the commission must republish.

Commission response

The commission declines to republish this rule to include AT&T Texas' proposed amendments to subsections (g), (k), and (l). The commission agrees with Joint Commenters that the proposed changes by AT&T Texas and Verizon regarding the implementation of SB 259 are outside of the scope of this rulemaking. AT&T Texas admits that its edits to subsections (g), (k), and (l) fall outside of the scope of this specific rulemaking which is intended to implement PURA §52.1035. AT&T Texas further acknowledges that in order to make their suggested edits the commission would most likely be required by the APA to republish the rule. The commission agrees with Joint Commenters that the changes proposed by AT&T Texas and supported by Verizon are not logical outgrowths of the proposed rule. The commission will consider opening a rulemaking to address SB 259's impact on §26.111 when this rulemaking is complete.

Joint Commenters argued that the rule changes proposed by AT&T Texas and Verizon run afoul of PURA's prohibition against discriminatory regulation. Joint Commenters also argued that once AT&T Texas and Verizon become fully deregulated, Competitive Local Exchange Carriers (CLECs) that provide service in the territory of these deregulated companies cannot be subjected to any regulatory burden not also applicable to AT&T Texas and Verizon. Joint Commenters stated that under the terms of PURA §52.154, the competing CLECs serving within these Incumbent Local Exchange Carriers' (ILECs) territory will

be exempt from any regulatory requirement not listed there as well. Specifically, Joint Commenters took issue with AT&T Texas and Verizons' proposed changes to subsections (m) and (n) of the rule which are designed to free deregulated ILECs from compliance with portions of the rule, while leaving the obligations of CLECs untouched. Joint Commenters further argued that by implementing this proposed language the rule will impose a regulatory burden on CLECs in excess of the burden on ILECs and therefore would violate PURA.

Commission response

Because the commission declines to accept the edits of AT&T Texas and Verizon as they are outside the scope of this rulemaking, the commission finds the arguments presented by the Joint Commenters to be moot. This rulemaking project is intended to implement PURA §52.1035.

Subsection (k)(2)

TEXALTEL asserted that annual recertification is unnecessary and would result in unnecessary work for certificate holders and the commission. TEXALTEL argued that the pace of entry to the market is slow and therefore annual recertification is not needed to purge inactive CLECs from the commission's list of active certificate holders. TEXALTEL noted that the Legislature gave the commission flexibility in the implementation of the renewal schedule by stating that the renewal process may be performed on a one-time or more regular basis. TEXALTEL therefore recommended that a recertification process be used once now and, if in the future circumstances warrant it, possibly additional recertification no more often than every five years going forward.

Joint Commenters argued that an annual renewal is unnecessary and that the proposed language rejects the Legislature's option to require only a one-time recertification. Additionally, Joint Commenters stated that the commission is required to articulate a reason for requiring an annual filing and failed to meet this requirement because the commission provided no rationale for rejecting a one-time submission. Joint Commenters reasoned that the commission failed to identify a purpose that may only be fulfilled by imposing a filing requirement once a year as opposed to any other time period. Joint Commenters pointed out that the commission has been processing certifications since 1995, and has therefore been dealing with the fact that some CLECs ceased operations in Texas during the ensuing years. Joint Commenters therefore argued that due to these circumstances it is difficult to understand why there now exists a need for an annual filing, as opposed to a one-time filing, or a filing every ten years, in order to purge the database of inactive CLECs.

Joint Commenters proposed requiring recertification no more often than once every ten years. In the alternative, Joint Commenters argued that once AT&T Texas and Verizon become fully deregulated within the next few years, neither they, nor the CLECs that operate in these ILECs' territories, will be required to comply with the proposed amendments. Therefore, Joint Commenters concluded the commission should not adopt a rule that imposes more than a one-time filing as compliance with additional filings will not achieve the commission's stated goal of having an accurate list of active COA and SPCOA holders with updated contact information.

Commission response

The commission agrees with TEXALTEL and the Joint Commenters that an annual recertification is not necessary at this time. The commission agrees that annual recertification is not

needed to purge inactive CLECs from the commission's list of active certificate holders. The commission also agrees with TEXALTEL that this may be accomplished with certification renewals that are required less frequently than annually or every five years. Accordingly, the commission has revised subsection (k)(2) to require a renewal filing by June 1, 2014 and every ten years thereafter. Though the commission determines that a filing need not occur as frequently as every five years, as TEXALTEL suggested, it may be necessary to require a certification renewal on a one-time basis during the ten-year interim. Accordingly, the commission has modified subsection (k) to provide for the ability of the commission to require each COA and SPCOA holder to file, the following year, a renewal of its certification.

Joint Commenters argued that subjecting CLECs to annual recertification and administrative penalties is inconsistent with Texas' policy of reducing regulatory burdens, and it also adds to an already discriminatory situation in that ILECs are not being subjected to a similar recertification requirement. Joint Commenters alleged this renewal process is anti-competitive.

Commission response

The commission disagrees with the assertion that a renewal process and administrative penalties are burdensome, discriminatory, or anti-competitive. This certification renewal process only requires that a company file minimal additional information from what has been previously required by the commission. Furthermore, the commission currently requires renewals for other types of communications companies, including pay phones, Automatic Dialing and Announcement Devices, and Interexchange Carriers. Though the commission does not find this process burdensome, it acknowledges that an annual filing is unnecessary, at this time, for the stated purpose, and therefore the commission has revised the rule language to require a renewal filing every ten years, or upon commission request.

Joint Commenters argued that an annual renewal will have unintended implications resulting in the interruption of service. Specifically, Joint Commenters argued that every contractual arrangement that requires CLECs to comply with "applicable law" in order to avoid being in default will be impacted.

Commission response

The commission agrees with the assertion that a renewal may have unintended implications resulting in the interruption of service. However, PURA §52.1035 clearly intends to make CLEC certification invalid for companies that fail to comply with the renewal process. Interruption of service can be avoided by complying with applicable rules and statutes which continues to be the obligation of all certificated communications companies.

Subsection (k)(3)

TEXALTEL proposed amending this subsection to move the effective date of decertification to 90 days after the end of the extension so that the necessary customer notice can be given before a certificate holder ceases operations. TEXALTEL expressed concern that the timeline for decertification in the rule will place COA and SPCOA holders, who run unintentionally afoul of the rule, in the predicament of having to continue providing service at the risk of being subject to an enforcement action for providing service without a certificate, or ceasing to provide service in violation of subsection (m)(1)(B), which requires a minimum 61 days' notice to customers.

Joint Commenters argued the extension period is too short. Specifically they argued that the current process for submission and review of a full application for certification is not structured so that a CLEC could expect to cure a contractual default within the time period. More specifically, Joint Commenters argued that many CLEC contracts only provide for a thirty day period during which time the contractual breach shall be cured.

Commission response

The commission agrees with TEXALTEL and the Joint Commenters comments regarding extending the effective date of decertification. Even though the commission determines that no different standard is being used here, the commission recognizes that an extension period shorter than 61 days may pose a challenge for COA and SPCOA holders. Therefore, the commission revised the rule to modify the automatic extension deadline to October 1st.

TEXALTEL recommended amending the proposed rule to state:

COA and SPCOA holders will have an automatic extension of the filing deadline until May 31 (31 days after initial filing deadline of April 30) to comply with paragraph (1) of this subsection during which time notice will be sent by registered mail to the certificate holder's business address on file with the (c)ommission.

TEXALTEL argued this change is necessary in order to implement the intent of having an effective extension period. TEXALTEL stated that with a 31 day extension period, without notice, the extension period is rendered meaningless because a COA or SPCOA holder would not know that they needed to utilize the extension period.

TEXALTEL further commented that the rule does not provide notice to a COA or SPCOA holder that is about to be decertified because the holder failed to file the necessary report. TEXALTEL noted that the only notice provided would be when the new list of COA and SPCOA holders is published and those who are decertified are absent from this list. TEXALTEL stated this would result in a CLEC, who has unintentionally failed to file this report, deciding between which law to violate; continuing to serve customers while it gives consumers the required notice that it is terminating service, or immediately terminating service, perhaps without notice. TEXALTEL argued that the commission should add language regarding notice stating that the commission shall notify, by certified letter to the last known address, each SPCOA holder that has not timely filed the required renewal reports that it is about to be decertified so that the certificate holder can comply with the rule. TEXALTEL argued notice is necessary because, in practice, commission reporting is delegated to mid-level management and changes in personnel, mergers, and reassignment of tasks might result in a company inadvertently forgetting to file routine reports with the commission. TEXALTEL stated that a carrier may be unaware that it has not filed the necessary reports and, without notice, would not know that it needed to correct the deficiency before it loses certification. Additionally, TEXALTEL noted that many larger companies have acquired SPCOAs through their merger history and confusion might exist regarding which reports need to be filed under which names. Finally, TEXALTEL stated that there are situations in which reports have been misfiled at the commission and, absent notice, the COA or SPCOA holder might be decertified even though they fully complied with the rules. For all of these reasons, TEXALTEL concluded notice should be given to COA or SPCOA holders who are at risk of losing their certification due to the failure to file the renewal.

Verizon supported TEXALTEL's proposal that the rule be amended to add a notice requirement to the certificate renewal process for COA and SPCOA holders. Specifically, Verizon supported TEXALTEL's proposal that all COA or SPCOA holders that miss the April 30 filing deadline be notified by registered mail that they failed to comply with the filing requirement. Verizon argued this notice would give those carriers an opportunity to make the required filing by May 31st to prevent the invalidation of their certificates and would help prevent carriers from forfeiting their certificates because of administrative oversight.

Joint Commenters took issue with the lack of notice provided before a certificate is automatically rendered invalid. They argued that voiding a CLEC's certification (its license to do business) without notice and an opportunity for a hearing could be challenged as an unconstitutional violation of due process rights. Instead they urged the commission to adopt a less draconian approach to the implementation of PURA §52.1035.

Commission response

The commission agrees with TEXALTEL and Verizon that the rule should be revised to provide for a longer automatic extension period; however, the commission declines to adopt the specific language proposed by TEXALTEL. The commission has modified subsection (k)(3) to establish an automatic extension of the filing deadline until October 1st. The commission agrees with the comments of TEXALTEL, Verizon, and the Joint Commenters that it is appropriate for the commission to provide notice to COA and SPCOA holders who have not complied with the certification renewal process and before any certificates are invalidated. Therefore, the commission has also modified subsection (k)(3) to provide that commission staff will send COA and SPCOA holders three notices during the automatic extension period. Notice and a longer extension period will allow additional time for certificate holders to come into compliance prior to invalidation.

Subsection (k)(4) and (5)

Joint Commenters argued that the automatic invalidation of a COA or SPCOA for failing to file an annual certification renewal will have unintended consequences. Specifically, Joint Commenters stated that a potential ramification of losing certification would include the termination of any contract (including interconnection agreements) that requires a CLEC to be certified. Joint Commenters stated ILECs may argue that the requirement to be certificated is "material" to a contract and therefore the lack of certification is a default event (where the contract does not expressly state that loss of certification is an event of default, which some contracts make clear), and that in an event of default these companies will have even more of a burden placed upon them. Joint Commenters further argued that the termination of a contract, like an interconnection agreement with one or more of the ILECs on which a CLEC depends for necessary services and the exchange of traffic, would have significant negative consequences that should not be triggered by an inadvertent failure to file information with the commission.

In addition, Joint Commenters argued that even if a contracting party chooses not to declare a CLEC in default due to failure to file the annual certification renewal, the rule's provision for administrative penalties will financially punish any CLEC that opts to continue to serve its customers while rectifying its reporting error. Therefore, Joint Commenters proposed the elimination of penalties and enforcement action with respect to any actively

operating CLEC that reapplies for certification within 10 days of receiving notice.

Commission response

The commission understands that the automatic invalidation of a COA or SPCOA for failure to file a certification renewal could have unintended consequences. However, the commission determines that any unintended consequences, due to a short extension period, will be mitigated by the revised longer automatic extension period and notices sent by commission staff to ILECs. The commission revised the automatic extension period to provide ample time for a company to discover their non-compliance with this rule and provides sufficient time for the company to correct any omissions or mistakes before the invalidation of the COA or SPCOA certificate. The commission concludes that it is the responsibility of the certificate holder to fully comply with all commission rules including filing requirements and that the filing of the certification renewal is necessary to maintain a valid certificate.

The commission disagrees with Joint Commenters and will not be adopting their suggestions regarding the removal of a penalty for non-compliance. The commission believes that this rule does not provide for a new penalty; a company has always been subject to penalties for operating in a manner that is not in compliance with commission rules, including operating without a valid certification. Additionally, the commission has clarified its position by amending the rule to make clear that a COA or SPCOA holder that is found to be invalid under this provision will no longer be in compliance with PURA §54.001.

Joint Commenters argued that there is no practical difference between revoking and voiding a certificate and therefore a rule that would void a CLEC's certification (its license to do business) without notice and opportunity for hearing could be challenged as an unconstitutional violation of due process rights.

Commission response

The commission disagrees with the Joint Commenters and concludes that the invalidation of a certificate is distinct from the revocation of a certificate, which does require notice and an opportunity for a hearing. PURA §52.1035 specifically authorizes the commission to immediately invalidate a COA or SPCOA for failure to comply with the certification renewal requirement after the automatic extension deadline has passed.

Joint Commenters took issue with what they argue is a short automatic extension for a late filing tied to a due date rather than the discovery of a failure to file. Joint Commenters argued that the current rule language omits any provision for notice of impending loss of certification and opens the door for administrative penalties and other enforcement actions being imposed on the erring CLEC even if the CLEC has promptly submitted a new application.

Joint Commenters argued that aspects of CLECs' operations and their ability to serve customers are dependent on the maintenance of a valid certificate which the automatic invalidation frustrates. Joint Commenters pointed to an example concerning CLEC's ability to obtain access to commercial property to provide service to tenants in response to tenant request as being an area where the automatic invalidation will have unintended consequences. It was Joint Commenters' position that CLECs that lose certification (even if only temporarily) will be unable to avail themselves of the right to obtain entry into a commercial building, and potentially lose customers. Joint Commenters also fear that

by holding an invalid certificate they may be in default and lose their right to remain in a building if their license agreement with a property owner requires them to maintain certification. Joint Commenters argued that invalidating an active CLEC's certification may prevent CLECs from having access to install or repair service for a customer because lessors may not let a CLEC holding an invalid certificate on the tenant's property.

Commission response

The commission agrees with the Joint Commenters, therefore the rule has been revised to include a longer automatic extension period and states that commission staff will provide three notices to CLECs who have not complied with the certification renewal process prior to invalidation. Though commission staff will provide notice of non-compliance, the commission finds that it is the responsibility of the COA or SPCOA certificate holder to comply with all commission rules and the failure to comply with commission rules has the potential for administrative penalties and the administration of other enforcement actions.

Subsection (f)

AT&T Texas requested that the commission further update the rule by strengthening the financial requirements for obtaining a COA or SPCOA. AT&T Texas argued that the financial requirements are outdated and therefore do not accurately reflect the capital requirements needed to start up a telecommunications business. AT&T Texas stated that stronger capital requirements will provide consumers the benefit of choosing a provider which is more likely to maintain long-term market presence. AT&T Texas recognized this might be outside of the scope of the rule-making and therefore recommends a project be opened to further review and update this rule.

Commission response

The commission declines AT&T Texas' proposal to update other subsections of the rule. The commission concludes that any amendments beyond implementation of PURA §52.1035 are beyond the scope of this rulemaking. PURA §52.1035 does not address the subsections of this subchapter which deal with financial requirements for obtaining a COA or SPCOA.

All comments, including any not specifically referenced herein, were fully considered by the commission. In adopting this section, the commission makes other minor modifications for the purpose of clarifying its intent.

The amendment is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (West 2007 and Supp. 2013) (PURA) which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction and specifically, PURA §52.1035 which grants the commission the authority to create and maintain a renewal process for COAs and SPCOAs.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002 and §52.1035.

§26.111. Certificate of Operating Authority (COA) and Service Provider Certificate of Operating Authority (SPCOA) Criteria.

(a) Scope and purpose. This section applies to the certification of persons and entities to provide local exchange telephone service, basic local telecommunications service, and switched access service as holders of certificates of operating authority (COAs) and service provider certificates of operating authority (SPCOA) established in the Public Utility Regulatory Act (PURA), Chapter 54, Subchapters C and D.

(b) Definitions.

(1) Affiliate--An affiliate of, or a person affiliated with, a specified person, is a person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under the common control with, the person specified.

(2) Annual Report--A report that includes but is not limited to the certificate holder's primary business telephone number, toll-free customer service number, email address, authorized company contact, regulatory contact, complaint contact, emergency contacts (primary and secondary) and migration contacts (operation and policy) which is submitted to the commission on an annual basis. Each provided contact shall include the contact's company title.

(3) Control--The term control (including the terms controlling, controlled by and under common control with) means the power, either directly or indirectly through one or more affiliates, to direct or cause the direction of the management or policies of a person, whether through ownership of voting securities, by contract, or otherwise.

(4) Executive officer--When used with reference to a person, means its president or chief executive officer, a vice-president serving as its chief financial officer, or a vice-president serving as its chief accounting officer, or any other officer of the person who performs any of the foregoing functions for the person.

(5) Facilities-based certification--Certification that authorizes the certificate holder to provide service using its own equipment, unbundled network elements, or E9-1-1 database management associated with selective routing services.

(6) Permanent employee--An individual that is fully integrated into the certificate holder's business. A consultant is not a permanent employee.

(7) Person--Includes an individual and any business entity, including and without limitation, a limited liability company, a partnership of two or more persons having a joint or common interest, a mutual or cooperative association, but does not include a municipal corporation.

(8) Principal--A person or member of a group of persons that controls the person in question.

(9) Shareholder--The term shareholder means the legal or beneficial owner of any of the equity in any business entity, including without limitation and as the context and applicable business entity requires, stockholders of corporations, members of limited liability companies and partners of partnerships.

(c) Ineligibility for certification.

(1) An applicant is ineligible for a COA or SPCOA if the applicant is a municipality.

(2) An applicant is ineligible for a COA if the applicant has not created a proper separation of business operations between itself and an affiliated holder of a certificate of convenience and necessity as required by PURA §54.102 (relating to Application for Certificate).

(3) An applicant is ineligible for a SPCOA if the applicant, together with its affiliates, has more than 6.0% of the total intrastate switched access minutes of use as measured for the most recent 12-month period.

(4) The commission will not grant an SPCOA to a holder of a:

- (A) CCN for the same territory; or
- (B) COA for the same territory.

(d) Application for COA or SPCOA certification.

(1) A person applying for COA or SPCOA certification must demonstrate its capability of complying with this section. A person who operates as a COA or SPCOA or who receives a certificate under this section shall maintain compliance with this section.

(2) An application for certification shall be made on a form approved by the commission, verified by oath or affirmation, and signed by an executive officer of the applicant.

(3) Except where good cause exists to extend the time for review, the presiding officer shall issue an order finding whether the application is deficient or complete within 20 days of filing. Deficient applications, including those without necessary supporting documentation, will be rejected without prejudice to the applicant's right to reapply.

(4) While an application for a certificate or certification amendment is pending, an applicant shall inform the commission of any material change in the information provided in the application within five working days of any such change.

(5) Except where good cause exists to extend the time for review, the commission will enter an order approving, rejecting, or approving with modifications, a new or amendment application within 60 days of the filing of the application.

(6) While an application for COA or SPCOA certification or certification amendment is pending, an applicant shall respond to a request for information from commission staff within ten days after receipt of the request by the applicant.

(e) Standards for granting certification to COA and SPCOA applicants. The commission may grant a COA or SPCOA to an applicant that demonstrates that it is eligible under subsection (c) of this section, has the technical and financial qualifications specified in this section, has the ability to meet the commission's quality of service requirements, and it and its executive officers and principals do not have a history of violations of rules or misconduct such that granting the application would be inconsistent with the public interest. In determining whether to grant a certificate, the commission shall consider whether the applicant satisfactorily provided all of the information required in the application for a COA or SPCOA.

(f) Financial requirements. To obtain COA or SPCOA certification, an applicant must demonstrate the shareholders' equity required by this subsection.

(1) To obtain facilities-based certification, an applicant must demonstrate shareholders' equity of not less than \$100,000. To obtain resale-only or data-only certification, an applicant must demonstrate shareholders' equity of not less than \$25,000.

(2) For the period beginning on the date of certification and ending one year after the date of certification, the certificate holder shall not make any distribution or other payment to any shareholders or affiliates if, after giving effect to the distribution or other payment, the shareholders' equity of the certificate holder is less than the amount required by this paragraph. The restriction on distributions or other payments contained in this paragraph includes, but is not limited to, dividend distributions, redemptions and repurchases of equity securities, or loans or loan repayments to shareholders or affiliates.

(3) Shareholders' equity shall be documented by an audited or unaudited balance sheet for the applicant's most recent quarter. The audited balance sheet shall include the independent auditor's report. The unaudited balance sheet shall include a sworn statement from an executive officer of the applicant attesting to the accuracy, in all ma-

terial respects, of the information provided in the unaudited balance sheet.

(g) Technical and managerial requirements. To obtain COA or SPCOA certification, an applicant must have and maintain the technical and managerial resources and ability to provide continuous and reliable service in accordance with PURA, commission rules, and other applicable laws.

(1) To obtain facilities-based certification, an applicant must have principals, consultants or permanent employees in managerial positions whose combined experience in the telecommunications industry equals or exceeds five years. To obtain resale-only or data-only certification, an applicant must have principals or permanent employees in managerial positions whose combined experience in the telecommunications industry equals or exceeds one year.

(2) To support technical qualification, applicants must provide the following documentation: the name, title, number of years of telecommunications or related experience, and a description of the experience for each principal, consultant and/or permanent employee that the applicant will rely upon to demonstrate the experience required by paragraph (1) of this subsection.

(3) An applicant shall include the following in its initial application for COA or SPCOA certification:

(A) Any complaint history, disciplinary record and compliance record during the 60 months immediately preceding the filing of the application regarding: the applicant; the applicant's affiliates that provide utility-like services such as telecommunications, electric, gas, water, or cable service; the applicant's principals; and any person that merged with any of the preceding persons;

(i) The complaint history, disciplinary record, and compliance record shall include information from any federal agency including the U.S. Securities and Exchange Commission; any self-regulatory organization relating to the sales of securities, financial instruments, or other financial transactions; state public utility commissions, state attorney general officers, or other regulatory agencies in states where the applicant is doing business or has conducted business in the past including state securities boards or commissions, the Texas Secretary of State, Texas Comptroller's Office, and Office of the Texas Attorney General. Relevant information shall include the type of complaint, status of complaint, resolution of complaint, and the number of customers in each state where complaints occurred.

(ii) The applicant may request to limit the inclusion of this information if it would be unduly burdensome to provide, so long as the information provided is adequate for the commission to assess the applicant's and the applicant's principals' and affiliates' complaint history, disciplinary record, and compliance record.

(iii) The commission may also consider any complaint information on file at the commission.

(B) A summary of any history of insolvency, bankruptcy, dissolution, merger, or acquisition of the applicant or any predecessors in interest during the 60 months immediately preceding the application;

(C) A statement indicating whether the applicant or the applicant's principals are currently under investigation or have been penalized by an attorney general or any state or federal regulatory agency for violation of any deceptive trade or consumer protection laws or regulations; and

(D) Disclosure of whether the applicant or applicant's principals have been convicted or found liable for fraud, theft, larceny,

deceit, or violations of any securities laws, customer protection laws, or deceptive trade laws in any state.

(4) Quality of service and customer protection.

(A) The applicant must affirm that it will meet the commission's quality-of-service standards as listed on the quality of service questionnaire contained in the application. The quality-of-service standards include E9-1-1 compliance and local number portability capability. Data-only providers are not subject to the requirements for E9-1-1 and local number portability compliance as applicable to switched voice services.

(B) The applicant must affirm that it is aware of and will comply with the customer protection rules and disclosure requirements as set forth in Chapter 26, Subchapter B of this title (relating to Customer Service and Protection).

(5) Limited scope of COAs and SPCOAs. If, after considering the factors in this subsection, the commission finds it to be in the public interest to do so, the commission may:

(A) Limit the geographic scope of the COA.

(B) Limit the scope of an SPCOA's service to facilities-based, resale-only, data-only, geographic scope, or some combination of the preceding list.

(h) Certificate Name. All local exchange telephone service, basic local telecommunications service, and switched access service provided under a COA or SPCOA must be provided in the name under which certification was granted by the commission. The commission shall grant the COA or SPCOA certificate in only one name.

(1) The applicant must provide the following information from its registration with the Texas Secretary of State or registration with another state or county, as applicable:

(A) Form of business being registered (*e.g.*, corporation, company, partnership, sole proprietorship, etc.);

(B) Any assumed names;

(C) Certification/file number; and

(D) Date business was registered.

(2) Business names shall not be deceptive, misleading, inappropriate, confusing or duplicative of existing name currently in use or previously approved for use by a Certificated Telecommunications Provider (CTP).

(3) Any name in which the applicant proposes to do business will be reviewed for compliance with paragraph (2) of this subsection. If the presiding officer determines that any requested name does not meet the requirements of paragraph (2) of this subsection, the presiding officer shall notify the applicant that the requested name may not be used by the applicant. The applicant will be required to amend its application to provide at least one suitable name in order to be certificated.

(i) Amendment of a COA or SPCOA Certificate.

(1) A person or entity granted a COA or SPCOA by the commission shall file an application to amend the COA or an SPCOA in a commission approved format in order to:

(A) Change the corporate name or assumed name of the certificate holder.

(i) Name change amendments may be granted on an administrative basis, if the holder is in compliance with applicable commission rules and no hearing is requested.

(ii) Commission staff will review any name in which the applicant proposes to do business. If staff determines that any requested name is deceptive, misleading, vague, inappropriate, or duplicative, it shall notify the applicant that the requested name may not be used by the applicant. The applicant will be required to provide at least one suitable name or the amendment may be denied.

(B) Change the geographic scope of the COA and SPCOA.

(C) Sell, transfer, assign, or lease a controlling interest in the COA or SPCOA or sell, transfer or lease a controlling interest in the entity holding the COA or the SPCOA. An application for this type of amendment must:

(i) be filed at least 60 days prior to the occurrence of the transaction;

(ii) be jointly filed by the transferor and transferee;

(iii) comply with the requirements for certification; and

(iv) comply with applicable commission rules.

(D) Change Type of Provider from resale-only, facilities-based only or data-only restrictions on a SPCOA certificate.

(E) Discontinuation of service and relinquishment of certificate, or discontinuation of optional services. Such an application is subject to subsections (m) and (n) of this section.

(2) If the application to amend is for corporate restructuring, a change in internal ownership, or an internal change in controlling interest, the applicant may file an abbreviated amendment application, unless the ownership or controlling interest involves an uncertificated company, significant changes in management personnel, or changes to the underlying financial qualifications of the certificate holder as previously approved. If the commission staff cannot make a determination of continued compliance based on the applicable substantive rules from the information provided on the abbreviated amendment application, then a full amendment application shall be filed.

(3) When a certificate holder acquires or merges with another certificate holder (other than a CCN holder), the acquiring entity must file a notice within 30 days of the closing of the acquisition or merger in a project established by staff. Staff shall have 10 business days to review the notice and determine whether a full amendment application will be required. If staff has not filed, within 10 business days, a request to docket the proceeding and determination that a full amendment application is required, a notice of approval may be issued. Notice to the commission shall include but not be limited to:

(A) A joint filing statement;

(B) Certificated entity names, certificate numbers, contact information, and statements of compliance; and

(C) An affidavit from each certificated entity attesting to compliance of COA or SPCOA certification requirements.

(4) No later than five working days after filing an amendment application or amendment notice with the commission, the applicant must provide a copy of the amendment application or notice to all affected 9-1-1 entities and the Commission on State Emergency Communications.

(5) If the application to amend requests any change other than a name change, the factors as set forth in subsections (c) and (d) of this section may be considered by the commission in determining whether to approve an amendment to a COA or SPCOA.

(j) Non-use of certificates. Applicants shall use their COA or SPCOA certificates expeditiously.

(1) A certificate holder that has discontinued providing service for a period of 12 consecutive months after the date the certificate holder has initially begun providing service must file an affidavit on an annual basis attesting that it continues to possess the required technical and financial resources necessary to provide the level of service proposed in its initial application.

(2) A certificate holder that has not provided service within 24 months of being granted the certificate by the commission may have its certificate suspended or revoked.

(k) Renewal of certificates. Each COA and SPCOA holder is required to file with the commission a renewal of its certification once every ten years. The commission may, prior to the ten year renewal requirement, require each COA and SPCOA holder to file, the following year, a renewal of its certification.

(1) The certification renewal will consist of:

(A) the certificate holder's name;

(B) the certificate holder's address; and

(C) the most recent version of the annual report the commission requires the certificate holder to submit to comply with subsection (l)(1) of this section.

(2) The certification renewal shall be filed on or before June 1, 2014 and every ten years thereafter.

(3) COA or SPCOA holders will have an automatic extension of the filing deadline until October 1st of each reporting year to comply with paragraph (1) of this subsection. The commission staff will send three notices to each COA and SPCOA holder that has not submitted its certification renewal by June 1st. The first notice will be sent on or before July 1st, the second notice will be sent on or before August 1st, and the third notice will be sent on or before September 1st. Failure to send any of these notices by the commission or failure to receive any of these notices by a COA or SPCOA holder shall not affect the requirement to renew a certificate under this section by October 1st of the renewal period.

(4) Failure to timely file the annual renewal required in paragraph (1) of this subsection on or before October 1st of each reporting year will automatically render the certificate of the COA or SPCOA invalid.

(5) COA or SPCOA holders that are found to be invalid are no longer in compliance with PURA §54.001.

(6) COA or SPCOA holders that continue to provide regulated telecommunications services under an invalid COA or SPCOA may be subject to administrative penalties and other enforcement actions.

(7) A certificate holder whose COA or SPCOA certificate is no longer valid may obtain a new certificate only by complying with the requirements prescribed for obtaining an original certificate.

(l) Reporting Requirements.

(1) Each COA or SPCOA holder must provide and maintain accurate contact information using the annual report. At a minimum, the COA or SPCOA holder shall maintain a current regulatory contact person, complaint contact person, primary and secondary emergency contact, operation and policy migration contact, business physical and mailing address, primary business telephone number, toll-free customer service number, and primary email address. The COA or

SPCOA holder shall submit the required information in the manner established by the commission.

(2) The annual report is due on or before April 30 of each calendar year. The COA or SPCOA holder must electronically submit the required information in a manner established by the commission.

(3) When terminating or disconnecting service to another CTP, COA and SPCOA holders shall file a copy of the termination/disconnection notice with the commission not later than two business days after the notice is sent to the CTP. The service termination/disconnection notice shall be filed under a project number established for that purpose.

(4) COA and SPCOA holders shall file a notice of the initiation of a bankruptcy in a project number established for that purpose. The notice must be filed not later than the fifth business day after the filing of the bankruptcy petition. The notice of bankruptcy must also include, at a minimum, the following information:

(A) The name of the certificated company that is the subject of the bankruptcy petition, the date and state in which bankruptcy petition was filed, type of bankruptcy (*e.g.*, Chapter 7, 11, or 13, and whether it is voluntary or not), the bankruptcy case number; and

(B) The number of affected customers, the type of service being provided to the affected customers, and the name of the provider(s) of last resort associated with the affected customers.

(5) A certificate holder shall file all reports required by PURA and this title, including but not limited to: §26.51 of this title (relating to Reliability of Operations of Telecommunications Providers); §26.76 of this title (relating to Gross Receipts Assessment Report); §26.80 of this title (relating to Annual Report on Historically Underutilized Businesses); §26.85 of this title (relating to Report of Workforce Diversity and Other Business Practices); §26.89 of this title (relating to Information Regarding Rates and Services of Nondominant Carriers); §26.465 of this title (relating to Methodology for Counting Access Lines and Reporting Requirements for Certified Telecommunications Providers); and §26.467 of this title (relating to Rates, Allocation, Compensation, Adjustments and Reporting).

(m) Standards for discontinuation of service and relinquishment of certification. A COA or SPCOA holder may cease operations in the state only if commission authorization to cease operations has been obtained. A COA or SPCOA holder that ceases operations and relinquishes its certification shall comply with PURA §54.253 (relating to Discontinuation of Service by Certain Certificate Holders).

(1) Before the certificate holder ceases operations, it must give notice of the intended action to the commission, each affected customer, the Commission on State Emergency Communications, each wholesale provider of telecommunications facilities or services from which the certificate holder purchased facilities or services, the Texas Universal Service Fund, and the Office of Public Utility Counsel (OPC).

(A) The notification letter shall clearly state the intent of the certificate holder to cease providing service.

(B) The notification letter shall give customers a minimum of 61 days of notice of termination of service, and the date of termination of service shall be clearly stated in the notification letter.

(C) The notification letter shall inform customers of the carrier of last resort or make other arrangements to provide service as approved by the customers.

(2) A COA or SPCOA holder that intends to cease operations shall file with the commission an application to cease operations

and relinquish its certificate, which shall provide the following information:

- (A) Name, address, and phone number of certificate holder;
- (B) COA or SPCOA certificate number being relinquished;
- (C) The commission docket number in which the COA or SPCOA was granted;

(D) A description of the areas in which service will be discontinued and whether basic service is available from other certificate holders in these areas;

(E) A description of any contractual arrangements with customers that will not be honored, as a consequence of the cessation of operations; and

(F) A statement regarding the disposition of customer credits and deposits, and a sworn statement stating the authority to relinquish certification, that proper notice of the relinquishment has been provided to all customers, and that the information provided in the application is true and correct.

(3) All customer deposits and credits shall be returned within 60 days of notification to cease operations and relinquish certification.

(4) Any switchover fees that will be charged to affected customers as a consequence of the cessation of operations shall be paid by the certificate holder relinquishing the certificate.

(5) Commission approval of the cessation of operations does not relieve the COA or SPCOA of obligations to its customers under contract or law.

(n) Standards for discontinuing optional services. A COA or SPCOA holder discontinuing optional services shall comply with PURA §54.253.

(1) The COA or SPCOA holder shall file an application with the commission to discontinue optional services, which shall provide the following information:

- (A) Name, address, and phone number of certificate holder;
- (B) COA or SPCOA certificate number being amended;
- (C) The commission docket number in which the COA or SPCOA was granted;

(D) A description of the optional services that will be discontinued and whether such services are available from other certificate holders in the areas served by the certificate holder;

(E) A description of any contractual arrangements with customers that will not be honored, as a consequence of the discontinuation of optional services; and

(F) A sworn statement stating the authority to discontinue service options, that proper notice of the discontinuation of service has been provided to all customers, and that the information provided in the amended application is true and correct.

(2) Notification to each customer receiving optional services is required, consisting of the following information:

(A) The notification letter shall clearly state the intent of the certificate holder to cease an optional service and a copy of the letter shall be provided to the commission and OPC.

(B) The notification letter shall give customers a minimum of 61 days of notice of discontinuation of optional services.

(3) All customer deposits and credits affiliated with the discontinued optional services shall be returned within 30 days of discontinuation.

(4) The certificate holder shall maintain the optional services until it has obtained commission authorization to cease the optional services.

(5) Commission approval of the discontinuation of an optional service does not relieve the certificate holder of obligations to its customers under contract or law.

(o) Revocation or suspension. A certificate granted pursuant to this section is subject to amendment, suspension, or revocation by the commission for violation of PURA or commission rules or if the holder of the certificate does not meet the requirements under this section to operate as a COA or SPCOA. A suspension of a COA or SPCOA certificate requires the cessation of all COA or SPCOA activities associated with obtaining new customers in the state of Texas. A revocation of a COA or SPCOA certificate requires the cessation of all COA or SPCOA activities in the state of Texas, pursuant to commission order. The commission may also impose an administrative penalty on a person for violations of law within its jurisdiction. The commission staff or any affected person may bring a complaint seeking to amend, suspend, or revoke a COA or SPCOA's certificate. Grounds for initiating an investigation that may result in the suspension or revocation include the following:

(1) Non-use of approved certificate for a period of 24 months, without re-qualification prior to the expiration of the 24-month period;

(2) Providing false or misleading information to the commission;

(3) Bankruptcy, insolvency, failure to meet financial obligations on a timely basis, or the inability to obtain or maintain the financial resources needed to provide adequate service;

(4) Violation of any state law applicable to the certificate holder that affects the certificate holders' ability to provide telecommunications services;

(5) Failure to meet commission reporting requirements;

(6) Engaging in fraudulent, unfair, misleading, deceptive, or anti-competitive practices or unlawful discrimination in providing telecommunications service;

(7) Switching, or causing a customer's telecommunications service to be switched, without first obtaining the customer's permission;

(8) Billing an unauthorized charge, or causing an unauthorized charge to be billed, to a customer's telecommunications service bill;

(9) Failure to maintain financial resources in accordance with subsection (f)(1) of this section;

(10) A pattern of not responding to commission inquiries or customer complaints in a timely fashion;

(11) Suspension or revocation of a registration, certification, or license by any state or federal authority;

(12) Conviction of a felony by the certificate holder, a person controlling the certificate holder, or principal employed by the cer-

tificate holder, or any crime involving theft, fraud, or deceit related to the certificate holder's service;

(13) Failure to serve as a provider of last resort if required to do so by the commission;

(14) Failure to provide required services to customers under the federal or Texas Universal Service Fund;

(15) Failure to comply with the rules of the federal or Texas Universal Service Fund; and

(16) Violations of PURA or any commission rule or order applicable to the certificate holder.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 18, 2014.

TRD-201401192

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Effective date: April 7, 2014

Proposal publication date: October 18, 2013

For further information, please call: (512) 936-7223



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) adopts new §101.3017, concerning student assessment. The new section is adopted without changes to the proposed text as published in the January 24, 2014, issue of the *Texas Register* (39 TexReg 381) and will not be republished. The adopted new section requires 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. Adopted new 19 TAC §101.3017, Release of Tests, specifies that the release of the assessments administered in the 2013-2014 school year will occur after the last time the assessments are administered in the 2013-2014 school year. The adopted new rule also specifies that this release excludes those assessments used for retesting or in subsequent administrations.

As amended by HB 5, the TEC, §39.023(e), requires the TEA to annually release all tests developed under the TEC, §39.023, that are administered during the 2014-2015 and 2015-2016 school years after the last time the assessments are given for those years. 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 adopted new section has no procedural and reporting implications. The adopted new section has no additional effect on the paperwork required and maintained by school districts and charter schools.

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

The public comment period on the proposal began January 24, 2014, and ended February 24, 2014. Following is a summary of the public comment received and the corresponding agency response regarding proposed new 19 TAC Chapter 101, Assessment, Subchapter CC, Commissioner's Rules Concerning Implementation of the Academic Content Areas Testing Program, Division 1, Implementation of Assessment Instruments, §101.3017, Release of Tests.

Comment: The superintendent of Hereford Independent School District notes the necessity of the rule.

Agency Response: The agency agrees.

The new section is adopted 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 5, 83rd Texas Legislature, Regular Session, 2013, which require the Texas Education Agency, 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).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 21, 2014.

TRD-201401264

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Effective date: April 10, 2014

Proposal publication date: January 24, 2014

For further information, please call: (512) 475-1497



TITLE 22. EXAMINING BOARDS

PART 1. TEXAS BOARD OF ARCHITECTURAL EXAMINERS

CHAPTER 1. ARCHITECTS

SUBCHAPTER H. PROFESSIONAL CONDUCT

22 TAC §1.149

The Texas Board of Architectural Examiners adopts an amendment to §1.149, concerning Criminal Convictions, without changes to the proposed text as published in the November 15, 2013, issue of the *Texas Register* (38 TexReg 8050). The text of the rule will not be republished.

The amendment requires each applicant for registration as an architect and each registered architect to submit a set of fingerprints to the Texas Department of Public Safety or a vendor under contract with the department. The amendment makes the submission of fingerprints a prerequisite for an applicant's initial architectural registration and for the next renewal of registration by a registered architect. Once fingerprints are submitted, the requirement no longer applies. The fingerprinting requirement also does not apply to the renewal of an emeritus or inactive certificate of registration. An emeritus or inactive architect shall submit a set of fingerprints only in order to restore his or her certificate of registration to active status. The amendment removes requirements by which applicants and registrants are to affirmatively disclose criminal history information to the board. The amendments implement House Bill 1717 passed by the 83rd Legislature after Sunset review of the agency.

No comments were received regarding adoption of the amendment.

The amendment is adopted pursuant to §§1051.202, 1051.3041, and 1051.3531, Texas Occupations Code, which provide the Texas Board of Architectural Examiners with authority to promulgate rules to implement Chapter 1051, Texas Occupations Code, and which prohibit the board from issuing or renewing a certificate of registration to a person who has not submitted fingerprints for the purpose of undergoing a criminal background check.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 24, 2014.

TRD-201401268

Cathy L. Hendricks, RID, ASID/IIDA

Executive Director

Texas Board of Architectural Examiners

Effective date: April 13, 2014

Proposal publication date: November 15, 2013

For further information, please call: (512) 305-9040



CHAPTER 3. LANDSCAPE ARCHITECTS

SUBCHAPTER H. PROFESSIONAL CONDUCT

22 TAC §3.149

The Texas Board of Architectural Examiners adopts an amendment to §3.149, concerning Criminal Convictions, without changes to the proposed text as published in the November 15, 2013, issue of the *Texas Register* (38 TexReg 8051). The text of the rule will not be republished.

The amendment requires each applicant for registration as landscape architect and each registered landscape architect to sub-

mit a set of fingerprints to the Texas Department of Public Safety or a vendor under contract with the department. The amendment makes the submission of fingerprints a prerequisite for an applicant's initial registration and for the next renewal of registration by a landscape architect. Once fingerprints are submitted, the requirement no longer applies. The fingerprinting requirement also does not apply to the renewal of an emeritus or inactive certificate of registration. An emeritus or inactive landscape architect shall submit a set of fingerprints only in order to restore his or her certificate of registration to active status. The amendment removes requirements by which applicants and registrants are to affirmatively disclose criminal history information to the board. The amendments implement House Bill 1717 passed by the 83rd Legislature after Sunset review of the agency.

No comments were received regarding adoption of the amendment.

The amendment is adopted pursuant to §§1051.202, 1051.3041, and 1051.3531, Texas Occupations Code, which provide the Texas Board of Architectural Examiners with authority to promulgate rules to implement Chapter 1051, Texas Occupations Code, and which prohibit the board from issuing or renewing a certificate of registration to a person who has not submitted fingerprints for the purpose of undergoing a criminal background check.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 24, 2014.

TRD-201401269

Cathy L. Hendricks, RID, ASID/IIDA

Executive Director

Texas Board of Architectural Examiners

Effective date: April 13, 2014

Proposal publication date: November 15, 2013

For further information, please call: (512) 305-9040



CHAPTER 5. REGISTERED INTERIOR DESIGNERS

SUBCHAPTER H. PROFESSIONAL CONDUCT

22 TAC §5.158

The Texas Board of Architectural Examiners adopts an amendment to §5.158, concerning Criminal Convictions, without changes to the proposed text as published in the November 15, 2013, issue of the *Texas Register* (38 TexReg 8052). The text of the rule will not be republished.

The amendment requires each applicant for registration as a registered interior designer and each registered interior designer to submit a set of fingerprints to the Texas Department of Public Safety or a vendor under contract with the department. The amendment makes the submission of fingerprints a prerequisite for an applicant's initial registration and for the next renewal of registration by a registered interior designer. Once fingerprints are submitted, the requirement no longer applies. The fingerprinting requirement also does not apply to the renewal of an emeritus or inactive certificate of registration. An emeritus or inactive registered interior designer shall submit a set of fingerprints only in order to restore his or her certificate of registra-

tion to active status. The amendment removes requirements by which applicants and registrants are to affirmatively disclose criminal history information to the board. The amendments implement House Bill 1717 passed by the 83rd Legislature after Sunset review of the agency.

No comments were received regarding adoption of the amendment.

The amendment is adopted pursuant to §§1051.202, 1051.3041, and 1051.3531, Texas Occupations Code, which provide the Texas Board of Architectural Examiners with authority to promulgate rules to implement Chapter 1051, Texas Occupations Code, and which prohibit the board from issuing or renewing a certificate of registration to a person who has not submitted fingerprints for the purpose of undergoing a criminal background check.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 24, 2014.

TRD-201401270

Cathy L. Hendricks, RID, ASID/IIDA

Executive Director

Texas Board of Architectural Examiners

Effective date: April 13, 2014

Proposal publication date: November 15, 2013

For further information, please call: (512) 305-9040



TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 1. GENERAL LAND OFFICE

CHAPTER 15. COASTAL AREA PLANNING

SUBCHAPTER A. MANAGEMENT OF THE BEACH/DUNE SYSTEM

31 TAC §15.32

The General Land Office (GLO) adopts an amendment to 31 TAC §15.32, concerning Certification Status of Cameron County Dune Protection and Beach Access Plan (Plan), without changes to the proposed text as published in the December 6, 2013, issue of the *Texas Register* (38 TexReg 8783). The text of the rule will not be republished.

The amendment adopts a new subsection (d) certifying as consistent with state law an amendment to Cameron County's (the County) Plan which was adopted by Cameron County on August 15, 2013, in Order No. 201308020.

Copies of the County's Plan can be obtained by contacting the Cameron County Parks and Recreation Department, 33174 State Park Road 100, South Padre Island, Texas 78597, phone number (956) 761-3700, and GLO's Archives Divisions, General Land Office, P.O. Box 12873, Austin, Texas 78711-2873, phone number (512) 475-1859.

BACKGROUND

The County is a coastal county consisting of areas bordering Willacy County to the north, Hidalgo County to the west, the Gulf

of Mexico to the east and the Mexican State of Tamaulipas to the south. The areas governed by the Plan include those beaches and adjacent areas bordering the Gulf of Mexico located in unincorporated areas within the County. The plan was previously amended to increase the County's beach user fee and was certified by the GLO as consistent with state law and became effective February 3, 2011.

Pursuant to the Open Beaches Act (Texas Natural Resources Code, Chapter 61) and the Beach/Dune Rules (31 TAC §§15.1 - 15.12 and §§15.21 - 15.37), a local government with jurisdiction over Gulf Coast Beaches must submit its dune protection and beach access plan and any amendments to the plan to the GLO for certification pursuant to 31 TAC §15.3(o). The GLO reviews a local beach access and dune protection plan and amendments to the plan and, if appropriate, certifies that the plan is consistent with state law by amendment of a rule as authorized in Texas Natural Resources Code §61.011(d)(5) and §61.015(b). The certification by rule reflects the state's certification of the plan, but the text of the plan is not adopted by the GLO as provided in 31 TAC §15.3(o)(4).

THE CAMERON COUNTY BEACH AMENDMENTS

The County adopted the current amendment to the Plan on August 15, 2013, in Order No. 201308020 and submitted the change to the GLO with a request for certification of the amendment as consistent with state law. The amendment authorizes Cameron County's closure of a beach and associated access points during space flight activities on a primary or backup launch date. Specifically, the amendment prohibits the County from closing the beach on a primary launch date without prior approval from GLO on the Saturday or Sunday preceding Memorial Day, Memorial Day, July 4th, Labor Day, and a Saturday or Sunday that falls between Memorial Day and Labor Day.

The amendment also provides that Cameron County will enter into a memorandum of agreement with GLO to address beach closures for space launch activities.

The amendment to §15.32 adds subsection (d) to certify the County's amendment to the Plan as consistent with state law. Based on the information provided by the County, the GLO has determined that the amendment is consistent with the Open Beaches Act, the Dune Protection Act, and 31 TAC Chapter 15. Therefore, the GLO finds that the approved amendment to the Plan is consistent with state law and hereby approves and certifies the amendment.

REASONED JUSTIFICATION

The justification for the adopted amendment is that it updates the plan to enable the County to foster the development of a launch site in the county while balancing the need to protect the public's right of access to county beaches as provided for in Texas Natural Resources Code §61.132. The amendment provides a framework under which the County may close a beach and associated access points during space flight activities and establishes when the County must obtain prior approval from the GLO before closing a beach and associated access points during specified times.

SUMMARY AND RESPONSE TO COMMENTS

No public comments were received during the thirty (30) day comment period.

CONSISTENCY WITH COASTAL MANAGEMENT PROGRAM

The amendment to §15.32 is subject to the Coastal Management Program (CMP) goals and policies as provided in Texas Natural Resources Code §33.2053 and 31 TAC §505.11(a)(1)(J) and (c), relating to Actions and Rules Subject to the Coastal Management Program. GLO has reviewed this amendment for consistency with CMP goals and policies in accordance with the regulations and has determined that the action is consistent with the applicable CMP goals and policies. No comments were received from the public or the Commissioner regarding the consistency determination. Consequently, the GLO has determined that the adopted amendment is consistent with the applicable CMP goals and policies.

STATUTORY AUTHORITY

The amendment is adopted under Texas Natural Resources Code §61.011, relating to GLO's authority to adopt rules for the contents and certification of beach access and use plans; and §61.011, relating to GLO's authority to adopt rules for the contents and the closure of beaches for space flight activities.

Texas Natural Resources Code §§61.011 - 61.026 are affected by the adopted amendment.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 20, 2014.

TRD-201401250

Larry Laine

Chief Clerk, Deputy Land Commissioner

General Land Office

Effective date: April 9, 2014

Proposal publication date: December 6, 2013

For further information, please call: (512) 475-1859



TEXAS DEPARTMENT OF INSURANCE

Notification Pursuant to the Insurance Code, Chapter 5,
Subchapter L

As required by the Insurance Code, Article 5.96 and 5.97, the *Texas Register* publishes notice of proposed actions by the Texas Department of Insurance. Notice of action proposed under Article 5.96 must be published in the *Texas Register* not later than the 30th day before the proposal is adopted. Notice of action proposed under Article 5.97 must be published in the *Texas Register* not later than the 10th day before the proposal is adopted. The Administrative Procedure Act, Government Code, Chapters 2001 and 2002, does not apply to department action under Articles 5.96 and 5.97.

The complete text of the proposal summarized here may be examined in the offices of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78701.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Administrative Procedure Act.

Texas Department of Insurance

Final Action on Rules

EXEMPT FILING NOTIFICATION UNDER TEXAS INSURANCE CODE CHAPTER 5, SUBCHAPTER L, ARTICLE 5.96

ADOPTION OF THE NATIONAL COUNCIL ON COMPENSATION INSURANCE BASIC MANUAL WITH TEXAS EXCEPTIONS, AND NATIONAL AND TEXAS-SPECIFIC ENDORSEMENTS AND FORMS IN THE NATIONAL COUNCIL ON COMPENSATION INSURANCE FORMS MANUAL

The commissioner of insurance adopts the *National Council on Compensation Insurance (NCCI) Basic Manual* with Texas exceptions, and the national and Texas-specific endorsements and forms in the *NCCI Forms Manual*, as proposed by the December 30, 2013, TDI staff petition (Reference No. W-1213-01-I), with one amendment, to allow NCCI to assume certain workers' compensation functions in Texas.

Hearing and Comments

TDI published notice of the proposal and hearing in the January 10, 2014, issue of the *Texas Register* (39 TexReg 221). The hearing was originally scheduled for January 24, 2014, but was postponed due to inclement weather. TDI rescheduled the hearing for February 18, 2014, and published notice of the rescheduled hearing in the February 7, 2014, issue of the *Texas Register* (39 TexReg 779). TDI received 12 written comments and seven public comments at the February 18, 2014, hearing, held under Docket No. 2762.

The comments received were either supportive of, or not opposed to, the adoption of the *NCCI Basic Manual* with Texas exceptions, and the national and Texas-specific endorsements and forms in the *NCCI Forms Manual*; and of the Texas transition from being an independent state to being an NCCI state. As an NCCI state, NCCI will administer certain workers' compensation functions in Texas, which TDI is not statutorily required to perform. TDI appreciates the commenters' support, and continues to work hard to ensure the best and most efficient administration of the Texas workers' compensation classification and premium calculation system.

Nearly all of the commenters requested an effective date of October 1, 2014, rather than an effective date of June 1, 2014, as the TDI staff petition proposed. Several commenters requested a permissive effective date of June 1, 2014, and a mandatory effective date of October 1, 2014. TDI agrees that a permissive effective date of June 1, 2014, and a mandatory effective date of October 1, 2014, would reasonably allow carriers time to update their systems. It would also permit carriers that have already updated their systems to use the adopted *NCCI Basic*

Manual with Texas exceptions, and the national and Texas-specific endorsements and forms in the *NCCI Forms Manual*, for policies with an effective date on or after June 1, 2014. All carriers would be required to use the adopted *NCCI Basic Manual* with Texas exceptions, and the national and Texas-specific endorsements and forms in the *NCCI Forms Manual*, for policies with an effective date on or after October 1, 2014.

One commenter expressed concern about whether, at some point in the future, costs to access information from NCCI regarding loss costs, relativities, and classification codes would increase to prohibitive levels for small employers. TDI appreciates the comment. NCCI's costs have not increased significantly over at least the past 10 years and, based on that historical information and on information NCCI has provided, TDI does not expect NCCI's costs to increase to prohibitive levels in the future. TDI will monitor costs and welcomes future communication from carriers and policyholders if problems arise.

Justification

The commissioner has determined that adopting the *NCCI Basic Manual* with Texas exceptions, and the national and Texas-specific endorsements and forms in the *NCCI Forms Manual* is necessary to allow NCCI to assume certain workers' compensation functions in Texas that TDI is not statutorily required to perform. The Texas exceptions to the NCCI rules and forms are necessary to preserve the rules that are unique to Texas and to make the transition to an NCCI state as seamless as possible for policyholders.

NCCI is the largest provider of workers' compensation and employee injury data and workers' compensation statistics in the nation. It is a licensed advisory organization in Texas, and is the workers' compensation statistical agent for the state. As of February 2014, there are 36 states plus the District of Columbia that are NCCI states, 10 independent states, including Texas, and four monopolistic states.

When Texas becomes an NCCI state, Texas carriers and policyholders will benefit from NCCI's technical expertise, infrastructure, easy-to-use electronic manuals, inspection services, dispute resolution process, and training programs. NCCI state status will enhance efficiency for Texas policyholders operating in other NCCI states, and carriers writing workers' compensation coverage in multiple NCCI states, by allowing them to have more consistent rules and forms and eliminating unnecessary government involvement. Additionally, transferring the responsibility for administrative functions to NCCI, where possible, will allow TDI staff to focus more on substantive issues in workers' compensation insurance.

Adopting the cited NCCI manuals and exceptions allows NCCI to operate in Texas by: 1) drafting new or revised manual rules and forms;

2) filing the rules and forms with TDI for acceptance as submitted, acceptance with changes, or rejection; 3) assigning classification codes to businesses on request; 4) on request and for a fee, inspecting businesses to determine the correct classifications; 5) responding to telephone and written inquiries regarding workers' compensation classification and premium calculation; and 6) participating in an appeals panel, if necessary, to resolve disputes between carriers and policyholders.

The *NCCI Basic Manual* and the Texas exceptions incorporate the Texas classifications currently in effect. Texas will retain its current classifications and will not change to the national classifications used in most NCCI states.

The Texas exceptions include a more formal dispute resolution process than TDI currently uses for disputes about rules or classifications that cannot be resolved between the policyholders and carriers. Participants in the dispute resolution process will not be required to retain counsel. However, participants must appear in person before the appeals panel, unless all participants agree to appear by telephone or other electronic means.

The Texas exceptions update the premium discount table that is currently available for carriers to use for premiums for policyholders who meet the eligibility requirements. The Texas exceptions also include updated percentages and minimum premiums for increased limits for employers' liability coverage if a policyholder elects employers' liability limits above the standard limits. The updated percentages are based on NCCI's actuarial analysis of more recent historical loss experience, which results in percentages that more closely reflect what the additional premium should be for optional increased limits for employers' liability coverage.

The Texas exceptions replace the aggregate deductible and the per accident/aggregate deductible options with the per claim deductible and the medical-only deductible options. This eliminates two options that are rarely chosen for Texas workers' compensation policies and adds two other options that are used in other NCCI states. The Texas exception pages do not include tables for the premium credits for the per accident, per claim, and medical-only deductible options. Instead, the Texas exception pages direct carriers to use loss elimination ratios (LERs) to calculate premium credits for those deductible options. Many carriers that operate in Texas already use LERs to calculate their premium credits in other states. As part of its transition plan, NCCI will provide information to carriers and respond to inquiries on LERs. In addition, TDI will send information to carriers about the filing requirements to adopt NCCI's Advisory LERs.

With the adoption of the national and Texas-specific endorsements and forms in the *NCCI Forms Manual*, the commissioner adopts 62 endorsements and forms and discontinues two endorsements for the two deductible options that will no longer be available. Of the 62 endorsements and forms approved:

- * 32 are identical to those in the *Texas Basic Manual*;
- * five are retrospective rating endorsements identical to those previously filed by NCCI and approved by TDI;
- * 18 are adopted with only minor editorial changes to the currently approved ones;
- * two are endorsements that already exist in the *Texas Basic Manual* that have been amended to clarify language and update statutory references;
- * two are new to Texas and necessary to implement the added deductible options;
- * two are new to Texas and necessary to clarify and standardize practices that are already common in Texas; and

* one is new to Texas and necessary to give notice of a possible pending law change to the federal terrorism law.

With the adoption of the *NCCI Basic Manual* with Texas exceptions, and the national and Texas-specific endorsements and forms in the *NCCI Forms Manual*, the commissioner of insurance and TDI will continue to fulfill all workers' compensation statutory requirements, such as: 1) prescribing standard policy forms and a uniform policy; 2) approving nonstandard forms and endorsements; 3) determining hazards by classification; 4) requiring carriers to use the classifications determined for Texas; 5) establishing classification relativities; 6) adopting a uniform experience rating plan; and 7) developing and updating statistical plans, as necessary.

Official Action Taken

The commissioner adopts the *NCCI Basic Manual* with Texas exceptions, and the national and Texas-specific endorsements and forms in the *NCCI Forms Manual*, as proposed, with the following change: in the Texas exceptions, the language in Section D, number 3 of the Dispute Resolution Process is amended to allow participation in the appeals panel by telephone or other electronic means, provided that all parties agree. Additionally, carriers are allowed to use the *NCCI Basic Manual* with Texas exceptions and the national and Texas-specific endorsements and forms in the *NCCI Forms Manual* for policies with an effective date on or after June 1, 2014, and must use them for policies with an effective date on or after October 1, 2014.

The commissioner orders that

- (1) The *NCCI Basic Manual* with Texas exceptions, and the national and Texas-specific endorsements and forms in the *NCCI Forms Manual*, may be used for Texas workers' compensation policies with an effective date on or after 12:01 a.m., June 1, 2014; but must be used for Texas workers' compensation policies with an effective date on or after 12:01 a.m., October 1, 2014.
- (2) The rules, classifications, endorsements, and forms contained in the *Texas Basic Manual* will continue to be in effect for policies with an effective date before 12:01 a.m., October 1, 2014. Carriers may use the adopted *NCCI Basic Manual* with Texas exceptions, and the national and Texas-specific endorsements and forms in the *NCCI Forms Manual* for policies with an effective date on or after 12:01 a.m., June 1, 2014.
- (3) The rules, classifications, endorsements, and forms contained in the *Texas Basic Manual* will expire at 12:01 a.m., October 1, 2015.
- (4) The Experience Rating Plan contained in the *Texas Basic Manual* will continue in force until TDI adopts the *NCCI Experience Rating Plan* with Texas exceptions, independent of the rules, classifications, endorsements, and forms in the *Texas Basic Manual*.
- (5) Any proposed future revisions to NCCI's manuals will be considered under either the procedure established in Insurance Code Article 5.96, or by the following procedure: 1) NCCI makes a filing; 2) TDI publishes notice of the filing on the TDI website and distributes notice of the filing to subscribers to TDI's electronic news, with at least a 30-day period for interested persons to submit comments or request a hearing; and 3) the commissioner issues an order approving the filing, approving the filing with changes, or rejecting the filing.

A copy of the full text of the staff petition and related exhibits has been on file with the TDI chief clerk since December 30, 2013. The petition and exhibits are incorporated by reference.

The commissioner adopts the *NCCI Basic Manual* with Texas exceptions, and the national and Texas-specific endorsements and forms in the *NCCI Forms Manual* under Article 5.96 of the Texas Insurance Code. Article 5.96 exempts action taken under this article from the requirements of the Administrative Procedure Act (Government Code,

Title 10, Chapter 2001), and authorizes TDI to prescribe, promulgate, adopt, approve, amend, or repeal standard and uniform manual rules, rating plans, classification plans, statistical plans, and policy and endorsement forms for various lines of insurance, including workers' compensation.

TDI certifies that the adoption of the *NCCI Basic Manual* with Texas exceptions, and the national and Texas-specific endorsements and forms in the *NCCI Forms Manual* have been reviewed by legal counsel and found to be a valid exercise of TDI's authority.

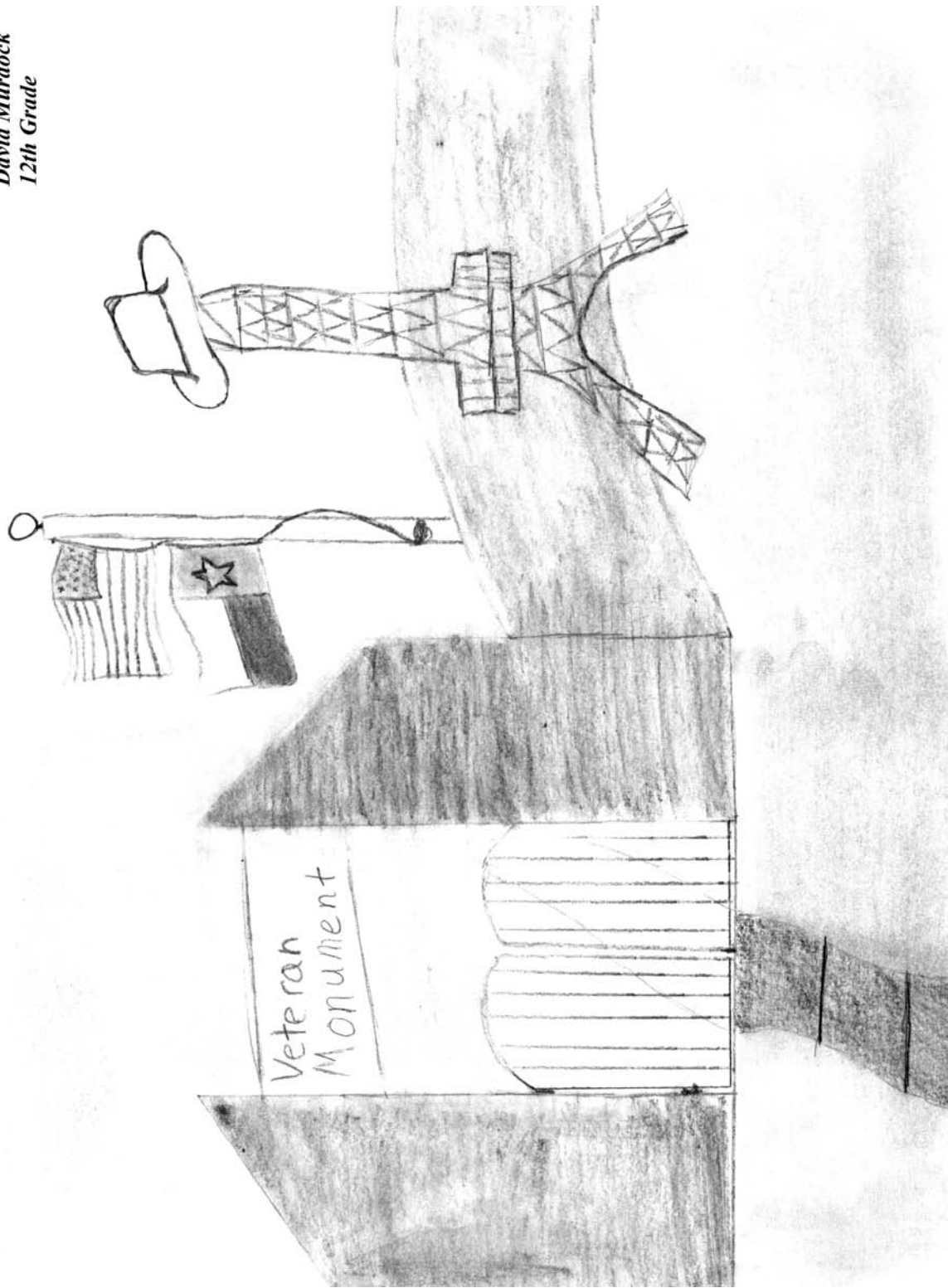
The commissioner orders that the *National Council on Compensation Insurance (NCCI) Basic Manual* with Texas exceptions, and the national and Texas-specific endorsements and forms in the *NCCI Forms Manual*, as proposed by the December 30, 2013, TDI staff petition

(Reference No. W-1213-01-I) and amended as outlined above, may be used for Texas workers' compensation policies with an effective date on or after 12:01 a.m., June 1, 2014; but must be used for Texas workers' compensation policies with an effective date on or after 12:01 a.m., October 1, 2014.

TRD-201401275
Sara Waitt
General Counsel
Texas Department of Insurance
Filed: March 24, 2014

◆ ◆ ◆

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.

Proposed Rule Reviews

Texas Animal Health Commission

Title 4, Part 2

The Texas Animal Health Commission (commission) proposes the review of 4 TAC Chapter 36, concerning Exotic Livestock and Fowl, in accordance with Texas Government Code, §2001.039. The rules to be reviewed are §36.1 and §36.2.

As required by §2001.039 of the Texas Government Code, the commission will accept comments and make a final assessment regarding whether the reasons for initially adopting these rules continue to exist and whether these rules should be repealed, readopted or readopted with amendments.

Comments on the rule review may be submitted to Carol Pivonka, Texas Animal Health Commission, 2105 Kramer Lane, Austin, Texas 78758; by fax at (512) 719-0721; or by email at "comments@tahc.texas.gov" no later than 30 days from the date that the proposed review is published in the *Texas Register*.

TRD-201401314

Gene Snelson

General Counsel

Texas Animal Health Commission

Filed: March 26, 2014



Adopted Rule Reviews

Texas Department of Housing and Community Affairs

Title 10, Part 1

The Texas Department of Housing and Community Affairs ("Department") has completed its review of 10 TAC Chapter 1, Subchapter A, §1.2, concerning Department Complaint System. The review was conducted in accordance with Texas Government Code, §2001.039, which requires state agencies to review their administrative rules every four years. The Department published Notice of Intent to Review this section in the December 27, 2013, issue of the *Texas Register* (38 TexReg 9633).

The public comment period was from December 27, 2013, to January 29, 2014. No comments were received regarding the review.

The purpose of the review was to assess whether the reasons for adopting the section continue to exist. The rule was initially adopted to provide an avenue by which Department stakeholders could raise concerns to the proper Department staff through officially established channels. The Department determined the initial reasons for adopting 10 TAC §1.2 continue to exist and readopts the section as a result of the four-year review in accordance with the requirements of the Texas Government Code, §2001.039. This rule may be subsequently revised in accordance with the Texas Administrative Procedure Act.

TRD-201401302

Timothy K. Irvine

Executive Director

Texas Department of Housing and Community Affairs

Filed: March 25, 2014



*Morgan Berry
12th Grade*



TABLES & GRAPHICS

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

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

Figure: 19 TAC §101.3041(b)(1)

State of Texas Assessments of Academic Readiness Grades 3-8 Assessments Level II and Level III Standards

English Assessments	Phase-in 1 Level II	Phase-in 2 Level II	Recommended Level II	Recommended Level III
Grade 3 Mathematics	1392	1460	1529	1615
Grade 4 Mathematics	1471	1535	1599	1677
Grade 5 Mathematics	1489	1558	1627	1710
Grade 6 Mathematics	1509	1584	1658	1762
Grade 7 Mathematics	1551	1615	1678	1798
Grade 8 Mathematics	1583	1641	1700	1863
Grade 3 Reading	1331	1400	1468	1555
Grade 4 Reading	1422	1486	1550	1633
Grade 5 Reading	1458	1520	1582	1667
Grade 6 Reading	1504	1567	1629	1718
Grade 7 Reading	1556	1615	1674	1753
Grade 8 Reading	1575	1637	1700	1783
Grade 4 Writing	3500	3750	4000	4612
Grade 7 Writing	3500	3750	4000	4602
Grade 5 Science	3500	3750	4000	4402
Grade 8 Science	3500	3750	4000	4406
Grade 8 Social Studies	3500	3750	4000	4268

Spanish Assessments	Phase-in 1 Level II	Phase-in 2 Level II	Recommended Level II	Recommended Level III
Grade 3 Mathematics	1392	1460	1529	1615
Grade 4 Mathematics	1471	1535	1599	1677
Grade 5 Mathematics	1489	1558	1627	1710
Grade 3 Reading	1304	1374	1444	1532
Grade 4 Reading	1398	1469	1539	1636
Grade 5 Reading	1447	1515	1582	1701
Grade 4 Writing	3500	3750	4000	4543
Grade 5 Science	3500	3750	4000	4402

Figure: 19 TAC §101.3041(b)(2)

State of Texas Assessments of Academic Readiness Modified Grades 3-8 Assessments Level II and Level III Standards

Assessment	Phase-in 1 Level II	Phase-in 2 Level II	Recommended Level II	Recommended Level III
Grade 3 Mathematics	2800	2900	3000	3578
Grade 4 Mathematics	2800	2900	3000	3526
Grade 5 Mathematics	2800	2900	3000	3691
Grade 6 Mathematics	2800	2900	3000	3462
Grade 7 Mathematics	2800	2900	3000	3551
Grade 8 Mathematics	2800	2900	3000	3577
Grade 3 Reading	2800	2900	3000	3306
Grade 4 Reading	2800	2900	3000	3238
Grade 5 Reading	2800	2900	3000	3312
Grade 6 Reading	2800	2900	3000	3316
Grade 7 Reading	2800	2900	3000	3368
Grade 8 Reading	2800	2900	3000	3436
Grade 4 Writing	2800	2900	3000	3349
Grade 7 Writing	2800	2900	3000	3422
Grade 5 Science	2800	2900	3000	3234
Grade 8 Science	2800	2900	3000	3509
Grade 8 Social Studies	2800	2900	3000	3348

Figure: 19 TAC §101.3041(b)(3)

State of Texas Assessments of Academic Readiness Alternate Grades 3-8 Assessments Conversion Table

Reading, Writing, Mathematics, Science, and Social Studies

Performance Level*	2011-2012 Score	2012-2013 Score	2013-2014 Score
Level I: Developing	0-47	0-49	0-47
Level II: Satisfactory	48-77	50-77	48-77
Level III: Accomplished	78-84	78-84	78-84

* The performance levels apply to all Alternate assessments. Each assessment has a total of 84 points possible derived in the following manner: each of the four essence statements has a maximum score of 21 points: $4 * 21 = 84$.

Figure: 19 TAC §101.3041(c)(1)

State of Texas Assessments of Academic Readiness End-of-Course Assessments Phase-In and Final Recommended Level II and Level III Standards*

Assessment	Phase-in 1 Level II	Phase-in 2 Level II	Recommended Level II	Recommended Level III
Algebra I	3500	3750	4000	4333
Biology	3500	3750	4000	4576
English I	3750	3900	4000	4691
English II	3750	3900	4000	4831
U.S. History	3500	3750	4000	4440
English I Reading**	1875	1950	2000	2304
English II Reading**	1875	1950	2000	2328
English I Writing**	1875	1950	2000	2476
English II Writing**	1875	1950	2000	2408

* The standard in place when a student first takes an EOC assessment is the standard that will be maintained on all EOC assessments throughout the student's high school career. Standard's apply beginning with students first enrolled in Grade 9 or below in 2011-2012.

** Administered prior to 2014.

Figure 19 TAC §101.3041(c)(2)

State of Texas Assessments of Academic Readiness Modified End-of-Course Assessments

Phase-In and Final Recommended Level II and Level III Standards*

Assessment	Phase-in 1 Level II	Phase-in 2 Level II	Recommended Level II	Recommended Level III
Algebra I	2800	2900	3000	3470
Biology	2800	2900	3000	3500
English I	2800	2857	3000	3359
English II	2800	2857	3000	3302
English I Reading**	1430	1450	1500	1672
English II Reading**	1430	1450	1500	1652
English I Writing**	1430	1450	1500	1612
English II Writing**	1430	1450	1500	1604

* The standard in place when a student first takes an EOC assessment is the standard that will be maintained on all EOC assessments throughout the student's high school career. Standards apply beginning with students first enrolled in Grade 9 or below in 2011-2012.

** Administered prior to 2014.

Figure: 19 TAC §101.3041(c)(3)

State of Texas Assessments of Academic Readiness Alternate End-of-Course Assessments Conversion Table

Reading, Writing, Mathematics, Science, and Social Studies

Performance Level*	2011-2012 Score	2012-2013 Score	2013-2014 Score
Level I: Developing	0-47	0-49	0-47
Level II: Satisfactory	48-77	50-77	48-77
Level III: Accomplished	78-84	78-84	78-84

* The performance levels apply to all Alternate assessments. Each assessment has a total of 84 points possible derived in the following manner: each of the four essence statements has a maximum score of 21 points: $4 * 21 = 84$.

Figure: 19 TAC §101.3041(d)

Texas Assessment of Knowledge and Skills Scale Score Standards Horizontal Scale Scores Required to Achieve the “Met Standard” and “Commended Performance” Levels

Grade	Mathematics	Writing/ELA*	Social Studies	Science
	Scale Score Cut Met/Commended	Scale Score Cut Met/Commended	Scale Score Cut Met/Commended	Scale Score Cut Met/Commended
Exit Level	2100/2400	2100/2400	2100/2400	2100/2400

* An essay rating of 2 or higher is required for Met Standard

Figure: 40 TAC §15.410(c)(2)

Minors	Total Staff	RN	RN or LVN	RN, LVN or Direct Care staff
1	1	1		
2-6	2	1		1
7-9	3	1	1	1
10-12	4	1	1	2
13-15	5	2	1	2
16-18	6	2	1	3
19-21	7	2	2	3
22-24	8	2	2	4
25-27	9	3	2	4
28-30	10	3	2	5
31-33	11	3	3	5
34-36	12	3	3	6
37-39	13	4	3	6
40-42	14	4	3	7
43-45	15	4	4	7
46-48	16	4	4	8
49-51	17	5	4	8
52-54	18	5	4	9
55-57	19	5	5	9
58-60	20	5	5	10

Figure: 40 TAC §15.1408(p)

Rule Cite	Subject Matter	Severity Level			
		A	B	C	D
§15.101(c)	A center may not be operated on the same premises as other licensed facilities			X	X
§15.101(e)	Actual census must not exceed capacity authorized by DADS	X	X	X	
§15.108(a)	A license is not assignable or transferrable			X	X
§15.109(a)	Center capacity must not be increased without approval from DADS	X	X	X	
§15.117	A license may not be altered			X	X
§15.119	Notification procedures for reporting a change in administration and management				X
§15.120	Notification procedures for reporting a change in contact information				X
§15.121	Notification procedures for reporting a change in operating hours				X
§15.122	Notification procedures for reporting a change in business name				X
§15.201(a)(1)-(2) separate penalties	Adoption and enforcement of a policy for operating hours	X	X	X	
§15.201(c)(1)-(2) separate penalties	Providing information on how to contact the person in charge if the center is closed during operating hours		X	X	X
§15.202(c)(1)-(5)	Requirements for when a center suspends operations for a scheduled closing		X	X	
§15.202(c)(6)-(9)	Documentation and notice requirements for when a center suspends operations for a scheduled closing			X	X
§15.202(d)(1)-(5) separate penalties	Requirements for when a center suspends operations for an unscheduled closing		X	X	
§15.202(d)(6)-(9)	Documentation and notice requirements for when a center suspends operations for an unscheduled closing			X	X
§15.202(e)	Requirements for when a center must close with less than 15 days' notice		X	X	
§15.203(a)	Requirement to have the financial ability to carry out center functions		X	X	
§15.203(b)	Requirement to make all business records available to DADS				X
§15.203(c)	Requirements for maintaining and correcting business records			X	X
§15.204	Adoption and enforcement of policy for billing and insurance claims			X	X
§15.205(a)	Obtain annual inspection from local fire marshal and maintain documentation		X	X	X
§15.205(b)	Requirement to plan, conduct and document fire drills once a month		X	X	X

§15.205(c)(1)-(2), (4) separate penalties	Requirement for the administrator and nursing director to review and evaluate the center's fire drill plan and maintain documentation of fire drill plan requirements		X	X	X
§15.205(c)(3)	Requirement for the administrator and nursing director to review and correct any problems that occurred during a fire drill		X	X	X
§15.205(d)	Requirement to have a working telephone in each building of the center			X	X
§15.205(e)(1)-(2)	Required emergency contact information posted near telephones			X	X
§15.205(f)	Adoption and enforcement of a policy for a minor's medical emergency	X	X	X	
§15.205(f)(1)(A)-(C) separate penalties	Requirements for a minor's emergency plan	X	X	X	
§15.205(f)(2)-(4) separate penalties	Training and notification procedures for a minor's medical emergency	X	X	X	
§15.205(g)	Procedures for transporting a minor to an emergency medical facility		X	X	
§15.205(h)	Requirements for a medical emergency transfer form	X	X	X	
§15.205(i)	Requirements to maintain a first aid kit and automated external defibrillator		X	X	X
§15.205(j)(1)-(2), (4) separate penalties	Adoption and enforcement of policies and procedures for verification and monitoring of visitors; verification and supervision of visitors	X	X	X	
§15.205(j)(3), (5)	Documentation of verification of visitors		X	X	X
§15.205(k)(1)-(2) separate penalties	Adoption and enforcement of policies and procedures for releasing minors	X	X	X	
§15.205(l)(1)-(4) separate penalties	Adoption and enforcement of a policy for ensuring minors are not left unattended at the center	X	X		
§15.205(m)	Requirements for visual checks at the center			X	X
§15.205(n)	Requirement to meet LSC and building requirements in this chapter	X	X		
§15.205(o)(1)	Use of alcohol-based hand rub dispensers at the center in compliance with state or local codes			X	X
§15.205(o)(2), (4) separate penalties	Installation of alcohol-based hand rub dispensers minimize leaks and spills and is compliance with LSC		X	X	
§15.205(o)(3)	Installation of alcohol-based hand rub dispensers out of reach of minors	X	X	X	
§15.205(p)(1)-(4) separate penalties	Requirements for center to be free from health and safety hazards	X	X		
§15.205(q)(1)	Requirement to provide a copy of policy to staff, adult minors and parents of weapons-free location		X		
§15.205(q)(2)	Requirements to provide a copy of policy to requestors			X	X
§15.205(r)	Requirement to post a notice for a weapons-free location			X	X

§15.206(a)(1)-(2) separate penalties	Implementation of a person-centered direction and guidance program		X	X	
§15.206(a)(3)	Providing daily notification to a parent of a minor's behavior			X	X
§15.206(b)	Requirements for strategies and techniques to encourage self-esteem, self-control and self-direction		X	X	
§15.206(c)	Requirements for direction and guidance used in a center		X	X	
§15.206(d)(1)-(5) separate penalties	Requirements for the use of timeout in a center	X	X		
§15.206(e)(1)-(10) separate penalties	Prohibited forms of discipline in a center	X	X		
§15.206(f)(1)-(2) separate penalties	Establishment and responsibilities of a person-centered direction and guidance committee		X	X	X
§15.206(g)	Personnel requirements for the person-centered direction and guidance committee			X	X
§15.206(h)	Documentation requirements to support attempted inclusion of parent or parent committee in the person-centered direction and guidance committee			X	X
§15.206(i)	Adoption and enforcement of policy for the person-centered direction and guidance committee			X	X
§15.206(j)	Requirements to provide staff and parents with a copy of the person-centered direction and guidance policy and maintain documentation of receipt.		X	X	X
§15.207(a)(1)-(4) separate penalties	Acceptable circumstance for use of restraint	X	X		
§15.207(b)(1)-(6) separate penalties	Acceptable types of restraint	X	X		
§15.207(c)	Adoption and enforcement of a policy for the use of restraints	X	X		
§15.207(d)	Prohibition of the use of physician's orders written for the use of protective devices on an as needed basis	X	X		
§15.207(e)(1)-(3) separate penalties	Requirements for physician's orders for restraints	X	X		
§15.207(f)(1)-(3) separate penalties	Responsibilities of an RN for the use of restraints	X	X		
§15.207(g)	Oral and written notification of right to discontinue use of restraints		X	X	
§15.207(h)	Training of staff before use of restraints	X	X		
§15.207(i)(1)-(4)(A)-(D), (7) separate penalties	Requirements for the release of a minor for reassessment and removal and replacement of a restraint and notification to physician	X	X		
§15.207(j)(1)-(4) separate penalties	Requirements for restraining a minor for a behavioral emergency	X	X		

§15.207(j)(5)(A)-(E)(i)-(ix) separate penalties	Documentation requirements for restraining a minor for a behavioral emergency		X	X	
§15.207(k)(1)-(6) separate penalties	Prohibited types of restraint	X	X		
§15.207(l)(1)-(5) separate penalties	Prohibited circumstances for restraint	X	X		
§15.207(m)	Requirement to maintain documentation		X	X	
§15.208(a)-(f) separate penalties	Equipment, Devices and Supplies		X	X	X
§15.209(a)-(b)(1)-(3)(A)-(C), (b)(4)-(5), (c)(1)-(3)(A)-(H), (c)(4)-(5)(A)-(E), (c)(6)(A)-(D), (c)(7)(A)-(B), (c)(8)(A)-(C), (d)(1)-(3), (e)(1)-(4) separate penalties	Emergency Preparedness and Response Planning Requirements	X	X	X	X
§15.210(a)-(b)(1)-(7) separate penalties	Requirements for maintaining a sanitary environment		X	X	X
§15.210(c)	Develop a written work plan for housekeeping operations			X	X
§15.210(d)-(e)(1)-(4) separate penalties	Maintain a safe and clean environment and procedures for cleaning products and equipment		X	X	X
§15.210(f)	Maintain a sufficient supply of clean linens and laundry service			X	X
§15.210(g)(1)-(11) separate penalties	Requirements for handling, storage and processing of linens		X	X	
§15.211(a)(1)-(6) separate penalties	Establish and maintain an Infection Prevention and Control Program	X	X	X	
§15.211(b)	Provide IPCP information to certain individuals		X	X	
§15.211(c)(1)-(d)(1)(A)-(B) separate penalties	Policies and procedures for admissions and attendance of minors at risk for infection and risk to others and preventing the spread of infection	X	X	X	
§15.211(d)(1)(C)	Procedures for preventing the spread of infection--notifications, transportation and return of a minor	X	X	X	
§15.211(d)(2)-(3) separate penalties	Prohibition of individuals with infectious diseases from contact with minors or food and policy for individuals to wash hands	X	X	X	
§15.211(d)(4)	Requirement to report minor's with reportable diseases and implement control procedures		X	X	
§15.211(e)-(g) separate penalties	Labeling and assignment of sleeping equipment, supplies for hand washing, and policies and procedures for the control of communicable diseases		X	X	X

§15.211(h)(1)-(3) separate penalties	Policies and procedures for control of a public health disaster	X	X	X	
§15.211(i)(1)-(3) separate penalties	Annual review to assess center's risk classification	X	X	X	
§15.211(j)(1)(A)-(E) separate penalties	Policies and procedures for protecting a minor against vaccine preventable diseases	X	X	X	
§15.211(j)(1)(F)-(H) separate penalties	Prohibition of discrimination, requirements for disciplinary action and documentation relating to protecting minors against vaccine preventable diseases			X	X
§15.211(j)(2)(A)-(B) separate penalties	Policy for exempting individuals from vaccine requirements and prohibition of exempt individuals from having contact with minors		X	X	X
§15.211(k)	Policies and procedures to identify individuals at risk of contacting blood or infectious materials	X	X	X	
§15.211(l)(1)-(3) separate penalties	Compliance with statute, regulations and center policies related to infection prevention and control	X	X	X	
§15.301(a)-(h) separate penalties	License holder responsibilities		X	X	X
§15.301(i)-(j) separate penalties	License holder responsibilities for documentation and notifications to DADS			X	X
§15.302(a)-(b) separate penalties	Organizational structure and lines of authority			X	X
§15.303(a)-(j) separate penalties	Administrator and alternate administrator qualifications and conditions		X	X	
§15.304(a)-(b)(1)-(19) separate penalties	Administrator responsibilities		X	X	
§15.305(b)-(d)(1)-(8) separate penalties	Initial training requirements in administration		X	X	
§15.305(e)(1)-(3), (f)(1)-(2), (g) separate penalties	Initial training requirements in administration--structure and provision of training, documentation of training, prohibition of applying the pre-licensing program training			X	X
§15.306(a)-(b) separate penalties	Continuing training requirements in administration		X	X	
§15.306(c)-(d) separate penalties	Continuing training requirements in administration--documentation of training and prohibition of applying the pre-licensing program training			X	X
§15.307(a)-(d) separate penalties	Medical director qualifications and conditions		X	X	
§15.308(a)(1)-(11) separate penalties	Medical director responsibilities		X	X	
§15.309(a)-(c)(1)-(6) separate penalties	Nursing director and alternate nursing director qualifications and conditions	X	X	X	
§15.310(a)(1)-(13) separate penalties	Nursing director responsibilities and supervision responsibilities	X	X	X	

§15.311(a)	Prohibition of solicitation			X	X
§15.401	Nursing Staff	X	X	X	
§15.402	RN qualifications	X	X	X	
§15.403(a)(1)-(10) separate penalties	RN responsibilities	X	X	X	
§15.404	LVN qualifications	X	X	X	
§15.405(a)-(b)(1)-(6) separate penalties	LVN responsibilities	X	X	X	
§15.406(a)(1)-(3) separate penalties	Student nurses	X	X	X	
§15.408	Delegation of nursing tasks by RN to unlicensed personnel and tasks not requiring delegation	X	X	X	
§15.409	Direct care staff qualifications	X	X	X	
§15.410(a)	Nursing services staff ratios	X	X	X	
§15.410(c)(1)-(2) separate penalties	Documentation requirements for nursing services staff ratios			X	X
§15.411(a)(1)-(9), (b)-(e) separate penalties	Rehabilitative and ancillary professional staff and qualifications	X	X	X	
§15.412	Peer Review	X	X	X	
§15.413(a)(1)-(6)(A)-(C) separate penalties	Requirements for the use of contractors	X	X	X	
§15.413(b)-(c) separate penalties	Documentation requirements for the use of contractors		X	X	
§15.414(a)-(c) separate penalties	Use of volunteers	X	X	X	
§15.415(a)-(b)(1)-(7)(A)-(F), (b)(8)-(13) separate penalties	Staffing policies for staff orientation, development, and training	X	X	X	
§15.415(c)(1)-(2)(A)-(F) separate penalties	Policies and procedures for parent orientation and training		X	X	
§15.416(a)(1)-(8), (b)(1)-(2) separate penalties	Staff development program requirements		X	X	X
§15.416(c)-(d) separate penalties	Documentation and record retention requirements for staff development program			X	X
§15.417(a)(1)-(8)(A)-(B), (b) separate penalties	Personnel record requirements			X	X
§15.418(b)(1)-(3), (c)(1), (3)-(4) separate penalties	Criminal history checks, nurse aide registry, and employee misconduct registry requirements	X	X	X	
§15.418(c)(2), (d) separate penalties	Notification and documentation requirements for criminal history checks, nurse aide registry, and employee misconduct registry requirements				X

§15.419(a)-(d) separate penalties	Drug testing policy			X	X
§15.501	Basic services	X	X		
§15.502(a)-(d) separate penalties	Medical services	X	X		
§15.503(a)-(c)(1)-(5) separate penalties	Nursing services	X	X		
§15.504(a)-(d)(1)-(4), (e)(1)-(5), separate penalties	Psychosocial treatment and services	X	X		
§15.504(f)(1)-(5) separate penalties	Participation in center activities by psychosocial treatment and services providers		X	X	
§15.505(a)-(c)(1)-(2), (d) separate penalties	Social services			X	X
§15.506(a)-(b) separate penalties	Rehabilitative services	X	X		
§15.506(c)(1)-(2) separate penalties	Participation in center activities by rehabilitative services providers		X	X	
§15.507(a)-(c)(1)-(4) separate penalties	Functional developmental services		X	X	
§15.508(a)-(e)(1)-(5), (6)(A)-(D) separate penalties	Educational developmental services			X	X
§15.509(a)-(e)(1)-(9) separate penalties	Parent training		X	X	X
§15.510(a)-(b) separate penalties	Nutritional counseling		X	X	
§15.511(a), (g), (h) separate penalties	Requirements for the provision of meals	X	X	X	
§15.511(b)-(f) separate penalties	Dietitian requirements		X	X	
§15.511(i)-(l)(1)-(4) separate penalties	Dietary services menus, record retention, table settings			X	X
§15.511(m)-(o)(1)-(2), (p)(1)-(6), (q)(1)-(3), (r)-(w) separate penalties	Requirements and responsibilities for scheduled meal and snack provisions, monitoring of food intake and purchasing, storing, preparation, and safe handling of food		X	X	X
§15.601(a)(1)-(5)-(b) separate penalties	Admission criteria	X	X	X	
§15.602(a)-(d)(1)-(16) separate penalties	Pre-admission conference requirements	X	X	X	
§15.603(a)-(d)(1)-(11)(A)-(F), (i) separate penalties	Agreement and disclosure requirements		X	X	X

§15.603(e)-(h) separate penalties	Signatures, record storage and updates			X	X
§15.604(a)(1)-(13) separate penalties	Admission procedures - interview requirements	X	X	X	
§15.604(b)-(c) separate penalties	Admission procedures - documentation and signatures		X	X	X
§15.605(a)-(f)(1)-(2) separate penalties	Initial and updated comprehensive assessment	X	X	X	
§15.606(a)-(d), (f) separate penalties	Interdisciplinary team requirements	X	X	X	
§15.606(e)	Interdisciplinary team members			X	X
§15.607(a)(1)-(2), (b)(1)-(7), (c), (g)-(h), (l), (o) separate penalties	Initial and updated plan of care requirements	X	X	X	
§15.607(d)-(f), (i)-(k), (m)-(n) separate penalties	Initial and updated plan of care requirements - signatures, documentation and communication		X	X	X
§15.608(a)-(e) separate penalties	Transfer and discharge notification requirements		X	X	X
§15.701(a)-(b)(1)-(8) separate penalties	Physician orders	X	X	X	
§15.702(a)-(b)(1)-(5), (c)(1)-(2), (d)(1)-(2) separate penalties	Receiving physician orders		X	X	X
§15.703(a)-(b)(1)-(4) separate penalties	Pharmacist services	X	X		
§15.704(a)(1)-(5), (b)(1)-(7), (c)-(f) separate penalties	Storage of medication	X	X		
§15.705(a)(1)-(8), (b)(1)-(5), (c)-(j)(1)-(10), (k) separate penalties	Administration of medication	X	X		
§15.706	Laboratory services	X	X		
§15.707	Disposal of special or medical waste		X	X	
§15.708	Disposal and destruction of pharmaceuticals		X	X	
§15.801(a)(1)-(19) separate penalties	Care policies	X	X	X	
§15.802(a)(1)-(2), separate penalties	Adoption and enforcement of written policies and procedures for coordination of services	X	X	X	
§15.802(b)	Documentation to demonstrate coordination		X	X	X
§15.802(c)(1)-(6)(A)-(B) separate penalties	Responsibilities and requirements for coordination of services		X	X	X
§15.803(a)-(b)(1)-(3), (c)(1)-(3), (d)-(e)(1)-(3) separate penalties	Census		X	X	X

§15.901(a)-(c)(1)-(18) separate penalties	Rights and Responsibilities		X	X	
§15.902(a)-(b) separate penalties	Advance Directives	X			
§15.903(b)-(g), (i) separate penalties	Abuse, neglect and exploitation requirements	X	X	X	
§15.903(h)	Liability statement for staff related to reporting of abuse, neglect and exploitation			X	X
§15.904(b)-(c)(1)-(4), (e), (f) separate penalties	Requirements for investigations of complaints and grievances		X	X	
§15.904(d)	Requirement to maintain documentation of investigations of complaints and grievances			X	X
§15.905(a)-(b) separate penalties	Reporting of a minor's death			X	X
§15.906(a)-(b) separate penalties	Requirement to make inspection results available when requested				X
§15.1001(a)-(f)(1)-(7), (g)(1)-(18), (h) separate penalties	Medical Records		X	X	X
§15.1002(a)-(d), (e)-(m) separate penalties	Quality Assessment and Performance Improvement		X	X	X
§15.1003(a)-(c)(1)-(2) separate penalties	Dissolution		X	X	X
§15.1004(a)(1)-(2) separate penalties	Retention of records			X	X
§15.1101(a)-(e)(1)-(18), (f)(1)-(3) separate penalties	Transportation Services requirements	X	X	X	
§15.1102(a)-(d)(1)-(9), (g)(1)-(3) separate penalties	Transportation safety provisions	X	X	X	
§15.1102(e)-(f) separate penalties	Transportation safety provisions - postings near vehicle exits, policies for emergencies while on transport	X	X	X	
§15.1204(d)-(i) separate penalties	Requirements for fire safety	X	X		
§15.1208	Food preparation requirements	X	X	X	
§15.1210(a)-(b) separate penalties	Minor's personal belongings			X	X
§15.1213	Locked areas		X	X	X
§15.1220(a)-(g) separate penalties	Heating, ventilation, air conditioning		X	X	X
§15.1223	Signage				X
§15.1303(a)-(c)	Cooperation with an inspection and visit				X
§15.1304(a)-(c)	Staff requirements for an inspection				X

IN

ADDITION

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

Comptroller of Public Accounts

Notice of Request for Proposals

Pursuant to Chapter 403; Chapter 404, Subchapter G; Chapter 2254, Subchapter A; and Chapter 2256 of the Texas Government Code and Chapter 15, §15.433 of the Texas Water Code, the Texas Comptroller of Public Accounts ("Comptroller"), as sole officer, director, and shareholder of Texas Treasury Safekeeping Trust Company ("TTSTC"), announces the issuance of Request for Proposals No. 209a ("RFP") from qualified, independent consultants to conduct a study which analyzes the job duties and compensation for approximately eighteen (18) professional level positions at TTSTC. Comptroller reserves the right to award one or more contracts under this RFP. If approved by Comptroller, Contractor will be expected to begin performance of the contract, if any, on or about May 16, 2014.

Contact: The RFP will be available electronically on the Electronic State Business Daily ("ESBD") at: <http://esbd.cpa.state.tx.us> on Friday, April 4, 2014, after 10:00 a.m., CT. Parties interested in a hard copy of the RFP should contact Jason Frizzell, 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 not later than 2:00 p.m. CT on Friday, April 11, 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 to ensure timely receipt. On or about Wednesday, April 16, 2014, Comptroller expects to post responses to questions as an addendum to the ESBD notice on the issuance of the RFP.

Closing Date: Proposals must be delivered to the Issuing Office no later than 2:00 p.m. CT, on Friday, April 25, 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 their proposals in the Issuing Office.

Evaluation Criteria: Proposals will be evaluated under the evaluation criteria outlined in the RFP. Comptroller will make the final decision on award(s). Comptroller reserves the right to accept or reject any or all proposals submitted. Comptroller is not obligated to execute a contract on the basis of this notice or the distribution of any RFP. Neither Comptroller nor TTSTC shall 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 - April 4, 2014, after 10:00 a.m. CT; Questions Due - April 11, 2014, 2:00 p.m. CT; Official Responses to Questions posted - April 16, 2014, or as soon thereafter as practical; Proposals Due - April 25, 2014, 2:00 p.m. CT; Contract Execution - May 16, 2014, or as soon thereafter as practical; Commencement of Work - May 16, 2014, or as soon thereafter as practical. Any changes to this solicitation will be posted on the ESBD as a RFP Addendum. It is the responsibility of interested parties to periodically check the ESBD for updates to the RFP prior to submitting a Proposal.

TRD-201401322

Jason C. Frizzell
Assistant General Counsel
Comptroller of Public Accounts
Filed: March 26, 2014

Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.009, and 304.003, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 03/31/14 - 04/06/14 is 18% for Consumer¹/Agricultural/Commercial² credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 03/31/14 - 04/06/14 is 18% for Commercial over \$250,000.

The judgment ceiling as prescribed by §304.003 for the period of 04/01/14 - 04/30/14 is 5.00% for Consumer/Agricultural/Commercial credit through \$250,000.

The judgment ceiling as prescribed by §304.003 for the period of 04/01/14 - 04/30/14 is 5.00% for Commercial over \$250,000.

¹ Credit for personal, family or household use.

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

TRD-201401295
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: March 24, 2014

Deep East Texas Council of Governments

Request for Qualifications

I. Purpose of the Request

The Deep East Texas Council of Governments (DETCOG) is issuing this Request for Qualifications (RFQ) for boundary/property surveys of single family rental or single family owner-occupied homes in the DETCOG 12 county region associated with the Hurricane Ike Disaster Recovery Program Round 2. DETCOG seeks to establish a list of pre-qualified survey firms based on the criteria established in this RFQ.

II. Obtaining Full RFQ and Submission Information

The full RFQ can be obtained at: www.DETCOG.org or by contacting:

Jason Riley, Disaster Recovery Finance
Deep East Texas Council of Governments
210 Premier Drive
Jasper, Texas 75951

Telephone: (409) 384-5704, extension 5314

Fax: (409) 384-5390

E-mail: jriley@detcog.org

III. Submission Requirements and Contacts

Surveying firms submitting a response to this RFQ are required to return a completed and signed Attachment A in the DETCOG Office on or before 4:00 p.m., Wednesday, May 7, 2014, to Walter G. Diggles, Sr., Executive Director. No late submissions will be accepted. Attachment A must be submitted in a sealed envelope either in person or by U.S. Mail or other parcel carrier to:

Deep East Texas Council of Governments

Attn: Walter G. Diggles, Sr., Executive Director

210 Premier Drive

Jasper, Texas 75951

TRD-201401299

Walter G. Diggles, Sr.

Executive Director

Deep East Texas Council of Governments

Filed: March 25, 2014

Texas Council for Developmental Disabilities

Request for Proposals

The Texas Council for Developmental Disabilities (TCDD) announces the availability of funds to award up to one organization for a group of self-advocates to work with a trained community organizer and other experts to make changes so people with intellectual and developmental disabilities are included in their community. This grant will provide support for people who have intellectual disabilities to make all decisions about what issues are important to them, how they will work on that issue, and implement their selected strategies.

TCDD has approved funding up to \$100,000 per year, for up to one organization, for up to three years. Funds available for these projects are provided to TCDD by the U.S. Department of Health and Human Services, Administration on Intellectual and Developmental Disabilities, pursuant to the Developmental Disabilities Assistance and Bill of Rights Act. Funding for the project is dependent on the results of a review process established by TCDD and on the availability of funds. Non-federal matching funds of at least 10% of the total project costs are required for projects in federally designated poverty areas. Non-federal matching funds of at least 25% of total project costs are required for projects in other areas.

Additional information concerning this Request for Proposals (RFP) or more information about TCDD may be obtained through TCDD's website at <http://www.tcdd.texas.gov/grants-rfps/funding-available-for-grants/>. All questions pertaining to this RFP should be directed in writing to Joanna Cordry, Planning Coordinator, via email joanna.cordry@tcdd.texas.gov or fax (512) 437-5434.

Deadline. One electronic copy and one hard copy with original signatures must be submitted. Electronic copies should be sent to Grants2@tcdd.texas.gov and must be received by TCDD no later than 4:00 p.m. Central Time, Friday, June 13, 2014. Printed copies may be delivered by hand or mailed to TCDD at 6201 East Oltorf, Suite 600, Austin, Texas 78741-7509 to the attention of Theresa Esquivel. Hard copies, if delivered by hand, must be received no later than 4:00 p.m. Central Time on the due date. If mailed, hard copies must

be postmarked prior to midnight on the date specified above. Faxed proposals cannot be accepted.

Proposals will not be accepted after the due date.

Grant Proposers' Workshops. The Texas Council for Developmental Disabilities will conduct telephone or video conferences to help potential proposers understand the grant proposal process and this specific RFP. In addition, answers to frequently asked questions will be posted on the TCDD website. Please check the TCDD's website at <http://tcdd.texas.gov/grants-rfps/funding-available-for-grants/> for a schedule of conference calls for this RFP.

TRD-201401315

Roger Webb

Executive Director

Texas Council for Developmental Disabilities

Filed: March 26, 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 **May 5, 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 May 5, 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: ANTIQUE ROSE EMPORIUM, INCORPORATED; DOCKET NUMBER: 2014-0148-EAQ-E; IDENTIFIER: RN106654270; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: site improvement project; RULE VIOLATED: 30 TAC §213.4(a)(1), by failing to obtain approval of a Water Pollution Abatement Plan prior to beginning a regulated activity over the Edwards Aquifer Recharge Zone; PENALTY: \$1,406; ENFORCEMENT COORDINATOR: Alejandro Laje, (512) 239-2547; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(2) COMPANY: Benbrook Texas Limited Partnership; DOCKET NUMBER: 2012-2700-MWD-E; IDENTIFIER: RN102963238; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: wastewater treatment facility; RULE VIOLATED: 30 TAC §305.125(17) and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0014792001, Sludge Provisions, by failing to submit the annual sludge report for the monitoring period ending July 31, 2010 by September 30, 2010; 30 TAC §305.125(1) and TPDES Permit Number WQ0014792001, Monitoring and Reporting Requirements Number 2.a, by failing to perform all measurements, tests and calculations in a representative manner to ensure the accurate reporting of data; 30 TAC §305.125(1) and §319.11(c) and TPDES Permit Number WQ0014792001, Monitoring and Reporting Requirements Number 2.a, by failing to properly conduct analysis of the total chlorine residual of collected effluent samples; 30 TAC §305.125(5) and TPDES Permit Number WQ0014792001, Operational Requirements Number 1, by failing to ensure that all systems of collection, treatment and disposal are properly operated and maintained; TWC, §26.121(a)(1), 30 TAC §305.125(1) and TPDES Permit Number WQ0014792001, Effluent Limitations and Monitoring Requirements Numbers 1, 2 and 6, by failing to comply with permitted effluent limits; 30 TAC §305.125(1) and §319.4 and TPDES Permit Number WQ0014792001, Monitoring and Reporting Requirements Number 1, by failing to collect and analyze quarterly effluent samples for *Escherichia coli*; 30 TAC §305.125(1) and §319.7(d) and TPDES Permit Number WQ0014792001, Monitoring and Reporting Requirements Number 1, by failing to timely submit effluent monitoring results as specified in the permit; 30 TAC §305.125(1) and TPDES Permit Number WQ0014792001, Monitoring and Reporting Requirements Number 7.c, by failing to submit non-compliance notifications for effluent violations that exceeded the permitted effluent limit by 40% or more for the monitoring periods ending June 30, 2012 - August 31, 2012; TWC, §26.121(a)(1), 30 TAC §305.125(1) and TPDES Permit Number WQ0014792001, Permit Conditions 2.g, by failing to prevent the unauthorized discharge of wastewater; and TWC, §26.121(a)(1), 30 TAC §305.125(1) and TPDES Permit Number WQ0014792001, Permit Conditions 2.d and Effluent Limitations and Monitoring Requirements Number 4, by failing to minimize or prevent any discharge or sludge use or disposal or other permit violation which has a reasonable likelihood of adversely affecting human health or the environment; PENALTY: \$65,371; ENFORCEMENT COORDINATOR: Remington Burkland, (512) 239-2611; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: City of Colorado City; DOCKET NUMBER: 2013-1457-MSW-E; IDENTIFIER: RN102335726; LOCATION: Colorado City, Mitchell County; TYPE OF FACILITY: Type 1 Arid Exempt Landfill; RULE VIOLATED: 30 TAC §330.371 and Municipal Solid Waste (MSW) Permit Number 420A, Part IV Site Operating Plan (SOP) for Arid Exempt Landfills, by failing to conduct quarterly monitoring to ensure that the concentration of methane gas did not exceed 5% by volume at the facility's boundary; 30 TAC §330.171(b) and MSW Permit Number 420A, Part IV SOP for Arid Exempt Landfills, by failing to prevent the unauthorized disposal of waste; 30 TAC §330.165(c) and MSW Permit Number 420A Part IV SOP for Arid Exempt Landfills, by failing to provide adequate intermediate cover; and 30 TAC §30.213 and MSW Permit Number 420A, by failing to have at least one individual licensed to supervise or manage an MSW facility; PENALTY: \$20,250; Supplemental Environmental Project offset amount of \$16,200 applied to Texas Association of Resources Conservation and Development Areas, Incorporated; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(4) COMPANY: City of Ropesville; DOCKET NUMBER: 2014-0028-PWS-E; IDENTIFIER: RN101175990; LOCATION: Ropesville, Hockley County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.106(f)(3) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 4.0 milligrams per liter for fluoride, based on the running annual average; PENALTY: \$1,228; ENFORCEMENT COORDINATOR: Lisa Westbrook, (512) 239-1160; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3421, (806) 796-7092.

(5) COMPANY: DHP Sales & Services Incorporated dba Champs Food Mart; DOCKET NUMBER: 2013-1917-PST-E; IDENTIFIER: RN102236270; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.8(c)(4)(C) and §334.7(d)(3), by failing to obtain an underground storage tank (UST) delivery certificate by submitting a properly completed UST registration and self-certification form; 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 UST delivery certificate before accepting delivery of a regulated substance into the USTs; 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; and 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the USTs for releases at a frequency of at least once every month; PENALTY: \$9,420; ENFORCEMENT COORDINATOR: David Carney, (512) 239-2583; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(6) COMPANY: DURGA ENTERPRISES INCORPORATED dba Omni Gas; DOCKET NUMBER: 2014-0051-PST-E; IDENTIFIER: RN102873395; LOCATION: Texas City, Galveston County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.248(1) and Texas Health and Safety Code (THSC), §382.085(b), by failing to ensure that at least one station representative received training in the operation and maintenance of the Stage II vapor recovery system, and each current employee receives in-house Stage II vapor recovery training regarding the purpose and correct operation of the Stage II equipment; and 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; PENALTY: \$7,846; ENFORCEMENT COORDINATOR: James Baldwin, (512) 239-1337; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(7) COMPANY: Efrain Franco and Christina Solis; DOCKET NUMBER: 2013-2035-PWS-E; IDENTIFIER: RN101242295; LOCATION: Houston, Harris County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.109(c)(2)(A)(i) and Texas Health and Safety Code, §341.033(d), by failing to collect routine distribution water samples for coliform analysis; and 30 TAC §290.122(c)(2)(A), by failing to provide public notification regarding the failure to conduct routine coliform monitoring; PENALTY: \$975; ENFORCEMENT COORDINATOR: Remington Burkland, (512) 239-2611; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(8) COMPANY: Flint Hills Resources Port Arthur, LLC; DOCKET NUMBER: 2013-2130-AIR-E; IDENTIFIER: RN100217389; LOCATION: Port Arthur, Jefferson County; TYPE OF FACILITY: petrochemical manufacturing plant; RULE VIOLATED: 30 TAC §§101.20(3), 116.715(a) and (c)(7), and 122.143(4), Texas Health and Safety Code (THSC), §382.085(b), Federal Operating Permit (FOP) Number O1317, Special Terms and Conditions (STC) Number 24, and

Flexible Permit Numbers 16989 and PSD-TX-794, Special Conditions (SC) Number 1, by failing to prevent unauthorized emissions during an event that occurred on August 17, 2013 and lasted eight hours; and 30 TAC §§101.20(3), 116.715(a) and (c)(7), and 122.143(4), THSC, §382.085(b), FOP Number O1317, STC Number 24, and Flexible Permit Numbers 16989 and PSD-TX-794, SC Number 1, by failing to prevent unauthorized emissions during an event that occurred on August 20, 2013 and lasted 18 minutes; PENALTY: \$13,126; Supplemental Environmental Project offset amount of \$5,250 applied to Southeast Texas Regional Planning Commission; ENFORCEMENT COORDINATOR: Heather Podlipny, (512) 239-2603; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(9) COMPANY: Howard C. Bigham dba Key Mobile Home Park; DOCKET NUMBER: 2013-2230-PWS-E; IDENTIFIER: RN101246262; LOCATION: Snyder, Scurry County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.110(e)(4)(A) and (f)(3), by failing to submit a Disinfectant Level Quarterly Operating Report (DLQOR) to the executive director each quarter by the tenth day of the month following the end of the quarter; 30 TAC §290.271(b) and §290.274(a) and (c), by failing to mail or directly deliver one copy of the Consumer Confidence Report (CCR) to each bill paying customer by July 1 of each year and failed to submit to the TCEQ by July 1 of each year a copy of the annual CCR and certification that the CCR has been distributed to the customers of the facility and that the information in the CCR is correct and consistent with compliance monitoring data; and 30 TAC §290.117(c)(2) and (i)(1), by failing to collect annual lead and copper samples, have the samples analyzed, and submit the results to the executive director for the January 1, 2013 - December 31, 2013 monitoring period; PENALTY: \$3,246; ENFORCEMENT COORDINATOR: Remington Burklund, (512) 239-2611; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(10) COMPANY: Key Energy Services, LLC; DOCKET NUMBER: 2013-2125-PWS-E; IDENTIFIER: RN101057545; LOCATION: Odessa, Midland County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.106(f)(3) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to comply with the maximum contaminant level (MCL) of 0.010 milligrams per liter (mg/L) for arsenic based on the running annual average; and 30 TAC §290.106(f)(2) and THSC, §341.031(a), by failing to comply with the acute MCL of 10 mg/L for nitrate; PENALTY: \$630; ENFORCEMENT COORDINATOR: Abigail Lindsey, (512) 239-2576; REGIONAL OFFICE: 9900 West IH-20, Suite 100, Midland, Texas 79706, (432) 570-1359.

(11) COMPANY: Linc Gulf Coast Petroleum, Incorporated; DOCKET NUMBER: 2013-2224-AIR-E; IDENTIFIER: RN105354724; LOCATION: Baytown, Chambers County; TYPE OF FACILITY: oil and gas production facility; RULE VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety Code, §382.0518(a) and §382.085(b), by failing to obtain authorization prior to the operation of emission sources; PENALTY: \$2,250; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(12) COMPANY: Lookout Development Group, L.P.; DOCKET NUMBER: 2014-0149-EAQ-E; IDENTIFIER: RN106865819; LOCATION: Leander, Williamson County; TYPE OF FACILITY: construction site; RULE VIOLATED: 30 TAC §213.23(a)(1), by failing to obtain approval of a Contributing Zone Plan prior to commencing a regulated activity over the Edwards Aquifer; PENALTY: \$6,750; ENFORCEMENT COORDINATOR: Jill Russell, (512)

239-4564; REGIONAL OFFICE: P.O. Box 13087 Austin, Texas 78711-3087, (512) 339-2929.

(13) COMPANY: Motiva Enterprises LLC; DOCKET NUMBER: 2013-2189-AIR-E; IDENTIFIER: RN100209451; LOCATION: Port Arthur, Jefferson County; TYPE OF FACILITY: petroleum refinery; RULE VIOLATED: 30 TAC §§101.20(3), 116.115(c), and 122.143(4), Federal Operating Permit (FOP) Number O1386, General Terms and Conditions (GTC) and Special Terms and Conditions (STC) Number 16, Air Permit Numbers 8404 and PSD-TX1062M1, Special Conditions Number 1, and Texas Health and Safety Code (THSC), §382.085(b), by failing to prevent unauthorized emissions; and 30 TAC §101.201(a)(1) and §122.143(4), FOP Permit Number O1386, GTC and STC Number 2F, and THSC, §382.085(b), by failing to submit an initial notification for an emissions event within 24 hours of discovery; PENALTY: \$50,438; Supplemental Environmental Project offset amount of \$25,219 applied to Southeast Texas Regional Planning Commission; ENFORCEMENT COORDINATOR: Nadia Hameed, (713) 767-3629; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(14) COMPANY: Rizwan Malik dba Texan Stop; DOCKET NUMBER: 2012-1943-PST-E; IDENTIFIER: RN101748770; LOCATION: Longview, Gregg County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks (USTs); 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide corrosion protection for the UST system; 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 proper release detection for the piping associated with the USTs; PENALTY: \$14,154; ENFORCEMENT COORDINATOR: Jacquelyn Green, (512) 239-2857; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(15) COMPANY: Robert F. Bryer dba Bentwood Estates Mobile Home Park; DOCKET NUMBER: 2013-1876-MWD-E; IDENTIFIER: RN102079126; LOCATION: Harris County; TYPE OF FACILITY: mobile home park with a wastewater treatment facility; RULE VIOLATED: TWC, §26.121(a)(1) and 30 TAC §305.64(b), by failing to obtain authorization prior to treating and discharging wastewater from the facility; PENALTY: \$19,320; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5886; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(16) COMPANY: Sea, Michael L (FC); DOCKET NUMBER: 2014-0349-WOC-E; IDENTIFIER: RN103705356; LOCATION: Anton, Hockley County; TYPE OF FACILITY: Individual owner ; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: \$175; ENFORCEMENT COORDINATOR: Heather Podlipny, (512) 239-2603; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, (806) 796-7092.

(17) COMPANY: Sheridan Hills Developments L P; DOCKET NUMBER: 2012-1132-PST-E; IDENTIFIER: RN105860894; LOCATION: Houston, Harris County; TYPE OF FACILITY: office building with a non retail petroleum storage and dispensing facility; RULE VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued underground storage tank (UST) delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; and 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make

available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the UST; PENALTY: \$975; ENFORCEMENT COORDINATOR: David Carney, (512) 239-2583; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(18) COMPANY: STX Process Equipment LLC; DOCKET NUMBER: 2013-2145-PWS-E; IDENTIFIER: RN105830186; LOCATION: Freer, Duval County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.106(f)(2) and Texas Health and Safety Code, §341.031(a), by failing to comply with the acute maximum contaminant level of 10 milligrams per liter for nitrate; PENALTY: \$606; ENFORCEMENT COORDINATOR: Sam Keller, (512) 239-2678; REGIONAL OFFICE: 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(19) COMPANY: Swindoll Industrial Services Incorporated; DOCKET NUMBER: 2013-2167-AIR-E; IDENTIFIER: RN106948110; LOCATION: Baytown, Chambers County; TYPE OF FACILITY: sandblasting and painting site; RULE VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety Code, §382.0518(a) and §382.085(b), by failing to obtain authorization prior to operation; PENALTY: \$3,750; ENFORCEMENT COORDINATOR: David Carney, (512) 239-2583; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(20) COMPANY: Terry Bourbon dba Green Acres Mobile Home Park; DOCKET NUMBER: 2014-0007-PWS-E; IDENTIFIER: RN101440907; LOCATION: El Paso County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.106(f)(3) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.010 milligrams per liter for arsenic based on the running annual average; PENALTY: \$608; ENFORCEMENT COORDINATOR: Katy Montgomery, (210) 403-4016; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(21) COMPANY: The Lubrizol Corporation; DOCKET NUMBER: 2013-1608-AIR-E; IDENTIFIER: RN101058410; LOCATION: Pasadena, Harris County; TYPE OF FACILITY: an industrial organic chemicals plant; RULE VIOLATED: 30 TAC §116.115(c) and §122.143(4), Texas Health and Safety Code (THSC), §382.085(b), Federal Operating Permit (FOP) Number O1582, Special Terms and Conditions (STC) Number 12, and New Source Review (NSR) Permit Number 1685, Special Conditions (SC) Number 8, by failing to limit the vent stream to Flare X-202 to no more than 720 hours per year on a rolling 12-month basis; 30 TAC §101.400(a)(1), (2), and (3) and §122.143(4), THSC, §382.085(b), and FOP Number O1582, STC Number 11, by failing to submit a completed Highly-Reactive Volatile Organic Compound Emissions Cap and Trade Annual Compliance Report; 30 TAC §116.110(a) and THSC, §382.085(b) and §382.0518(a), by failing to obtain authorization to construct and operate a source of air emissions; 30 TAC §116.115(c) and §122.143(4), THSC, §382.085(b), FOP Number O1582, STC Number 12, and NSR Permit Number 1685, SC Number 14, by failing to limit the temperature to 70 degrees Fahrenheit or below for Tank 216, Emission Point Number A-216; 30 TAC §116.115(c) and §122.143(4), THSC, §382.085(b), and FOP Number O1582, STC Number 12, and NSR Permit Number 6221, SC Numbers 10.B. and 10.C., by failing to begin sampling the cooling tower water within 30 days of the issuance of the permit; 30 TAC §116.115(c) and §122.143(4), THSC, §382.085(b), FOP Number O1582, STC Number 12, and NSR Permit Number 6221, SC Number 12B, by failing to calibrate ammonia scrubber's flow meter as per manufacturer's specifications or at least annually, whichever is more frequent; 30 TAC §122.210(a) and §122.121 and THSC, §382.054 and §382.085(b), by failing to include all fugitives components and permits

in FOP Number O1582; 30 TAC §101.20(1) and §122.143(4), THSC, §382.085(b), 40 Code of Federal Regulations (CFR) §60.115b(d)(3), and FOP Number O1582, STC Number 1A, by failing to include Tank Numbers 402, 408, 201, 216, 502, and 516 in the semi-annual pilot flame outage report dated January 27, 2012; 30 TAC §101.20(1) and §122.143(4), THSC, §382.085(b), 40 CFR §60.115b(c)(1), and FOP Number O1582, STC Number 1A, by failing to provide an operating plan for storage vessels; 30 TAC §122.143(4) and §122.145(2)(A), THSC, §382.085(b), and FOP Number O1582, General Terms and Conditions, by failing to report all instances of deviations; and 30 TAC §§101.20(2), 113.520, and 122.143(4), 40 CFR §63.1023(a)(1)(ii) and §63.1026(b)(1), and FOP Number O1582, STC Number 1A, by failing to conduct Leak Detection and Repair monitoring for 13 pumps; PENALTY: \$88,977; Supplemental Environmental Project offset amount of \$35,591 applied to Houston Regional Monitoring Corporation; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

TRD-201401308

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: March 25, 2014

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Notice of Availability and Request for Comments on a Draft Restoration Plan for Ecological Injuries and Service Losses Associated with the Former ASARCO LLC Facility, Encycle/Texas, Inc., Nueces County, Texas

AGENCIES: Texas Commission on Environmental Quality (TCEQ or Commission), Texas Parks and Wildlife Department (TPWD), and General Land Office (GLO).

ACTION: Notice of availability of a Draft Damage Assessment and Restoration Plan (DARP) for ecological injuries and service losses associated with the former ASARCO LLC facility, Encycle/Texas, Inc. (the Facility) in Corpus Christi, Nueces County, Texas, and of a 30-day period for public comment on the Draft DARP beginning April 4, 2014.

SUMMARY: Pursuant to 43 Code of Federal Regulations (CFR) §11.32 and §11.81, notice is hereby given that the "Draft Damage Assessment and Restoration Plan for Encycle/Texas, Inc. (formerly ASARCO LLC), Nueces County, Corpus Christi, Texas" (Draft DARP) is available for public review and comment. The Draft DARP has been prepared by the state natural resource trustee agencies listed above (Trustees) to address natural resource injuries and service losses attributable to releases of hazardous substances from the Facility. The liability of both ASARCO LLC and Encycle/Texas, Inc. for natural resource damages related to releases of hazardous substances from the Facility under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) has been addressed pursuant to a settlement agreement approved by the United States Bankruptcy Court, Southern District of Texas, Corpus Christi Division. This Draft DARP presents the Trustees' assessment of natural resource injuries and service losses attributable to the Facility and the plan for restoring ecological resources and services to compensate for those injuries and losses. The Trustees will consider input received during the public comment period before finalizing the Draft DARP.

To receive a copy of the Draft DARP, interested members of the public are invited to contact Richard Seiler at the Texas Commission on Environmental Quality, Remediation Division, MC 136, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2523 (phone) or (512) 239-2450 (fax), or via email at richard.seiler@tceq.texas.gov.

DEADLINE: Comments must be submitted in writing and received on or before May 5, 2014. Comments must be sent to Richard Seiler at the addresses listed in the previous paragraph.

SUPPLEMENTARY INFORMATION: The Facility is approximately 108 acres in size and is located at 5500 Up River Road in Corpus Christi, Texas. It is bordered by the Corpus Christi Inner Harbor (Inner Harbor) to the north; McBride Lane and Valero Refining (formerly Coastal Refining) to the east; Up River Road and Dona Drive to the south.

The Facility was originally developed by American Smelting and Refining Company, now ASARCO LLC, in 1941 to process mineral ores for the production of high-grade zinc. The Facility was shut down during 1985 and was inactive until April 1988. The Facility was then operated by Encycle/Texas, Inc., a wholly owned subsidiary of ASARCO LLC, as a commercial waste management facility treating primarily inorganic hazardous and non-hazardous materials for the purpose of recycling, reclamation, and reduction in volume using hydro-metallurgical processes. Encycle/Texas, Inc. ceased operations at the Facility in 2003.

Existing data indicates that there have been numerous releases of hazardous substances from the Facility, including but not limited to zinc, cadmium, lead, silver and nickel. Improper management of the facility's east and west lagoons resulted in the discharge of heavy metals to the Inner Harbor. From 1947 to 1982, material from the maintenance dredging of the Inner Harbor was routinely deposited along the south shore of Nueces Bay, which further elevated heavy metal concentrations in the sediments and oysters in Nueces Bay. There has also been the direct transfer of contaminated Inner Harbor water and suspended sediments to Nueces Bay via the cooling water discharge of the American Electric Power (AEP) facility, formerly Central Power and Light Company (CP&L).

Trusteeship authority is designated pursuant to CERCLA, 42 United States Code (USC), §§9601, *et seq.*; the Federal Water Pollution Control Act, 33 USC, §§1251, *et seq.* (Clean Water Act or CWA); Subpart G of the National Contingency Plan, 40 CFR §§300.600 - 300.615; the Department of Interior's natural resource damage assessment regulations at 43 CFR Part 11 (Natural Resource Damage Assessment Regulations); and other applicable State and Federal laws. The Governor of the State of Texas designated the TCEQ, TPWD, and GLO as state trustees for natural resources injured as a result of releases from the facility. The Trustees are authorized to act on behalf of the public under these authorities to protect and restore natural resources injured or lost as a result of discharges or releases of hazardous substances.

Releases from the Facility have resulted in levels of hazardous substances in the sediments of Corpus Christi Harbor and portions of Nueces and Corpus Christi Bays sufficient to cause a measurable adverse change in the chemical and physical quality and the viability of geological and biological resources and the services they provide. The Trustees determined that injuries to benthic organisms have occurred within a portion of Nueces Bay, Corpus Christi Bay and the Inner Harbor as a result of metals contamination of the sediments from the Facility. Injuries to the natural resource services provided by oysters in Nueces Bay have also occurred as a result of zinc contamination from the Facility. A fisheries closure for oysters within Nueces Bay went into effect in 1995 as a result of zinc concentrations above a level safe for human consumption. This continued closure represents a significant injury to, and loss of services provided by, the natural resources of Nueces Bay.

On the basis of the information provided in the Draft DARP, the Trustees filed claims in the amount of \$67,954,665.36 against ASARCO LLC and Encycle/Texas, Inc. in the United States Bank-

ruptcy Court for the Southern District of Texas to compensate the public for natural resource injuries resulting from releases of hazardous substances from the Facility. This total was based on the anticipated costs of construction of compensatory emergent wetland habitat, construction of compensatory oyster reef habitat and the Trustees' future costs associated with restoration implementation activities.

The Trustees, ASARCO LLC and Encycle/Texas, Inc. subsequently entered into mediation resulting in an agreement between the Trustees, ASARCO LLC and Encycle/Texas, Inc. on the amount of the Trustees' claim for natural resource damages. This settlement established that the Trustees held an allowed general unsecured claim of \$10,000,000.00 in the ASARCO LLC bankruptcy case and an allowed general unsecured claim of \$15,000,000.00 in the Encycle/Texas, Inc. bankruptcy case.

The Trustees were granted the entirety of their \$10,000,000.00 claim, plus interest accrued, in the resolution of the ASARCO LLC bankruptcy. Final resolution of the Trustees' claim in the Encycle/Texas, Inc. bankruptcy is pending.

The funds received from the ASARCO LLC bankruptcy will be used to implement projects that restore or support oyster populations or intertidal aquatic habitats within Corpus Christi Bay, Nueces Bay or surrounding coastal areas. Four proposed restoration projects have been identified in the Draft DARP as preferred alternatives for replacing the natural resources and their services that were injured or lost due to the discharge of hazardous substances from the Facility.

The Draft DARP identifies the information and methods used to define the natural resource injuries and losses and to select the restoration actions that are preferred to restore, replace, or acquire resources or services equivalent to those lost.

To receive a copy of the Draft DARP or for further information, contact Richard Seiler at (512) 239-2523, or via e-mail at richard.seiler@tceq.texas.gov.

TRD-201401300

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: March 25, 2014



Notice of Receipt of Application and Intent to Obtain Municipal Solid Waste Limited Scope Permit Major Amendment Permit Number 2348

APPLICATION. Desarrollo del Rancho La Gloria TX, LP, 13630 Fondren Road, Houston, Harris County, Texas 77085-2012, a waste management company, has applied to the Texas Commission on Environmental Quality (TCEQ) for a limited scope permit amendment for its La Gloria Ranch Landfill facility to authorize the acceptance of Class 1 waste. The permit amendment will revise the final contour and excavation plans for the facility to incorporate the acceptance of Class 1 nonhazardous industrial waste. The facility is located at 23485 North Moorefield Road, Edinburg, Hidalgo County, Texas 78541-5071. The TCEQ received the application on February 19, 2014. This application is available for viewing and copying at the McAllen Public Library, 4001 North 23rd Street, McAllen, Hidalgo County, Texas 78504, and may be viewed online at <http://www.ftwweaverboos.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=26.409166&lng=-98.368333&zoom=13&type=r>. For exact location, refer to application.

ADDITIONAL NOTICE. TCEQ's Executive Director has determined the application is administratively complete and will conduct a technical review of the application. After technical review of the application is complete, the Executive Director may prepare a draft permit and will issue a preliminary decision on the application. Notice of the Application and Preliminary Decision will be published and mailed to those who are on the county-wide mailing list and to those who are on the mailing list for this application. That notice will contain the deadline for submitting public comments.

PUBLIC COMMENT/PUBLIC MEETING. You may submit public comments or request a public meeting on this application. The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application. TCEQ will hold a public meeting if the Executive Director determines that there is a significant degree of public interest in the application or if requested by a local legislator. A public meeting is not a contested case hearing.

OPPORTUNITY FOR A CONTESTED CASE HEARING. After the deadline for submitting public comments, the Executive Director will consider all timely comments and prepare a response to all relevant and material, or significant public comments.

Unless the application is directly referred for a contested case hearing, the response to comments, and the Executive Director's decision on the application, will be mailed to everyone who submitted public comments and to those persons who are on the mailing list for this application. If comments are received, the mailing will also provide instructions for requesting reconsideration of the Executive Director's decision and for requesting a contested case hearing. A person who may be affected by the facility is entitled to request a contested case hearing from the commission. A contested case hearing is a legal proceeding similar to a civil trial in state district court.

TO REQUEST A CONTESTED CASE HEARING, YOU MUST INCLUDE THE FOLLOWING ITEMS IN YOUR REQUEST: your name, address, phone number; applicant's name and permit number; the location and distance of your property/activities relative to the facility; a specific description of how you would be adversely affected by the facility in a way not common to the general public; and, the statement "[I/we] request a contested case hearing." If the request for contested case hearing is filed on behalf of a group or association, the request must designate the group's representative for receiving future correspondence; identify an individual member of the group who would be adversely affected by the facility or activity; provide the information discussed above regarding the affected members location and distance from the facility or activity; explain how and why the member would be affected; and explain how the interests the group seeks to protect are relevant to the group's purpose. Following the close of all applicable comment and request periods, the Executive Director will forward the application and any requests for reconsideration or for a contested case hearing to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. The Commission will only grant a contested case hearing on disputed issues of fact that are relevant and material to the Commission's decision on the application. Further, the Commission will only grant a hearing on issues that were raised in timely filed comments that were not subsequently withdrawn.

MAILING LIST. If you submit public comments, a request for a contested case hearing or a reconsideration of the Executive Director's decision, you will be added to the mailing list for this application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and permit number; and/or (2) the mailing list for a specific county. To be placed on the permanent and/or

the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below.

AGENCY CONTACTS AND INFORMATION. All public comments and requests must be submitted either electronically at www.tceq.texas.gov/about/comments.html or in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087. If you choose to communicate with the TCEQ electronically, please be aware that your email address, like your physical mailing address, will become part of the agency's public record.

For more information about this permit application or the permitting process, please call the TCEQ's Public Education Program, toll free, at 1-800-687-4040. Si desea información en español, puede llamar al 1-800-687-4040.

Further information may also be obtained from Desarrollo del Rancho La Gloria TX, LP, at the address stated above or by calling Mr. Scott A. Trebus, Area Environmental Manager, at (713) 726-7506.

TRD-201401311

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: March 26, 2014



Notice of Water Quality Applications

The following notices were issued on March 14, 2014, through March 21, 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

CITY OF CROWELL has applied for a renewal of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014888001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 200,000 gallons per day. The facility is located at 600 South Farm-to-Market Road 98, in the City of Crowell in Foard County, Texas 79227.

ALUMAX MILL PRODUCTS INC which operates the Alumax Mill Products Texarkana Facility, has applied for a renewal of TPDES Permit No. WQ0002742000, which authorizes the discharge of treated process wastewater, utility wastewater, hot mill coolant wastewater, reverse osmosis reject and backwash water, and paint line after cooler water at a daily average flow not to exceed 152,000 gallons per day via Outfall 002. The facility is located at 300 Alumax Drive, approximately five miles west of the City of Texarkana, southwest of the intersection of U.S. Interstate Highway 30 and Farm Road 989 and adjacent to the northern limit of the Town of Nash, Bowie County, Texas 75501.

CITY OF LOTT has applied to the Texas Commission on Environmental Quality (TCEQ) for a renewal of TPDES Permit No. WQ0010017001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 80,000 gallons per day. The facility is located on the northwest side of the City of Lott on Avenue "G" between Bone Branch and the Southern Pacific Railroad in Falls County, Texas 76656.

CITY OF ANTON has applied for a renewal of TCEQ Permit No. WQ0010021001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 100,000 gallons per day via surface irrigation of 150 acres of non-public access agricultural land. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site are located north of Yellow House Draw, approximately 0.5 mile south of the City of Anton, southwest of the intersection of U.S. Highway 84 and Farm-to-Market Road 168 in Hockley County, Texas 79313.

CITY OF COPPERAS COVE has applied for a renewal of TPDES Permit No. WQ0010045003, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,500,000 gallons per day. The facility is located at 2711 Big Valley Road, approximately 0.2 mile east of Farm-to-Market Road 3046 and 2,500 feet south of the intersection of Farm-to-Market Road 3046 and Farm-to-Market Road 116, and approximately 1.5 miles south of the City of Copperas Cove in Coryell County, Texas 76522.

CITY OF COPPERAS COVE has applied for a renewal of TPDES Permit No. WQ0010045005, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 4,000,000 gallons per day. The facility is located at 1601 North First Street, north of the City of Copperas Cove, adjacent to the west side of Farm-to-Market Road 116 at a point approximately 1.8 miles north of the intersection of Farm-to-Market Road 116 and Farm-to-Market Road 1113, Copperas Cove in Coryell County, Texas 76522.

CITY OF FLOYDADA has applied for a renewal of TCEQ Permit No. WQ0010170001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 500,000 gallons per day via surface irrigation of 128 acres of non-public access agricultural land. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site are located 0.5 mile south of U.S. Highway 70 and approximately 1.5 miles east of Farm-to-Market Road 1958 in Floyd County, Texas 79235.

CITY OF SMITHVILLE has applied for a renewal of TPDES Permit No. WQ0010286001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 500,000 gallons per day. The facility is located at 101 Royston Avenue, southwest of the intersection of North Second Street and Royston Street (on the east side of Gazley Creek), Smithville in Bastrop County, Texas 78957.

CITY OF HAMLIN has applied for a renewal of TPDES Permit No. WQ0010491002, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 320,000 gallons per day. The facility is located approximately 0.25 mile southeast of the intersection of State Highway 92 and U.S. Highway 83 on the north bank of California Creek in Jones County, Texas 79520.

BELL COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO 3 has applied for a renewal of TPDES Permit No. WQ0010797001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 675,000 gallons per day. The facility is located on the south side of State Highway 190, approximately a mile east of the intersection of State Highway 190 and Main Street, Nolanville in Bell County, Texas 79665.

CITY OF COLLEGE STATION has applied for a renewal of TPDES Permit No. WQ0013153001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 8,500 gallons per day. The facility is located at 2401 Carter Lake Drive, College Station in Brazos County, Texas 77845.

GREIF PACKAGING LLC has applied for a renewal of TPDES Permit No. WQ0013949001, which authorizes the discharge of treated

domestic wastewater at a daily average flow not to exceed 3,000 gallons per day. The facility is located at 10700 Strang Road in Harris County, Texas 77571.

BEARPEN CREEK LP has applied for a renewal of TPDES Permit No. WQ0014614001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 500,000 gallons per day. The facility will be located along County Road 2526, on the west bank of Bearpen Creek, 6,000 feet east of the intersection of State Route 35 and County Road 2526 in Hunt County, Texas 75189.

QUADVEST LP has applied for a new permit, proposed TPDES Permit No. WQ0015192001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 900,000 gallons per day. The facility will be located 4,200 feet southwest of the intersection of Farm-to-Market Road 1010 and Farm-to-Market Road 352 in Montgomery County, Texas 77327.

If you need more information about these permit applications or the permitting process, please call the TCEQ Public Education Program, toll free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at www.tceq.texas.gov. Si desea información en español, puede llamar al 1-800-687-4040.

TRD-201401310
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: March 26, 2014

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Texas Ethics Commission

List of Late Filers

Listed below are the names of filers from the Texas Ethics Commission who did not file reports or failed to pay penalty fines for late reports in reference to the listed filing deadline. If you have any questions, you may contact Marta Cortes at (512) 463-5800.

Deadline: 30-Day Pre-Election Report due February 3, 2014 for Candidates and Officeholders

Craig A. Bonham, P.O. Box 59061, Dallas, Texas 75229
Susan Delgado, 2284 Jean St., Houston, Texas 77023-5009
Michael A. Franks, 1795 N. Fry Rd. #131, Katy, Texas 77449
Fidencio M. Guerra, Jr., 705 Maple, McAllen, Texas 78501
Andrea C. Hilburn, 6760 Talbot Pkwy., Dallas, Texas 75232
Angus Kelly McGinty, P.O. Box 701874, San Antonio, Texas 78232
Nigel H. Redmond, 320 S. R.L. Thornton Fwy., Ste. 300, Dallas, Texas 75203
Juan J. Maldonado, 504 E. Sioux Rd., San Juan, Texas 78589-3395
Anuar J. Maycot, 5 Country Club Rd., Brownsville, Texas 78521
TRD-201401249
Natalia Luna Ashley
Interim Executive Director
Texas Ethics Commission
Filed: March 19, 2014

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List of Late Filers

Listed below are the names of filers from the Texas Ethics Commission who did not file reports or failed to pay penalty fines for late reports in reference to the listed filing deadline. If you have any questions, you may contact Robbie Douglas at (512) 463-5780.

Deadline: Lobby Activities Report due September 10, 2013

Danielle Delgadillo, 404 Rio Grande #107, Austin, Texas 78701

Deadline: Lobby Activities Report due October 10, 2013

Danielle Delgadillo, 404 Rio Grande #107, Austin, Texas 78701

Deadline: Lobby Activities Report due November 12, 2013

Danielle Delgadillo, 404 Rio Grande #107, Austin, Texas 78701

Deadline: Monthly Report due January 6, 2014, for Committees

Peter Hwang, 8300 Bender Rd., Humble, Texas 77396-2309

Deadline: Semiannual Report due January 15, 2014, for Committees

Patricia A. Jones, Treasurer, Adline AFT, 1400 N. Sam Houston Pkwy., E, Ste. 150, Houston, Texas 77032-2958

Deadline: Personal Financial Statement due January 21, 2014

Chester Daniel Anderson, 1700 Storey Ave., Midland, Texas 79701

Donald Bates, 841 County Road 2607, Bonham, Texas 75418

Michael Binkley, 2918 Daisy Ct., Garland, Texas 75040

Craig A. Bonham, 3806 Shady Hill Dr., Dallas, Texas 75229

Ada Brown, P.O. Box 261073, Plano, Texas 75026-1073

Stephen K. Brown, II, 518 Hawthorn Pl., Missouri City, Texas 77459

Sandra Crenshaw, P.O. Box 41541, Dallas, Texas 75241

Anne B. Darring, 3810 17th St. N., Texas City, Texas 77590

Brandon B. DeHoyos, 1401 Redford St. #1709B, Houston, Texas 77034

Michael Dooling, 1406 Overture Way, Carrollton, Texas 75006-2970

Quinn Eaker, 7325 Mansfield Cardinal Rd., Kennedale, Texas 76060

Brian W. Holk, 890 Cozy Ln., Tow, Texas 78672-4994

Damian LaCroix, P.O. Box 66185, Houston, Texas 77266-6185

Nicholas LaHood, 1924 Main Ave., San Antonio, Texas 78212

Miriam Eliza Martinez, 3406 Crystal Falls Ave., Edinburg, Texas 78539

Alfonso "Poncho" Nevarez, 643 Weyrich Rd., Eagle Pass, Texas 78852-7421

Antoine K. Noun, 18482 Kuykendahl Rd., Ste. 131, Spring, Texas 77379

David Palmquist, 561 Upper Elgin River Rd., Elgin, Texas 78621

Brandon M. Parmer, 1409 N. Zang Blvd. #937, Dallas, Texas 75203

Joe Pompa, 5101 Forestlake Cr., Arlington, Texas 76017

Frederick Harrison Stralow, 115 Brett Dr., Gun Barrel City, Texas 75156-4263

Braxton C. Thompson, 4304 Village Green, Irving, Texas 75034

Felecia L. Whatley, 6157 Skylark Ln., Watauga, Texas 76148

Braeden M. Wright, 214 S. Bell Ave., Apt. 1114, Denton, Texas 76201

Roger L. Wrights, 109 Latigo Dr., Burnet, Texas 78611-5921

TRD-201401294

Natalia Luna Ashley

Interim Executive Director

Texas Ethics Commission

Filed: March 24, 2014

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Texas Facilities Commission

Request for Proposals #303-5-20429

The Texas Facilities Commission (TFC), on behalf of the Department of Family and Protective Services, announces the issuance of Request for Proposals (RFP) #303-5-20429. TFC seeks a five (5) or ten (10) year lease of approximately 16,439 square feet of office space in San Antonio, Bexar County, Texas.

The deadline for questions is April 14, 2014, and the deadline for proposals is April 22, 2014, at 3:00 p.m. The award date is May 21, 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 Program Specialist, 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=110564.

TRD-201401263

Kay Molina

General Counsel

Texas Facilities Commission

Filed: March 21, 2014

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Request for Proposals #303-5-20430

The Texas Facilities Commission (TFC), on behalf of the Comptroller of Public Accounts, announces the issuance of Request for Proposals (RFP) #303-5-20430. TFC seeks a five (5) or ten (10) year lease of approximately 3,771 square feet of office space in McAllen, Texas.

The deadline for questions is April 14, 2014, and the deadline for proposals is April 25, 2014, at 3:00 p.m. The award date is May 21, 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 Program Specialist, 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=110596.

TRD-201401298

Kay Molina

General Counsel

Texas Facilities Commission

Filed: March 24, 2014

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Request for Proposals #303-5-20431

The Texas Facilities Commission (TFC), on behalf of the Texas Department of Criminal Justice, announces the issuance of Request for Proposals (RFP) #303-5-20431. TFC seeks a five (5) or ten (10) year lease of approximately 11,524 square feet of office space in San Antonio, Bexar County, Texas.

The deadline for questions is April 14, 2014 and the deadline for proposals is April 22, 2014 at 3:00 p.m. The award date is May 21, 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 Program Specialist, 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=110629.

TRD-201401313

Kay Molina

General Counsel

Texas Facilities Commission

Filed: March 26, 2014

Department of Family and Protective Services

Title IV-B Child and Family Services Plan

The Texas Department of Family and Protective Services (DFPS), as the designated agency to administer Title IV-B programs in the state of Texas, is developing the annual update of the Title IV-B Child and Family Services Plan (CFSP) for Texas and developing a new CFSP to report on years 2015-2019. Under guidelines issued by the U.S. Department of Health and Human Services, Administration for Children and Families, DFPS is required to review the progress made in the previous year toward accomplishing the goals and objectives identified in the state's five year CFSP for the period from October 1, 2009, through September 30, 2014, as well as develop a new five-year Child and Family Services Plan for fiscal years 2015-2019.

The CFSP Annual Progress and Services Report (APSR) is required for the state to receive its federal allocation for fiscal year 2015 authorized under Title IV-B of the Social Security Act, Subparts 1 and 2, and the Child Abuse Prevention and Treatment Act (CAPTA). The APSR also gives states an opportunity to apply for fiscal year 2015 funds for the Chafee Foster Care Independence Program. The annual report referenced above must be submitted by June 30, 2014.

The purpose of this notice is to solicit input in the development of the APSR as well as the CFSP. This input will enable the agency to consider and include any changes in our state plan in order to best meet the needs of the children and families the agency serves. Members of the public can obtain more detailed information regarding the CFSP from the DFPS web site at: <http://www.dfps.state.tx.us>. The web site includes a copy of the 2013 APSR and a copy of the 2010-2014 CFSP.

Written comments regarding the annual update or the five-year plan may be faxed or mailed to: Texas Department of Family and Protective Services, Attention: Max Villarreal; P.O. Box 149030, MC Y-934; Austin, Texas 78714-9030; telephone (512) 919-7868; fax (512) 339-5927. The comments must be received no later than May 2, 2014.

TRD-201401309

Cynthia O'Keeffe

General Counsel

Department of Family and Protective Services

Filed: March 25, 2014

Texas Health and Human Services Commission

Public Notice

The Texas Health and Human Services Commission announces its intent to submit transmittal numbers 14-002 and Children's Health Insurance Program (CHIP) 33 to the Texas State Plans for Medical Assistance under Title XIX and Title XXI of the Social Security Act.

The proposed amendments establish that the state is using federally required modified adjusted gross income methodology for determining Medicaid eligibility for children, parents and caretakers, pregnant women, and individuals under age 21 who were formerly under Texas conservatorship. The state also provides coverage for non IV-E adoption assistance and coverage to certain individuals under age 21 who are in certain reasonable classifications, which operate under a waiver that eliminates income tests for eligibility determinations.

The proposed amendments indicate that the state does not opt to provide Medicaid for childless adults under age 65, family planning services, and tuberculosis-only services.

Federal law requires that children ages 6 through 18 with household income at or below 133 percent of the Federal Poverty Level (FPL) are eligible for Medicaid. The proposed amendments provide that children whose household income is above 100 up to and including 133 percent of the FPL will be determined eligible for Medicaid, rather than the CHIP, provided that all other eligibility criteria are met.

Federal law also requires the state to establish the Former Foster Care Children's program, which provides Medicaid for former foster care children ages 18 to 25 who aged out of foster care while in Texas's conservatorship at age 18 or older and were receiving Medicaid when they aged out of foster care, in accordance with Social Security Act §1902(a)(10)(A)(i)(IX), 42 U.S.C. §1396a(a)(10)(A)(i)(IX).

The proposed amendments are effective January 1, 2014.

The proposed amendments are estimated to result in an additional annual aggregate expenditure of \$59.7 million for the remainder of state fiscal year (SFY) 2014, consisting of \$39.2 million in federal funds and \$20.5 million in state general revenue. For SFY 2015, the estimated additional annual expenditure is \$179.5 million, consisting of \$121.6 million in federal funds and \$57.9 million in state general revenue.

To obtain copies of the proposed amendment, interested parties may contact Ashley Fox, State Plan Policy Advisor, by mail at Texas Health and Human Services Commission, P.O. Box 13247, Mail Code H-100, Austin, Texas 78711; by telephone at (512) 462-6282; by facsimile at (512) 730-7472; or by e-mail at ashley.fox@hhsc.state.tx.us. Copies of the proposal will also be made available for public review at the local offices of the Department of Aging and Disability Services.

TRD-201401324

Jack Stick

Chief Counsel

Texas Health and Human Services Commission

Filed: March 26, 2014

Department of State Health Services

Correction of Error

The Department of State Health Services (department) adopted new 25 TAC §§416.51 - 416.58, concerning home and community-based services for individuals with extended tenure in state mental health facilities, in the March 28, 2014, issue of the *Texas Register* (39 TexReg 2289). Section 416.52 was adopted with changes and republished on page 2291. The acronym "HCBS-AMH" that appeared in §416.52(6), the definition for "Individual recovery plan (IRP)", should have been "HCBS". Corrected paragraph (6) reads as follows:

"(6) Individual recovery plan (IRP)--A written, individualized plan, developed in consultation with the individual and LAR, if applicable,

which identifies the necessary HCBS to be provided to the individual and also serves as the treatment plan or recovery plan."

TRD-201401257



Licensing Actions for Radioactive Materials

The Department of State Health Services has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables. The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout TX" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

NEW LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Austin	Arise Healthcare System, L.L.C. dba Arise Austin Medical Center	L06621	Austin	00	03/04/14
Seguin	Craig Cardiovascular Center, P.A.	L06623	Seguin	00	03/10/14
Seminole	Fehr's Metal Building Construction, L.L.C.	L06615	Seminole	00	02/19/14
Throughout TX	Archer Wireline Service, Inc.	L06620	Houston	00	02/28/14
Throughout TX	ARC Abatement Holdings, Inc.	L06622	Waco	00	03/07/14

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Abilene	Hendrick Medical Center	L02433	Abilene	112	03/04/14
Abilene	Hendrick Medical Center	L02433	Abilene	113	03/10/14
Borger	Agrium U.S., Inc.	L02772	Borger	20	03/11/14
Borger	GPCH, L.L.C. dba Golden Plains Community Hospital	L04369	Borger	17	03/05/14
Bryan	St. Joseph Regional Health Center	L00573	Bryan	80	03/03/14
Conroe	CHCA Conroe, L.P. dba Conroe Regional Medical Center	L01769	Conroe	94	03/03/14
Dallas	Cardinal Health	L02048	Dallas	145	03/13/14
Dallas	Texas Oncology, P.A. dba Sammons Cancer Center	L04878	Dallas	51	03/05/14
El Paso	Tenet Hospitals Limited dba Providence Memorial Hospital	L02353	El Paso	113	03/04/14
El Paso	Tenet Hospitals Limited dba Providence Memorial Hospital	L02353	El Paso	114	03/06/14
El Paso	Tenet Hospitals Limited dba Providence Memorial Hospital	L02353	El Paso	115	03/14/14
El Paso	Tenet Hospitals Limited dba Sierra Medical Center	L02365	El Paso	80	03/06/14
El Paso	Tenet Hospitals Limited dba Sierra Providence East Medical Center	L06152	El Paso	15	03/05/14
Fort Worth	Texas Christian University	L01096	Fort Worth	43	03/06/14
Fort Worth	Radiology Associates	L03953	Fort Worth	70	03/07/14
Fort Worth	Physician Reliance, L.P. dba Texas Oncology at Klabzuba	L05545	Fort Worth	49	03/06/14
Fort Worth	Oncology Hematology Consultants, P.A. dba The Center for Cancer and Blood Disorders	L05919	Fort Worth	21	03/07/14
Harlingen	Texas Oncology, P.A. dba South Texas Cancer Center Harlingen	L00154	Harlingen	43	03/13/14
Houston	Institute of Biosciences and Technology	L04681	Houston	42	03/06/14
Houston	Triad Isotopes	L06327	Houston	09	03/04/14
Houston	The Methodist Hospital Research Institute dba Houston Methodist Research Institute	L06383	Houston	07	03/07/14
Houston	Westside Surgical Hospital, L.L.C.	L06538	Houston	01	03/10/14
Houston	Shared Imaging, L.L.C.	L06614	Houston	01	03/07/14
Humble	Humble Surgical Hospital	L06357	Humble	06	03/07/14
Lubbock	Radiation Oncology of The South Plains dba Lubbock Imaging Center	L05418	Lubbock	20	02/12/14
Midlothian	Ash Grove Texas, L.P.	L05424	Midlothian	06	03/12/14
Odessa	Ector County Hospital District dba Medical Center Hospital	L01223	Odessa	96	03/07/14

AMENDMENTS TO EXISTING LICENSES ISSUED (CONTINUED):

Location	Name	License #	City	Amendment #	Date of Action
Pasadena	Mohamed O. Jeroudi, M.D., P.A.	L05753	Pasadena	14	03/13/14
San Antonio	The University of Texas Health Science Center at San Antonio	L01279	San Antonio	151	03/11/14
Temple	Texas A&M University System Health Science Center	L05494	Temple	20	03/06/14
Throughout TX	Desert NDT, L.L.C. dba Midwest Inspection Services	L06462	Abilene	19	03/11/14
Throughout TX	Anderson Perforating Services, L.L.C.	L06587	Albany	03	03/14/14
Throughout TX	Lotus, L.L.C.	L05147	Andrews	29	03/05/14
Throughout TX	RWLS, L.L.C. dba Renegade Services	L06307	Andrews	22	03/13/14
Throughout TX	Holt Engineering, Inc.	L02752	Austin	20	03/14/14
Throughout TX	Radiation Technology, Inc.	L04633	Austin	30	03/07/14
Throughout TX	Metalforms, Inc.	L02261	Beaumont	41	03/14/14
Throughout TX	Cardiac Imaging, Inc.	L06565	Beaumont	01	03/07/14
Throughout TX	Qualspec Services, Inc. dba Qualspec	L06432	Deer Park	08	03/04/14
Throughout TX	Millennium Engineers Group, Inc.	L05388	Edinburg	09	03/04/14
Throughout TX	Techcorr USA, L.L.C. dba AUT Specialists, L.L.C.	L05972	Flint	103	03/07/14
Throughout TX	T. Smith Inspection and Testing, L.L.C.	L05697	Fort Worth	17	03/05/14
Throughout TX	Recon Petrotechnologies, Inc.	L06026	Fort Worth	18	03/03/14
Throughout TX	Archer Wireline, L.L.C.	L06620	Fort Worth	01	03/14/14
Throughout TX	Geoscience Engineering & Testing, Inc.	L05180	Houston	12	03/10/14
Throughout TX	Statewide Maintenance Company dba Diamond G. Inspection, Inc.	L06229	Houston	10	03/05/14
Throughout TX	Acuren Inspection, Inc.	L01774	La Porte	279	03/13/14
Throughout TX	Nabors Completion & Production Services Co.	L06375	Midland	04	03/07/14
Throughout TX	Turner Industries Group, L.L.C. dba Pipe Fabrication Division Texas Operations	L05237	Paris	25	03/07/14
Tyler	Cardiovascular Associates of East Texas, P.A.	L04800	Tyler	35	03/17/14
Waco	Baylor University	L00343	Waco	32	03/12/14

RENEWAL OF LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Allen	Texas Health Presbyterian Hospital Allen	L05765	Allen	25	03/06/14
Amarillo	Ali Jaffar, M.D., P.A.	L05577	Amarillo	09	03/04/14
Longview	The Good Shepherd Hospital, Inc. dba Good Shepherd Medical Center	L02411	Longview	91	03/12/14
Pasadena	BASF Corporation	L05782	Pasadena	06	03/07/14
San Angelo	Shannon Medical Center	L02174	San Angelo	66	03/14/14
Throughout TX	House Engineering and Construction, Inc.	L04702	Longview	18	03/07/14
Throughout TX	CDK Perforating, L.L.C. dba Nine Energy Service	L06616	Midland	01	02/28/14
Throughout TX	Insight Health Corporation	L05504	Roanoke	15	03/10/14
Throughout TX	City Public Works	L02876	San Antonio	28	03/11/14

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Austin	Asuragen, Inc.	L05977	Austin	08	03/06/14
Houston	The Christus Stehlin Foundation for Cancer Research	L04244	Houston	09	03/03/14

TERMINATIONS OF LICENSES ISSUED (CONTINUED):

Location	Name	License #	City	Amendment #	Date of Action
Plano	La Mastra Holdings, P.L.L.C. dba Mind Matters Clinic of Texas	L06489	Plano	02	03/14/14
Throughout TX	Rio Grande Resource Corporation	L06151	Hobson	04	03/14/14
Throughout TX	Gray Wireline Service, Inc.	L03541	Houston	48	03/11/14

In issuing new licenses, amending and renewing existing licenses, or approving license exemptions, the Department of State Health Services (department), Radiation Safety Licensing Branch, has determined that the applicant has complied with the applicable provisions of 25 Texas Administrative Code (TAC) Chapter 289 regarding radiation control. In granting termination of licenses, the department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC Chapter 289. In denying the application for a license, license renewal or license amendment, the department has determined that the applicant has not met the applicable requirements of 25 TAC Chapter 289.

In accordance with Texas Health and Safety Code, §401.106(b) it has been determined that companies using neutron generating industrial accelerators for well-logging purposes are hereby exempt from the regulatory requirement of obtaining an x-ray registration, provided the radioactive material in the device is authorized by a Department of State Health Services issued Radioactive Material License.

Rationale

Section 401.106(b) states: The department or commission, as applicable, may exempt a source of radiation or a kind of use or user from the application of a rule adopted by the department or commission under this chapter if the department or commission, respectively, determines that the exemption:

- (1) is not prohibited by law; and
- (2) will not result in a significant risk to public health and safety and the environment.

After reviewing the exemption request by Baker Hughes dated January 23, 2014, the department hereby issues a generic exemption to licensees possessing neutron generating industrial accelerators that are used for well-logging service operations from registering the accelerators since their use is authorized by their radioactive material license.

This notice affords the opportunity for a hearing on written request of a person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. A person affected may request a hearing by writing Richard A. Ratliff, Radiation Program Officer, Department of State Health Services, Radiation Material Licensing - Mail Code 2835, P.O. Box 149347, Austin, Texas 78714-9347. For information call (512) 834-6688.

TRD-201401251
 Lisa Hernandez
 General Counsel
 Department of State Health Services
 Filed: March 20, 2014

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Texas Lottery Commission

Instant Game Number 1636 "Texas Dream Home"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1636 is "TEXAS DREAM HOME".
 The play style is "key number match".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1636 shall be \$5.00 per Ticket.

1.2 Definitions in Instant Game No. 1636.

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, \$\$ SYMBOL, HOUSE SYMBOL, \$5.00, \$10.00, \$15.00, \$20.00, \$25.00, \$50.00, \$100, \$500, \$1,000, \$10,000, \$50,000 and \$100,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1636 - 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	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
\$\$ SYMBOL	DOUBLE
HOUSE SYMBOL	WINALL
\$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
\$10,000	TEN THOU
\$50,000	50 THOU
\$100,000	HUN THOU

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the Ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$5.00, \$10.00, \$15.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$25.00, \$50.00, \$75.00, \$100, \$200 or \$500.

H. High-Tier Prize - A prize of \$1,000, \$10,000 or \$100,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1636), 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: 1636-0000001-001.

K. Pack - A Pack of "TEXAS DREAM HOME" 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 "TEXAS DREAM HOME" Instant Game No. 1636 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 "TEXAS DREAM HOME" Instant Game is determined once the latex on the Ticket is scratched off to expose 45 (forty-five) Play Symbols. If a player matches any of the YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the prize for that number. If a player reveals a Double Dollar Sign "\$\$" Play Symbol, the player wins DOUBLE the prize for that symbol. If the player reveals a "HOUSE" Play Symbol, the player wins ALL 20 PRIZES instantly! No portion of the Dis-

play Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game Ticket, all of the following requirements must be met:

1. Exactly 45 (forty-five) Play Symbols must appear under the Latex Overprint on the front portion of the Ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The Ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Ticket;
8. The Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The Ticket must not be counterfeit in whole or in part;
10. The Ticket must have been issued by the Texas Lottery in an authorized manner;
11. The Ticket must not have been stolen, nor appear on any list of omitted Tickets or non-activated Tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The Ticket must be complete and not miscut and have exactly 45 (forty-five) Play Symbols under the Latex Overprint on the front portion of the Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the Ticket;
14. The Serial Number of an apparent winning Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Tickets, and a Ticket with that Serial Number shall not have been paid previously;
15. The Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
16. Each of the 45 (forty-five) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 45 (forty-five) Play Symbols on the Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Ticket. In the event a defective Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Ticket with another unplayed Ticket in that Instant Game (or a Ticket of equivalent sales price from any other current Texas Lottery Instant Game) or refund the retail sales price of the Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Players can win up to twenty (20) times on a Ticket in accordance with the approved prize structure.

B. Adjacent Non-Winning Tickets within a Pack will not have identical Play and Prize Symbol patterns. Two (2) Tickets have identical Play and Prize Symbol patterns if they have the same Play and Prize Symbols in the same positions.

C. The top Prize Symbol will appear on every Ticket unless otherwise restricted by parameters, play action or prize structure.

D. No prize amount in a non-winning spot will correspond with the "YOUR NUMBERS" Play Symbol (i.e., 5 and \$5).

E. Non-winning Prize Symbols will never be the same as the winning Prize Symbol(s).

F. Non-winning "YOUR NUMBERS" Play Symbols will all be different.

G. Each Ticket will have five (5) different "WINNING NUMBERS" Play Symbols.

H. Non-winning Prize Symbols will never appear more than three (3) times.

I. The "\$\$" (DOUBLE) and "HOUSE" (WINALL) Play Symbols will never appear in the "WINNING NUMBERS" Play Symbol spots.

J. The "\$\$" (DOUBLE) Play Symbol will only appear as dictated by the prize structure.

K. On Tickets that contain the "HOUSE" (WINALL) Play Symbol, none of the "WINNING NUMBERS" Play Symbols will match any of the "YOUR NUMBERS" Play Symbols.

2.3 Procedure for Claiming Prizes.

A. To claim a "TEXAS DREAM HOME" Instant Game prize of \$5.00, \$10.00, \$15.00, \$20.00, \$25.00, \$50.00, \$75.00, \$100, \$200 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 \$25.00, \$50.00, \$75.00, \$100, \$200 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 "TEXAS DREAM HOME" Instant Game prize of \$1,000, \$10,000 or \$100,000, the claimant must sign the winning Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "TEXAS DREAM HOME" 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 Texas 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.

F. If a person is indebted or owes delinquent taxes to the State, and is selected as a winner in a promotional second-chance drawing, the debt to the State must be paid within 30 days of notification or the prize will be awarded to an Alternate.

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 "TEXAS DREAM HOME" 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 "TEXAS DREAM HOME" 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.

2.9 Promotional Second-Chance Drawings. Any Non-Winning "TEXAS DREAM HOME" Instant Game scratch-off Ticket may be entered into one of four promotional drawings for a chance to win a promotional second-chance drawing prize. See instructions on the back of the Ticket for information on eligibility and entry requirements.

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 8,040,000 Tickets in the Instant Game No. 1636. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1636 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$5	964,800	8.33
\$10	750,400	10.71
\$15	107,200	75.00
\$20	134,000	60.00
\$25	107,200	75.00
\$50	34,505	233.01
\$75	10,050	800.00
\$100	21,440	375.00
\$200	1,139	7,058.82
\$500	737	10,909.09
\$1,000	67	120,000.00
\$10,000	20	402,000.00
\$100,000	8	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 3.77. 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. 1636 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. 1636, 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-201401296

Bob Biard

General Counsel

Texas Lottery Commission

Filed: March 24, 2014



Instant Game Number 1640 "10X the Cash"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1640 is "10X THE CASH". The play style is "key number match".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1640 shall be \$2.00 per Ticket.

1.2 Definitions in Instant Game No. 1640.

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, 6, 7, 8, 9, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 5X SYMBOL, 10X SYMBOL, \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00, \$200, \$1,000 and \$50,000.

D. Play Symbols 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. 1640 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
6	SIX
7	SVN
8	EGT
9	NIN
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
5X SYMBOL	TIMES 5
10X SYMBOL	TIMES 10
\$2.00	TWO\$
\$4.00	FOUR\$
\$5.00	FIVE\$
\$10.00	TEN\$
\$20.00	TWENTY
\$50.00	FIFTY
\$200	TWO HUND
\$1,000	ONE THOU
\$50,000	50 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 \$2.00, \$4.00, \$5.00, \$10.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$50.00 or \$200.

H. High-Tier Prize - A prize of \$1,000 or \$50,000.

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 (1640), 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: 1640-0000001-001.

K. Pack - A Pack of "10X THE CASH" Instant Game Tickets contains 125 Tickets, packed in plastic shrink-wrapping and fanfolded in pages

of two (2). One Ticket will be folded over to expose a front and back of one Ticket on each Pack. Please note the books will be in an A, B, C and D 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 "10X THE CASH" Instant Game No. 1640 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 "10X THE CASH" Instant Game is determined once the latex on the Ticket is scratched off to expose 23 (twenty-three) Play Symbols. If a player matches any of YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the prize for that number. If a player reveals a "5X" Play Symbol, the player wins 5 TIMES the prize for that symbol. If a player reveals a "10X" Play Symbol, the player wins 10 TIMES the prize for that symbol. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game Ticket, all of the following requirements must be met:

1. Exactly 23 (twenty-three) 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 23 (twenty-three) 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 23 (twenty-three) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 23 (twenty-three) 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 Texas Lottery Instant Game) or refund the retail sales price of the Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Players can win up to ten (10) times on a Ticket in accordance with the approved prize structure.

B. Adjacent Non-Winning Tickets within a Pack will not have identical Play and Prize Symbol patterns. Two (2) Tickets have identical Play and Prize Symbol patterns if they have the same symbols in the same positions.

C. Each Ticket will have three (3) different "WINNING NUMBERS" Play Symbols.

D. Non-winning "YOUR NUMBERS" Play Symbols will all be different.

E. Non-winning Prize Symbols will never appear more than three (3) times.

F. The "5X" and "10X" Play Symbols will never appear in the "WINNING NUMBERS" Play Symbol spots.

G. The "5X" and "10X" Play Symbols will only appear as dictated by the prize structure.

H. Non-winning Prize Symbols will never be the same as the winning Prize Symbol(s).

I. The top Prize Symbol will appear on every Ticket unless otherwise restricted by other parameters, play action or prize structure.

J. No prize amount in a non-winning spot will correspond with the "YOUR NUMBERS" Play Symbol (i.e., 5 and \$5).

2.3 Procedure for Claiming Prizes.

A. To claim a "10X THE CASH" Instant Game prize of \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00 or \$200, 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 \$200 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 "10X THE CASH" Instant Game prize of \$1,000 or \$50,000, 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 "10X THE CASH" 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 Texas 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 "10X THE CASH" 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 "10X THE CASH" 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 20,160,000 Tickets in the Instant Game No. 1640. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1640 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$2	2,257,920	8.93
\$4	1,612,800	12.50
\$5	483,840	41.67
\$10	241,920	83.33
\$20	161,280	125.00
\$50	91,644	219.98
\$200	6,720	3,000.00
\$1,000	252	80,000.00
\$50,000	20	1,008,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.15. 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. 1640 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. 1640, 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-201401297
 Bob Biard
 General Counsel
 Texas Lottery Commission
 Filed: March 24, 2014

◆ ◆ ◆
Public Utility Commission of Texas

Notice of Application for Amendment to Service Provider Certificates of Operating Authority

On March 20, 2014, Conterra Ultra Broadband, LLC (Applicant) filed an application to amend service provider certificate of operating authority (SPCOA) Number 60900. Applicant seeks approval for a change in ownership/control whereby Applicant will become an indirect subsidiary of CUB Parent, Inc.

The Application: Application of Conterra Ultra Broadband, LLC for Amendment to a Service Provider Certificate of Operating Authority, Docket Number 42322.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at 1-888-782-8477 no later than April 11, 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 42322.

TRD-201401262
 Adriana A. Gonzales
 Rules Coordinator
 Public Utility Commission of Texas
 Filed: March 21, 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 March 20, 2014, to amend a certificate of convenience and necessity for a proposed transmission line in Gonzales, Karnes, and Wilson Counties, Texas.

Docket Style and Number: Application of Guadalupe Valley Electric Cooperative, Inc. to Amend a Certificate of Convenience and Necessity for a Proposed 138-kV Transmission Line in Gonzales, Karnes, and Wilson Counties. Docket Number 42287.

The Application: The application of Guadalupe Valley Electric Cooperative, Inc. (GVEC) for a proposed 138-kV transmission line in Gonzales, Karnes, and Wilson Counties is designated as the Gillett to Nopal 138-kV Transmission Line Project. The facilities include construction of a new 138-kV transmission line and substation. GVEC stated the purpose of the project is to improve the capacity and reliability of GVEC's electric distribution system to meet the growing demand for electric power in the Eagle Ford Shale area.

The total estimated cost for the project ranges from approximately \$13,942,000 to \$16,723,000 depending on the route chosen. The pro-

posed project is presented with sixteen (16) alternate routes and is estimated to be approximately 9 to 12 miles in length. The commission may approve any of the routes or route segments presented in the application.

The proposed project is presented with sixteen (16) alternate routes. 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 1-888-782-8477. The deadline for intervention in this proceeding is May 5, 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 42287.

TRD-201401265
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 21, 2014

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Texas Department of Transportation

Public Notice - Aviation

Pursuant to Transportation Code, §21.111 and 43 TAC §30.209, the Texas Department of Transportation conducts public hearings to receive comments from interested parties concerning proposed approval of various aviation projects. For information regarding actions and times for aviation public hearings, please go to the following website:

www.txdot.gov/inside-txdot/get-involved/about/hearings-meetings.
Or visit www.txdot.gov, How Do I Find Hearings and Meetings, choose Hearings and Meetings, and then choose Schedule. Or contact Texas Department of Transportation, Aviation Division, 150 East Riverside, Austin, Texas 78704, (512) 416-4500 or 1-800-68-PILOT.

TRD-201401326
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: March 26, 2014

◆ ◆ ◆

Request for Proposal - Professional Services

The Texas Department of Transportation (department) announces a Request for Proposal (RFP) for professional services pursuant to Government Code, Chapter 2254, Subchapter A. The term of the contract will be from project initiation to December 31, 2014. The department will administer the contract. The RFP will be released on April 4, 2014.

Purpose: The department is requesting proposals from qualified Certified Public Accounting firms to audit its financial statements for the fiscal year ending August 31, 2014, with four (4) optional one year renewals contingent on satisfactory performance and subsequent delegations by the State Auditor's Office (SAO) evaluated on an annual basis. These audits are to be performed in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States. In connection with these standards, the audit firm will perform such procedures as required to comply with the Texas Comptroller of Pub-

lic Accounts' *Reporting Requirements for Annual Financial Reports of State Agencies and Universities*.

Eligible Applicants: Eligible applicants shall be qualified Certified Public Accounting (CPA) firms.

Program Goal: Shall issue a report on the fair presentation of the financial statements of the department, Texas Mobility Fund, and the Central Texas Turnpike System in conformity with generally accepted accounting principles. Audit firm shall communicate any reportable conditions found during the audit.

Review and Award Criteria: Each application will first be screened for completeness and timeliness. Proposals that are deemed incomplete or arrive after the deadline will not be reviewed. A team of reviewers from the department will evaluate the proposals as to the auditing firm's competence, knowledge, and qualifications and as to the reasonableness of the proposed fee for the services. The criteria and review process are further described in the RFP.

Deadlines: The department must receive proposals prepared according to instructions in the RFP package on or before April 25, 2014 at 3:00 p.m.

To Obtain a Copy of the RFP: Requests for a copy of the RFP should be submitted to Arthur Levine, Finance Division, Texas Department of Transportation, 150 East Riverside Drive, Austin, Texas 78704; e-mail: arthur.levine@txdot.gov; telephone number (512) 486-5612; and fax (512) 486-5390. Copies will also be available on the Electronic State Business Daily at <http://esbd.cpa.state.tx.us/>.

TRD-201401329
Leonard Reese
Associate General Counsel
Texas Department of Transportation
Filed: March 26, 2014

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Texas Water Development Board

Request for Applications - Water Conservation Education Grants

The Texas Water Development Board (TWDB) solicits Request for Applications for the state fiscal year 2014. The total amount of the grants to be awarded under this request for applications by the TWDB shall not exceed \$1,000,000 from the General Revenue Fund.

Introduction and Purpose

The Water Conservation Education Grant Program will fund projects that promote the benefits of water conservation through statewide education and outreach programs. Title 30 Texas Administrative Code §288.1 defines water conservation as "those practices, techniques, and technologies that reduce the consumption of water, reduce the loss or waste of water, improve the efficiency in the use of water, or increase the recycling and reuse of water so that a water supply is made available for future or alternative uses". The objective of water conservation is a long-term increase in the productive use of water supply in order to satisfy water supply needs without compromising desired water supply services.

Summary of the Request for Applications

Solicitation Date (Opening): Friday, April 4, 2014

Due Date (Closing): 12:00 p.m., Thursday, May 8, 2014

Anticipated Award Date: June 2014

Estimated Total Funding: \$1,000,000

Eligible applicants: public and private organizations, trade associations, or any other legally cognizable entity that pursues statewide water conservation education.

Program Contact:

Mr. John Sutton

Municipal Water Conservation

Texas Water Development Board

P.O. Box 13231, Austin, Texas 78711-3231

Phone: (512) 463-7988

E-mail: john.sutton@twdb.texas.gov

Contracting Contact:

Mr. David Carter

Contract Administration

Texas Water Development Board

P.O. Box 13231, Austin, Texas 78711-3231

Phone: (512) 936-6079

E-mail: contracts@twdb.texas.gov

Who is Eligible?

A "water conservation education group" that is any statewide group of people or entities, either public or private, such as a for-profit or non-profit corporation or partnership, a trade association, or any other legally cognizable entity that pursues statewide water conservation education, but not an individual person, is eligible to apply.

Eligible Projects

To be eligible for funding, the project must address the objectives, goals and/or priorities identified in the request for applications. Eligible activities include water conservation education and outreach programs which may include media outreach, public awareness, websites, social media, collateral materials, or other activities such as: radio and/or television public service announcements; website with interactive pages and additional information such as maps and specific regional information; social media and mobile applications; production and distribution of conservation literature in both print and electronic formats; surveys to access water conservation knowledge and attitudes; research for public awareness including a methodology to measure effectiveness of outreach efforts; outreach materials that can be used at exhibits and trade fairs; or toolkits to promote water conservation.

Grant Amount

Up to \$1,000,000 has been authorized for Fiscal Year 2014 for water conservation education grants. Funds will be awarded through a statewide competitive grants process which includes a requirement for matching funds. TWDB may fund single-and multi-year projects. Overhead is not an allowable expense category eligible for reimbursement. All proposals will be evaluated based upon the criteria set forth in this solicitation.

All successful proposals will be funded for the entire duration of the project with Fiscal Year 2014 funds. Applicants may submit more than one application; however, applicants are only eligible to receive one grant.

In the event that acceptable applications are not received, the Board retains the right not to award contract funds.

Matching Fund Requirements

Applicants are required to provide private matching funds of at least 50 percent which can be in the form of financial and/or in-kind contributions excluding administrative expenses. Additional priority will be given for matching funds greater than the minimum 50 percent.

Public-Private Partnerships through the matching of dollars can offer the following benefits: Improve current information that is available for water conservation education resources; Ensure local perspectives are considered in projects; Stakeholders gain insight into the nature of water conservation problems and solutions; Promote statewide stewardship of water resources.

Priority

Applications will be prioritized based on: the potential service population of the statewide project; matching funds greater than the minimum 50 percent; and monitoring procedures and any estimated water savings to be realized by this project.

Application Requirements

Applications need to be consistent with the format provided in the application instruction document available online or from TWDB staff.

Provide a scope of work that includes, at a minimum: A description of the proposed project, including the purpose and primary features of the project, products to be developed or produced, clear timelines, and a detailed narrative of all tasks to be performed. Timelines should include quarterly progress reports, as well as a final report. A list of the groups, individuals, organizations, and/or institutions that will be included in the proposed project. The specific goals, such as identified target audience to reach, outcomes of educational efforts, or product development, with respect to promoting the benefits of water resource conservation and water efficiency through the project. Detailed specific activities and tasks to be funded with the grant funding, such as meetings, workshops, fairs, production, printings, mailings, and all other project tasks and activities. A detailed project budget, broken down by tasks, identifying all costs associated with the project, including but not limited to labor hours and costs (in-kind and cash), and other direct costs such as travel, per diem, copies, rental of meeting space, materials, and resources, excluding administrative expenses. Overhead is not an allowable expense category eligible for reimbursement.

Project Deliverables

All funded projects will be required to provide quarterly progress reports. The estimated dates of the progress reports must be included in the scope of work contained in the application. In addition, the applicant will need to prepare and submit a final project report.

Application Evaluation

The degree to which an application meets the above evaluation criteria will be determined by TWDB staff. Projects from qualified applicants will be ranked based on these criteria for the purpose of determining which projects receive grant funds.

The applicable scope of work, schedule, and contract amount will be negotiated after the TWDB selects the most qualified applicants and/or the desired projects for funding. Failure to arrive at mutually agreeable terms of a contract with the most qualified applicant shall constitute a rejection of the Board's offer and may result in subsequent negotiations with the next most qualified applicant and/or desired project for funding. The TWDB reserves the right to reject any or all applications if staff determines that the application(s) does not adequately meet the required criteria or if the funding available is less than the requested funding.

Application instructions are available upon request from Mr. John Sutton at (512) 463-7988, john.sutton@twdb.texas.gov or online at www.twdb.texas.gov.

Deadline for Submission of Applications

Six double-sided, double-spaced copies on recycled paper and one digital copy (CD) of a completed application must be filed with the TWDB on or before 12:00 p.m. on Thursday, May 8, 2014. Applications can be directed either in person to Mr. David Carter, Texas Water Development Board, Stephen F. Austin Building, Room 610D, 1700 North Congress Avenue, Austin, Texas, 78701; or by mail to Mr. David Carter,

Texas Water Development Board, P.O. Box 13231 - Capitol Station, Austin, Texas 78711-3231.

TRD-201401312

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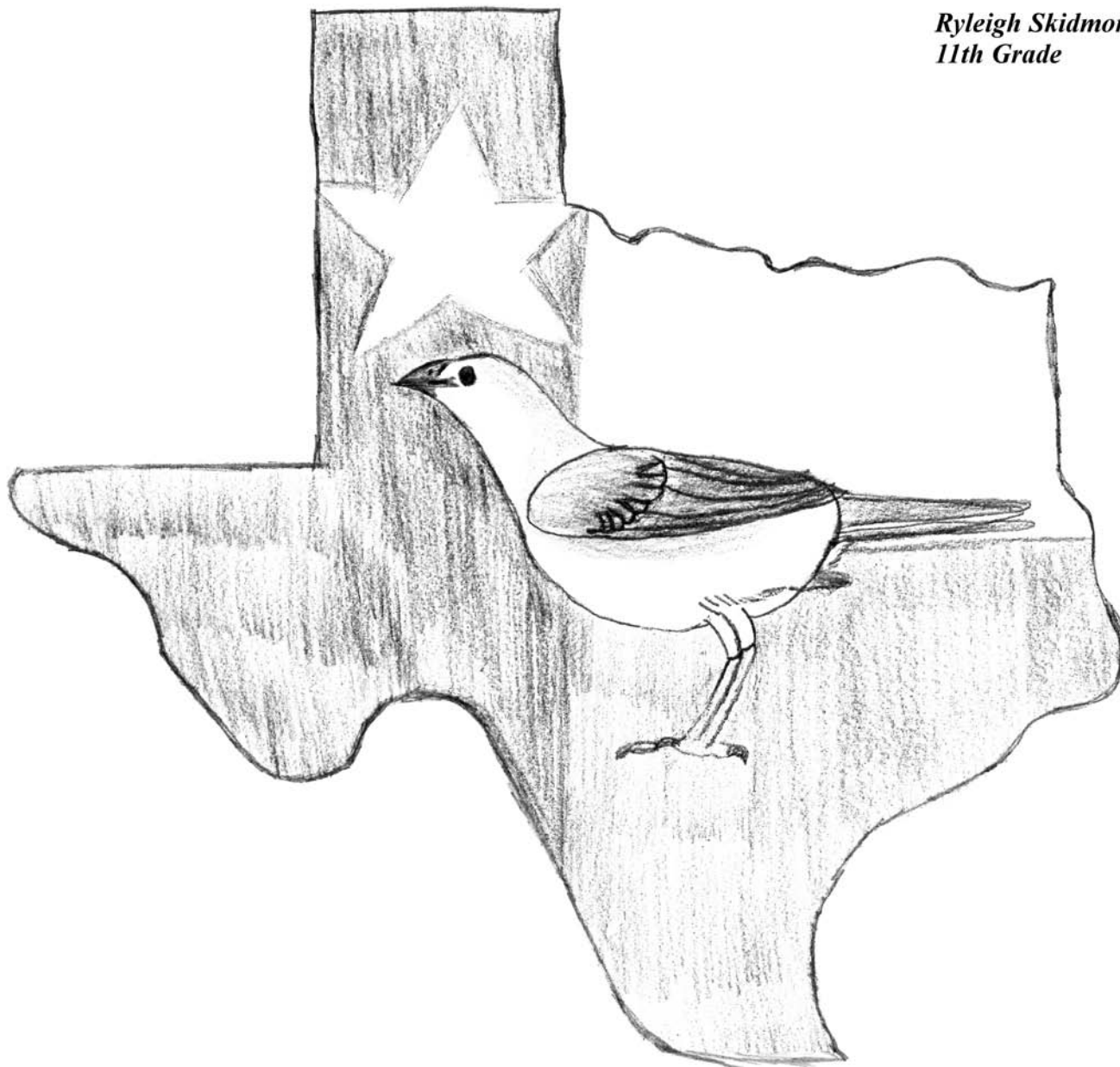
General Counsel

Texas Water Development Board

Filed: March 26, 2014



Ryleigh Skidmore
11th Grade



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 39 (2014) is cited as follows: 39 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written “39 TexReg 2 issue date,” while on the opposite page, page 3, in the lower right-hand corner, would be written “issue date 39 TexReg 3.”

How to 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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***Note:** Back issues of the *Texas Register*, published before September 9, 2005, must be ordered through the Texas Register Section of the Office of the Secretary of State at (512) 463-5561.

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