TEXAS REGISTER

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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.

The artwork featured on the front cover is chosen at random. Inside each issue, the artwork is published on what would otherwise be blank pages in the *Texas Register*. These blank pages are caused by the production process used to print the *Texas Register*.

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IN THIS ISSUE

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://texasattorneygeneral.gov/og/open-government

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-0028-KP

Requestor:

The Honorable Robert L. Nichols

Chair, Committee on Transportation

Texas State Senate

Post Office Box 12068

Austin, Texas 78711-2068

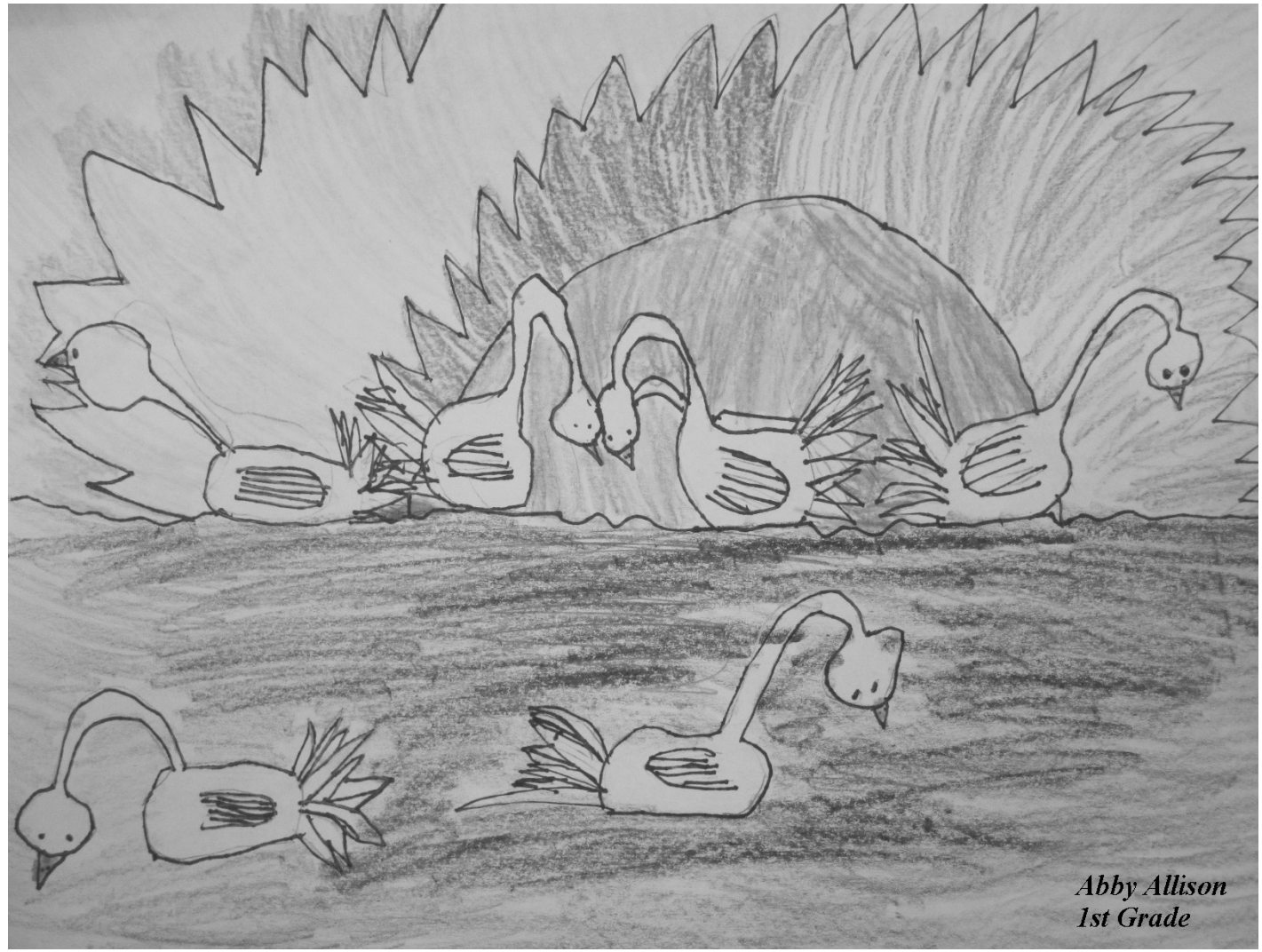
Re: Authority of the Metropolitan Transit Authority of Harris County to participate in the Uptown Houston Transit Project otherwise known as the Post Oak Boulevard Bus Lanes Project (RQ-0028-KP)

Briefs requested by July 15, 2015

For further information, please access the website at www.texasattorneygeneral.gov or call the Opinion Committee at (512) 463-2110.

TRD-201502312
Amanda Crawford
General Counsel
Office of the Attorney General
Filed: June 17, 2015

♦ ♦ ♦


Abby Allison
1st Grade

TEXAS ETHICS COMMISSION

The Texas Ethics Commission is authorized by the Government Code, §571.091, to issue advisory opinions in regard to the following statutes: the Government Code, Chapter 302; the Government Code, Chapter 305; the Government Code, Chapter 572; the Election Code, Title 15; the Penal Code, Chapter 36; and the Penal Code, Chapter 39. Requests for copies of the full text of opinions or questions on particular submissions should be addressed to the Office of the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, (512) 463-5800.

Ethics Advisory Opinion

EAO-527. Whether a general-purpose committee may use political contributions accepted from a corporation to make contributions to a political party. **(AOR-598)**

SUMMARY

A general-purpose committee may not use political contributions accepted from a corporation for its own administration to make a contribution to a political party for the party's administrative costs.

The Texas Ethics Commission is authorized by §571.091 of the Government Code to issue advisory opinions in regard to the following statutes: (1) Chapter 572, Government Code; (2) Chapter 302, Government Code; (3) Chapter 303, Government Code; (4) Chapter 305, Government Code; (5) Chapter 2004, Government Code; (6) Title 15, Election Code; (7) Chapter 159, Local Government Code; (8) Chapter 36, Penal Code; (9) Chapter 39, Penal Code; (10) §2152.064, Government Code; and (11) §2155.003, Government Code.

Questions on particular submissions should be addressed to the Texas Ethics Commission, P.O. Box 12070, Capitol Station, Austin, Texas 78711-2070, (512) 463-5800.

TRD-201502262
Natalia Luna Ashley
Executive Director
Texas Ethics Commission
Filed: June 15, 2015

♦ ♦ ♦

Ethics Advisory Opinion

EAO-528. Whether a general-purpose committee may use political contributions accepted from a corporation to compensate a person for providing lobbying services to the corporation. **(AOR-599)**

SUMMARY

Title 15 does not prohibit a general-purpose committee from using a political contribution that was legally given and accepted from a corporation, for the purpose of financing the establishment or administration of the committee, to compensate an individual lobbyist for providing lobbying services to a corporation. Assuming that the contributions to the committee were given for the specific purpose of financing the committee's administrative expenses, and that the funds were not provided to the committee for the purpose of compensating a lobbyist, the committee would not be required to register solely by using the contributions to compensate the lobbyist.

The Texas Ethics Commission is authorized by §571.091 of the Government Code to issue advisory opinions in regard to the following statutes: (1) Chapter 572, Government Code; (2) Chapter 302, Government Code; (3) Chapter 303, Government Code; (4) Chapter 305, Government Code; (5) Chapter 2004, Government Code; (6) Title 15, Election Code; (7) Chapter 159, Local Government Code; (8) Chapter 36, Penal Code; (9) Chapter 39, Penal Code; (10) §2152.064, Government Code; and (11) §2155.003, Government Code.

Questions on particular submissions should be addressed to the Texas Ethics Commission, P.O. Box 12070, Capitol Station, Austin, Texas 78711-2070, (512) 463-5800.

TRD-201502264
Natalia Luna Ashley
Executive Director
Texas Ethics Commission
Filed: June 15, 2015

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Giselle Cantu
1st Grade

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 354. MEDICAID HEALTH SERVICES

SUBCHAPTER A. PURCHASED HEALTH SERVICES

DIVISION 35. REIMBURSEMENT ADJUSTMENTS FOR POTENTIALLY PREVENTABLE EVENTS

1 TAC §354.1445, §354.1446

The Texas Health and Human Services Commission (HHSC) proposes amendments to §354.1445 (relating to Potentially Preventable Readmissions) and §354.1446 (relating to Potentially Preventable Complications).

Background and Justification

House Bill (H.B.) 1, 84th Legislature, Regular Session, 2015, Article II, Special Provisions Section 59(b) requires HHSC to develop and implement a methodology providing incentive payments for safety-net hospitals exceeding existing quality metrics.

Currently, the only adjustments for potentially preventable readmissions (PPRs) and potentially preventable complications (PPCs) are penalty-based. Senate Bill (S.B.) 7, 82nd Legislature, First Called Session, 2011, and S.B. 7, 83rd Legislature, Regular Session, 2013, requires the Health and Human Services Commission (HHSC) to implement a reporting process and reimbursement adjustments to hospitals based on performance of PPRs and PPCs. In fee-for-service Medicaid, each hospital's actual rates of these potentially preventable events are compared to the hospital's expected rates. Based on that analysis, a potential reduction is applied to the hospital's reimbursements on a go-forward basis. These reductions could be up to 2 percent based on PPR performance and up to 2.5 percent based on PPC performance, for a total possible rate reduction of 4.5 percent. Recalculation of performance is on an annual basis. HHSC leverages this process to make managed care organization (MCO) premium adjustments utilizing the same data used for the fee-for-service adjustments.

H.B. 1, 84th Legislature, Regular Session, 2015, Article II, Special Provisions Section 59(b) directs HHSC to provide payment incentives to safety-net hospitals in the amount of $150,378,593 (All Funds) in fiscal year 2016 and $148,641,716 (All Funds) in fiscal year 2017. It requires HHSC to use ten percent of these additionally appropriated funds to distribute to the safety-net hospitals based on quality metrics.

Section-by-Section Summary

Proposed §354.1445(b)(17) adds a definition for the term "Safety-net hospital."

Proposed §354.1445(h) describes the methodology for targeted incentive payments to safety net hospitals.

Proposed §354.1446(b)(15) adds a definition for the term "Safety-net hospital."

Proposed §354.1446(h) describes the methodology for targeted incentive payments to safety net hospitals.

Fiscal Note

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that during the first five-year period the amended rules are in effect, there will be a fiscal impact to state government of $6,434,700 General Revenue (GR) ($15,037,859 All Funds (AF)) for State Fiscal Year (SFY) 2016 and $6,434,700 ($14,864,172 AF) for each year from SFY 2017 through SFY 2020. Costs and revenues of local governments will not be affected.

Small and Micro-business Impact Analysis

HHSC has determined that there will be no effect on small businesses or micro businesses to comply with the amended rules, as there are no affected hospitals that qualify as a small or micro business.

Public Benefit and Costs

Ms. Rymal has determined that for each year of the first five years the rules are in effect, the public will benefit from the adoption of the rules. The anticipated public benefit will be increased funds for hospitals that achieve a high quality of care.

Ms. Rymal has also determined that for each of the first five years the rules are in effect, there will be no costs to persons required to comply.

There is no anticipated negative impact on local employment.

Regulatory Analysis

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

proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

Takings Impact Assessment

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

Public Comment

Written comments on the proposal may be submitted by mail to Janna Doan, Program Specialist, 6330 Highway 290 East, Suite 100, Austin, Texas 78723; by fax to (512) 380-4380; or by e-mail to *Janna.Doan@hhsc.state.tx.us* within 30 days of publication of this proposal in the *Texas Register.*

Public Hearing

A public hearing is scheduled from 2:30 p.m. to 3:30 p.m. on July 22, 2015, in the Brown-Heatly Public Hearing Room located at 4900 North Lamar Boulevard, Austin, Texas 78751. Persons requiring further information, special assistance, or accommodations should contact Kristine Dahlmann at (512) 462-6299.

Statutory Authority

The amendments are proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §536.152, which provides HHSC with the authority to adjust payments to hospitals that exceed quality measures.

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

§354.1445. Potentially Preventable Readmissions.

(a) Introduction. The Health and Human Services Commission (HHSC) may reward or penalize a hospital under this section based on the hospital's performance with respect to exceeding or failing to meet outcome and process measures relative to all Texas Medicaid and CHIP hospitals regarding the rates of potentially preventable events.

(b) Definitions.

(1) Actual-to-Expected Ratio--A ratio that measures the impact of potentially preventable readmissions (PPRs) by deriving an actual hospital rate compared to an expected hospital rate based on a methodology defined by HHSC. HHSC may use cost of PPR as a factor in weighting PPRs and in calculating PPR Actual-to-Expected Ratio.

(2) Adjustment time period--The state fiscal year (September through August) that a hospital's claims are adjusted in accordance with subsection (f) of this section. Adjustments will be done on an annual basis.

(3) All Patient Refined Diagnosis-Related Group (APR-DRG)--A diagnosis and procedure code classification system for inpatient services.

(4) Candidate admission--An admission that is at risk of a PPR.

(5) Case-mix--A measure of the clinical characteristics of patients treated during the reporting time period and measured using all patient refined-diagnosis related group (APR-DRG) or its replacement classification system, severity of illness, patient age, and the presence of a major mental health or substance abuse comorbidity.

(6) Claims during the reporting time period--Includes Medicaid traditional fee-for-service (FFS), Children's Health Insurance Program or CHIP, and managed care inpatient hospital claims filed for reimbursement by a hospital that:

(A) had a date of admission occurring within the reporting period;

(B) were adjudicated and approved for payment during the reporting period and the six-month grace period that immediately followed, except for claims that had zero inpatient days;

(C) were not claims for patients who are covered by Medicare;

(D) were not claims for individuals classified as undocumented immigrants; and

(E) were not subject to other exclusions as determined by HHSC.

(7) Children's Health Insurance Program or CHIP or Program--The Texas State Children's Health Insurance Program established under Title XXI of the federal Social Security Act (42 U.S.C. Chapter 7, Title XXI) and Chapters 62 and 63 of the Texas Health and Safety Code.

(8) Clinically related--A requirement that the underlying reason for readmission be plausibly related to the care rendered during or immediately following the initial admission. A clinically related readmission occurs within a specified readmission time interval resulting from the process of care and treatment during the initial admission or from a lack of post admission follow-up, but not from unrelated events occurring after the initial admission.

(9) HHSC--The Health and Human Services Commission or its designee.

(10) Hospital--A public or private institution licensed under Chapter 241 or Chapter 577, Texas Health and Safety Code, including a general or special hospital as defined by §241.003, Texas Health and Safety Code.

(11) Initial admission--A candidate admission followed by one or more readmissions that are clinically related.

(12) Medicaid program--The medical assistance program established under Chapter 32, Texas Human Resources Code.

(13) Potentially preventable event (PPE)--A potentially preventable admission, a potentially preventable ancillary service, a potentially preventable complication, a potentially preventable emergency room visit, a potentially preventable readmission, or a combination of these events, which are more fully defined in §354.1070 of this title.

(14) Potentially preventable readmission (PPR)--A return hospitalization of a person within a period specified by HHSC that may have resulted from deficiencies in the care or treatment provided to the person during a previous hospital stay or from deficiencies in post-hospital discharge follow-up. The term does not include a hospital readmission necessitated by the occurrence of unrelated events after the discharge. The term includes the readmission of a person to a hospital for:

(A) the same condition or procedure for which the person was previously admitted;

(B) an infection or other complication resulting from care previously provided;

(C) a condition or procedure that indicates that a surgical intervention performed during a previous admission was unsuccessful in achieving the anticipated outcome; or

(D) another condition or procedure of a similar nature, as determined by HHSC.

(15) Readmission chain--A sequence of PPRs that are all clinically related to the Initial Admission. A readmission chain may contain an Initial Admission and only one PPR, or may contain multiple PPRs following the Initial Admission.

(16) Reporting time period--The period of time that includes hospital claims that are assessed for PPRs. This may be a state fiscal year (September through August) or other specified time frame as determined by HHSC. PPR Reports will consist of statewide and hospital specific reports and will be done at least on an annual basis, using the most complete data period available to HHSC.

(17) Safety-net hospital--As defined in §355.8052(b)(31) of this title (relating to Inpatient Hospital Reimbursement).

(c) Calculating a PPR rate. Using claims during the reporting time period and HHSC-designated software and methodology, HHSC calculates an actual PPR rate and an expected PPR rate for each hospital in the analysis. The methodology for inclusion of hospitals in the analysis will be described in the statewide and hospital specific reports. HHSC may use cost of PPR as a factor in weighting PPRs, and in calculating PPR Actual-to-Expected Ratio.

(1) The actual PPR rate is the number of readmission chains divided by the number of candidate admissions.

(2) The expected PPR rate is the expected number of readmission chains divided by the number of candidate admissions. The expected number of readmission chains is based on the hospital's case-mix relative to the case-mix of all hospitals included in the analysis during the reporting period.

(d) Comparing the PPR performance of all hospitals included in analysis. Using the rates determined in subsection (c) of this section, HHSC calculates a ratio of actual-to-expected PPR rates.

(e) Reporting results of PPR rate calculations. HHSC provides a confidential report to each hospital included in the analysis regarding the hospital's performance with respect to potentially preventable readmissions, including the PPR rates calculated as described in subsection (c) of this section and the hospital's actual-to-expected ratio calculated as described in subsection (d) of this section.

(f) Hospitals subject to reimbursement adjustment and amount of adjustment.

(1) A hospital with an actual-to-expected PPR ratio equal to or greater than 1.10 and equal to or less than 1.25 is subject to a reimbursement adjustment of -1%;

(2) A hospital with an actual-to-expected PPR ratio greater than 1.25 is subject to a reimbursement adjustment of -2%.

(g) Claims subject to reimbursement adjustment.

(1) The reimbursement adjustments described in subsection (f) of this section will apply to all Medicaid fee-for-service claims, based on patient discharge date, for the adjustment time period after the confidential report on which the reimbursement adjustments are based is made available to hospitals.

(2) The reimbursement adjustments for a hospital will cease in the adjustment time period that is after the hospital receives a confidential report indicating an actual-to-expected ratio of less than 1.10.

(h) Targeted incentive payments for safety-net hospitals.

(1) Using the same dataset and reporting time periods for adjustments identified in subsections (b) - (f) of this section, HHSC uses approximately 50 percent of funds appropriated for targeted incentive payments to safety-net hospitals, based on performance for PPRs.

(2) HHSC evaluates performance and targeted incentive payments annually based on the actual-to-expected ratio for this category of hospitals, subject to change based on hospital performance and funds availability.

(3) Hospitals are not eligible for this incentive payment if they received a reimbursement reduction for PPR or potentially preventable complications within the same reporting time period.

§354.1446. Potentially Preventable Complications.

(a) Introduction. The Health and Human Services Commission (HHSC) may reward or penalize a hospital under this section based on the hospital's performance with respect to exceeding or failing to achieve outcome and process measures relative to all Texas Medicaid and CHIP hospitals that address the rates of potentially preventable events.

(b) Definitions.

(1) Actual to Expected Ratio--The ratio of actual potentially preventable complications (PPCs) within an inpatient stay compared with expected PPCs within an inpatient stay, where the expected number depends on the all patient refined-diagnosis related group at the time of admission (APR-DRG or its replacement classification system) is adjusted for the patient's severity of illness. HHSC, at its discretion, determines the relative weights of PPCs when calculating the actual to expected ratio. Expected PPC results calculation is based on the statewide norms and is calculated from Medicaid traditional fee-for-service (FFS), Children's Health Insurance Program or CHIP, and, if available, managed care data.

(2) Adjustment time period--The state fiscal year (September through August) that a hospital's claims are adjusted in accordance with subsection (f) or (g)(4) of this section. Adjustments will be done on an annual basis.

(3) All Patient Refined Diagnosis-Related Group (APR-DRG)--A diagnosis and procedure code classification system for inpatient services.

(4) Case-mix--A measure of the clinical characteristics of patients treated during the reporting time period based on diagnosis and severity of illness. "Higher" case-mix refers to sicker patients who require more hospital resources.

(5) Children's Health Insurance Program or CHIP or Program--The Texas State Children's Health Insurance Program established under Title XXI of the federal Social Security Act (42 U.S.C. Chapter 7, Title XXI) and Chapters 62 and 63 of the Texas Health and Safety Code.

(6) Inpatient claims during the reporting time period--Includes Medicaid traditional FFS, CHIP, and, if available, managed care data for inpatient hospital claims filed for reimbursement by a hospital that:

(A) had a date of admission occurring within the reporting time period;

(B) were adjudicated and approved for payment during the reporting time period and the six-month grace period that immediately followed, except for such claims that had zero inpatient days;

(C) were not inpatient stays for patients who are covered by Medicare;

(D) were not claims for patients diagnosed with major metastatic cancer, organ transplants, human immunodeficiency virus (HIV), or major trauma; and

(E) were not subject to other exclusions as determined by HHSC.

(7) HHSC--The Health and Human Services Commission or its designee.

(8) Hospital--A public or private institution licensed under Chapter 241 or Chapter 577, Texas Health and Safety Code, including a general or special hospital as defined by §241.003, Texas Health and Safety Code.

(9) Medicaid program--The medical assistance program established under Chapter 32, Texas Human Resources Code.

(10) Norm--The Texas statewide average or the standard by which hospital PPC performance is compared.

(11) Potentially preventable complication (PPC)--A harmful event or negative outcome with respect to a person, including an infection or surgical complication, that:

(A) occurs after the person's admission to an inpatient acute care hospital; and

(B) may have resulted from the care, lack of care, or treatment provided during the hospital stay rather than from a natural progression of an underlying disease.

(12) Potentially preventable event (PPE)--A potentially preventable admission, a potentially preventable ancillary service, a potentially preventable complication, a potentially preventable emergency room visit, a potentially preventable readmission, or a combination of those events, which are more fully defined in §354.1070 of this title.

(13) Present on Admission (POA) Indicators--A coding system that requires hospitals to accurately submit principal and secondary diagnoses that are present at the time of admission. POA codes are essential for the accurate calculation of PPC rates and consist of the current coding set approved by CMS.

(14) Reporting time period--The period of time that includes hospital claims that are assessed for PPCs. This may be a state fiscal year (September through August) or other specified time frame as determined by HHSC. PPC Reports will consist of statewide and hospital specific reports and will be done at least on an annual basis, using the most complete data period available to HHSC.

(15) Safety-net hospital--As defined in §355.8052(b)(31) of this title (relating to Inpatient Hospital Reimbursement).

(c) Calculating a PPC rate. Using inpatient claims during the reporting time period and HHSC-designated software and methodology, HHSC calculates an actual PPC rate and an expected PPC rate for each hospital included in the analysis. The methodology for inclusion of hospitals in the analysis will be described in the statewide and hospital specific reports. HHSC will determine at its discretion the relative weights of PPCs when calculating the actual to expected ratio.

(d) Comparing the PPC performance of all hospitals included in the analysis. Using the rates determined in subsection (c) of this section, HHSC calculates a ratio of actual-to-expected PPC rates.

(e) Reporting results of PPC rate calculations. HHSC provides a confidential report to each hospital included in the analysis regarding the hospital's performance with respect to potentially preventable complications, including the PPC rates calculated as described in subsection (c) of this section and the hospital's actual-to-expected ratio calculated as described in subsection (d) of this section.

(f) Hospitals subject to reimbursement adjustment and amount of adjustment.

(1) A hospital with an actual-to-expected PPC ratio equal to or greater than 1.10 and equal to or less than 1.25 is subject to a reimbursement adjustment of -2%;

(2) A hospital with an actual-to-expected PPC ratio greater than 1.25 is subject to a reimbursement adjustment of -2.5%.

(g) Claims subject to reimbursement adjustment.

(1) The reimbursement adjustments described in subsection (f) of this section apply to all Medicaid fee-for-service claims beginning November 1, 2013 and after.

(2) The reimbursement adjustments will occur after the confidential report on which the reimbursement adjustments are based is made available to hospitals.

(3) The reimbursement adjustments for a hospital will cease in the adjustment time period that is after the hospital receives a confidential report indicating an actual-to-expected ratio of less than 1.10.

(4) Based on HHSC-approved POA data screening criteria, HHSC may implement automatic payment reductions to hospitals who fail POA screening. The POA screening criteria and methodology will be described in the statewide and hospital specific reports. The POA screening process will begin during the FY15 reporting time period and will apply to the corresponding adjustment time period as follows:

(A) Failure to meet POA screening criteria, first reporting period violation: 2% reduction applied to all Medicaid fee-for-service claims in the corresponding adjustment period.

(B) Failure to meet POA screening criteria, two or more violations in a row: 2.5% applied all Medicaid fee-for-service claims in the corresponding adjustment period.

(C) If a hospital passes POA screening criteria during a reporting time period, any future violations of the POA screening criteria will be considered a first violation.

(5) The reimbursement adjustments based on POA screening criteria will cease when the hospital passes HHSC-approved POA screening criteria for an entire reporting time period, at which the hospital will be subject to reimbursement adjustments, if applicable, based on criteria outlined in subsection (f) of this section.

(6) Hospitals that receive a reimbursement adjustment based on POA screening criteria outlined in paragraph (4) of this subsection will not concurrently receive reductions outlined in subsection (f) of this section.

(h) Targeted incentive payments for safety-net hospitals.

(1) Using the same dataset and reporting time periods for adjustments identified in subsections (b) - (f) of this section, HHSC uses approximately 50 percent of funds appropriated for targeted incentive payments to safety-net hospitals, based on performance for PPCs.

(2) HHSC evaluates performance and targeted incentive payments annually based on the actual-to-expected ratio for this category of hospitals, subject to change based on hospital performance and funds availability.

(3) Hospitals are not eligible for this incentive payment if they received a reimbursement reduction for potentially preventable readmissions or PPC within the same reporting time period.

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 June 12, 2015.

TRD-201502238
Karen Ray
General Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: July 26, 2015
For further information, please call: (512) 424-6900

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CHAPTER 355. REIMBURSEMENT RATES
SUBCHAPTER D. REIMBURSEMENT METHODOLOGY FOR INTERMEDIATE CARE FACILITIES FOR INDIVIDUALS WITH AN INTELLECTUAL DISABILITY OR RELATED CONDITIONS (ICF/IID)

1 TAC §355.456

The Texas Health and Human Services Commission (HHSC) proposes amendments to §355.456, concerning Reimbursement Methodology, to add a total Medicaid spending requirement.

Background and Justification

This rule establishes the reimbursement methodology for the Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Conditions (ICF/IID) program operated by the Texas Department of Aging and Disability Services (DADS). HHSC, under its authority and responsibility to administer and implement rates, proposes amendments to this rule to add a methodology for a total Medicaid spending requirement.

Rider 40 of the 2016-2017 General Appropriations Act (Article II, House Bill 1, 84th Legislature, Regular Session, 2015) requires HHSC to establish a system of spending accountability, in order to access increased appropriations for the ICF/IID program, that ensures each program provider expends at least 90 percent of funds received through the ICF/IID Medicaid payment rates on ICF/IID Medicaid services as captured by the provider's Medicaid cost report or is subject to a recoupment of the difference between 90 percent of funds received through the ICF/IID Medicaid payment rates and the provider's actual expenditures providing ICF/IID services to Medicaid recipients.

HHSC will use annual cost reports to calculate the costs and revenue of each provider and determine compliance with the total Medicaid spending requirement. Any provider whose contract terminates or has a change of ownership will be required to complete a report covering the period of time from the beginning of the provider's fiscal year to the official date of the termination or change of ownership.

If a provider participates in the attendant compensation rate enhancement program and is subject to a recoupment, the provider's revenue will be adjusted by the amount of the recoupment prior to determining compliance with the total Medicaid spending requirement.

Any provider who fails to meet the 90 percent spending requirement will be subject to a recoupment of the excess revenue. The contracted provider, owner, or legal entity which received the Medicaid payment is the responsible party for the repayment of the recoupment amount. Failure to repay the amount due or submit an acceptable payment plan within 60 days of notification will result in placement of a vendor hold on all HHSC and DADS contracts controlled by the responsible entity.

Section-by-Section Summary

Proposed §355.456(d)(3) clarifies an acronym used throughout the rule.

Proposed §355.456(j) adds the requirements for the Total Medicaid Spending Requirement for the ICF/IID program.

Proposed §355.456(j)(1) adds that compliance with the spending requirement is determined annually based on provider cost reports, including requirements for cost reports due to a change of ownership or contract termination.

Proposed §355.456(j)(2) clarifies how allowable costs are determined.

Proposed §355.456(j)(3) clarifies how the attendant compensation rate enhancement affects how compliance with the spending requirement is determined.

Proposed §355.456(j)(4) specifies that providers who fail to meet the 90 percent spending requirement are subject to a recoupment of the difference between the 90 percent spending requirement and their actual Medicaid allowable ICF/IID costs.

Proposed §355.456(j)(5) describes who is responsible for repayment of the recoupment amount, and the consequences for failure to do so.

Fiscal Note

Greta Rymal, Deputy Executive Commissioner for Financial Services for HHSC, has determined that during the first five-year period the amendments are in effect, there will be no fiscal impact to the state government. This determination is based on the assumption that providers currently not expending at least 90 percent of their ICF/IID Medicaid revenues on Medicaid allowable ICF/IID costs will increase their expenditures to avoid a recoupment. The amended rule will not result in any fiscal implications for local health and human services agencies. There are no fiscal implications for local governments as a result of enforcing or administering the section.

There will be an economic cost to ICF/IID providers who are not currently expending at least 90 percent of their ICF/IID Medicaid revenues on Medicaid allowable ICF/IID costs as these providers will be required to either increase their expenditures to 90 percent of their ICF/IID Medicaid revenues or be subject to a recoupment of the difference between 90 percent of their Medicaid revenues and their Medicaid allowable ICF/IID costs.

Public Benefit

Pam McDonald, Director of Rate Analysis, has determined that, for each year of the first five years the rule will be in effect, the public benefits expected as a result of enforcing the amendments will be to ensure Medicaid funds are, in general, used only for costs allowable in the Medicaid program.

Small Business and Micro-Business Impact Analysis

While providers will be paid the same Medicaid rates under the current rule and the proposed amendments, HHSC has determined that the proposed amendments may have an adverse economic impact on ICF/IID providers that meet the definition of a small or micro-business if these providers are not currently expending at least 90 percent of their ICF/IDD Medicaid revenues on ICF/IID Medicaid allowable expenses as these providers will have to either: 1) increase their expenditures to meet the spending requirement; or 2) return the difference between 90 percent of their ICF/IID Medicaid revenues and their ICF/IID Medicaid allowable expenses. However, the rider language in H.B. 1, which is quoted below, does not allow HHSC any flexibility to consider alternative methods to achieve the purpose of the proposed rule while minimizing the adverse effects on small businesses.

Rider 40(b), H.B. 1, 84th Legislature, Regular Session, 2015: *The appropriation of the amounts described in subsection (a) is contingent upon a certification by the commissioner submitted to the Legislative Budget Board and the Comptroller of Public Accounts that a system of spending accountability has been established that ensures each provider expends at least 90 percent of funds received through the ICF/IID Medicaid payment rates on ICF/IID Medicaid services as captured by the provider's Medicaid cost report or is subject to a recoupment of the difference between 90 percent of funds received through the ICF/IID Medicaid payment rates and the provider's actual expenditures providing ICF/IID services to Medicaid recipients.*

Because the proposed amendments are required by a rider adopted by the Legislature in the 2016-2017 General Appropriations Act in order for HHSC to access increased appropriations for ICF/IID rate increases, HHSC is not required to set forth alternative regulatory methods as required by Sections 2006.002(c) and 2006.002(c-1) of the Government Code.

Regulatory Analysis

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

Takings Impact Assessment

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

Public Comment

Written comments on the proposal may be submitted to Victor Perez, Rate Analysis Department, Texas Health and Human Services Commission, Mail Code H-400, P.O. Box 85200, Austin, Texas 78705-5200, by fax to (512) 730-7475, or by e-mail to victor.perez@hhsc.state.tx.us within 30 days after publication of this proposal in the *Texas Register.*

Public Hearing

A public hearing is scheduled from 3:30 p.m. to 4:30 p.m. on July 22, 2015, in the Brown-Heatly Public Hearing Room located at 4900 North Lamar Blvd, Austin, Texas 78751. Persons requiring further information, special assistance, or accommodations should contact Kristine Dahlmann at (512) 462-6299.

Statutory Authority

The amendments are proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance (Medicaid) payments under Texas Human Resources Code Chapter 32. The rule implements Texas Government Code, Chapter 531 and Texas Human Resources Code Chapter 32.

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

§355.456. Reimbursement Methodology.

(a) Types of facilities. There are two types of facilities for purposes of rate setting: state-operated and non-state operated. Facilities are further divided into classes that are determined by the size of the facility.

(b) Classes of non-state operated facilities. There is a separate set of reimbursement rates for each class of non-state operated facilities, which are as follows.

(1) Large facility--A facility with a Medicaid certified capacity of 14 or more as of the first day of the full month immediately preceding a rate's effective date or, if certified for the first time after a rate's effective date, as of the date of initial certification.

(2) Medium facility--A facility with a Medicaid certified capacity of nine through 13 as of the first day of the full month immediately preceding a rate's effective date or, if certified for the first time after a rate's effective date, as of the date of initial certification.

(3) Small facility--A facility with a Medicaid certified capacity of eight or fewer as of the first day of the full month immediately preceding a rate's effective date or, if certified for the first time after a rate's effective date, as of the date of initial certification.

(c) Classes of state-operated facilities. There is a separate interim rate for each class of state-operated facilities, which are as follows:

(1) Large facility--A facility with a Medicaid certified capacity of 17 or more as of the first day of the full month immediately preceding a rate's effective date or, if certified for the first time after a rate's effective date, as of the date of initial certification.

(2) Small facility--A facility with a Medicaid certified capacity of 16 or less as of the first day of the full month immediately preceding a rate's effective date or, if certified for the first time after a rate's effective date, as of the date of initial certification.

(d) Reimbursement rate determination for non-state operated facilities. HHSC will adopt the reimbursement rates for non-state operated facilities in accordance with §355.101 of this title (relating to Introduction) and this subchapter.

(1) Reimbursement rates combine residential and day program services, i.e., payment for the full 24 hours of daily service.

(2) Reimbursement rates are differentiated based on the level of need (LON) of the individual receiving the service. The levels of need are intermittent, limited, extensive, pervasive, and pervasive plus.

(3) The recommended modeled rates are based on cost components deemed appropriate for economically and efficiently operated services. The determination of these components is based on cost reports submitted by Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Conditions (ICF/IID) [~~ICF/IID~~] providers.

(4) Direct service workers cost area. This cost area includes direct service workers' salaries and wages, benefits, and mileage reimbursement expenses. The reimbursement rate for this cost area is calculated as specified in §355.112 of this title (relating to Attendant Compensation Rate Enhancement).

(5) Direct care trainers and job coaches cost area. This cost area includes direct care trainers' and job coaches' salaries and wages, benefits, and mileage reimbursement expenses. The reimbursement rate for this cost area is calculated as specified in §355.112 of this title.

(6) Add-on reimbursement rate. There is an available add-on reimbursement rate, in addition to the daily reimbursement rate, for certain individuals.

(A) The add-on is based on the Resource Utilization Group (RUG-III) 34 group classification system as described in §355.307 of this title (relating to Reimbursement Setting Methodology).

(B) There are three add-on groupings based on certain RUG-III 34 classification groups and the assessed Activities of Daily Living (ADL) score.

(i) Group 1 includes Extensive Services 3 (SE3), Extensive Services 2 (SE2), and Rehabilitation with ADL score of 17-18 (RAD).

(ii) Group 2 includes Rehabilitation with ADL score of 14-16 (RAC), Rehabilitation with ADL score of 10-13 (RAB), Extensive Services 1 (SE1), Special Care with ADL score of 17-18 (SSC), Special Care with ADL score of 15-16 (SSB), and Special Care with ADL score of 4-14 (SSA).

(iii) Group 3 includes Rehabilitation with ADL score of 4-9 (RAA), Clinically Complex with Depression and ADL score of 17-18 (CC2), Clinically Complex with ADL score of 17-18 (CC1), Clinically Complex with Depression and ADL score of 12-16 (CB2), Clinically Complex and ADL score of 12-16 (CB1), Clinically Complex with Depression and ADL score of 4-11 (CA2), and Clinically Complex and ADL score of 4-11 (CA1).

(C) An individual must meet the following criteria to be eligible to receive the add-on rate:

(i) be assigned a RUG-III 34 classification in Group 1, Group 2, or Group 3;

(ii) be a resident of a large state-operated facility for at least six months immediately prior to referral; and

(iii) have a LON which includes a medical LON increase as described in 40 TAC §9.241 (relating to Level of Need Criteria), but not be assessed a LON of pervasive plus.

(D) The add-on for each Group is determined based on data and costs from the most recent nursing facility cost reports accepted by HHSC.

(i) For each Group, compute the median direct care staff per diem base rate component for all facilities as specified in §355.308 of this title (relating to Direct Care Staff Rate Component); and

(ii) Subtract the average nursing portion of the current recommended modeled rates as specified in subsection (d)(3) of this section.

(e) Reimbursement determination for state-operated facilities. Except as provided in paragraph (2) of this subsection and subsection (f) of this section, state-operated facilities are reimbursed an interim rate with a settlement conducted in accordance with paragraph (1)(B) of this subsection. HHSC will adopt the interim reimbursement rates for state-operated facilities in accordance with §355.101 of this title and this subchapter.

(1) State-operated facilities certified prior to January 1, 2001, will be reimbursed using an interim reimbursement rate and settlement process.

(A) Interim reimbursement rates for state-operated facilities are based on the most recent cost report accepted by HHSC.

(B) Settlement is conducted each state fiscal year by class of facility. If there is a difference between allowable costs and the reimbursement paid under the interim rate, including applied income, for a state fiscal year, federal funds to the state will be adjusted based on that difference.

(2) A state-operated facility certified on or after January 1, 2001, will be reimbursed using a pro forma rate determined in accordance with §355.101(c)(2)(B) and §355.105(h) of this title (relating to Introduction and General Reporting and Documentation Requirements). A facility will be reimbursed under the pro forma rate methodology until HHSC receives an acceptable cost report which includes at least 12 months of the facility's cost data and is available to be included in the annual interim rate determination process.

(f) HHSC may define experimental classes of service to be used in research and demonstration projects on new reimbursement methods. Demonstration or pilot projects based on experimental classes may be implemented on a statewide basis or may be limited to a specific region of the state or to a selected group of providers. Reimbursement for an experimental class is not implemented, however, unless HHSC and the Centers for Medicare and Medicaid Services (CMS) approve the experimental methodology.

(g) Cost Reporting.

(1) Providers must follow the cost-reporting guidelines as specified in §355.105 of this title.

(2) Providers must follow the guidelines in determining whether a cost is allowable or unallowable as specified in §355.102 and §355.103 of this title (relating to General Principles of Allowable and Unallowable Costs, and Specifications for Allowable and Unallowable Costs).

(3) Revenues must be reported on the cost report in accordance with §355.104 of this title (relating to Revenues).

(h) Adjusting costs. Each provider's total reported allowable costs, excluding depreciation and mortgage interest, are projected from the historical cost-reporting period to the prospective reimbursement period as described in §355.108 of this title (relating to Determination of Inflation Indices). HHSC may adjust reimbursement if new

legislation, regulations, or economic factors affect costs, according to §355.109 of this title (relating to Adjusting Reimbursement When New Legislation, Regulations, or Economic Factors Affect Costs).

(i) Field Audit and Desk Review. Desk reviews or field audits are performed on cost reports for all contracted providers. The frequency and nature of the field audits are determined by HHSC to ensure the fiscal integrity of the program. Desk reviews and field audits will be conducted in accordance with §355.106 of this title (relating to Basic Objectives and Criteria for Audit and Desk Review of Cost Reports), and providers will be notified of the results of a desk review or a field audit in accordance with §355.107 of this title (relating to Notification of Exclusions and Adjustments). Providers may request an informal review and, if necessary, an administrative hearing to dispute an action taken under §355.110 of this title (relating to Informal Reviews and Formal Appeals).

(j) Total Medicaid Spending Requirement. Effective for costs and revenues accrued on or after September 1, 2015, all non-state operated ICF/IID providers are required to spend at least 90 percent of revenue received through the ICF/IID daily Medicaid payment rates on Medicaid allowable costs under the ICF/IID program.

(1) Compliance with the spending requirement is determined on an annual basis using cost reports as described in Chapter 355, Subchapter A, of this title (relating to Cost Determination Process) and this subchapter.

(A) When a provider changes ownership through a contract assignment, the prior owner must submit a report covering the period from the beginning of the provider's fiscal year to the effective date of the contract assignment as determined by HHSC or its designee. This report is used as the basis for determining compliance with the spending requirement.

(B) Providers whose contracts are terminated voluntarily or involuntarily must submit a report covering the period from the beginning of the provider's fiscal year to the date recognized by HHSC or its designee as the contract termination date. This report is used as the basis for determining compliance with the spending requirement.

(2) Allowable costs are those described in Chapter 355, Subchapter A, and this subchapter.

(3) The total Medicaid revenue for an ICF/IID provider participating in the attendant compensation rate enhancement is offset by any recoupment made under §355.112(s) of this title prior to determining compliance with the spending requirement.

(4) Providers who fail to meet the 90 percent spending requirement are subject to a recoupment of the difference between the 90 percent spending requirement and their actual Medicaid allowable ICF/IID costs.

(5) The contracted provider, owner, or legal entity which received the Medicaid payment is responsible for the repayment of the recoupment amount. Failure to repay the amount due or submit an acceptable payment plan within 60 days of notification results in placement of a vendor hold on all HHSC and Texas Department of Aging and Disability Services contracts controlled by the responsible entity.

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 June 12, 2015.

TRD-201502205

Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: July 26, 2015
For further information, please call: (512) 424-6900

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SUBCHAPTER F. REIMBURSEMENT METHODOLOGY FOR PROGRAMS SERVING PERSONS WITH MENTAL ILLNESS OR INTELLECTUAL OR DEVELOPMENTAL DISABILITY

1 TAC §355.723

The Texas Health and Human Services Commission (HHSC) proposes an amendment to §355.723, concerning Reimbursement Methodology for Home and Community-Based Services and Texas Home Living Programs, to add a total Medicaid spending requirement.

Background and Justification

This rule establishes the reimbursement methodology for the Home and Community-based Services (HCS) and Texas Home Living (TxHmL) waiver programs operated by the Texas Department of Aging and Disability Services (DADS). HHSC, under its authority and responsibility to administer and implement rates, proposes an amendment to this rule to add a methodology for a total Medicaid spending requirement.

Rider 39 of the 2016-2017 General Appropriations Act (Article II, House Bill 1, 84th Legislature, Regular Session, 2015) requires HHSC to establish a system of spending accountability, in order to access increased appropriations for the HCS program, that ensures each HCS provider (not limited to those receiving a rate increase) expends at least 90 percent of all funds received through the HCS Medicaid payment rates on HCS Medicaid services as captured by the provider's Medicaid cost report or is subject to a recoupment of the difference between 90 percent of funds received through the HCS Medicaid payment rates and the provider's actual expenditures providing HCS services to Medicaid recipients.

Although Rider 39 does not reference the TxHmL program, the spending accountability requirement in the proposed rule amendment applies to both HCS and TxHmL services, since Medicaid providers who deliver both HCS and TxHmL services submit annual cost report data within a single cost report. Excluding TxHmL from the spending accountability requirement would cause an administrative burden on the provider community and HHSC, as separate cost reports would be required to be submitted in order to exclude TxHmL revenues and costs from the spending accountability requirements.

HHSC will use annual cost reports to calculate the costs and revenue of each provider and determine compliance with the total Medicaid spending requirement. Any provider whose contract terminates or has a change of ownership will be required to complete a report covering the period of time from the beginning of the provider's fiscal year to the official date of the termination or change of ownership.

If a provider participates in the attendant compensation rate enhancement program and is subject to a recoupment, the

provider's revenue will be adjusted by the amount of the recoupment prior to determining compliance with the total Medicaid spending requirement.

Any provider who fails to meet the 90 percent spending requirement will be subject to a recoupment of the excess revenue. The contracted provider, owner, or legal entity which received the Medicaid payment is the responsible party for the repayment of the recoupment amount. Failure to repay the amount due or submit an acceptable payment plan within 60 days of notification will result in placement of a vendor hold on all HHSC and DADS contracts controlled by the responsible entity.

Section-by-Section Summary

Proposed §355.723(a) clarifies an acronym used throughout the rule.

Proposed §355.723(f) adds the requirements for the Total Medicaid Spending Requirement for the HCS and TxHmL programs.

Proposed §355.723(f)(1) adds that compliance with the spending requirement is determined on an annual basis using provider cost reports, including the requirement for a cost report when there is a change of ownership or a contract termination.

Proposed §355.723(f)(2) clarifies how allowable costs are determined.

Proposed §355.723(f)(3) explains how revenue calculation is adjusted for a provider participating in the attendant compensation rate enhancement.

Proposed §355.723(f)(4) clarifies that revenue and costs for the HCS and TxHmL waiver programs are combined for a component code for determination of compliance with the spending requirement.

Proposed §355.723(f)(5) adds that providers who fail to meet the 90 percent spending requirement are subject to a recoupment of the difference between the 90 percent spending requirement and their actual Medicaid allowable HCS and TxHmL costs.

Proposed §355.723(f)(6) adds information regarding the repayment of a recoupment amount, and the consequences for failure to repay the amount due or submit an acceptable payment plan within 60 days of notification.

Proposed §355.723(f)(7) adds information regarding how a provider pays a recoupment amount.

Fiscal Note

Greta Rymal, Deputy Executive Commissioner for Financial Services for HHSC, has determined that during the first five-year period the amendment is in effect, there will be no fiscal impact to the state government. This determination is based on the assumption that providers currently not expending at least 90 percent of their HCS and TxHmL Medicaid revenues on Medicaid allowable HCS and TxHmL costs will increase their expenditures to avoid a recoupment. The amended rule will not result in any fiscal implications for local health and human services agencies. There are no fiscal implications for local governments as a result of enforcing or administering the section.

There will be an economic cost to HCS and TxHmL providers who are not currently expending at least 90 percent of their HCS and TxHmL Medicaid revenues on Medicaid allowable HCS and TxHmL costs as these providers will be required to either increase their expenditures to 90 percent of their HCS and TxHmL Medicaid revenues or be subject to a recoupment of the difference between 90 percent of their Medicaid revenues and their Medicaid allowable HCS and TxHmL costs.

Public Benefit

Pam McDonald, Director of Rate Analysis, has determined that, for each year of the first five years the rule will be in effect, the public benefits expected as a result of enforcing the amendment will be to ensure Medicaid funds are, in general, used only for costs allowable in the Medicaid program.

Small Business and Micro-Business Impact Analysis

While providers will be paid the same Medicaid rates under the current rule and the proposed amendment, HHSC has determined that the amendment may have an adverse economic impact on HCS and TxHmL providers that meet the definition of a small or micro-business if these providers are not currently expending at least 90 percent of their HCS and TxHmL Medicaid revenues on HCS and TxHmL Medicaid allowable expenses as these providers will have to either: 1) increase their expenditures to meet the spending requirement; or 2) return the difference between 90 percent of their HCS and TxHmL Medicaid revenues and their HCS and TxHmL Medicaid allowable expenses. However, the rider language in H.B. 1, which is quoted below, does not allow HHSC any flexibility to consider alternative methods to achieve the purpose of the proposed rule while minimizing the adverse effects on small businesses.

Rider 39, H.B. 1, 84th Legislature, Regular Session, 2015: *The appropriation of the amounts described in subsection (a) is contingent upon a certification by the commissioner submitted to the Legislative Budget Board and the Comptroller of Public Accounts that a system of spending accountability has been established that ensures each provider expends at least 90 percent of funds received through the HCS Medicaid payment rates (not limited to those receiving a rate increase) on HCS Medicaid services as captured by the provider's Medicaid cost report or is subject to a recoupment of the difference between 90 percent of funds received through the HCS Medicaid payment rates and the provider's actual expenditures providing HCS services to Medicaid recipients.*

Because the proposed amendment is required by a rider adopted by the Legislature in the 2016-2017 General Appropriations Act in order for HHSC to access increased appropriations for HCS rate increases, HHSC is not required to set forth alternative regulatory methods as required by Sections 2006.002(c) and 2006.002(c-1) of the Government Code.

The only alternative regarding the inclusion of TxHmL revenues and allowable expenses under the spending requirement would be to exclude these revenues and expenses from the spending requirement calculations. As indicated above, this alternative would increase the administrative burden on all entities that provide both HCS and TxHmL services, even those already meeting the spending requirement because all of these entities would be required to segregate their TxHmL revenues and expenditures from their HCS revenues and expenditures as part of their accounting process and to complete two separate annual cost reports.

Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. A "major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may

adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

Takings Impact Assessment

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

Public Comment

Written comments on the proposal may be submitted to Victor Perez, Rate Analysis Department, Texas Health and Human Services Commission, Mail Code H-400, P.O. Box 85200, Austin, Texas 78705-5200, by fax to (512) 730-7475, or by e-mail to victor.perez@hhsc.state.tx.us within 30 days after publication of this proposal in the *Texas Register.*

Public Hearing

A public hearing is scheduled from 3:30 p.m. to 4:30 p.m. on July 22, 2015, in the Brown-Heatly Public Hearing Room located at 4900 North Lamar Blvd, Austin, Texas 78751. Persons requiring further information, special assistance, or accommodations should contact Kristine Dahlmann at (512) 462-6299.

Statutory Authority

The amendment is proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance (Medicaid) payments under Texas Human Resources Code Chapter 32. The rule implements Texas Government Code, Chapter 531 and Texas Human Resources Code Chapter 32.

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

§355.723. Reimbursement Methodology for Home and Community-Based Services and Texas Home Living Programs.

(a) Prospective payment rates. The Texas Health and Human Services Commission (HHSC) sets payment rates to be paid prospectively to Home and Community-based Services (HCS) and Texas Home Living (TxHmL) providers.

(b) Levels of need.

(1) Variable rates. Rates vary by level of need for the following services: Residential Support Services, Supervised Living, Foster/Companion Care, and HCS Day Habilitation.

(2) Non-variable rates. Rates do not vary by level of need for the following services: Supported Home Living, Community Support Services, Supported Employment, Employment Assistance, Respite, RN, LVN, Dietary, Behavioral Support, Physical Therapy, Occupational Therapy, Speech Therapy, Audiology, Cognitive Rehabilitative Therapy, and Social Work. Rates for TxHmL Day Habilitation will be equal to HCS level of need five Day Habilitation rates.

(c) Recommended rates. The recommended modeled rates are determined for each HCS and TxHmL service listed in subsection (b)(1) - (2) of this section by type and, for services listed in subsection (b)(1) of this section, by level of need to include the following cost components: direct care worker staffing costs (wages, benefits, modeled staffing ratios for direct care workers, direct care trainers and job coaches), other direct service staffing costs (wages for direct care supervisors, benefits, modeled staffing ratios); facility costs (for respite care only); room and board costs for overnight, out-of-home respite care; administration and operation costs; and professional consultation and program support costs. The determination of all components except for the direct care worker staffing costs component is based on cost reports submitted by HCS and TxHmL providers in accordance with §355.722 of this subchapter (relating to Reporting Costs by Home and Community-based Services (HCS) and Texas Home Living (TxHmL) Providers). The determination of the direct care worker staffing costs component is calculated as specified in §355.112 of this title (relating to Attendant Compensation Rate Enhancement).

(d) Administration and operation cost component. The administration and operation cost component included in the recommended rates described in subsection (c) of this section for each HCS and TxHmL service type is determined as follows.

(1) Step 1. Determine total projected administration and operation costs and projected units of service by service type using cost reports submitted by HCS and TxHmL providers in accordance with §355.722 of this subchapter.

(2) Step 2. Determine the foster/companion care coordinator component of the foster/companion care rate as follows. For fiscal years 2010 through 2013, this component will be modeled using the weighted average foster/companion care coordinator wage as reported on the most recently available, reliable audited HCS cost report database plus 10.25 percent for payroll taxes and benefits inflated to the rate period and a consumer to foster/companion care coordinator ratio of 1:15. For fiscal year 2014 and thereafter, this component will be determined by summing total reported foster/companion care coordinator wages and allocated payroll taxes and benefits from the most recently available audited cost report, inflating those costs to the rate period and dividing the resulting product by the total number of foster care units of service reported on that cost report.

(3) Step 3. Determine total foster/companion care coordinator dollars as follows. Multiply the foster/companion care coordinator component of the foster/companion care rate from paragraph (2) of this subsection by the total number of foster care units of service reported on the most recently available, reliable audited HCS cost report database.

(4) Step 4. Determine total projected administration and operation costs after offsetting total foster/companion care coordinator dollars as follows. Subtract the total foster/companion care coordinator dollars from paragraph (3) of this subsection from the total projected administration and operation costs from paragraph (1) of this subsection.

(5) Step 5. Determine projected weighted units of service for each HCS and TxHmL service type as follows:

(A) Supervised Living and Residential Support Services in HCS. Projected weighted units of service for Supervised Living and Residential Support Services equal projected Supervised Living and Residential Support units of service times a weight of 1.00;

(B) Day Habilitation in HCS and TxHmL. Projected weighted units of service for Day Habilitation equal projected Day Habilitation units of service times a weight of 0.25;

(C) Foster/Companion Care in HCS. Projected weighted units of service for Foster/Companion Care equal projected Foster/Companion Care units of service times a weight of 0.50;

(D) Supported Home Living in HCS and Community Support Services in TxHmL. Projected weighted units of service for Supported Home Living equal projected Supported Home Living units of service times a weight of 0.30;

(E) Respite in HCS and TxHmL. Projected weighted units of service for Respite equal projected Respite units of service times a weight of 0.20;

(F) Supported Employment in HCS and TxHmL. Projected weighted units of service for Supported Employment equal projected Supported Employment units of service times a weight of 0.25;

(G) Behavioral Support in HCS and TxHmL. Projected weighted units of service for Behavioral Support equal projected Behavioral Support units of service times a weight of 0.18;

(H) Physical Therapy, Occupational Therapy, Speech Therapy, Audiology, and Cognitive Rehabilitative Therapy in HCS and TxHmL. Projected weighted units of service for Physical Therapy, Occupational Therapy, Speech Therapy, Audiology, and Cognitive Rehabilitative Therapy equal projected Physical Therapy, Occupational Therapy, Speech Therapy, Audiology, and Cognitive Rehabilitative Therapy units of service times a weight of 0.18;

(I) Social Work in HCS. Projected weighted units of service for Social Work equal projected Social Work units of service times a weight of 0.18;

(J) Nursing in HCS and TxHmL. Projected weighted units of service for Nursing equal projected Nursing units of service times a weight of 0.18;

(K) Employment Assistance in HCS and TxHmL. Projected weighted units of service for Employment Assistance equal projected Employment Assistance units of service times a weight of 0.25; and

(L) Dietary in HCS and TxHmL. Projected weighted units of service for Dietary equal projected Dietary units of service times a weight of 0.18.

(6) Step 6. Calculate total projected weighted units of service by summing the projected weighted units of service from paragraph (5)(A) - (L) of this subsection.

(7) Step 7. Calculate the percent of total administration and operation costs to be allocated to the service type by dividing the projected weighted units for the service type from paragraph (5) of this subsection by the total projected weighted units of service from paragraph (6) of this subsection.

(8) Step 8. Calculate the total administration and operation cost to be allocated to that service type by multiplying the percent of total administration and operation costs allocated to the service type from paragraph (7) of this subsection by the total administration and operation costs after offsetting total foster/companion care coordinator dollars from paragraph (4) of this subsection.

(9) Step 9. Calculate the administration and operation cost component per unit of service for each HCS and TxHmL service type by dividing the total administration and operation cost to be allocated to that service type from paragraph (8) of this subsection by the projected units of service for that service type from paragraph (1) of this subsection.

(10) Step 10. Effective September 1, 2011, the administration and operation cost component per unit of service for Supported Home Living in HCS is equal to five dollars.

(11) Step 11. For fiscal years 2012 and 2013, the foster/companion care coordinator component of the foster/companion care rate will be remodeled using a consumer to foster/companion care coordinator ratio of 1:20. This remodeling will be performed after the administration and operation cost component per unit of service for each HCS and TxHmL service type is calculated as described in paragraph (9) of this subsection.

(e) Refinement and adjustment. Refinement/adjustment of the cost components and model assumptions will be considered, as appropriate, by HHSC.

(f) Total Medicaid Spending Requirement. Effective for costs and revenues accrued on or after September 1, 2015, all HCS and TxHmL providers are required to spend at least 90 percent of revenue received through the HCS and TxHmL waiver programs' Medicaid payment rates on Medicaid allowable costs under these programs.

(1) Compliance with the spending requirement is determined on an annual basis using cost reports as described in Chapter 355, Subchapter A, of this title (relating to Cost Determination Process) and this subchapter.

(A) When a provider changes ownership through a contract assignment, the prior owner must submit a report covering the period from the beginning of the provider's fiscal year to the effective date of the contract assignment as determined by HHSC or its designee. This report is used as the basis for determining compliance with the spending requirement.

(B) Providers whose contracts are terminated voluntarily or involuntarily must submit a report covering the period from the beginning of the provider's fiscal year to the date recognized by HHSC or its designee as the contract termination date. This report is used as the basis for determining compliance with the spending requirement.

(2) Allowable costs are those described in Chapter 355, Subchapter A, and this subchapter.

(3) The total Medicaid revenue for an HCS or TxHmL provider participating in the attendant compensation rate enhancement is offset by any recoupment made under §355.112(s) of this title prior to determining compliance with the spending requirement.

(4) Revenue and costs for the HCS and TxHmL waiver programs are combined for a component code for determination of compliance with the spending requirement.

(5) Providers who fail to meet the 90 percent spending requirement are subject to a recoupment of the difference between the 90 percent spending requirement and their actual Medicaid allowable HCS and TxHmL costs.

(6) The contracted provider, owner, or legal entity which received the Medicaid payment is responsible for the repayment of the recoupment amount. Failure to repay the amount due or submit an acceptable payment plan within 60 days of notification results in placement of a vendor hold on all HHSC and Texas Department of Aging and Disability Services contracts controlled by the responsible entity.

(7) If HHSC, or its designee, is unable to recoup owed funds using an automated system, providers are required to repay some or all of the funds to be recouped through a check, money order or other non-automated method. Providers are required to submit the required repayment amount within 60 days of notification.

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

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SUBCHAPTER G. ADVANCED TELECOMMUNICATIONS SERVICES AND OTHER COMMUNITY-BASED SERVICES

1 TAC §355.7001

The Texas Health and Human Services Commission (HHSC) proposes amendments to §355.7001, concerning Reimbursement Methodology for Telemedicine, Telehealth, and Home Telemonitoring Services.

Background and Justification

The proposed rule amendment is a result of House Bill (H.B.) 1878, 84th Legislature, Regular Session, 2015, which clarifies that physicians shall be reimbursed for telemedicine medical services provided in a school-based setting even if the physician is not the patient's primary care physician, if certain conditions are met. The proposed amendment updates the Medicaid reimbursement methodology rules for those services to reflect the additional conditions for reimbursement.

Section-by-Section Summary

Proposed §355.7001 adds subsection (f) which indicates that telemedicine medical services provided in a school-based setting by a physician, even if the physician is not the patient's primary care physician, will be reimbursed in accordance with the applicable methodologies described in subsection (b)(1) cited in this section and §355.8443 of this title (relating to Reimbursement Methodology for School Health and Related Services (SHARS)) if the following conditions are met:

(1) the physician is an authorized health care provider under Medicaid;

(2) the patient is a child who receives the service in a primary or secondary school-based setting;

(3) the parent or legal guardian of the patient provides consent before the service is provided; and

(4) a health professional as defined by Government Code §531.0217(a)(1) is present with the patient during the treatment

Fiscal Note

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

Small and Micro-business Impact Analysis

Ms. Rymal has also determined that there will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing or administering the amendments because the providers will not be required to alter current business practices.

Public Benefit

Pam McDonald, Director of Rate Analysis, has determined that for each of the first five years the amendment is in effect, the expected public benefit is increased public understanding of the way in which the Health and Human Services Commission determines reimbursement for telemedicine, telehealth and telemonitoring services.

Ms. Rymal does not anticipate that there will be any economic cost to persons who are required to comply with the proposed amendment during the first five years the rules will be in effect. The amendment will not affect local employment.

Regulatory Analysis

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

Takings Impact Assessment

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

Public Comment

Written comments on the proposal may be submitted to Dan Huggins, Director of Acute Care, Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 149030, MC-H400, Austin, Texas 78714-9030; by fax to (512) 730-7475; or by e-mail to Dan.Huggins@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register.*

Statutory Authority

The amendments are proposed under Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out the commission's duties; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Human Resources Code, Chapter 32.

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

§355.7001. Reimbursement Methodology for Telemedicine, Telehealth, and Home Telemonitoring Services.

(a) Eligible providers performing telemedicine medical, telehealth, or home telemonitoring services are defined in §354.1430 of this title (relating to Definitions), §354.1432 of this title (relating to Telemedicine and Telehealth Benefits and Limitations), and §354.1434 of this title (relating to Home Telemonitoring Benefits and Limitations).

(b) The Health and Human Services Commission (HHSC) reimburses eligible distant site professionals providing telemedicine medical services as follows:

(1) Physicians are reimbursed for their Medicaid telemedicine medical services in the same manner as their other professional services in accordance with §355.8085 of this title (relating to Reimbursement Methodology for Physicians and Other Practitioners).

(2) Physician assistants are reimbursed for their Medicaid telemedicine medical services in the same manner as their other professional services in accordance with §355.8093 of this title (relating to Physician Assistants).

(3) Advanced practice registered nurses are reimbursed for their Medicaid telemedicine medical services in the same manner as their other professional services in accordance with §355.8281 of this title (relating to Reimbursement Methodology).

(4) Certified nurse midwives are reimbursed for their Medicaid telemedicine medical services in the same manner as their other professional services in accordance with §355.8161 of this title (relating to Reimbursement Methodology for Midwife Services).

(c) HHSC reimburses eligible distant site professionals providing telehealth services as follows:

(1) Licensed professional counselors (including licensed marriage and family therapists) and licensed clinical social workers (including Comprehensive Care Program social workers) are reimbursed for their Medicaid telehealth services in the same manner as their other professional services in accordance with §355.8091 of this title (relating to Reimbursement to Licensed Professional Counselors, Licensed Master Social Worker-Advanced Clinical Practitioners, and Licensed Marriage and Family Therapists).

(2) Licensed psychologists (including licensed psychological associates) and psychology groups are reimbursed for their Medicaid telehealth services in the same manner as their other professional services in accordance with §355.8085 of this title (relating to Reimbursement Methodology for Physicians and Other Practitioners).

(3) Durable medical equipment suppliers are reimbursed for their Medicaid telehealth services in the same manner as their other professional services in accordance with §355.8021 of this title (relating to Reimbursement Methodology for Home Health Services and Durable Medical Equipment, Prosthetics, Orthotics and Supplies).

(d) Telemedicine and telehealth patient site locations, as defined in §354.1430 and §354.1432 of this title, are reimbursed a facility fee determined by HHSC.

(e) HHSC reimburses eligible providers performing home telemonitoring services in the same manner as their other professional services described in §355.8021 of this title.

(f) Telemedicine medical services provided in a school-based setting by a physician, even if the physician is not the patient's primary care physician, will be reimbursed in accordance with the applicable methodologies described in subsection (b)(1) of this section and §355.8443 of this title (relating to Reimbursement Methodology for School Health and Related Services (SHARS)) if the following conditions are met:

(1) the physician is an authorized health care provider under Medicaid;

(2) the patient is a child who receives the service in a primary or secondary school-based setting;

(3) the parent or legal guardian of the patient provides consent before the service is provided; and

(4) a health professional as defined by Government Code §531.0217(a)(1) is present with the patient during the treatment.

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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Karen Ray
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SUBCHAPTER H. REIMBURSEMENT METHODOLOGY FOR 24-HOUR CHILD CARE FACILITIES

1 TAC §355.7103

The Texas Health and Human Services Commission (HHSC) proposes an amendment to §355.7103, concerning Rate-Setting Methodology for 24-Hour Residential Child-Care Reimbursements, to add a reimbursement methodology for payment rates effective September 1, 2015.

Background and Justification

HHSC, under its authority and responsibility to administer and implement rates, is proposing changes to this rule to outline how the 24-Hour Residential Child-Care (24-RCC) rates effective September 1, 2015, will be determined. The proposed amendment will adjust payment rates for the 24-RCC program to comply with the 2016-2017 General Appropriations Act (DFPS Rider 42, Article II, Health and Human Services, 84th Legislature, Regular Session, 2015), which appropriated general revenue funds for provider rate increases for this program.

Section-by-Section Summary

The proposed amendments to §355.7103 are as follows:

Amend subsection (p) to state that beginning September 1, 2015, the rates for psychiatric step-down services will be equal to rate effective August 31, 2015:

Amend subsection (q) to describe the rates effective September 1, 2015:

For Child Placing Agencies (CPAs), the rates for the CPA retainage for each level of service will be equal to the rate paid to CPAs for the CPA retainage for that level of service in effect August 31, 2015, plus 5.1 percent. Retainage is the portion of the rate that includes the CPA's costs for administering the service, including but not limited to recruiting and training foster families,

matching children with foster families, monitoring foster families and foster homes and the associated overhead costs;

For General Residential Operations (GROs) and Residential Treatment Centers (RTCs), the rates for the specialized level of service will be equal to the rate paid to GROs and RTCs for the specialized level of service in effect August 31, 2015, plus 9.58 percent, the rates for the intense level of service will be equal to the rate paid to GROs and RTCs for the intense level of service in effect August 31, 2015, plus 0.3 percent and rates for the remaining levels of service will be equal to the rates in effect August 31, 2015, with no increase; and

For facilities providing emergency care services, the rate will be equal to the rate in effect August 31, 2015, plus 6.0 percent.

Fiscal Note

Greta Rymal, Deputy Executive Commissioner for Financial Services for HHSC, has determined that, for each year of the first five years the proposed rule will be in effect, there will be a fiscal impact to the state government of $4,957,132 for state fiscal year (SFY) 2016, $4,957,132 for SFY 2017, $4,957,132 for SFY 2018, $4,957,132 for SFY 2019, and $4,957,132 for SFY 2020. There are no fiscal implications for local governments as a result of enforcing or administering the amendment.

Ms. Rymal does not anticipate that there will be any economic costs to persons who are required to comply with the proposed amendment during the first five years the rule will be in effect. The amendment will not affect local employment.

Small Business and Micro-Business Impact Analysis

HHSC has determined that there is no adverse economic effect on small businesses or micro-businesses as a result of enforcing or administering the amendment. The implementation of the proposed amendment does not require any change in practice or any additional cost to the contracted provider.

Public Benefit

Pam McDonald, Director of Rate Analysis, has determined that, for each year of the first five years the amendment will be in effect, the public benefits expected as a result of this amendment will be to incorporate legislative intent leading to a payment rate increase for certain providers in the 24-RCC program.

Regulatory Analysis

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

Takings Impact Assessment

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

Public Comment

Written comments on the proposal may be submitted to Sarah Hambrick, Senior Rate Analyst, Rate Analysis Department, Texas Health and Human Services Commission, Mail Code H-400, P.O. Box 85200, Austin, Texas 78705-5200, by fax to (512) 730-7475, or by e-mail to sarah.hambrick@hhsc.state.tx.us within 30 days after publication of this proposal in the *Texas Register.*

Statutory Authority

The amendment is proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority. The amendment implements Texas Government Code Chapter 531.

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

§355.7103. Rate-Setting Methodology for 24-Hour Residential Child-Care Reimbursements.

(a) The following is the authority and process for determining payment rates:

(1) For payment rates established prior to September 1, 2005, the Department of Family and Protective Services (DFPS; formerly the Department of Protective and Regulatory Services) reviewed payment rates for providers of 24-hour residential child care services every other year in an open meeting, after considering financial and statistical information, DFPS rate recommendations developed according to the provisions of this subchapter, legislative direction, staff recommendations, agency service demands, public testimony, and the availability of appropriated revenue. Before the open meeting in which rates were presented for adoption, DFPS sent rate packets containing the proposed rates and average inflation factor amounts to provider association groups. DFPS also sent rate packets to any other interested party, by written request. Providers who wished to comment on the proposed rates could attend the open meeting and give public testimony. Notice of the open meeting was published on the Secretary of State's web site at http://www.sos.state.tx.us/open. DFPS notified all foster care providers of the adopted rates by letter.

(2) For payment rates established September 1, 2005 and thereafter, the Health and Human Services Commission (HHSC) approves rates that are statewide and uniform. In approving rate amounts HHSC takes into consideration staff recommendations based on the application of formulas and procedures described in this chapter. However, HHSC may adjust staff recommendations when HHSC deems such adjustments are warranted by particular circumstances likely to affect achievement of program objectives, including economic conditions and budgetary considerations. Reimbursement amounts will be determined coincident with the state's biennium. HHSC will hold a public hearing on proposed reimbursements before HHSC approves reimbursements. The purpose of the hearing is to give interested parties an opportunity to comment on the proposed reimbursements. Notice of the hearing will be provided to the public. The notice of the public hearing will identify the name, address, and telephone number to contact for the materials pertinent to the proposed reimbursements. At least ten working days before the public hearing takes place, material pertinent to the proposed statewide uniform reimbursements will be made available to the public. This material will be furnished to anyone who requests it.

(b) For payment rates in effect for state fiscal year (SFY) 2002 and 2003, DFPS develops rate recommendations for Board consideration for foster homes serving Levels of Care 1 through 4 children as follows:

(1) For all Level of Care 1 rates, DFPS analyzes the most recent statistical data available on expenditures for a child published

by the United States Department of Agriculture (USDA) from middle income, dual parent households for the "Urban South." USDA data includes costs for age groupings from 0 to 17 years of age. An age differential is included with one rate for children ages 0-11 years, and another rate for children 12 years and older. Foster homes providing services to Level of Care 1 children receive the rate that corresponds to the age of the child in care.

(A) DFPS excludes health care costs, as specified in the USDA data, from its calculations since Medicaid covers these costs. USDA specified child-care and education costs are also excluded since these services are available in other DFPS day-care programs.

(B) DFPS includes the following cost categories for both age groups as specified in the USDA data: housing, food, transportation, clothing, and miscellaneous.

(C) The total cost per day is projected using the Implicit Price Deflator-Personal Consumption Expenditures (IPD-PCE) Index from the period covered in the USDA statistics to September 1 of the second year of the biennium, which is the middle of the biennium that the rate period covers. Information on inflation factors is specified in subsection (h) of this section.

(2) For Levels of Care 2 through 4 rates, DFPS analyzes the information submitted in audited foster home cost surveys and related documentation in the following ways:

(A) A statistically valid sample of specialized (therapeutic, habilitative, and primary medical) foster homes complete a cost survey covering one month of service if they meet the following criteria:

(i) the foster home currently has a DFPS foster child(ren) residing in the home; and

(ii) the number of children in the home, including the children of the foster parents, is 12 or fewer.

(B) For rates covering the fiscal year 2002-2003 biennium, child-placing agency homes are the only foster homes that complete a cost survey because the children they serve are currently assigned levels of care verified by an independent contractor. By September 1, 2001, children served in DFPS specialized foster homes will also be assigned levels of care verified by an independent contractor. All future sample populations completing a one-month foster home cost survey will include both child-placing agency and DFPS specialized foster homes. As referenced in subsection (j) of this section, during the 2004-2005 biennium, when the rate methodology is fully implemented, DFPS specialized foster homes and child-placing agency foster homes will be required to receive at a minimum the same foster home rate as derived by this subsection.

(C) Cost categories included in the one-month foster home cost survey include:

(i) shared costs, which are costs incurred by the entire family unit living in the home, such as mortgage or rent expense and utilities;

(ii) direct foster care costs, which are costs incurred for DFPS foster children only, such as clothing and personal care items. These costs are tracked and reported for the month according to the level of care of the child; and

(iii) administrative costs that directly provide for DFPS foster children, such as child-care books, and dues and fees for associations primarily devoted to child care.

(D) A cost per day is calculated for each cost category and these costs are combined for a total cost per day for each level of care served.

(E) A separate sample population is established for each type of specialized foster home (therapeutic, habilitative, and primary medical). Each level of care maintenance rate is established by the sample population's central tendency, which is defined as the mean, or average, of the population after applying two standard deviations above and below the mean of the total population.

(F) The rates calculated for each type of specialized foster home are averaged to derive one foster care maintenance rate for each of the Levels of Care 2 through 4.

(G) The total cost per day is projected using the IPD-PCE Index from the period covered in the cost report to September 1 of the second year of the biennium, which is the middle of the biennium that the rate period covers. Information on inflation factors is specified in subsection (h) of this section.

(c) For payment rates in effect for state fiscal year (SFY) 2002 and 2003, DFPS develops rate recommendations for Board consideration for child-placing agencies serving Levels of Care 1 through 4 children as follows:

(1) The rate-setting model defined in subsection (g) of this section is applied to child-placing agencies' cost reports to calculate a daily rate.

(2) At a minimum, child-placing agencies are required to pass through the applicable foster home rate derived from subsection (b) of this section to their foster homes. The remaining portion of the rate is provided for costs associated with case management, treatment coordination, administration, and overhead.

(3) For rate-setting purposes, the following facility types are included as child-placing agencies and will receive the child-placing agency rate:

(A) child-placing agency;

(B) independent foster family/group home;

(C) independent therapeutic foster family/group home;

(D) independent habilitative foster family/group home; and

(E) independent primary medical needs foster family/group home.

(d) For payment rates in effect for state fiscal year (SFY) 2002 and 2003, DFPS develops rate recommendations for Board consideration for residential care facilities serving Levels of Care 1 through 6 as follows:

(1) For Levels of Care 1 and 2, DFPS applies the same rate paid to child-placing agencies as recommended in subsection (c) of this section.

(2) For Levels of Care 3 through 6, the rate-setting model defined in subsection (g) of this section is applied to residential care facilities' cost reports to calculate a daily rate.

(3) For rate-setting purposes, the following facility types are included as residential care facilities and will receive the residential care facility rate:

(A) residential treatment center;

(B) therapeutic camp;

(C) institution for mentally retarded;

(D) basic care facility;

(E) halfway house; and

(F) maternity home.

(e) For payment rates in effect for state fiscal year (SFY) 2002 and 2003, DFPS develops rate recommendations for Board consideration for emergency shelters as follows:

(1) DFPS analyzes emergency shelter cost report information included within the rate-setting population defined in subsection (f) of this section. Emergency shelter costs are not allocated across levels of care since, for rate-setting purposes, all children in emergency shelters are considered to be at the same level of care.

(2) For each cost report in the rate-setting population, the total costs are divided by the total number of days of care to calculate a daily rate.

(3) The total cost per day is projected using the IPD-PCE Index from the period covered in the cost report to September 1 of the second year of the biennium, which is the middle of the biennium that the rate period covers. Information on inflation factors is specified in subsection (h) of this section.

(4) The emergency shelter rate is established by the population's central point or central tendency. The measure of central tendency is defined as the mean, or average, of the population after applying two standard deviations above and below the mean of the total population.

(f) For payment rates in effect for state fiscal year (SFY) 2002 and 2003, level of care rates for contracted providers including child-placing agencies, residential care facilities, and emergency shelters are dependent upon provider cost report information. The following criteria applies to this cost report information:

(1) DFPS excludes the expenses specified in §700.1805 and §700.1806 of this title (relating to Unallowable Costs and Costs Not Included in Recommended Payment Rates). Exclusions and adjustments are made during audit desk reviews and on-site audits.

(2) DFPS includes therapy costs in its recommended payment rates for emergency shelters and for Levels of Care 3 through 6, and these costs will be considered as allowable costs for inclusion on the provider's annual cost report, only if one of the following conditions applies. The provider must access Medicaid for therapy for children in their care unless:

(A) the child is not eligible for Medicaid or is transitioning from Medicaid Managed Care to fee-for-service Medicaid;

(B) the necessary therapy is not a service allowable under Medicaid;

(C) service limits have been exhausted and the provider has been denied an extension;

(D) there are no Medicaid providers available within 45 miles that meet the needs identified in the service plan to provide the therapy; or

(E) it is essential and in the child's best interest for a non-Medicaid provider to provide therapy to the child and arrange for a smooth coordination of services for a transition period not to exceed 90 days or 14 sessions, whichever is less. Any exception beyond the 90 days or 14 sessions must be approved by DFPS before provision of services.

(3) DFPS may exclude from the database any cost report that is not completed according to the published methodology and the specific instructions for completion of the cost report. Reasons for exclusion of a cost report from the database include, but are not limited to:

(A) receiving the cost report too late to be included in the database;

(B) low occupancy;

(C) auditor recommended exclusions;

(D) days of service errors;

(E) providers that do not participate in the level of care system;

(F) providers with no public placements;

(G) not reporting costs for a full year;

(H) using cost estimates instead of actual costs;

(I) not using the accrual method of accounting for reporting information on the cost report;

(J) not reconciling between the cost report and the provider's general ledger; and

(K) not maintaining records that support the data reported on the cost report.

(4) DFPS requires all contracted providers to submit a cost report unless they meet one or more of the conditions in §355.105(b)(4)(D) of this title (relating to General Reporting and Documentation Requirements, Methods, and Procedures).

(g) For payment rates in effect for state fiscal year (SFY) 2002 and 2003, a rate-setting model is applied to child-placing agencies' and residential care facilities' cost report information included within the rate-setting population defined in subsection (f) of this section. Three allocation methodologies are used in the rate-setting model to allocate allowable costs among the levels of care of children that are served. The methodologies are explained below and are applied as follows:

(1) The first methodology is a staffing model, validated by a statistically valid foster care time study, driven by the number of direct care and treatment coordination staff assigned to a child-placing agency or residential care facility to care for the children at different levels of care. The staffing model produces a staffing complement that is applied to direct care costs to allocate the costs among the levels of care.

(A) Staff positions reported on the direct care labor area of the cost report are grouped into the following categories to more clearly define the staffing complement required at each level of care:

(i) case management;

(ii) treatment coordination;

(iii) direct care;

(iv) direct care administration; and

(v) medical.

(B) A categorized staffing complement for each Level of Care 1 through 6 is derived as follows:

(i) A 14-day foster care time study is applied to a representative sample of residential care facilities and child-placing agencies that completed a cost report.

(ii) Contracted staff, or employees, within the sampled facilities complete a foster care time study daily activity log that assigns half-hour units of each employee's time to the individual child(ren) with whom the employee is engaged during the time period.

By correlating the distribution of the employee's time with the level of care assigned to each child, the employee's time is distributed across the Levels of Care 1 through 6.

(iii) The foster care time study daily activity log also captures the type of activity performed. The total amount of time spent in each of these activities is a component in determining the number of staff needed in each of the categories included in the staffing complement. The activities performed include:

(I) care and supervision;

(II) treatment planning and coordination;

(III) medical treatment and dental care; and

(IV) other (administrative, managerial, training functions, or personal time).

(iv) An analysis of the cumulative frequency distribution of these time units by level of care of all children served in the sample population, by category of staff performing the activity, and by type of activity, establishes appropriate staffing complements for each level of care in child-placing agencies and in residential care facilities. These time units by level of care are reported as values that represent the equivalent of a full-time employee. The results are reported in the following chart for incorporation into the rate-setting model:
Figure: 1 TAC §355.7103(g)(1)(B)(iv) (No change.)

(v) The foster care time study should be conducted every other biennium, or as needed, if service levels substantially change.

(C) Staff position salaries and contracted fees are reported as direct care labor costs on the cost reports. Each staff position is categorized according to the staffing complement outlined for the time study. The salaries and contracted fees for these positions are grouped into the staffing complement categories and are averaged for child-placing agencies and residential care facilities included in the rate-setting population. This results in an average salary for each staffing complement category (case management, treatment coordination, direct care, direct care administration, and medical).

(D) The staffing complement values, as outlined in the chart at paragraph (1)(B)(iv) of this subsection, are multiplied by the appropriate average salary for each staffing complement category. The products for all of the staffing complement categories are summed for a total for each level of care for both child-placing agencies and residential care facilities. The total by level of care is multiplied by the number of days of service in each level of care, and this product is used as the primary allocation statistic for assigning each provider's direct care costs to the various levels of care.

(E) Direct care costs include the following areas from the cost reports:

(i) direct care labor;

(ii) total payroll taxes/workers compensation; and

(iii) direct care non-labor for supervision/recreation, direct services, and other direct care (not CPAs).

(2) The second methodology allocates the following costs by dividing the total costs by the total number of days of care for an even distribution by day regardless of level of care. This amount is multiplied by the number of days served in each level:

(A) direct care non-labor for dietary/kitchen;

(B) building and equipment;

(C) transportation;

(D) tax expense; and

(E) net educational and vocational service costs.

(3) The third methodology allocates the following administrative costs among the levels of care by totaling the results of the previous two allocation methods, determining a percent of total among the levels of care, and applying those percentages:

(A) administrative wages/benefits;

(B) administration (non-salary);

(C) central office overhead; and

(D) foster family development.

(4) The allocation methods described in paragraphs (1) - (3) of this subsection are applied to each child-placing agency and residential care facility in the rate-setting population, and separate rates are calculated for each level of care served. Rate information is included in the population to set the level of care rate if the following criteria are met:

(A) Providers must have at least 30% of their service days within Levels of Care 3 through 6 for residential settings. For example, for the provider's cost report data to be included for calculating the Level of Care 3 rate, a provider must provide Level of Care 3 services for at least 30% of their service days.

(B) For Levels of Care 5 and 6, a contracted provider could provide up to 60% of "private days" services to be included in the rate-setting population. They must provide at least 40% state-placed services.

(5) Considering the criteria in paragraph (4) of this subsection, the rate-setting population is fully defined for each level of care. Based on this universe, each level of care rate will be established by the group's central point or central tendency. The measure of central tendency is defined as the mean, or average, of the population after applying two standard deviations above and below the mean of the total population.

(6) The total cost per day for each child-placing agency and residential care facility is projected using the IPD-PCE Index from the period covered in the cost report to September 1 of the second year of the biennium, which is the middle of the biennium that the rate period covers. Information on inflation factors is specified in subsection (h) of this section.

(h) For payment rates in effect for state fiscal year (SFY) 2002 and 2003, DFPS uses the Implicit Price Deflator - Personal Consumption Expenditures (IPD-PCE) Index, which is a general cost inflation index, to calculate projected allowable expenses. The IPD-PCE Index is a nationally recognized measure of inflation published by the Bureau of Economic Analysis of the United States Department of Commerce. DFPS uses the lowest feasible IPD-PCE Index forecast consistent with the forecasts of nationally recognized sources available to DFPS when the rates are prepared. Upon written request, DFPS will provide inflation factor amounts used to determine rates.

(i) All reimbursement rates will be equitably adjusted to the level of appropriations authorized by the Legislature.

(j) There will be a transition period for the fiscal year 2002-2003 biennium. During this period current rates will not be reduced, and any increased funding will be applied to those levels of care that are less adequately reimbursed according to the methodology. Since increased funding was appropriated at a different percentage for each year of the 2002-2003 biennium, the rates will be set separately for

each year instead of setting a biennial rate, and inflation factors will be applied to the middle of each year of the biennium.

(k) For the SFY 2004 through 2005, DFPS determines payment rates using the rates determined for SFY 2002 and 2003 from subsections (a) - (h) of this section, with adjustments for the transition from a six level of care system to a four service level system of payment rates.

(l) For the state fiscal year 2006 through 2007 biennium, the 2005 payment rates in effect on August 31, 2005 will be adjusted by equal percentages based on a prorata distribution of additional appropriated funds.

(m) For the state fiscal year 2008 through 2009 biennium, rates are paid for each level of service identified by the DFPS. For foster homes, the payments effective September 1, 2007 through August 31, 2009 for each level of service will be equal to the minimum rate paid to foster homes for that level of service in effect August 31, 2007 plus 4.3 percent. For Child Placing Agencies (CPAs), the rates effective September 1, 2007, through August 31, 2009 for each level of service will be equal to the rate paid to CPAs for that level of service in effect August 31, 2007, plus 4.3 percent. Additional appropriated funds remaining after the rate increase for foster homes and CPAs shall be distributed proportionally across general residential operations and residential treatment centers based on each of these provider type's ratio of costs as reported on the most recently audited cost report to existing payment rates.

(n) HHSC may adjust payment rates, if determined appropriate, when federal or state laws, rules, standards, regulations, policies, or guidelines are changed or adopted. These adjustments may result in increases or decreases in payment rates. Providers must be informed of the specific law, rule, standard, regulation, policy or guideline change and be given the opportunity to comment on any rate adjustment resulting from the change prior to the actual payment rate adjustment.

(o) To implement Chapter 1022 of the Acts of the 75th Texas Legislature, §103, the executive director may develop and implement one or more pilot competitive procurement processes to purchase substitute care services, including foster family care services and specialized substitute care services. The pilot programs must be designed to produce a substitute care system that is outcome-based and that uses outcome measures. Rates for the pilot(s) will be the result of the competitive procurement process, but must be found to be reasonable by the executive director. Rates are subject to adjustment as allowed in subsections (a) and (m) of this section.

(p) Payment rates for psychiatric step-down services are determined on a pro forma basis in accordance with §355.105(h) of this title (relating to General Reporting and Documentation Requirements, Methods, and Procedures). Payment rates for psychiatric step-down services effective September 1, 2015, will be equal to the rates in effect on August 31, 2015.

(q) Rates effective September 1, 2015.

(1) Definitions.

(A) Child-placing agency (CPA)--Child-placing agencies as defined in 40 Texas Administrative Code (TAC) §745.21.

(B) CPA retainage--The portion of the rate that includes the CPA's costs for administering the service, including but not limited to recruiting and training foster families, matching children with foster families, monitoring foster families and foster homes and the associated overhead costs.

(C) Emergency Care Services--Emergency care services as defined in 40 TAC §748.61.

(D) Foster home--Foster home as defined in 40 TAC §749.43 and §750.43.

(E) General Residential Operation (GRO)--General residential operations as defined in 40 TAC §748.43.

(F) Levels of service--Levels of service as described in 40 TAC Chapter 700, Subchapter W.

(G) Residential Treatment Center (RTC)--Residential treatment center as defined in 40 TAC §748.43.

(2) Rates are paid for each level of service identified by DFPS.

(A) For foster homes, the minimum daily rate to be paid to a foster home effective September 1, 2015, for each level of service will be equal to the rate for that level of service in effect August 31, 2015.

(B) For CPAs, the rates effective September 1, 2015, for the CPA retainage for each level of service will be equal to the rate paid to CPAs for the CPA retainage for that level of service in effect August 31, 2015, plus 5.1 percent.

(C) For GROs and RTCs, the rates effective September 1, 2015, will be equal to the rates paid to GROs and RTCs in effect August 31, 2015:

(i) plus 9.58 percent for the specialized level of service;

(ii) plus 0.3 percent for the intense level of service; and

(iii) unchanged for other levels of service.

(D) For emergency care services the rates effective September 1, 2015, will be equal to the rates in effect August 31, 2015 plus 6.0 percent.

~~[(q) Rates are paid for each level of service identified by the DFPS. For foster homes, the payments effective September 1, 2013, for each level of service will be equal to the minimum rate paid to foster homes for that level of service in effect August 31, 2013, plus 4.30 percent. For Child Placing Agencies (CPAs), the rates effective September 1, 2013, for each level of service will be equal to the rate paid to CPAs for that level of service in effect August 31, 2013, plus 6.12 percent. For General Residential Operations (GROs) and Residential Treatment Centers (RTCs), the rates effective September 1, 2013, for each level of service will be equal to the rate paid to GROs and RTCs for that level of service in effect August 31, 2013, plus 7.13 percent. For facilities providing emergency care services, the rate effective September 1, 2013, will be equal to the rate in effect August 31, 2013, plus 5.86 percent. For psychiatric step-down services, the rate effective September 1, 2013, will be equal to the rate in effect on August 31, 2013.]~~

(r) Payment rates for Single Source Continuum Contractors under Foster Care Redesign are determined on a pro forma basis in accordance with §355.105(h) of this title.

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 June 12, 2015.

TRD-201502208

Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: July 26, 2015
For further information, please call: (512) 424-6900

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1 TAC §355.7107

The Texas Health and Human Services Commission (HHSC) proposes new §355.7107, concerning Reimbursement Methodology for Psychiatric Residential Treatment Facilities.

Background and Justification

The 2016-2017 General Appropriations Act (Article II, H.B. 1, 84th Legislature, Regular Session, 2015) appropriates funding for Department of Family and Protective Services (DFPS) to implement Psychiatric Residential Treatment Facilities (PRTFs) services. This new rule establishes the reimbursement methodology for PRTFs.

Per Title 1 of the Texas Administrative Code (TAC) Subchapter A, §355.105(h), HHSC will develop payment rates for a new program or service based upon rates determined for other programs that provide similar services. If payment rates are not available from other programs that provide similar services, HHSC will develop payment rates using a pro forma approach. 1 TAC Subchapter A, §355.101(c)(2)(B) defines pro forma costing as an approach that uses historical costs of delivering similar services, where appropriate data are available, and estimating the basic types and costs of products and services necessary to deliver services meeting federal and state requirements.

Section-by-Section Summary

Proposed §355.7107 describes the reimbursement methodology for Psychiatric Residential Treatment Facilities.

§355.7107(a) specifies that payment rates are determined either based on rates for other programs that provide similar services or using a pro forma approach.

§355.7107(b) specifies that §355.101 and §355.105(g), which describe the general cost determination processes, also apply to the rate methodology for PRTFs.

Fiscal Note

Greta Rymal, Deputy Executive Commissioner for Financial Services for HHSC, has determined that, for each year of the first five years the proposed new rule will be in effect, there will be a fiscal impact to the state government of $835,000 for state fiscal year (SFY) 2016, $3,340,000 for SFY 2017, $3,340,000 for SFY 2018, $3,340,000 for SFY 2019, and $3,340,000 for SFY 2020. There are no fiscal implications for local governments as a result of enforcing or administering the new section.

Ms. Rymal does not anticipate that there will be any economic costs to persons who are required to comply with the proposed new rule during the first five years the rule will be in effect. The new rule will not affect local employment.

Small Business and Micro-Business Impact Analysis

HHSC has determined that there is no adverse economic impact on small businesses or micro-businesses as a result of enforcing or administering the new rule. The implementation of the proposed new rule does not require any changes in practice or any additional cost to the contracted provider.

Public Benefit

Pam McDonald, Director of Rate Analysis, has determined that, for each year of the first five years the rule will be in effect, the public benefits expected as a result of adopting the rule will be to allow HHSC to develop and adopt rates to pay for a needed service to children in the foster care system.

Regulatory Analysis

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

Takings Impact Assessment

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

Public Comment

Written comments on the proposal may be submitted to Sarah Hambrick, Senior Rate Analyst, Rate Analysis Department, Texas Health and Human Services Commission, Mail Code H-400, P.O. Box 85200, Austin, Texas 78705-5200, by fax to (512) 730-7475, or by e-mail to sarah.hambrick@hhsc.state.tx.us within 30 days after publication of this proposal in the *Texas Register.*

Statutory Authority

The new rule is proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority. The new rule implements Texas Government Code Chapter 531.

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

§355.7107. Reimbursement Methodology for Psychiatric Residential Treatment Facilities.

(a) Payment rate determination. Payment rates are developed based on rates determined for other programs that provide similar services. If payment rates are not available from other programs that provide similar services, payment rates are determined using a pro forma approach in accordance with §355.105(h) of this title (relating to General Reporting and Documentation Requirements, Methods, and Procedures).

(b) Related information. The information in §355.101 of this title (relating to Introduction) and §355.105(g) of this title also applies.

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 June 12, 2015.

TRD-201502209

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

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SUBCHAPTER J. PURCHASED HEALTH SERVICES
DIVISION 4. MEDICAID HOSPITAL SERVICES

1 TAC §355.8052

The Texas Health and Human Services Commission (HHSC) proposes amendments to §355.8052, concerning Inpatient Hospital Reimbursement. Contingent on the passage of House Bill (H.B.) 7, 84th Legislature, Regular Session, 2015, and the availability of funds, the proposed amendments will allow HHSC to implement increases in the percentages used in determining trauma add-on amounts and to implement a new standard dollar amount (SDA) add-on for certain safety-net hospitals.

Background and Justification

The amendments to this rule are proposed to comply with the 2016-2017 General Appropriations Act (Article II, Special Provisions, H.B. 1, 84th Legislature, Regular Session, 2015, Sections 32 and 59). Specifically, these special provisions direct HHSC to increase the amount of the SDA add-on for trauma-designated hospitals and to create a new add-on for certain safety-net hospitals.

To accomplish these legislative objectives, HHSC is proposing the following changes to reimbursement for inpatient services provided beginning September 1, 2015:

Trauma add-on--Certain urban hospitals are currently eligible for an increase to their Base SDA through a trauma add-on. To be eligible for the trauma add-on, a hospital must be designated as a trauma hospital by the Texas Department of State Health Services. Currently, the rule states that a hospital's trauma add-on amount is determined by multiplying their Base SDA by the following percentages:

- 12.8% for hospitals with a Level 1 trauma designation

- 8.2% for hospitals with a Level 2 trauma designation

- 1.4% for hospitals with a Level 3 trauma designation

- 0.9% for hospitals with a Level 4 trauma designation

Beginning in SFY 2016, the proposed rule change would increase these percentages to the following:

- 28.3% for hospitals with a Level 1 trauma designation

- 18.1% for hospitals with a Level 2 trauma designation

- 3.1% for hospitals with a Level 3 trauma designation

- 2.0% for hospitals with a Level 4 trauma designation

Safety-Net add-on--Certain urban and children's hospitals are currently eligible for an increase to their Base SDA through add-ons. Currently, urban hospitals may be eligible for an increase through a Geographic Wage add-on, a Medical Education add-on, and a Trauma add-on, and children's hospitals may be eligible for an increase through a Geographic Wage add-on and a Teaching Medical Education add-on.

The proposed rule change would create a new add-on for eligible hospitals. To be eligible for the safety-net add-on, a hospital must be an urban or children's hospital that meets the eligibility and qualification requirements described in 1 TAC §355.8065 (relating to Disproportionate Share Hospital Reimbursement Methodology) for the most recent federal fiscal year for which such eligibility and qualification determinations have been made.

In response to the requirement under Special Provision, Section 59 (relating to Contingency for H.B. 7 and Safety-Net Hospitals) which states "Total reimbursement for each hospital shall not exceed its hospital specific limit," the proposed rule change would also allow HHSC to perform a reconciliation for each hospital that received the safety-net add-on to ensure that no such hospital received total Medicaid reimbursements for inpatient and outpatient services in excess of their total Medicaid and uncompensated care inpatient and outpatient costs.

Section-by-Section Summary

Proposed §355.8052(b)(30) provides a definition of Safety-Net add-on.

Proposed §355.8052(b)(31) provides a definition of Safety-Net Hospital.

Proposed §355.8052(d)(1)(C) lists the safety-net add-on as a potential add-on for children's hospitals.

Proposed §355.8052(d)(2)(D) lists the safety-net add-on as a potential add-on for urban hospitals.

Proposed §355.8052(d)(3)(C) adds safety-net add-on to the list of add-ons in this subsection related to the how add-ons affect a hospital's SDA.

Proposed §355.8052(d)(7)(B) changes the percentages that are multiplied by the Base SDA for hospitals receiving the trauma add-on.

Proposed §355.8052(d)(8) is a new paragraph that describes the eligibility criteria, calculation method and reconciliation for the safety-net add-on.

Proposed §355.8052(e)(2)(E) is deleted in its entirety, as it only applied to state fiscal year 2014.

Proposed §355.8052(e)(2)(F) is deleted in its entirety, as it only applied to state fiscal year 2015.

Proposed §355.8052(f)(3) is deleted in its entirety, as hospitals in Rockwall County no longer require an exception.

The proposed rule includes other technical corrections, numbering revisions, and non-substantive changes to make the rule more understandable.

Fiscal Note

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that during the first five-year period the amendment is in effect there will be a cost to the state government of $134,412,300 for state fiscal year SFY 2016, $134,412,299 for SFY 2017, $134,412,299 for SFY 2018, $134,412,299 for SFY 2019, $134,412,299 for SFY 2020, and $134,412,299 for SFY 2021. There is no anticipated negative fiscal impact on local governments.

Ms. Rymal does not anticipate that there will be any economic cost to persons who are required to comply with the proposed amendment during the first five years the rule will be in effect. The amendment will not affect local employment.

Small Business and Micro-Business Impact Analysis

Under §2006.002 of the Texas Government Code, a state agency proposing an administrative rule that may have an adverse economic effect on small or micro-businesses must prepare an economic impact statement and a regulatory flexibility analysis. The economic impact statement estimates the number of small businesses subject to the rule and projects the economic impact of the rule on small businesses. The regulatory flexibility analysis describes the alternative methods the agency considered to achieve the purpose of the proposed rule while minimizing adverse effects on small businesses.

HHSC has determined that the rule will not have an adverse economic effect on either small businesses or micro-businesses, or both, because no hospital meeting the definition of a small or micro-business receives Medicaid hospital funding.

Public Benefit

Pam McDonald, Director of Rate Analysis, has determined that for each year of the first five years the amendment is in effect, the public benefits expected as a result of enforcing the amendment will be increased Medicaid inpatient provider rates for trauma and certain safety-net hospitals.

Regulatory Analysis

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

Takings Impact Assessment

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

Public Comment

Written comments on the proposal may be submitted to Kevin Niemeyer, Hospital Rate Analyst, Rate Analysis Department, Texas Health and Human Services Commission, Mail Code H-400, P.O. Box 13247, Austin, Texas 78711, by fax to (512) 747-7475, or by e-mail to kevin.niemeyer@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register.*

Public Hearing

A public hearing is scheduled from 2:30 p.m. to 3:30 p.m. on July 22, 2015, in the Brown-Heatly Public Hearing Room located at 4900 North Lamar Blvd., Austin, Texas 78751. Persons requiring further information, special assistance, or accommodations should contact Kristine Dahlmann at (512) 462-6299.

Statutory Authority

The amendment is proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance (Medicaid) payments under Texas Human Resources Code Chapter 32.

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

§355.8052. Inpatient Hospital Reimbursement.

(a) Introduction. The Texas Health and Human Services Commission (HHSC) uses the methodology described in this section to calculate reimbursement for a covered inpatient hospital service.

(b) Definitions.

(1) Adjudicated--The approval or denial of an inpatient hospital claim by HHSC.

(2) Add-on--An amount that is added to the base SDA to reflect high-cost functions and services or regional cost differences.

(3) Base standard dollar amount (base SDA)--A standardized payment amount calculated by HHSC, as described in subsection (d) of this section, for the costs incurred by prospectively-paid hospitals in Texas for furnishing covered inpatient hospital services.

(4) Base year--For the purpose of this section, the base year is a state fiscal year (September through August) to be determined by HHSC.

(5) Base year claims--All Medicaid traditional fee-for-service (FFS) and Primary Care Case Management (PCCM) inpatient hospital claims for reimbursement filed by a hospital that:

(A) had a date of admission occurring within the base year;

(B) were adjudicated and approved for payment during the base year and the six-month grace period that immediately followed the base year, except for such claims that had zero inpatient days;

(C) were not claims for patients who are covered by Medicare;

(D) were not Medicaid spend-down claims;

(E) were not claims associated with military hospitals, out-of-state hospitals, state owned teaching hospitals, and freestanding psychiatric hospitals.

(F) Individual sets of base year claims are compiled for children's hospitals, rural hospitals, and urban hospitals for the purposes of rate setting and rebasing.

(6) Base year cost per claim--The cost for a base year claim that would have been paid to a hospital if HHSC reimbursed the hospital under methods and procedures used in the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), without the application of the TEFRA target cap for all hospitals except children's and state-owned teaching hospitals.

(7) Children's hospital--A Medicaid hospital designated by Medicare as a children's hospital.

(8) Cost outlier payment adjustment--A payment adjustment for a claim with extraordinarily high costs.

(9) Cost outlier threshold--One factor used in determining the cost outlier payment adjustment.

(10) Day outlier payment adjustment--A payment adjustment for a claim with an extended length of stay.

(11) Day outlier threshold--One factor used in determining the day outlier payment adjustment.

(12) Diagnosis-related group (DRG)--The classification of medical diagnoses as defined in the 3M™ All Patient Refined Diagnosis Related Group (APR-DRG) system or as otherwise specified by HHSC.

(13) Final settlement--Reconciliation of cost in the Medicare/Medicaid hospital fiscal year end cost report performed by HHSC within six months after HHSC receives the cost report audited by a Medicare intermediary or HHSC.

(14) Final standard dollar amount (final SDA)--The rate assigned to a hospital after HHSC applies the add-ons and other adjustments described in this section.

(15) Geographic wage add-on--An adjustment to a hospital's base SDA to reflect geographical differences in hospital wage levels. Hospital geographical areas correspond to the Core-Based Statistical Areas (CBSAs) established by the federal Office of Management and Budget in 2003.

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

(17) Impact file--The Inpatient Prospective Payment System (IPPS) Final Rule Impact File that contains data elements by provider used by the Centers for Medicare and Medicaid Services (CMS) in calculating Medicare rates and impacts. The impact file is publicly available on the CMS website.

(18) Inflation update factor--Cost of living index based on the annual CMS Prospective Payment System Hospital Market Basket Index.

(19) In-state children's hospital--A hospital located within Texas that is recognized by Medicare as a children's hospital and is exempted by Medicare from the Medicare prospective payment system.

(20) Interim payment--An initial payment made to a hospital that is later settled to Medicaid-allowable costs, for hospitals reimbursed under methods and procedures in the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA).

(21) Interim rate--The ratio of Medicaid allowed inpatient costs to Medicaid allowed inpatient charges filed on a hospital's Medicare/Medicaid cost report, expressed as a percentage. The interim rate established during a cost report settlement for an urban hospital or a rural hospital reimbursed under this section excludes the application of TEFRA target caps and the resulting incentive and penalty payments.

(22) Mean length of stay (MLOS)--One factor used in determining the payment amount calculated for each DRG; for each DRG, the average number of days that a patient stays in the hospital.

(23) Medical education add-on--An adjustment to the base SDA for an urban teaching hospital to reflect higher patient care costs relative to non-teaching urban hospitals.

(24) Military hospital--A hospital operated by the armed forces of the United States.

(25) New Hospital--A hospital that was enrolled as a Medicaid provider after the end of the base year and has no base year claims data.

(26) Out-of-state children's hospital--A hospital located outside of Texas that is recognized by Medicare as a children's hospital and is exempted by Medicare from the Medicare prospective payment system.

(27) Rebasing--Calculation of the base year cost per claim for each Medicaid inpatient hospital.

(28) Relative weight--The weighting factor HHSC assigns to a DRG representing the time and resources associated with providing services for that DRG.

(29) Rural hospitals--A hospital in a county with 60,000 or fewer persons based on the 2010 decennial census, a hospital designated by Medicare as a Critical Access Hospital (CAH), a Sole Community Hospital (SCH), or a Rural Referral Center (RRC).

(30) Safety-Net add-on--An adjustment to the base SDA for a safety-net hospital to reflect the higher costs of providing inpatient services in a hospital that provides a significant percentage of its services to Medicaid and/or uninsured patients.

(31) Safety-Net hospital--An urban or children's hospital that meets the eligibility and qualification requirements described in §355.8065 of this division (relating to Disproportionate Share Hospital Reimbursement Methodology) for the most recent federal fiscal year for which such eligibility and qualification determinations have been made.

(32) [~~(30)~~] State-owned teaching hospital--The following hospitals: University of Texas Medical Branch (UTMB); University of Texas Health Center Tyler; and M.D. Anderson Hospital.

(33) [~~(31)~~] Teaching hospital--A hospital for which CMS has calculated and assigned a percentage Medicare education adjustment factor under 42 CFR §412.105.

(34) [~~(32)~~] Teaching medical education add-on--An adjustment to the base SDA for a children's teaching hospital with a program approved by the Accreditation Council for Graduate Medical Education (ACGME) to reflect higher patient care costs relative to non-teaching children's hospitals.

(35) [~~(33)~~] TEFRA target cap--A limit set under the Social Security Act §1886(b) (42 U.S.C. §1395ww(b)) and applied to a hospital's cost settlement under methods and procedures in the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA). TEFRA target cap is not applied to services provided to patients under age 21, and incentive and penalty payments associated with this limit are not applicable to those services.

(36) [~~(34)~~] Tentative settlement--Reconciliation of cost in the Medicare/Medicaid hospital fiscal year-end cost report performed by HHSC within six months after HHSC receives an acceptable cost report filed by a hospital.

(37) [~~(35)~~] Texas provider identifier--A unique number assigned to a provider of Medicaid services in Texas.

(38) [~~(36)~~] Trauma add-on--An adjustment to the base SDA for a trauma hospital to reflect the higher costs of obtaining and maintaining a trauma facility designation, as well as the direct costs of providing trauma services, relative to non-trauma hospitals or to hospitals with lower trauma facility designations.

(39) [~~(37)~~] Trauma hospital--An inpatient hospital that meets the Texas Department of State Health Services criteria for

a Level I, II, III, or IV trauma facility designation under 25 Texas Administrative Code §157.125 (relating to Requirements for Trauma Facility Designation).

(40) [~~(38)~~] Universal mean--Average base year cost per claim for all urban hospitals.

(41) [~~(39)~~] Urban hospital--Hospital located in a metropolitan statistical area and not fitting the definition of rural hospitals, children's hospitals, state-owned teaching hospitals, or freestanding psychiatric hospitals.

(c) Base urban and children's hospital standard dollar amount (SDA) calculations. HHSC will use the methodologies described in this subsection to determine two separate average statewide base SDAs: one for children's hospitals and one for urban hospitals. For each category of hospital:

(1) HHSC calculates the average base year cost per claim as follows:

(A) Use the sum of the base year costs per claim for each hospital.

(B) Sum the amount for all hospitals' base year costs from subparagraph (A) of this paragraph.

(C) For children's hospitals subtract an amount equal to the estimated outlier payment amount for the base year claims for all children's hospitals from subparagraph (B) of this paragraph.

(D) To derive the average base year cost per claim:

(i) for urban hospitals, divide the result from subparagraph (B) of this paragraph by the total number of base year claims; and

(ii) for children's hospitals, divide the result from subparagraph (C) of this paragraph by the total number of base year claims.

(E) The result from subparagraph (D)(i) of this paragraph is the universal mean that is used in calculations described in subsections (g) and (h) of this section.

(2) From the amount determined in paragraph (1)(B) of this subsection for urban hospitals and paragraph (1)(C) of this subsection for children's hospitals, HHSC sets aside an amount to recognize high-cost hospital functions, services and regional wage differences. In determining the amount to set aside, HHSC considers factors including other funding available to reimburse high-cost hospital functions and services, available data sources, historical costs, Medicare practices, and feedback from hospital industry experts.

(A) The costs remaining after HHSC sets aside the amount for high-cost hospital functions and services will be used to determine the base SDA.

(B) The costs HHSC sets aside will determine the funds available for distribution to hospitals that are eligible for one or more add-ons as described in subsection (d) of this section.

(3) HHSC divides the amount in paragraph (2)(A) of this subsection by the total number of base year claims to derive the base SDA.

(d) Add-ons.

(1) A children's hospital may receive increases to the base SDA for any of the following:

(A) Geographic wage add-on, as described in paragraph (4) of this subsection.

(i) For claims with dates of admission beginning September 1, 2013, and continuing until the next rebasing, the geographic wage add-on for children's hospitals will be calculated based on the impact file in effect on September 1, 2011.

(ii) Subsequent add-ons will be based on the impact file available at the time of rebasing.

(B) Teaching medical education add-on, as described in paragraph (5) of this subsection.

(C) Safety-Net add-on, as described in paragraph (8) of this subsection.

(2) An urban hospital may receive increases to the base SDA for any of the following:

(A) Geographic wage add-on, as described in paragraph (4) of this subsection.

(B) Medical education add-on, as described in paragraph (6) of this subsection.

(C) Trauma add-on, as described in paragraph (7) of this subsection.

(D) Safety-Net add-on, as described in paragraph (8) of this subsection.

(3) Add-on amounts will be determined or adjusted based on the following:

(A) Impact files.

(i) HHSC will use the impact file in effect at the last rebasing to calculate add-ons for new hospitals, except as otherwise specified in this section; and

(ii) HHSC will use the most recent finalized impact file from the current Hospital Inpatient Prospective Payment System (PPS) final rule available at the time of rebasing to calculate add-ons.

(B) If a hospital becomes eligible for the geographic wage reclassification under Medicare during the fiscal year, the hospital will become eligible for the adjustment upon the next rebasing.

(C) If a hospital becomes eligible for the teaching medical education add-on, medical education add-on, [~~or~~] trauma add-on, or safety-net add-on during the fiscal year, the hospital will receive an increased final SDA to include these newly eligible add-ons, effective for claims that have a date of admission occurring on or after the first day of the next state fiscal year.

(D) If an eligible children's hospital is new to the Medicaid program and a cost report is not available, the teaching medical education add-on will be calculated at the beginning of the state fiscal year after a cost report is received.

(4) Geographic wage add-on.

(A) Wage index. To determine a children's or urban hospital's geographic wage add-on, HHSC first calculates a wage index for Texas as follows:

(i) HHSC identifies the Medicare wage index factor for each Core Based Statistical Area (CBSA) in Texas.

(ii) HHSC identifies the lowest Medicare wage index factor in Texas.

(iii) HHSC divides the Medicare wage index factor for each CBSA by the lowest Medicare wage index factor identified in clause (ii) of this subparagraph and subtracts one from each resulting quotient to arrive at a percentage.

(iv) HHSC uses the result of the calculations in clause (iii) of this subparagraph to calculate each CBSA's add-on amount described in subparagraph (C) of this paragraph.

(B) County assignment. HHSC will initially assign a hospital to a CBSA based on the county in which the hospital is located. A hospital that has been approved for geographic reclassification under Medicare may request that HHSC recognize its Medicare CBSA reclassification, under the process described in paragraph (9) [~~(8)~~] of this subsection.

(C) Add-on amount.

(i) HHSC calculates 62 percent of the base SDA to derive the labor-related portion of that rate, consistent with the Medicare labor-related percentage.

(ii) To determine the geographic wage add-on amount for each CBSA, HHSC multiplies the wage index factor determined in subparagraph (A)(iv) of this paragraph for that CBSA by the percentage labor share of the base SDA calculated in clause (i) of this subparagraph.

(5) Teaching medical education add-on.

(A) Eligibility. A teaching hospital that is a children's hospital is eligible for the teaching medical education add-on. Each children's hospital is required to confirm, under the process described in paragraph (9) [~~(8)~~] of this subsection, that HHSC's determination of the hospital's eligibility for the add-on is correct.

(B) Add-on amount. HHSC calculates the teaching medical education add-on amounts as follows:

(i) For each children's hospital, identify the total hospital medical education cost from each hospital cost report or reports that cross over the base year.

(ii) For each children's hospital, sum the amounts identified in clause (i) of this subparagraph to calculate the total medical education cost.

(iii) For each children's hospital, calculate the average medical education cost by dividing the amount from clause (ii) of this subparagraph by the number of cost reports that cross over the base year.

(iv) Sum the average medical education cost per hospital to determine a total average medical education cost for all hospitals.

(v) For each children's hospital, divide the average medical education cost for the hospital from clause (iii) of this subparagraph by the total average medical education cost for all hospitals from clause (iv) of this subparagraph to calculate a percentage for the hospital.

(vi) Divide the total average medical education cost for all hospitals from clause (iv) of this subparagraph by the total base year cost for all children's hospitals from subsection (c)(1)(B) of this section to determine the overall teaching percentage of Medicaid cost.

(vii) For each children's hospital, multiply the percentage from clause (v) of this subparagraph by the percentage from clause (vi) of this subparagraph to determine the teaching percentage for the hospital.

(viii) For each children's hospital, multiply the hospital's teaching percentage by the base SDA amount to determine the teaching medical education add on amount.

(6) Medical education add-on.

(A) Eligibility. A teaching hospital that is an urban hospital is eligible for the medical education add-on. Each hospital is required to confirm, under the process described in paragraph (9) [~~(8)~~] of this subsection, that HHSC's determination of the hospital's eligibility and Medicare education adjustment factor for the add-on is correct.

(B) Add-on amount. HHSC multiplies the base SDA by the hospital's Medicare education adjustment factor to determine the hospital's medical education add-on amount.

(7) Trauma add-on.

(A) Eligibility.

(i) To be eligible for the trauma add-on, a hospital must be designated as a trauma hospital by the Texas Department of State Health Services and be eligible to receive an allocation from the trauma facilities and emergency medical services account under Chapter 780, Health and Safety Code.

(ii) HHSC initially uses the trauma level designation associated with the physical address of a hospital's TPI. A hospital may request that HHSC, under the process described in paragraph (9) [~~(8)~~] of this subsection, use a higher trauma level designation associated with a physical address other than the hospital's TPI address.

(B) Add-on amount. To determine the trauma add-on amount, HHSC multiplies the base SDA:

(i) by 28.3 [~~12.8~~] percent for hospitals with Level 1 trauma designation;

(ii) by 18.1 [~~8.2~~] percent for hospitals with Level 2 trauma designation;

(iii) by 3.1 [~~1.4~~] percent for hospitals with Level 3 trauma designation; or

(iv) by 2.0 [~~0.9~~] percent for hospitals with Level 4 trauma designation.

(C) Reconciliation with other reimbursement for uncompensated trauma care. Subject to the General Appropriations Act and other applicable law:

(i) If a hospital's allocation from the trauma facilities and emergency medical services account administered under Chapter 780, Health and Safety Code, is greater than the total trauma add-on amount estimated to be paid to the hospital under this section during the state fiscal year, the Department of State Health Services will pay the hospital the difference between the two amounts at the time funds are disbursed from that account to eligible trauma hospitals.

(ii) If a hospital's allocation from the trauma facilities and emergency medical services account is less than the total trauma add-on amount estimated to be paid to the hospital under this section during the state fiscal year, the hospital will not receive a payment from the trauma facilities and emergency medical services account.

(8) Safety-Net add-on.

(A) Eligibility. To be eligible for the safety-net add-on, a hospital must meet the definition of a safety-net hospital in subsection (b)(30) of this section.

(B) Add-on amount. HHSC calculates the safety-net add-on amounts as follows:

(i) for each eligible hospital, determine the total allowable Medicaid inpatient days for a period of 12 contiguous months specified by HHSC;

(ii) sum the amounts identified in clause (i) of this subparagraph to calculate the total allowable Medicaid inpatient days for all eligible hospitals;

(iii) for each eligible hospital, divide the amount determined in clause (i) of this subparagraph by the amount determined in clause (ii) of this subparagraph to calculate the hospital's percentage of total allowable Medicaid inpatient days for all eligible hospitals;

(iv) for each eligible hospital, multiply the amount determined in clause (iii) of this subparagraph by the amount of available funds;

(v) for each eligible hospital, sum the relative weights of all inpatient claims for the period of 12 contiguous months indicated in clause (i) of this subparagraph; and

(vi) for each eligible hospital, divide the amount determined in clause (iv) of this subparagraph by the amount determined in clause (v) of this subparagraph to calculate the safety-net add-on amount.

(C) Reconciliation. Effective for costs and revenues accrued on or after September 1, 2015, HHSC may perform a reconciliation for each hospital that received the safety-net add-on to identify any such hospitals with total Medicaid reimbursements for inpatient and outpatient services in excess of their total Medicaid and uncompensated care inpatient and outpatient costs. For hospitals with total Medicaid reimbursements in excess of total Medicaid and uncompensated care costs, HHSC may recoup the difference.

(9) [~~(8)~~] Add-on status verification.

(A) Notification. HHSC will determine a hospital's initial add-on status by reference to the impact file and the Texas Department of State Health Services' list of trauma-designated hospitals. HHSC will notify the hospital of the CBSA to which the hospital is assigned, the Medicare education adjustment factor assigned to the hospital for urban hospitals, the trauma level designation assigned to the hospital, the Medicare teaching hospital designation for children's hospitals, as applicable and any other related information determined relevant by HHSC. HHSC may post the information on HHSC's website, send the information through the established Medicaid notification procedures used by HHSC's fiscal intermediary, send through other direct mailing, or provide the information to the hospital associations to disseminate to their member hospitals.

(B) HHSC will calculate a hospital's final SDA using the add-on status initially determined by HHSC unless, within 14 calendar days after the date of the notification, HHSC receives notification, in writing by regular mail, hand delivery or special mail delivery, from the hospital (in a format determined by HHSC) that any add-on status determined by HHSC is incorrect and:

(i) the hospital provides documentation of its eligibility for a different trauma designation, medical education percentage, or teaching hospital designation; or

(ii) the hospital provides documentation that it is approved by Medicare for reclassification to a different CBSA.

(C) If a hospital fails to notify HHSC within 14 calendar days after the date of the notification that the add-on status as initially determined by HHSC includes one or more add-ons for which the hospital is not eligible, resulting in an overpayment, HHSC will recoup such overpayment and will prospectively reduce the SDA accordingly.

(e) Final urban and children's hospital SDA calculations.

(1) HHSC calculates an urban hospital's final SDA as follows:

(A) Add all add-on amounts for which the hospital is eligible to the base SDA.

(B) Multiply the SDA determined in subparagraph (A) of this paragraph by the hospital's total relative weight of base year claims as calculated in subsection (g)(1) of this section.

(C) Sum the amount calculated in subparagraph (B) of this paragraph for all urban hospitals.

(D) Divide the total funds appropriated for reimbursing inpatient urban hospital services under this section by the amount determined in subparagraph (C) of this paragraph.

(E) Multiply the SDA determined for each hospital in subparagraph (A) of this paragraph by the percentage determined in subparagraph (D) of this paragraph.

(F) For new urban hospitals for which HHSC has no base year claim data, the final SDA is the base SDA plus any add-ons for which the hospital is eligible, multiplied by the percentage determined in subparagraph (D) of this paragraph.

(2) HHSC calculates a children's hospital's final SDA as follows:

(A) Add all add-on amounts for which the hospital is eligible to the base SDA.

(B) For labor and delivery services provided to adults age eighteen or greater in a children's hospital, the final SDA is equal to the base SDA for urban hospitals without add-ons, calculated as described in subsection (c)(3) of this section plus the urban hospital wage add-on for an urban hospital located in the same CBSA as the children's hospital providing the service.

(C) For new children's hospitals that are not teaching hospitals for which HHSC has no base year claim data, the final SDA is the base SDA plus the hospital's geographic wage add-on. The SDA will be inflated from the base year to the current period at the time of enrollment or to state fiscal year 2015, whichever is earlier.

(D) For new children's hospitals that qualify for the teaching medical education add-on described in subsection (b)(33) [~~(b)(32)~~] of this section for which HHSC has no base year claim data, the final SDA is calculated based on one of the following options until rebasing is performed with base year claim data for the hospital. A new children's hospital must notify the HHSC Rate Analysis Department of its selected option within 60 days from the date the hospital is notified of its provider activation by HHSC's fiscal intermediary. If notice of the option is not received, HHSC will assign the hospital the SDA calculated as described in clause (i) of this subparagraph. The SDA calculated based on the selected option will be effective retroactive to the first day of the provider's enrollment.

(i) Children's hospital base SDA plus the applicable geographic wage add-on and the minimum teaching add-on for existing children's hospitals. No settlement of costs is required for services reimbursed under this option. The SDA will be in effective for the hospital for three years or until the next rebasing when a new SDA will be determined. The SDA will be inflated from the base year to the current period at the time of enrollment or to state fiscal year 2015, whichever is earlier.

(ii) Children's base SDA plus the applicable geographic wage add-on and the maximum teaching add-on for existing children's hospitals. A cost settlement is required for services reimbursed under this option. The SDA will be in effect for the hospital for three years or until the next rebasing when a new SDA will be determined. The SDA will be inflated from the base year to the current

period at the time of enrollment or to state fiscal year 2015, whichever is earlier.

[(E) For state fiscal year 2014 only, HHSC will calculate a blended SDA for children's hospitals, other than those described in subparagraphs (C) and (D) of this paragraph, as follows:]

[(i) Calculate a full-cost SDA by dividing the hospital's total base year cost determined in subsection (c)(1)(A) of this section by the sum of the relative weights of the claims in the base year;]

[(ii) Multiply the result of clause (i) of this subparagraph by 0.50;]

[(iii) Multiply the hospital's final base SDA from subparagraph (A) of this paragraph by 0.50;]

[(iv) Sum the results of the calculations described in clauses (ii) and (iii) of this subparagraph.]

[(v) The resulting blended SDA determined in clause (iv) of this subparagraph will be adjusted by the inflation update factor from the base year to state fiscal year 2014.]

[(F) For state fiscal year 2015, the final SDA determined in subparagraphs (A), (C) and (D) of this paragraph will be adjusted by the inflation update factor from the base year to state fiscal year 2015. This SDA will remain in effect until the next rebasing.]

(3) For military and out-of-state hospitals, the final SDA is the urban hospital base SDA multiplied by the percentage determined in paragraph (1)(D) of this subsection.

(f) Final rural hospital SDA calculation.

(1) HHSC calculates a rural hospital's final SDA as follows:

(A) Calculate a hospital-specific full-cost SDA by dividing each hospital's base year cost, calculated as described in subsection (c)(1)(A) of this section, by the sum of the relative weights of the claims in the base year;

(B) Adjust the result from subparagraph (A) of this paragraph by multiplying the hospital [~~hospital's~~]-specific full-cost SDA by the inflation update factor to obtain an adjusted hospital-specific SDA;

(C) Calculate an SDA floor based on 1.5 standard deviations below the average adjusted hospital-specific SDA from subparagraph (B) of this paragraph for all rural hospitals with more than 50 claims as calculated in subparagraph (B) of this paragraph;

(D) Calculate an SDA ceiling based on 2.0 standard deviations above the average adjusted hospital-specific SDA from subparagraph (B) of this paragraph for all rural hospitals with more than 50 claims as calculated in subparagraph (B) of this paragraph;

(E) Compare the adjusted hospital-specific SDA for each hospital from subparagraph (B) of this paragraph to the SDA floor from subparagraph (C) of this paragraph. If the adjusted hospital-specific SDA is less than the SDA floor, the hospital is assigned the SDA floor amount as the final SDA;

(F) Compare the adjusted hospital-specific SDA for each hospital from subparagraph (B) of this paragraph to the SDA ceiling from subparagraph (D) of this paragraph. If the adjusted hospital-specific SDA is more than the SDA ceiling, the hospital is assigned the SDA ceiling amount as the final SDA;

(G) Assign the adjusted hospital-specific SDA as the final SDA to each hospital not described in subparagraphs (E) and (F) of this paragraph.

(2) HHSC calculates a new rural hospital's final SDA as follows:

(A) For new rural hospitals for which HHSC has no base year claim data, the final SDA is the mean rural SDA, calculated by dividing the sum of the base year costs per claim for the rural hospital group by the sum of the relative weights for the rural hospital group of claims.

(B) The mean rural SDA remains in effect until the next rebasing using the steps outlined in paragraph (1)(A) - (G) of this subsection, using the SDA floor and SDA ceiling in effect for the fiscal year.

[(3) For hospitals in Rockwall County:]

[(A) For state fiscal year 2014 only, for each hospital, HHSC will calculate a blended SDA as follows:]

[(i) Calculate a final SDA as described in paragraph (1) of this subsection;]

[(ii) Multiply the result of clause (i) of this subparagraph by 0.67;]

[(iii) Calculate a final urban SDA as described in subsection (e)(1) of this section.]

[(iv) Multiply the hospital's final urban SDA from clause (iii) of this subparagraph by 0.33;]

[(v) Sum the results of the calculations described in clauses (ii) and (iv) of this subparagraph.]

[(B) For state fiscal year 2015 only, for each hospital, HHSC will calculate a blended SDA as follows:]

[(i) Calculate a final SDA as described in paragraph (1) of this subsection;]

[(ii) Multiply the result of clause (i) of this subparagraph by 0.33;]

[(iii) Calculate a final urban SDA as described in subsection (e)(1) of this section.]

[(iv) Multiply the hospital's final urban SDA from clause (iii) of this subparagraph by 0.67;]

[(v) Sum the results of the calculations described in clauses (ii) and (iv) of this subparagraph.]

[(C) For state fiscal year 2016 and thereafter, hospitals in Rockwall County will be classified as urban hospitals and will receive the final SDA as calculated in subsection (e)(1) of this section.]

(g) - (n) (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 June 12, 2015.

TRD-201502210
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: July 26, 2015
For further information, please call: (512) 424-6900

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1 TAC §355.8061

The Texas Health and Human Services Commission (HHSC) proposes amendments to §355.8061, concerning Outpatient Hospital Reimbursement. The proposed amendments will allow HHSC to implement increases in certain outpatient reimbursements for rural hospitals.

Background and Justification

This rule establishes the reimbursement methodology for hospital outpatient services. HHSC, under its authority and responsibility to administer and implement rates, proposes amendments to this rule to implement increases in certain outpatient reimbursements for rural hospitals. Rural hospitals are defined as hospitals located in a county with 60,000 or fewer persons according to the 2010 U.S. Census as well as Medicare-designated Rural Referral Centers (RCC), Sole Community Hospitals (SCH), and Critical Access Hospitals (CAH).

The 2016-2017 General Appropriations Act (Article II, Health and Human Services Commission, House Bill 1, 84th Legislature, Regular Session, 2015, Special Provisions Relating to all Health and Human Services Agencies, Section 58) directs HHSC to expend certain funds to provide increases in, or add-ons to, Medicaid outpatient provider rates for rural hospitals to ensure access to critical services. As per Section 58, increases may include a combination of increases in or add-ons to any or all of the following: general outpatient reimbursements, outpatient emergency department services that do not qualify as emergency visits, the outpatient imaging services fee schedule, and the outpatient clinical laboratory services fee schedule. In addition, as per Section 58, no reimbursement may exceed 100 percent of cost, and outpatient emergency department services that do not qualify as emergency visits are limited to 65 percent of cost.

To accomplish these legislative objectives, HHSC proposes the following amendments to the reimbursement methodology for rural hospital outpatient services provided beginning September 1, 2015:

- increase general outpatient reimbursements such that final payments do not exceed 100 percent of cost;

- increase reimbursement for outpatient emergency department services that do not qualify as emergency visits such that final payments do not exceed 65 percent of cost;

- remove references to Rockwall county hospitals due to the expiration of the Rockwall county hospitals transition from rural to urban classification; and

- create rural hospital add-ons to the outpatient hospital imaging services fee schedule as follows:

(1) for procedure codes with an outpatient hospital imaging services fee that is less than or equal to $80.00, the proposed add-on amount is $3.00;

(2) for procedure codes with an outpatient hospital imaging services fee that is greater than $80.00 and less than or equal to $150.00, the proposed add-on amount is $8.00;

(3) for procedure codes with an outpatient hospital imaging services fee that is greater than $150.00 and less than or equal to $300.00, the proposed add-on amount is $15.00; and

(4) for procedure codes with an outpatient hospital imaging services fee that is greater than $300.00, the proposed add-on amount is $32.00.

No changes are proposed for the clinical laboratory services fee schedule because all appropriated funds are consumed by the changes detailed above.

Section-by-Section Summary

Proposed §355.8061(b)(1)(A)(ii) deletes the current text due to the expiration of the Rockwall county hospitals transition from rural to urban classification. Proposed new text states that the percent of allowable charges used in calculating general outpatient reimbursement for high-volume rural hospitals is 100 percent.

Proposed §355.8061(b)(1)(B)(ii) deletes the current text due to the expiration of the Rockwall county hospitals transition from rural to urban classification. Proposed new text states that the percent of allowable charges used in calculating general outpatient reimbursement for rural hospitals that are not high-volume providers is 100 percent.

Proposed §355.8061(b)(1)(D)(i) states that rural hospitals can receive payments not to exceed 65 percent of cost for outpatient emergency department services that do not qualify as emergency visits.

Proposed §355.8061(b)(1)(D)(ii) deletes language related to Rockwall county hospitals.

Proposed §355.8061(d)(2) describes outpatient hospital imaging reimbursement add-ons for rural hospitals.

The proposed rule also includes technical corrections, numbering revisions, and non-substantive changes to make the rule more readable and understandable.

Fiscal Note

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that during the first five-year period the proposed amendment is in effect there will be a cost to the state government of $12,000,000 for state fiscal year (SFY) 2016, $13,000,000 for SFY 2017, $13,000,000 for SFY 2018, $13,000,000 for SFY 2019, and $13,000,000 for SFY 2020. There is no anticipated negative fiscal impact on local governments as a result of enforcing or administering the section.

Ms. Rymal does not anticipate that there will be any economic cost to persons who are required to comply with the proposed amendment during the first five years the rule will be in effect. The amendment will not affect local employment.

Small Business and Micro-Business Impact Analysis

HHSC has determined that the rule will not have an adverse economic effect on either small businesses or micro-businesses, or both, because no hospital meeting the definition of a small or micro-business receives Medicaid hospital funding.

Public Benefit

Pam McDonald, Director of Rate Analysis, has determined that for each year of the first five years the amendment is in effect, the public benefits expected as a result of enforcing the amendment will be compliance with legislative appropriations so Medicaid outpatient provider reimbursement for rural hospitals is sufficient to ensure access to critical services.

Regulatory Analysis

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

Takings Impact Assessment

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

Public Comment

Written comments on the proposal may be submitted to Laura Skaggs, Hospital Rate Analyst, Rate Analysis Department, Texas Health and Human Services Commission, Mail Code H-400, P.O. Box 13247, Austin, Texas 78711, by fax to (512) 747-7475, or by e-mail to laura.skaggs@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register.*

Public Hearing

A public hearing is scheduled from 2:30 p.m. to 3:30 p.m. on July 22, 2015, in the Brown-Heatly Public Hearing Room located at 4900 North Lamar Blvd., Austin, Texas 78751. Persons requiring further information, special assistance, or accommodations should contact Kristine Dahlmann at (512) 462-6299.

Statutory Authority

The amendment is proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance (Medicaid) payments under Texas Human Resources Code Chapter 32.

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

§355.8061. Outpatient Hospital Reimbursement.

(a) Introduction. The Health and Human Services Commission (HHSC) or its designee reimburses outpatient hospital services under the reimbursement methodology described in this section. Except as described in subsections (c) and (d) of this section, HHSC will reimburse for outpatient hospital services based on a percentage of allowable charges and an outpatient interim rate.

(b) Interim reimbursement.

(1) HHSC will determine a percentage of allowable charges, which are charges for covered Medicaid services determined through claims adjudication.

(A) For high volume providers that received Medicaid outpatient payments equaling at least $200,000 during calendar year 2004.

(i) For children's hospitals and[~~,~~] state-owned hospitals[~~, and rural hospitals~~] as defined in §355.8052 of this division (relating to Inpatient Hospital Reimbursement), the percentage of allowable charges is 76.03 percent, except as described in subparagraph (C) of this paragraph.

(ii) For rural hospitals as defined in §355.8052 of this division, the percentage of allowable charges is 100 percent.

~~*[(ii)* For providers in Rockwall County.]~~

~~*[(I)* For state fiscal year 2014, the percentage of allowable charges is 74.69 percent.]~~

~~*[(II)* For state fiscal year 2015, the percentage of allowable charges is 73.34 percent.]~~

~~*[(III)* For state fiscal year 2016 and thereafter, the percentage of allowable charges is 72.00 percent.]~~

(iii) For all other providers, the percentage of allowable charges is 72.00 percent.

(B) For all providers not considered high volume providers as determined in paragraph (1)(A) of this subsection.

(i) For children's hospitals and[~~,~~] state-owned hospitals[~~, and rural hospitals~~] as defined in §355.8052 of this division, the percentage of allowable charges is 72.27 percent, except as described in subparagraph (C) of this paragraph.

(ii) For rural hospitals as defined in §355.8052 of this division, the percentage of allowable charges is 100 percent.

~~*[(ii)* For providers in Rockwall County.]~~

~~*[(I)* For state fiscal year 2014, the percentage of allowable charges is 70.99 percent.]~~

~~*[(II)* For state fiscal year 2015, the percentage of allowable charges is 69.72 percent.]~~

~~*[(III)* For state fiscal year 2016 and thereafter, the percentage of allowable charges is 68.44 percent.]~~

(iii) For all other providers, the percentage of allowable charges is 68.44 percent.

(C) For children's hospitals:

(i) The percentage of allowable charges described in subparagraphs (A)(i) and (B)(i) of this paragraph are subject to the prior written approval of the Legislative Budget Board and the Governor, as required by the 2014-2015 General Appropriations Act (Article II, Health and Human Services Comm., S.B. 1, 83rd Leg., Regular Session, 2013, Rider 83 and Special Provisions Relating to All Health and Human Services Agencies, Section 44, Rate Limitations and Reporting Requirements).

(ii) If the percentages of allowable charges described in subparagraphs (A)(i) and (B)(i) of this paragraph are not approved as described in clause (i) of this subparagraph, the percentages of allowable charges described in subparagraphs (A)(iii) and (B)(iii) of this paragraph apply.

(D) For outpatient emergency department (ED) services that do not qualify as emergency visits, which are listed in the Texas Medicaid Provider Procedures Manual and other updates on the claims administrator's website, HHSC will reimburse:

(i) rural hospitals, as defined in §355.8052 of this division, an amount not to exceed 65 percent of allowable charges after application of the methodology in paragraph (2)(C) of this subsection, which will result in a payment that does not exceed 65 percent of allow-

able cost; and [~~60 percent of the amount determined in subparagraph (A) or (B) of this paragraph;~~]

~~*[(ii)* hospitals in Rockwall County:]~~

~~*[(I)* for state fiscal year 2014 and 2015, 60 percent of the amount determined in subparagraphs (A) or (B) of this paragraph;]~~

~~*[(II)* for state fiscal year 2016 and thereafter, a flat fee set at a percentage of the Medicaid acute care physician office visit amount for adults; and]~~

(ii) [~~(iii)~~] all other hospitals, a flat fee set at a percentage of the Medicaid acute care physician office visit amount for adults.

(2) HHSC will determine an outpatient interim rate for each hospital, which is the ratio of Medicaid allowable outpatient costs to Medicaid allowable outpatient charges derived from the hospital's Medicaid cost report.

(A) For a hospital with at least one tentative cost report settlement completed prior to September 1, 2013, the interim rate is the rate in effect on August 31, 2013, except the hospital will be assigned the interim rate calculated upon completion of any future cost report settlement if that interim rate is lower.

(B) For a new hospital that does not have at least one tentative cost report settlement completed prior to September 1, 2013, the interim rate is 50 percent until the interim rate is adjusted as follows:

(i) If the hospital files a short-period cost report for its first cost report, the hospital will be assigned the interim rate calculated upon completion of the hospital's first tentative cost report settlement.

(ii) The hospital will be assigned the interim rate calculated upon completion of the hospital's first full-year tentative cost report settlement.

(iii) The hospital will retain the interim rate calculated as described in clause (ii) of this subparagraph, except it will be assigned the interim rate calculated upon completion of any future cost report settlement if that interim rate is lower.

(C) Interim claim reimbursement is determined by multiplying the amount of a hospital's outpatient allowable charges after applying any reductions to allowable charges made under paragraph (1) of this subsection by the outpatient interim rate in effect on the date of service.

(D) Cost settlement. Interim claim reimbursement determined in subparagraph (C) of this paragraph will be cost-settled at both tentative and final audit of a hospital's cost report. The calculation of allowable costs will be determined based on the amount of allowable charges after applying any reductions to allowable charges made under paragraph (1) of this subsection.

(i) Interim payments for claims with a date of service prior to September 1, 2013, will be cost settled.

(ii) Interim payments for claims with a date of service on or after September 1, 2013, will be included in the cost report interim rate calculation, but will not be adjusted due to cost settlement unless the settlement calculation indicates an overpayment.

(iii) HHSC will calculate an interim rate at tentative and final cost settlement for the purposes described in subparagraph (B) of this paragraph.

(iv) If a hospital's interim claim reimbursement for all outpatient services, excluding imaging, clinical lab and outpatient emergency department services that do not qualify as emergency visits, for the hospital's fiscal year exceeded the allowable costs for those services, HHSC will recoup the amount paid to the hospital in excess of allowable costs.

(v) If a hospital's interim claim reimbursement for all outpatient services, excluding imaging, clinical lab and outpatient emergency department services that do not qualify as emergency visits, for the hospital's fiscal year was less than the allowable costs for those services, HHSC will not make additional payments through cost settlement to the hospital for service dates on or after September 1, 2013.

(c) Outpatient hospital surgery. Outpatient hospital non-emergency surgery is reimbursed in accordance with the methodology for ambulatory surgical centers as described in §355.8121 of this subchapter (relating to Reimbursement).

(d) Outpatient hospital imaging.

(1) For all hospitals except rural hospitals, as defined in §355.8052 of this division, outpatient [~~Outpatient~~] hospital imaging services are not reimbursed under the outpatient reimbursement methodology described in subsection (b) of this section. Outpatient hospital imaging services are reimbursed according to an outpatient hospital imaging service fee schedule that is based on a percentage of the Medicare fee schedule for similar services. If a resulting fee for a service provided to any Medicaid beneficiary is greater than 125 percent of the Medicaid adult acute care fee for a similar service, the fee is reduced to 125 percent of the Medicaid adult acute care fee.

(2) For rural hospitals, outpatient hospital imaging services are reimbursed according to the outpatient hospital imaging service fee schedule calculated in paragraph (1) of this subsection plus add-on amounts as follows:

(A) for procedure codes with a fee calculated under paragraph (1) of this subsection that is less than or equal to $80.00, the rural hospital add-on amount is $3.00;

(B) for procedure codes with a fee calculated under paragraph (1) of this subsection that is greater than $80.00 and less than or equal to $150.00, the rural hospital add-on amount is $8.00;

(C) for procedure codes with a fee calculated under paragraph (1) of this subsection that is greater than $150.00 and less than or equal to $300.00, the rural hospital add-on amount is $15.00; and

(D) for procedure codes with a fee calculated under paragraph (1) of this subsection that is greater than $300.00, the rural hospital add-on amount is $32.00.

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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Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: July 26, 2015
For further information, please call: (512) 424-6900

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

The Texas Health and Human Services Commission (HHSC) proposes the repeal of §371.21, concerning Subpoena Authority, and proposes amendments to §371.1003 and §371.1013, concerning Provider Disclosure and Screening; §§371.1607, 371.1609, 371.1613, and 371.1615, concerning General Provisions; and §371.1709 and §371.1711, concerning Administrative Actions and Sanctions.

Background and Justification

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

The repeal and amendments to rules in Chapter 371 are proposed in light of recent state legislation affecting Texas Government Code Chapter 531. Specifically, these rules implement various provisions of Senate Bill 207, 84th Legislature, Regular Session, 2015 (S.B. 207).

The proposed amendments revise the current process for informal resolution meetings, appeals, and payment holds, as mandated by S.B. 207. The amendments also include additional components and clarifications related to provider enrollment and administrative actions and sanctions by HHSC's Office of Inspector General (OIG).

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

HHSC intends that should any sentence, paragraph, subdivision, clause, phrase, or section of the amended rules in Chapter 371 be determined, adjudged, or held to be unconstitutional, illegal, or invalid, the same shall not affect the validity of the subchapter as a whole, or any part or provision hereof other than the part so declared to be unconstitutional, illegal, or invalid, and shall not affect the validity of the subchapter as a whole.

Section-by-Section Summary

Section 371.21 is being repealed because it is unnecessary and conflicts with the provisions of S.B. 207. Under Texas Government Code §531.1021(a), as amended by S.B. 207, OIG may issue a subpoena to compel the attendance of a relevant witness or the production, for inspection or copying, of relevant evidence that is in this state.

Section 371.1003 is amended to include a definition of a "complete application," as referenced in Texas Government Code §531.1034, added by S.B. 207.

Section 371.1013 is amended to require that an application must be "complete," as defined, before OIG will make a recommendation regarding the enrollment of a provider.

Section 371.1607 is amended to update the definitions of "fraud" and "costs related to an administrative appeal" to reflect changes in Senate Bill 207. S.B. 207 amended the definition of "fraud" in Texas Government Code §531.1011(4). Under Texas Government Code §531.1201(b) and §531.102(g)(4), OIG is responsible for the costs of an administrative hearing.

Section 371.1609 is amended to update provisions that are inconsistent with S.B. 207, remove references to OIG's subpoena authority, and generally refer to notice requirements in statute.

Section 371.1613 is amended to update the Informal Resolution Meeting (IRM) Process and timelines as outlined in Senate Bill 207. The process is now confidential, and a recording is made of the process only if requested. In addition, timelines for payment holds, non-payment holds, and recoupments were included in §371.1613(b)(2)(A) - (C). In subparagraph (A), the payment hold ten-day requirement is from statute. The non-payment hold 30-day timeline in subparagraph (B) is proposed as a reasonable time for requesting an IRM based on similar language in the prior rule and the 30-day timeframe in amended Texas Government Code §531.1201(a) for an appeal. In subparagraph (C), which pertains to recoupment of an overpayment, the amendment eliminates the requirement that a request for the IRM process be timely. The new amended statute requires that the IRM process run concurrently with the administrative hearing process, so OIG's proposed language allows a provider to submit a request for an IRM at any time prior to the issuance of the final notice.

Section 371.1615 is amended to address the appeals process and the timelines and processes associated with requesting an appeal, as required by S.B. 207. It also reflects the changes in statute regarding who bears the costs of a SOAH procedure. S.B. 207 amended the time periods by which providers must request an appeal after receiving a notice of OIG action: 30 days for a recoupment of an overpayment or debt (Texas Government Code §531.1201(a)) and 10 days for a payment hold (Texas Government Code §531.102(g)(3)). Under Texas Government Code §531.1201(b) and §531.102(g)(4), OIG is responsible for the costs of an administrative hearing, but a provider is responsible for the provider's own costs incurred in preparing for the hearing.

Section 371.1709 is amended to reflect the changes in S.B. 207 to the payment hold process.

Section 371.1711 is amended to remove redundant language regarding recoupments of overpayments and debts and to reflect current statutory requirements added by S.B. 207.

Fiscal Note

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that during the first five-year period the proposed rule amendments and repeal are in effect there will be a cost to state government of $430,326 General Revenue (GR) ($860,652 All Funds (AF)) for SFY 2016 and $413,154 GR ($826,307 AF) each year for SFY 2017 through SFY 2020. Included in the estimate is $89,953 for employee benefits each year for SFY 2016 through SFY 2017. There is no anticipated effect on the costs or revenues of local governments. Although the agency anticipates additional costs, no appropriations were

made for the incremental amount in State Office of Administrative Hearings (SOAH) charges.

Small Business and Micro-business Impact Analysis

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

Public Benefit and Costs

Ms. Rymal has determined that for each year of the first five years the amendments and repeal are in effect, the expected public benefit is that the rules will ensure the integrity of Medicaid and other HHS programs by discovering, preventing, and correcting fraud, waste, and abuse.

Ms. Rymal has also determined there are no anticipated economic costs to persons who are required to comply with the proposed amendments and repeal during the first five years the rules will be in effect. There is no anticipated negative impact on local employment or local economies.

Regulatory Analysis

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

Takings Impact Assessment

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

Public Comment

Written comments on the proposal may be submitted by mail to Lisa Barragan, Texas Health and Human Services Commission-OIG, Broadmoor 902 (MC 1350), 11501 Burnet Road, Austin, Texas 78758; by fax to (512) 833-6484; or by e-mail to *Lisa.Barragan@hhsc.state.tx.us* within 30 days of publication in the *Texas Register.*

SUBCHAPTER B. OFFICE OF INSPECTOR GENERAL

1 TAC §371.21

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

Legal Authority

The repeal is proposed under Texas Government Code §531.102(a-2), which provides that the Executive Commissioner shall work in consultation with the Office of Inspector General to adopt rules necessary to implement a power or duty of the office; 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 to administer Medicaid funds.

The repeal implements Texas Government Code Chapter 531, as amended by S.B. 207. No other statutes, articles, or codes are affected by the proposal.

§371.21. Subpoena Authority.

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-201502244
Karen Ray
General Counsel
Texas Health and Human Services Commission
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For further information, please call: (512) 424-6900

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SUBCHAPTER E. PROVIDER DISCLOSURE AND SCREENING

1 TAC §371.1003, §371.1013

The amendments are proposed under Texas Government Code §531.102(a-2), which provides that the Executive Commissioner shall work in consultation with the Office of Inspector General to adopt rules necessary to implement a power or duty of the office; 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 to administer Medicaid funds.

The amendments implement Texas Government Code Chapter 531, as amended by S.B. 207. No other statutes, articles, or codes are affected by the proposal.

§371.1003. Definitions.

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

(1) Applicant--An individual or an entity that has filed an enrollment application to become a provider, re-enroll as a provider, or enroll a new practice location in a Medicaid program or the Children's Health Insurance Program.

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

(3) Complete Application--A provider enrollment application that contains all the required information, including:

(A) All questions answered completely, including correct date of birth, social security numbers, license numbers, and all requirements per provider type defined in the Texas Medicaid Provider Procedures Manual;

(B) IRS Form W-9;

(C) Signed and certified provider agreements;

(D) Provider Information Form (PIF-1);

(E) Principal Information Forms (PIF-2) on all persons required to be disclosed;

(F) Full disclosure of all criminal history, including copies of complete dispositions on all criminal history;

(G) Full disclosure of all board or licensing orders, including documentation of compliance with current board orders;

(H) Full disclosure of all corporate compliance agreements, settlement agreements, state or federal debt, and sanctions;

(I) Documentation of an active license that is not subject to expiration within 30 days of submission of the enrollment application;

(J) Completion of a pre-enrollment site visit by HHSC or its designee, if required, and all required current documentation (e.g., liability insurance); and

(K) Documentation of fingerprints of a provider or any person with a 5 percent or more direct or indirect ownership in the provider, if required.

(4) [~~(3)~~] Enrollment application--A form prescribed by the Texas Health and Human Services Commission (HHSC) that a provider or applicant submits to HHSC or its designee to enroll or re-enroll as a provider.

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

(6) [~~(5)~~] HHSC--The Texas Health and Human Services Commission (HHSC).

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

(8) [~~(7)~~] Medical assistance--A medical or health care related service, item, benefit, or supply.

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

(10) [~~(9)~~] Provider--An applicant that successfully completes the enrollment process outlined in this chapter, Chapter 352 of this title (relating to Medicaid and Children's Health Insurance Program Provider Enrollment), if applicable, or another health and human services program.

(11) [~~(10)~~] Provider agreement--An agreement between HHSC and a provider wherein the provider agrees to certain contract provisions as a condition of participation.

§371.1013. Provider Enrollment Recommendations.

(a) HHSC-OIG makes a recommendation on each enrollment application submitted for review in accordance with the requirements of this subchapter (relating to Provider Disclosure and Screening) and Chapter 352 of this title (relating to Medicaid and Children's Health Insurance Program Provider Enrollment), or other rule, as applicable. The recommendation is at the sole discretion of HHSC-OIG, and is not subject to administrative review or reconsideration.

(b) In making its enrollment recommendation, HHSC-OIG may consider any relevant circumstance or factor as it applies to the applicant, provider, or any person required to be disclosed in the enrollment application in accordance with this subchapter and Chapter 352 of this title, if applicable.

(c) Upon making a recommendation on a complete [~~an enrollment~~] application, HHSC-OIG informs HHSC of its recommendation. HHSC makes the final enrollment decision after considering:

(1) HHSC-OIG's recommendation;

(2) any conditions for approval recommended by HHSC-OIG;

(3) the availability of access to care; and

(4) any other relevant facts or circumstances.

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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Karen Ray
General Counsel
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SUBCHAPTER G. ADMINISTRATIVE ACTIONS AND SANCTIONS
DIVISION 1. GENERAL PROVISIONS

1 TAC §§371.1607, 371.1609, 371.1613, 371.1615

The amendments are proposed under Texas Government Code §531.102(a-2), which provides that the Executive Commissioner shall work in consultation with the Office of Inspector General to adopt rules necessary to implement a power or duty of the office; 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 to administer Medicaid funds.

The amendments implement Texas Government Code Chapter 531, as amended by S.B. 207. No other statutes, articles, or codes are affected by the proposal.

§371.1607. Definitions.

For purposes of this subchapter, the following terms have the meanings assigned as follows:

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

(2) Address of record--An HHS provider's current mailing or physical address, including a working fax number, as provided to the appropriate health and human service program's claims administrator or as required by contract, statute, or regulation; a non-HHS provider's

last known address as reflected by the records of the United States Postal Service or the Texas Secretary of State's records for business organizations, if applicable.

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) a fraud hotline complaint;

(B) claims data mining;

(C) data analysis processes; or

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

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

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

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

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

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

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

(12) Claim--

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

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

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

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

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

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

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

(18) Conviction or convicted--Means that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(19) [(20)] Credible allegation of fraud--An allegation of fraud that has been verified by the state. An allegation is considered to be credible when the commission has verified that the allegation has indicia of reliability and has carefully reviewed all allegations, facts, and evidence. The commission will act judiciously on a case-by-case basis.

(20) [(21)] Day--A calendar day.

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

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

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

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

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

(26) [(27)] Federal health care program--Any plan or program that provides health benefits, whether directly, through insurance, or otherwise, which is funded directly, in whole or in part, by the United States Government (other than the federal employee health insurance program under Chapter 89 of Title 5, United States Code).

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

(28) [(29)] Fraud--Any [act that constitutes fraud under applicable federal or state law, including any] intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to that person or some other person. The term does not include unintentional technical, clerical, or administrative errors. [Fraud may include any acts prohibited by the Texas Human Resources Code Chapter 36 or Texas Penal Code Chapter 35A.]

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

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

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

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

(A) the past, present, or future physical or mental health or condition of an individual;

(B) the provision of health care to an individual; or

(C) the past, present, or future payment for the provision of health care to an individual.

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

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

(A) a health and human services agency under the umbrella of the Commission or its successor, including the Commission;

(B) a program or service provided under the authority of the Commission, including Medicaid and CHIP; or

(C) a health and human services agency, including those agencies delineated in Texas Government Code §531.001.

(33) [(34)] Immediate family member--A person's spouse (husband or wife); natural or adoptive parent; child or sibling; stepparent, stepchild, stepbrother or stepsister; father-, mother-, daughter-, son-, brother- or sister-in-law; grandparent or grandchild; or spouse of a grandparent or grandchild.

(34) [(35)] Indirect ownership interest--Any ownership interest in an entity that has an ownership interest in another entity. The

term includes an ownership interest in any entity that has an indirect ownership interest in the entity at issue.

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

(36) [~~(37)~~] "Item" or "service" includes--

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(49) [~~(50)~~] OIG--Office of the Inspector General, or its successor, within the Health and Human Services Commission.

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

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

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

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

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

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

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

(54) [~~(55)~~] Payment hold (suspension of payments)--An administrative sanction that withholds all or any portion of payments due a provider until the matter in dispute, including all investigation and legal proceedings, between the provider and the Commission or an operating agency or its agent(s) are resolved. This is a temporary denial of reimbursement under the Medicaid or other HHS program for items or services furnished by a specified provider.

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

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

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

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

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

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

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

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

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

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

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

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

(B) has a provider or contract number issued by the Commission or by any HHS agency or program or their designee to provide medical assistance, Medicaid, or any other HHS service in any HHS program, including CHIP, under contract or provider agreement with the Commission, its designee, or an HHS agency; or

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

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

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

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

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

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

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

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

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

(C) cost reports, documentation supporting cost reports;

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

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

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

(G) statistical documentation, computer records and data;

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

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

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

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

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

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

(74) [~~(75)~~] Sanction--Any administrative enforcement measure imposed by OIG pursuant to this subchapter other than administrative actions defined in §371.1701 of this subchapter (relating to Administrative Actions).

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

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

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

(78) [~~(79)~~] SOAH--The State Office of Administrative Hearings as described in Texas Government Code §2003.021.

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

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

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

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

(83) [~~(84)~~] Suspension of payments (payment hold)--An administrative sanction that withholds all or any portion of payments due a provider until the matter in dispute, including all investigation and legal proceedings, between the provider and the Commission or an operating agency or its agent(s) are resolved. This is a temporary denial of reimbursement under the Medicaid or other HHS program for items or services furnished by a specified provider.

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

(85) [~~(86)~~] Terminated--Means:

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

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

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

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

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

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

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

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

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

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

§371.1609. Notice and[~~,~~] Service[~~, and Subpoena Authority~~].

(a) Service of notice.

(1) When required by this subchapter, OIG provides written notice by:

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

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

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

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

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

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

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

[~~(2) It is the responsibility of all providers to provide a current and accurate mailing and physical address of record and other~~

contact information, including a working fax number, to the Medicaid claims administrator.]

[(A) OIG will send notice to a provider's address of record.]

[(B) OIG will send notice to a non-HHS provider's address of record, and, if additional addresses are located after a diligent search by OIG, to additional addresses that appear to be current addresses belonging to the person.]

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

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

(b) Contents of Notice.

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

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

(2) [(B)] the basis of the action or potential action;

(3) [(C)] the effect of the action or potential action;

(4) [(D)] the duration of the action;

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

(6) [(F)] any additional information required by statute or this subchapter [law or for resolution of the pending issue].

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

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

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

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

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

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

[(B) a description of facts and supporting evidence;]

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

[(D) the extrapolation methodology;]

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

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

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

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

[(d) Subpoenas.]

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

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

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

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

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

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

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

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

§371.1613. Informal Resolution Process.

(a) A person who is served [receives] a notice of intent to impose a sanction or notice of a payment hold may request an [initial] informal resolution meeting (IRM) to discuss the issues identified by OIG in the notice. [pending allegations and initiate settlement discussions. OIG must receive a written request for an initial IRM no later than 30 days after the date the person receives notice of intent to impose the sanction or notice of a payment hold.]

(b) A written request for an IRM must:

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

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

(A) for a payment hold, 10 days after service on the person of the notice of payment hold.

(B) for any sanction other than a payment hold or notice of recoupment of overpayment or debt, 30 days after service on the person of the notice.

(C) for a notice of recoupment or overpayment or debt, a person may request an IRM any time prior to the issuance of the final notice.

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

agrees, and, in the case of a payment hold, why an IRM would be beneficial for the resolution of the case;

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

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

(c) On timely request for an initial IRM:[,]

(1) for any sanction other than a payment hold, OIG shall [will] schedule the IRM and give notice of the time and place of the meeting. [no later than 60 days after the date OIG receives a timely request or will schedule at a later date if requested by the person or an attorney for the person. OIG will provide the person or the person's attorney notice of the time and place of the initial IRM no later than 30 days before the meeting is to be held.]

(2) for a request based on a payment hold, OIG shall decide whether to grant the provider's request for an IRM and, if OIG decides to grant the IRM, OIG shall schedule the IRM and notice of the time and place of the meeting.

(d) A [Within 30 days of receipt of a notice of intent to impose a sanction or notice of a payment hold, a] person may also submit to OIG any documentary evidence or written argument regarding whether the sanction is warranted. Documentary evidence or written argument that may be submitted is not necessarily controlling upon the OIG, however.

(e) A written request for an [initial] IRM may be combined with a request for an administrative [contested case] hearing, if a person is entitled to such hearing, and if it meets the requirements of this subchapter. If both an [initial] IRM and an administrative [contested case] hearing have been requested by a person entitled to both, the informal resolution process shall run concurrently with the administrative hearing process, and the administrative hearing process may not be delayed on account of the informal resolution process. [administrative contested case hearing and all pertinent discovery, prehearing conferences, and all other issues and activities regarding the administrative contested case hearing will be abated until the informal resolution process has concluded without settlement or resolution of the issues. OIG will request that the case be docketed for an administrative contested case hearing on the sanction if no resolution is met at the conclusion of the informal resolution process.]

(f) Upon written request of a provider, OIG will provide for a recording of an IRM at no expense to the provider who requested the meeting. The recording of an IRM will be made available to the provider who requested the meeting. OIG shall not record an IRM unless OIG receives a written request from a provider.

(g) Notwithstanding Government Code §531.1021(g), an IRM is confidential, and any information or materials obtained by OIG, including OIG's employees or agents, during or in connection with an IRM, including a recording, are privileged and confidential and may not be subject to disclosure under Chapter 552, Texas Government Code, or any other means of legal compulsion for release, including disclosure, discovery, or subpoena. [A person may request a second IRM not later than 20 days after the date of the initial IRM if the sanction involves any payment hold or proposed recoupment of an overpayment or debt and any damages or penalties relating to a proposed recoupment of an overpayment or debt arising out of a fraud or abuse investigation. On receipt of a timely request, OIG will schedule the second IRM not later than 45 days after the date OIG receives the request. If requested by the provider, OIG will schedule the meeting on a later date as determined by OIG. OIG will give notice to the provider of the time and place of the second IRM no later than 20 days before the date the meeting is to be held. A provider may provide additional information before the second IRM for consideration by OIG. Additional information that may be submitted is not necessarily controlling upon the OIG, however.]

[(h) In the event that the IRM process does not result in settlement, OIG will issue a notice of a final sanction, if applicable, and the provider may then elect to request an administrative contested case hearing.]

§371.1615. Appeals.

(a) A person who is served with [receives a] final notice of a sanction [or notice of a payment hold,] may appeal the imposition of the sanction. [An appeal may consist of an administrative contested case hearing.]

(b) Request for hearing.

(1) A request for an administrative [contested case] hearing at HHSC Appeals Division or at SOAH on a final notice of overpayment, must be received in writing by OIG no later than 30 [15] days after the date the person is served [receives] the final notice.

(2) A request for an administrative hearing at HHSC Appeals Division on a Final Notice of Contract Cancellation, Final Notice of Exclusion, or Notice of Final Assessment of Administrative Penalties must be received in writing by OIG no later than 15 days after the date the person is served the notice.

(3) [(2)] A request for an expedited administrative hearing at SOAH on a payment hold must be received in writing by OIG no later than 10 days after the date the person is served the notice. [When a person is entitled to a payment hold hearing at SOAH, OIG must receive the written request for the hearing no later than 30 days after receipt of the notice of the payment hold.]

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

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

(B) timely arrive at the address specified in the final notice [of sanction or notice of payment hold]; and

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

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

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

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

(5) [(4)] Other than a final notice of overpayment or payment hold, an administrative [contested case] hearing for a final notice of a sanction will be held at the HHSC Appeals Division. [An administrative contested case hearing for a final notice of overpayment may be held at the HHSC Appeals Division or at SOAH. A payment hold hearing will be held at SOAH.]

(6) [(5)] The costs for an administrative [contested case] hearing [or payment hold hearing] held at SOAH will be borne by OIG, but a provider is responsible for the provider's own costs incurred in preparing for the hearing. [and the provider unless otherwise determined by the administrative law judge for good cause at the hearing.]

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

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

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

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

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

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

[(i) contact the person about scheduling the hearing;]

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

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

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

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

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

(7) All other costs incurred by either party, including attorney's fees, transcript copies, expert fees, and deposition costs, will be the responsibility of the party incurring those costs.

(8) [(6)] OIG will contact the HHSC Appeals Division or SOAH [after receipt of the security deposit, as applicable,] to request that the hearing be docketed. OIG will file a docketing request for a payment hold hearing with SOAH not later than the 3rd [60th] day after the hearing is requested. [completing the informal resolution process and receiving the cash security deposit, if applicable.]

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

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

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

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

(c) [(e)] If a person who has been served [received] notice of a final sanction or notice of a payment hold fails to timely request an administrative [contested case] hearing, the sanction will become final and unappealable.

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 June 15, 2015.

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Karen Ray
General Counsel
Texas Health and Human Services Commission
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For further information, please call: (512) 424-6900

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DIVISION 3. ADMINISTRATIVE ACTIONS AND SANCTIONS

1 TAC §371.1709, §371.1711

The amendments are proposed under Texas Government Code §531.102(a-2), which provides that the Executive Commissioner shall work in consultation with the Office of Inspector General to adopt rules necessary to implement a power or duty of the office; 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 to administer Medicaid funds.

The amendments implement Texas Government Code Chapter 531, as amended by S.B. 207. No other statutes, articles, or codes are affected by the proposal.

§371.1709. Payment Hold.

[(a) OIG may impose a payment hold against any person if it determines that the person committed an act for which a person is subject to administrative actions or sanctions, including the following:]

[(1) is subject to a suspension of payments by the U.S. Department of Health and Human Services for Medicare violations;]

[(2) commits a program violation;]

[(3) is affiliated with a person who commits a program violation; or]

[(4) for any other reason provided by statute or regulation.]

(a) [(b)] Subject to subsections (c) and (d) of this section, OIG shall impose [imposes] a payment hold against a provider only [person]:

(1) to compel the production records or documents [when a request made by a Requesting Agency is refused];

(2) when requested by the state's Medicaid Fraud Control Unit; or

(3) upon the determination a credible allegation of fraud exists.

(b) OIG may elect not to impose a payment hold, to not continue a payment hold, to impose a payment hold only in part, or to convert a payment hold imposed in whole to one imposed only in part, for any of the good cause exceptions enumerated in Texas Government Code §531.102(g)(8) and in 42 C.F.R. §455.23.

(c) OIG may not impose a payment hold on claims for reimbursement submitted by a provider for medically necessary services for which the provider has obtained prior authorization from the commission or a contractor of the commission unless OIG has evidence that the provider has materially misrepresented documentation relating to those services. [~~Whenever OIG's investigation leads to the initiation of a payment hold in whole or part, OIG will make a fraud referral to the Medicaid Fraud Control Unit as required by 42 CFR §455.23(d).~~]

(d) [~~Notice.~~]

[~~(1)~~] Unless OIG receives a request from a law enforcement agency to temporarily withhold notice pursuant to 42 C.F.R. §455.23 [~~to a person of a payment hold~~], OIG shall provide notice as required by 42 CFR §455.23(b) and Texas Government Code §531.102(g). [~~provides written notice of a payment hold no later than the fifth (5th) business day after the date the payment hold is imposed. A law enforcement agency may request a delay in sending notice for up to 30 days. The request may be renewed up to twice and in no event may exceed 90 days.~~]

[~~(2) Notice of payment hold includes:~~]

[~~(A) a description of the hold;~~]

[~~(B) the basis for the hold;~~]

[~~(C) the effect of the hold;~~]

[~~(D) the duration of the hold; and~~]

[~~(E) a statement of the person's right to request an informal resolution meeting or a payment hold hearing regarding the imposition of the payment hold.~~]

[~~(3) If the payment hold is based on a credible allegation of fraud, written notice will also:~~]

[~~(A) state that the payments are being suspended according to 42 CFR §455.23;~~]

[~~(B) state the general allegations as to why the payment hold has been imposed;~~]

[~~(C) state that the hold is for a temporary period and will be lifted after either:~~]

~~(i)~~ ~~OIG or a prosecuting authority determines that there is insufficient evidence of fraud by the person; or~~]

~~(ii)~~ ~~legal proceedings related to the person's alleged fraud are completed;~~]

[~~(D) specify the types of Medicaid claims or business units to which the payment suspension is effective;~~]

[~~(E) inform the provider of the right to submit written evidence for consideration by the agency;~~]

[~~(F) state the specific basis for the hold, including identification of the claims supporting the allegation at that point in the investigation and a representative sample of any documents that form the basis for the hold; and~~]

[~~(G) describe administrative and judicial due process remedies, including the provider's right to seek informal resolution, a formal administrative appeal hearing, or both.~~]

[~~(e) Due process.~~]

[~~(1) After receiving a notice of a payment hold, a person has a right to the informal resolution process in accordance with §371.1613of this subchapter (relating to Informal Resolution Process). A request for an IRM does not expand the time allowed to the provider to request an administrative hearing.~~]

[~~(2) A person may request a payment hold hearing after receipt of a notice of payment hold in accordance with §371.1615(d) of this subchapter (relating to Appeals). OIG must receive the written request for an appeal no later than 30 days after the date the person receives the notice.~~]

(e) [~~(f)~~] Scope and effect of payment hold.

(1) Once a person is placed on payment hold, payment of Medicaid [~~or other HHS program~~] claims for specific procedures or services [~~and any other payments to the person from an HHS agency~~] will be limited or denied as long as the payment hold is in effect.

[~~(2) If the state's Medicaid fraud control unit or any other law enforcement agency accepts a fraud referral from the office for investigation, a payment hold based on a credible allegation of fraud may be continued until:~~]

[~~(A) that investigation and any associated enforcement proceedings are complete; or~~]

[~~(B) the state's Medicaid fraud control unit, another law enforcement agency, or other prosecuting authorities determine that there is insufficient evidence of fraud by the provider.~~]

[~~(3) If the state's Medicaid fraud control unit or any other law enforcement agency declines to accept a fraud referral from OIG for investigation, a payment hold based on a credible allegation of fraud will be discontinued unless the commission has alternative federal or state authority under which it may impose a payment hold or the office makes a fraud referral to another law enforcement agency.~~]

(2) [~~(4)~~] After a payment hold is terminated for any reason, OIG may retain the funds accumulated during the payment hold to offset any overpayment, criminal restitution, penalty or other assessment, or agreed-upon amount that may result from ongoing investigation of the person, including any payment amount accepted by the prosecuting authorities made in lieu of a prosecution to reimburse the Medicaid or other HHS program.

(3) [~~(5)~~] The payment hold may be terminated or partially lifted for the reasons outlined in 42 CFR §455.23 or Texas Government Code §531.102(g)(8). [~~upon the following events:~~]

[~~(A) OIG or a prosecuting authority determines that there is insufficient evidence of fraud by the person if the hold is based upon an allegation of fraud;~~]

[~~(B) legal proceedings related to the person's alleged fraud are completed if the hold is based upon an allegation of fraud;~~]

[~~(C) the Medicaid Fraud Control Unit asks OIG to lift the hold if the hold is based upon the Unit's request;~~]

[~~(D) the duration of the hold expires if the hold was imposed for a specific, limited time;~~]

[~~(E) OIG and the person have agreed to lift the hold in whole or in part during an informal resolution;~~]

[(F) OIG determines in its sole discretion that there is insufficient evidentiary or legal basis for maintaining the hold;]

[(G) OIG determines in its sole discretion that it is in the best interests of the Medicaid program to lift the hold;]

[(H) OIG determines that a payment hold would adversely affect clients' access to care or as otherwise determined to be "good cause" as defined in 42 CFR §455.23(e);]

[(I) an administrative law judge or judge of any court of competent jurisdiction orders OIG to lift the hold in whole or in part; or]

[(J) all proceedings against the provider, including any appeals and judicial review, have been exhausted and all overpayments and other reimbursements are satisfied.]

§371.1711. Recoupment of Overpayments and Debts.

(a) OIG recovers overpayments made to providers within the Medicaid or other HHS programs, whether the overpayment resulted from error by the provider, the claims administrator, or an operating agency, misunderstanding, or a program violation.

(b) Application. OIG may recoup from any person if it determines that the person committed an act for which a person is subject to administrative actions or sanctions, including the following:

(1) commits a program violation that leads to the payment of an overpayment;

(2) has failed to pay a debt owed to Medicare or to any Medicaid program as the result of fraudulent or abusive actions by a person participating in such program;

(3) is affiliated with a person who commits a program violation that leads to the payment of an overpayment;

(4) commits an act for which sanctions, damages, penalties, or liability could be or are assessed by OIG; or

(5) who causes or receives an overpayment.

(c) Notice will include:[.]

[(1) Notice of Proposed Recoupment of Overpayment or Debt. When OIG proposes to recoup overpayments or debts, it gives written notice of its intent to recoup by sending a notice of proposed recoupment of overpayment or debt. A notice of proposed recoupment of overpayment or debt includes:]

[(A) a description of the recoupment, including the amount of the potential identified overpayment;]

[(B) the basis for the recoupment;]

[(C) the effect of the recoupment;]

[(D) the duration of the recoupment; and]

[(E) a statement of the person's right to request an informal resolution meeting (IRM).]

[(2) Notice of any proposed recoupment of an overpayment or debt and any damages or penalties related to a proposed recoupment of an overpayment or debt arising out of a fraud or abuse investigation will include:]

(1) [(A)] the specific basis for the overpayment or debt;

(2) [(B)] a description of facts and supporting evidence;

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

(4) [(D)] the extrapolation methodology, information relating to the extrapolation methodology used as part of the investigation, and the methods used to determine the overpayment or debt in sufficient detail so that the extrapolation results may be demonstrated to be statistically valid and are fully reproducible;

(5) [(E)] the calculation of the overpayment or debt amount;

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

(7) [(G)] a description of administrative and judicial due process remedies, including the provider's option [right] to seek informal resolution, the provider's right to seek a formal administrative appeal hearing, or that the provider may seek both.

[(3) Final notice of overpayment and notice of recoupment of debt. A final notice of overpayment and a notice of recoupment of debt includes:]

[(A) a description of the recoupment, including the amount of the identified final overpayment or debt;]

[(B) the basis of the recoupment;]

[(C) the effect of the recoupment;]

[(D) the duration of the recoupment;]

[(E) the requirements of the person for repayment of the overpayment or debt; and]

[(F) a statement of the person's right to request a formal administrative appeal hearing regarding the recoupment.]

[(d) Due process.]

[(1) After receiving a notice of proposed recoupment or overpayment of debt, a person has a right to the informal resolution process in accordance with §371.1613 of this subchapter (relating to Informal Resolution Process).]

[(2) A person may request an administrative appeal hearing after receipt of a final notice of potential recoupment in accordance with §371.1615 of this subchapter (relating to Appeals). OIG must receive the written request for an appeal no later than 15 days after the date the person receives final notice.]

(d) [(e)] [Scope and effect of recoupment.] The person who is the subject of a recoupment of overpayment or recoupment of a debt is responsible for payment of all overpayment amounts or debts assessed.[, plus OIG's and other HHS program's costs related to an administrative appeal and all investigative and administrative costs related to the investigation that resulted in recoupment, if applicable. A final notice of overpayment will become final as provided in §371.1617(a) of this subchapter (relating to Finality and Collections).]

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 June 15, 2015.

TRD-201502248
Karen Ray
General Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: July 26, 2015
For further information, please call: (512) 424-6900

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TITLE 4. AGRICULTURE

PART 2. TEXAS ANIMAL HEALTH COMMISSION

CHAPTER 38. TRICHOMONIASIS

4 TAC §38.1, §38.3

The Texas Animal Health Commission (commission) proposes amendments to §38.1, concerning Definitions, and §38.3, concerning Infected Herds, in Chapter 38, which is entitled "Trichomoniasis". The purpose of the amendments is to make changes to the Trichomoniasis (Trich) testing requirements.

The Trich organism causes abortion and extended calving seasons. Bulls will remain persistently infected and spread infection from cow to cow. Older bulls are typically the main reservoir of infection in a herd; this is because older bulls often have deeper preputial folds (crypts) creating a more favorable environment for Trich.

The Bovine Trich Working Group (TWG) had an annual review on April 23, 2015, to evaluate the effectiveness of current rules. The TWG discussed the program overview to date, the management of infected herds, entry requirements, and the need for possible revisions to the program.

The TWG recommended adding testing requirements for bulls located in adjacent pastures to property where Trich infected male or female cattle are or were located and this proposed amendment to §38.3 includes the TWG recommendations. Under the proposal, where any positive cattle are located on property that is fence line adjacent to bulls, those bulls on the adjacent property must be officially tested for Trich. The testing is required if the Trich infected cattle were located in fence line adjacent pastures within 30 days of the removal of the infected animal. The commission will provide written notification to the owner or caretaker of the bulls specifying the timeframe for testing. The commission may waive this testing requirement if the commission's epidemiological investigation shows that testing is not required.

The TWG also recommended lowering the acceptable in-state virgin age from 24 months to 18 months to harmonize in-state change of ownership virgin rules with interstate entry rules for virgin bulls, so there is a proposed change to the definition of virgin bull in §38.1.

FISCAL NOTE

Ms. Larissa Schmidt, Director of Administration, Texas Animal Health Commission, has determined for the first five-year period the rules are in effect, there will be no significant additional fiscal implications for state or local government as a result of enforcing or administering the rule. An Economic Impact Statement (EIS) is required if the proposed rule has an adverse economic effect on small businesses. The purpose of the amendments is to determine whether or not an infected animal exists on property adjacent to property where Trich positive cattle were located, and to harmonize virgin bull definitions. The agency has evaluated the requirements and determined that there is not an adverse economic impact and, therefore, there is no need to do an EIS. Implementation of these rules poses no significant fiscal impact on small or micro-businesses, or to individuals.

PUBLIC BENEFIT NOTE

Ms. Schmidt has also determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be to ensure the testing and health status of exposed or affected cattle, which protects the livestock industry in this state.

LOCAL EMPLOYMENT IMPACT STATEMENT

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

TAKINGS ASSESSMENT

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

REQUEST FOR COMMENT

Comments regarding the proposal may be submitted to Amanda Bernhard, Texas Animal Health Commission, 2105 Kramer Lane, Austin, Texas 78758, by fax at (512) 719-0719 or by email at "comments@tahc.texas.gov".

STATUTORY AUTHORITY

The amendments are proposed under the following statutory authority as found in Chapter 161 of the Texas Agriculture Code. The commission is vested by statute, §161.041(a), with the requirement to protect all livestock, domestic animals, and domestic fowl from disease. The commission is authorized, through §161.041(b), to act to eradicate or control any disease or agent of transmission for any disease that affects livestock.

Pursuant to §161.048, entitled "Inspection of Shipment of Animals or Animal Products", the commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved. An agent of the commission is entitled to stop and inspect a shipment of animals or animal products being transported in this state in order to determine if the shipment originated from a quarantined area or herd; or determine if the shipment presents a danger to the public health or livestock industry through insect infestation or through a communicable or noncommunicable disease.

Pursuant to §161.054, entitled "Regulation of Movement of Animals", the commission, by rule, may regulate the movement of animals. The commission may restrict the intrastate movement of animals even though the movement of the animals is unrestricted in interstate or international commerce.

Pursuant to §161.061, entitled "Quarantines", if the commission determines that a disease listed in §161.041 or an agent of transmission of one of those diseases exists in a place in this state among livestock, or that livestock are exposed to one of those diseases or an agency of transmission of one of those diseases, the commission shall establish a quarantine on the affected animals or on the affected place. The quarantine of an affected place may extend to any affected area, including a county, district, pasture, lot, ranch, farm, field, range, thoroughfare, building, stable, or stockyard pen. The commission may establish a quarantine to prohibit or regulate the movement of (1) any article or animal that the commission designates to be a carrier of a

disease listed in §161.041 or a potential carrier of one of those diseases, if movement is not otherwise regulated or prohibited; and (2) an animal into an affected area, including a county district, pasture, lot, ranch, farm, field, range, thoroughfare, building, stable, or stockyard pen.

Pursuant to §161.046, entitled "Rules", the commission may adopt rules as necessary for the administration and enforcement of this chapter.

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

§38.1. Definitions.

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

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

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

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

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

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

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

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

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

(9) Herd--

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

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

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

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

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

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

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

(14) Movement Permit--Authorization for movement of infected or exposed cattle from the farm or ranch of origin through marketing channels to slaughter or for movement of untested animals to a location where the animals will be held under hold order until testing has been accomplished.

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

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

(17) Official Identification/Officially Identified--The identification of livestock by means of an official identification device, official eartag, registration tattoo, or registration brand, or any other method approved by the commission and/or Administrator of APHIS that provides unique identification for each animal. Official identification includes USDA alpha-numeric metal eartags (silver bangs tags), 840 RFID tags, 840 bangle tags, official breed registry tattoos, and official breed registry individual animal brands.

(18) Official Trichomoniasis test--A test for bovine Trichomoniasis, approved by the commission, applied and reported by TVMDL or any other laboratory approved as an official laboratory by the commission. The test document is valid for 60 days, provided the bull is isolated from female cattle at all times, and may be transferred within that timeframe with an original signature of the consignor.

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

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

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

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

(23) Trichomoniasis--A venereal disease of cattle caused by the organism *Tritrichomonas foetus.*

(24) TVMDL--The official laboratory for testing is the Texas A&M Veterinary Medical Diagnostic Laboratory.

(25) Virgin Bull--Sexually intact male cattle which have not serviced a cow and which are not more than 18 [~~24~~] months of age as determined by the eruption [~~presence~~] of the two permanent central incisors [~~in wear~~] or birth date on breed registry papers certified by the breeder; or not more than 30 months of age and certified by both the breeder based on birth date and confirmed by his veterinarian that the bull facility is sufficient to prevent contact with female cattle. The certification by the breeder is valid for 60 days, provided the bull is isolated from female cattle at all times, and may be transferred within that timeframe with an original signature of the consignor.

§38.3. Infected Herds.

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

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

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

(d) Breeding bulls that are part of a quarantined herd or a herd that is under a hold order and tests negative to the first official Trichomoniasis test may be maintained with the herd if the owner or caretaker of the bulls develops a Trichomoniasis herd control plan with a certified veterinarian. The Trichomoniasis herd control plan shall require all breeding bulls to be tested annually with an official Trichomoniasis test and include other best management practices to control, eliminate and prevent the spread Trichomoniasis. The Trichomoniasis herd control plan, unless otherwise approved or disapproved by the commission, expires three years from the date the plan is signed by the herd owner or caretaker and the authorized veterinarian. Breeding bulls that are part of a Trichomoniasis herd control plan that expires or that is disapproved must be tested for Trichomoniasis as required by subsection (c) of this section.

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

(f) If male or female cattle are found to be infected with Trichomoniasis, then bulls that are located or were located on property adjacent to the infected animal within 30 days from the date the infected animal was removed from such property shall be officially tested for Trichomoniasis. Such bulls shall be tested within a timeframe as determined by the commission. The commission shall provide written notification to the owner or caretaker of the bulls specifying the timeframe in which the bulls must be tested. The commission may waive this testing requirement if it is epidemiologically determined by the commission that testing is not required.

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

Filed with the Office of the Secretary of State on June 15, 2015.

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Gene Snelson
General Counsel
Texas Animal Health Commission
Earliest possible date of adoption: July 26, 2015
For further information, please call: (512) 719-0722

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CHAPTER 41. FEVER TICKS

4 TAC §41.6, §41.9

The Texas Animal Health Commission (commission) proposes amendments to §41.6, concerning Restrictions on Movement of Livestock, and §41.9, concerning Vacation and Inspection of a Premise, in Chapter 41, which is entitled "Fever Ticks." The purpose of the amendments is to add a requirement that all livestock on or moved from a control purpose quarantine area, temporary preventative quarantine area or tick eradication quarantine area, as defined by §41.4, be identified with permanent official identification.

The purpose of the Texas Cattle Fever Tick Eradication Program is to eradicate the Fever Tick through the management of a permanent quarantine zone, as well as temporary quarantine areas created to address the presence of ticks outside the permanent zone. To be more effective in the efforts to eradicate Fever Ticks, the commission adopted requirements that went into effect on June 12, 2013, which require permanent and official identification of all livestock maintained in the permanent quarantine zone.

In October 2014, the commission established a Temporary Preventative Quarantine Area (TPQA) in portions of Cameron County after the presence of fever ticks was confirmed on premises located outside the permanent zone in that county. With the creation of a new TPQA, there is a significant amount of effort required to control and eradicate Fever Ticks through the inspection and treatment of livestock located in the TPQA as well as other premises quarantined for infestation or exposure to Fever Ticks. In order to ensure that all high-risk livestock are inspected and treated, it is necessary to expand the identification requirement to all livestock maintained on or moving from quarantined areas, premises or properties.

The individual identification of livestock is necessary to maintain inventories of cattle in all herds within the TPQA, Control Purpose Quarantine Areas, and for those individual quarantines that extend outside of the TPQA to ensure that all animals within the high risk areas are accountable to a premises, have received routine inspection and treatment, and have legally been authorized to move between premises within and from the designated areas.

The identification of cattle with RFID provides an efficient and effective method of accomplishing unique individual animal identification. The identification are provided by the TAHC and APHIS without cost to the affected producers. Identification of cattle with an RFID can be efficiently saved into the agency supported database for each inspection, treatment, and authorized movement. The electronic storage of these records substantially supports an efficient method of disease traceability. This system has been successfully implemented in the permanent quarantine zone for over one year with favorable acceptance from the cattle industry operating in this region.

FISCAL NOTE

Ms. Larissa Schmidt, Director of Administration, Texas Animal Health Commission, has determined for the first five-year period the rules are in effect, there will be no significant additional fiscal implications for state or local government as a result of enforcing or administering the rules. An Economic Impact Statement (EIS) is required if the proposed rule has an adverse economic effect on small businesses. The agency has evaluated the requirements and determined that there is not an adverse economic impact and, therefore, there is no need to do an EIS. Implementation of these rules poses no significant fiscal impact on small or micro-businesses, or to individuals. This requirement would apply to those already restricted by a fever tick quarantine. As such, these cattle must be routinely inspected and scratched for fever ticks, and this inspection provides an opportunity to apply identification. In addition, the commission provides official identification to producers at no cost.

PUBLIC BENEFIT NOTE

Ms. Schmidt has also determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be to have inspection and the use of identification as an effective and necessary action to control and eradicate fever ticks from a herd in an efficient manner.

LOCAL EMPLOYMENT IMPACT STATEMENT

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

TAKINGS ASSESSMENT

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

REQUEST FOR COMMENT

Comments regarding the proposal may be submitted to Amanda Bernhard, Texas Animal Health Commission, 2105 Kramer Lane, Austin, Texas 78758, by fax at (512) 719-0719 or by email at "comments@tahc.texas.gov".

STATUTORY AUTHORITY

The amendments are proposed under the following statutory authority as found in Chapters 161 and 167 of the Texas Agriculture Code. The commission is vested by statute, §161.041(a), with the requirement to protect all livestock, domestic animals, and domestic fowl from disease. The commission is authorized, through §161.041(b), to act to eradicate or control any disease or agent of transmission for any disease that affects livestock.

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

Pursuant to §161.007, entitled "Exposure or Infection Considered Continuing", if a veterinarian employed by the commission determines that a communicable disease exists among livestock, domestic animals, or domestic fowl or on certain premises or that livestock, domestic animals, or domestic fowl have been exposed to the agency of transmission of a communicable disease, the exposure or infection is considered to continue until the commission determines that the exposure or infection has been eradicated through methods prescribed by rule of the commission.

Pursuant to §161.048, entitled "Inspection of Shipment of Animals or Animal Products", the commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved. An agent of the commission is entitled to stop and inspect a shipment of animals or animal products being transported in this state in order to determine if the shipment originated from a quarantined area or herd; or determine if the shipment presents a danger to the public health or livestock industry through insect infestation or through a communicable or noncommunicable disease.

Pursuant to §161.054, entitled "Regulation of Movement of Animals", the commission, by rule, may regulate the movement of animals. The commission may restrict the intrastate movement of animals even though the movement of the animals is unrestricted in interstate or international commerce.

Pursuant to §161.056(a), entitled "Animal Identification Program", the commission, in order to provide for disease control and enhance the ability to trace disease-infected animals or animals that have been exposed to disease, may develop and implement an animal identification program that is no more stringent than a federal animal disease traceability or other federal animal identification program. Section 161.056(d) authorizes the commission to by a two-thirds vote adopt rules to provide for an animal identification program more stringent than a federal program only for control of a specific animal disease or for animal emergency management.

Pursuant to §161.057, entitled "Classification of Areas", the commission by rule may prescribe criteria for classifying areas in the state for disease control. The criteria must be based on sound epidemiological principles. The commission may prescribe different control measures and procedures for areas with different classifications.

Pursuant to §161.061, entitled "Establishment", if the commission determines that a disease listed in §161.041 of this code or

an agency of transmission of one of those diseases exists in a place in this state or among livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl, or that a place in this state or livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl are exposed to one of those diseases or an agency of transmission of one of those diseases.

Pursuant to §161.081, entitled "Importation of Animals", the commission by rule may regulate the movement, including movement by a railroad company or other common carrier, of livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl into this state from another state, territory, or country.

Pursuant to §167.003, entitled "General Powers and Duties of the Commission", the commission shall eradicate all ticks capable of carrying Babesia in this state and shall protect all land, premises, and livestock in this state from those ticks and exposure to those ticks. In carrying out this chapter, the commission may adopt necessary rules.

Pursuant to §167.004, entitled "Classification of Animals or Premises as Infested, Exposed or Free from Exposure", the commission by rule shall define what animals and premises are to be classified as exposed to ticks. The commission shall classify as exposed to ticks livestock that have been on land or in an enclosure that the commission determines to be tick infested or exposed to ticks or to have been tick infested or exposed to ticks before or after the removal of the livestock, unless the commission determines that the infestation or exposure occurred after the livestock were removed and that the livestock did not become infested or exposed before removal.

Section 167.006 authorizes the commission to designate for tick eradication any county or part of a county that the commission determines may contain ticks. Section 167.007 authorizes the commission to conduct tick eradication in the free area. Section 167.021, entitled "General Quarantine Power" provides that the commission may establish quarantines on land, premises, and livestock as necessary for tick eradication. Section 167.022, entitled "Quarantine of Tick Eradication Area" provides that the order designating a county or part of a county for tick eradication shall contain a provision quarantining that county or part of a county. Section 167.023, entitled "Quarantine of Free Area" provides the commission authority to establish a quarantine in the free area. Section 167.024, entitled "Movement In or From Quarantined Area" provides that a person may not move livestock in a quarantined area unless the person first obtains a permit or a certificate from an authorized inspector. Section 167.032 provides that the commission may restrict movement of commodities that are capable of carrying of carrying ticks.

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

§41.6. Restrictions on Movement of Livestock.

(a) Movement from a free area. There are no restrictions on the movement of livestock from a designated free area.

(b) Movement is restricted from leaving a tick eradication quarantine area, temporary preventative quarantine area, or control purpose quarantined area. The owner or caretaker of livestock located in a tick eradication quarantine area, temporary preventative quarantine area, or control purpose quarantine area shall not move, or allow the movement of, any livestock from the area without the livestock having a commission approved permanent official identification device and a permit or certificate for movement issued by an authorized representative of the commission. No person may accept a shipment of livestock from a tick eradication quarantine area, temporary preventative quarantine area, or control purpose quarantine area, unless the livestock are accompanied by an original permit or certificate for movement.

(1) Movement from an infested premise or exposed premise. A certificate for movement will be issued after the livestock, if moving directly to slaughter by sealed conveyance, have had two consecutive dips not less than seven nor more than 14 days apart without scratch inspection unless required by §41.8 of this title (relating to Dipping of Livestock); or have had two dips not less than seven days nor more than 14 days apart, with each dip following a scratch inspection that does not reveal ticks; or have been dipped through a swim vat following a scratch inspection and not less than 12 days nor more than 14 days after being dipped through a swim vat following a scratch inspection that does not reveal ticks.

(2) Movement from an adjacent premise or check premise. Certificates for movement will be issued after the livestock have been found free from ticks by scratch inspection and then dipped; or have had three dips not less than seven nor more than 14 days apart without scratch inspection unless required under §41.8 of this title or, if moving directly to slaughter by sealed conveyance, have had two dips not less than seven nor more than 14 days apart without scratch inspection unless required under §41.8 of this title if moving directly to slaughter by sealed conveyance.

(c) Movement originating in other states. In addition to other requirements, livestock originating in a fever tick quarantined area must be accompanied by a certificate issued by an authorized representative of the commission showing them to be free of infestation and exposure and that they were dipped under supervision in an approved dipping solution immediately prior to shipment. The livestock must be transported in clean and disinfested trucks, railroad cars, or other vehicles.

§41.9. Vacation and Inspection of a Premise.

(a) Vacation of premise. Upon the removal of all livestock from a premise, the premise remains classified as before for the period shown on Table I (Pasture Vacation Schedule, South of Highway 90) or Table II (Pasture Vacation Schedule, North of Highway 90), whichever is applicable. The starting date is the date of the first clean dipping during which 100% of the livestock on the premise have been dipped and continued on an official dipping schedule until removed from the premise. The premise will be reclassified to a Check Premise, as provided by subsection (b) of this section, upon the expiration of the time shown in Tables I (Pasture Vacation Schedule, South of Highway 90) or II (Pasture Vacation Schedule, North of Highway 90), whichever is applicable. The Check Premise restrictions will be released when determined by the commission that the premise has no infestation.

(b) Required inspection of premise. An infested premise, exposed premise, or adjacent premise will be inspected every 14 days by an authorized representative of the commission. The 14-day interval may be extended due to circumstances that prevent the inspection. A check premise will be inspected when deemed necessary by an authorized representative of the commission.

(c) Required scratch inspection of livestock. The owner or caretaker of livestock on any premise must present them to be scratch inspected at any time specified by notice from an authorized representative of the commission.

(d) Free-ranging wildlife and exotic animals that are found on vacated pastures or check premises and which are capable of hosting fever ticks shall be treated by methods approved by the commission [~~Commission~~] and for the length of time specified by the commission [~~Commission~~].

(e) All livestock maintained in the permanent quarantine zone as defined by §§41.14 - 41.22 of this title (relating to Quarantined Areas) [~~chapter~~] shall be gathered and presented annually for inspection in the presence of an authorized representative of the commission [~~Commission~~]. All of these animals shall be identified with a permanent and official identification device recognized by the commission [~~Commission~~].

(f) Required identification of livestock. Livestock located on a premise in a control purpose quarantine area, temporary preventative quarantine area or tick eradication quarantine area, as defined by §41.4 of this title (relating to Quarantines), shall be identified with a permanent official identification device approved by the commission. The owner or caretaker of livestock shall identify the livestock on or before the first date of inspection, as required by this section.

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 June 15, 2015.

TRD-201502242
Gene Snelson
General Counsel
Texas Animal Health Commission
Earliest possible date of adoption: July 26, 2015
For further information, please call: (512) 719-0722

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TITLE 16. ECONOMIC REGULATION

PART 8. TEXAS RACING COMMISSION

CHAPTER 301. DEFINITIONS

16 TAC §301.1

The Texas Racing Commission proposes an amendment to 16 TAC §301.1, concerning Definitions. The proposed amendment removes the definition for "historical racing". This change is proposed in conjunction with the proposed repeal of rules authorizing and regulating historical racing under Chapter 321, Subchapter F, Regulation of Historical Racing, which is published elsewhere within this issue of the *Texas Register.* Since this section lists the definitions in alphabetical order, the amendment renumbers subsequent definitions in order to accommodate the change.

Chuck Trout, Executive Director, has determined that for the first five-year period that this amendment, as well as the repeal of rules authorizing and regulating historical racing, is in effect there will be no fiscal implications for state or local government as a result of enforcing the amendment since the rules authorizing historical racing have never been put into practice after the adverse ruling by the 261st District Court of Travis County.

Mr. Trout has determined that for each year of the first five years that this amendment, as well as the repeal of rules authorizing and regulating historical racing, is in effect the anticipated public benefit will be to bring the rules into conformity with the decision by the 261st District Court of Travis County that the rules relating to historical racing exceeded the Commission's authority.

The amendment will have no adverse economic effect on small or micro-businesses since the rules authorizing historical racing have never been put into practice after the adverse ruling by the 261st District Court of Travis County.

There are no negative impacts upon employment conditions in this state as a result of the proposed amendment since the rules authorizing historical racing have never been put into practice after the adverse ruling by the 261st District Court of Travis County.

The amendment will have no effect on the state's agricultural, horse breeding, horse training, greyhound breeding, and greyhound training industry since the rules authorizing historical racing have never been put into practice after the adverse ruling by the 261st District Court of Travis County.

All comments or questions regarding the proposed amendment may be submitted in writing within 30 days following publication of this notice in the *Texas Register* to Mary Welch, Assistant to the Executive Director for the Texas Racing Commission, at P.O. Box 12080, Austin, Texas 78711-2080, telephone (512) 833-6699, or fax (512) 833-6907.

The amendment is proposed under Texas Revised Civil Statutes Annotated, Article 179e, §3.02, which requires the Commission to adopt rules for conducting greyhound or horse racing in this state involving wagering, §3.021, which authorizes the Commission to license and regulate all aspects of greyhound racing and horse racing in this state, whether or not that racing involves pari-mutuel wagering, and §11.01, which requires the Commission to adopt rules to regulate wagering on greyhound races and horse races under the system known as pari-mutuel wagering.

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

§301.1. Definitions.

(a) (No change.)

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

(1) - (31) (No change.)

[~~(32) Historical racing--to present for pari-mutuel wagering, through a totalisator system that meets the requirements of Chapter 321, Subchapter F of this title (relating to Regulation of Historical Racing), a previously run horse or greyhound race that was:~~]

[~~(A) authorized by the commission or by another racing jurisdiction;~~]

[~~(B) concluded with official results and without scratches, disqualifications or dead-heat finishes; and~~]

[~~(C) recorded by video, film, electronic, or similar means of preservation.~~]

(32) [~~(33)~~] Horse--an equine of any breed, including a stallion, gelding, mare, colt, filly, or ridgling.

(33) [~~(34)~~] Horse Race--a running contest between horses for entry fees, purse, prize, or other reward, including the following:

(A) Claiming race--a race in which a horse may be claimed in accordance with the Rules.

(B) Derby race--a race in which the first condition of eligibility is to be three years old.

(C) Futurity race--a race in which the first condition of eligibility is to be two years old.

(D) Guaranteed race--a race for which the association guarantees by its conditions a specified purse, which is the limit of its liability.

(E) Handicap race--a race in which the weights to be carried by the entered horses are adjusted by the racing secretary for the purpose of equalizing their respective chances of winning.

(F) Match race--a race between only two horses that are owned by different owners.

(G) Maturity race--a race in which the first condition of eligibility is to be four years of age or older.

(H) Optional claiming race--a claiming race in which there is an option to have horses entered to be claimed for a stated price or not eligible to be claimed.

(I) Progeny race--a race restricted to the offspring of a specific stallion or stallions.

(J) Purse or overnight race--a race for which owners of horses entered are not required by its conditions to contribute money toward its purse.

(K) Stakes race--a race to which nominators of the entries contribute to a purse.

(L) Starter race--an overnight race under allowance or handicap conditions, restricted to horses which have previously started for a designated claiming price or less, as stated in the conditions of the race.

(M) Walkover race--a stakes race in which only one horse starts or all the starters are owned by the same interest.

(N) Weight for age race--a race in which weights are assigned in keeping with the scale of weights in these rules.

(34) [~~(35)~~] In today horse--a horse that is in the body of a race program which is entered into a race on the next consecutive race day.

(35) [~~(36)~~] Kennel area--an area on association grounds for the boarding or training of greyhounds.

(36) [~~(37)~~] Lead out--an individual who handles a greyhound from the lockout kennel to the starting box.

(37) [~~(38)~~] Locked in the gate--a horse or greyhound that is prevented from leaving the starting gate or box due to the failure of the front door of the gate or box to open simultaneously with the other doors.

(38) [~~(39)~~] Lure--a mechanical apparatus at a greyhound racetrack consisting of a stationary rail installed around the track, a motorized mechanism that travels on the rail, and a pole that is attached to the mechanism and extends over the track, and to which a decoy is attached.

(39) [~~(40)~~] Maiden--a horse or greyhound that has never won a race at a recognized race meeting authorized by the Commission or by another racing jurisdiction.

(40) [~~(41)~~] Minus pool--a pool in which there are insufficient net proceeds to pay the minimum price to holders of the winning tickets.

(41) [~~(42)~~] Mutuel field--a group of horses joined as a single betting interest in a race due to the limited numbering capacity of the totalisator.

(42) [~~(43)~~] No race--a race that is canceled after being run due to a malfunction of the starting gate or box or any other applicable reason as determined by the Rules.

(43) [~~(44)~~] Nominator--the person in whose name a horse or greyhound is entered for a race.

(44) [~~(45)~~] Occupational licensee--an individual to whom the Commission has issued a license to participate in racing with pari-mutuel wagering.

(45) [~~(46)~~] Odds--a number indicating the amount of profit per dollar wagered to be paid to holders of winning pari-mutuel tickets.

(46) [~~(47)~~] Off time--the moment when, on signal from the starter, the horses or greyhounds break from the starting gate or box and run the race.

(47) [~~(48)~~] Paddock--the area in which horses or greyhounds gather immediately before a race.

(48) [~~(49)~~] Patron--an individual present on association grounds during a race meeting who is eligible to wager on the racing.

(49) [~~(50)~~] Pecuniary interest--includes a beneficial ownership interest in an association, but does not include bona fide indebtedness or a debt instrument of an association.

(50) [~~(51)~~] Performance--the schedule of horse or greyhound races run consecutively as one program. A greyhound performance consists of fifteen or fewer races unless approved by the executive secretary.

(51) [~~(52)~~] Photofinish--the system of recording pictures or images of the finish of a race to assist in determining the order of finish.

(52) [~~(53)~~] Place--to finish second in a race.

(53) [~~(54)~~] Post position--the position assigned to a horse or greyhound in the starting gate or box.

(54) [~~(55)~~] Post time--the time set for the arrival at the starting gate or boxes by the horses or greyhounds in a race.

(55) [~~(56)~~] Purse--the cash portion of the prize for a race.

(56) [~~(57)~~] Race date--a date on which an association is authorized by the Commission to conduct races.

(57) [~~(58)~~] Race day--a day in which a numerical majority of scheduled races is conducted and is a part of the association's allocated race days.

(58) [~~(59)~~] Race meeting--the specified period and dates each year during which an association is authorized to conduct racing and/or pari-mutuel wagering by approval of the Commission.

(59) [~~(60)~~] Racetrack facility--the buildings, structures and fixtures located on association grounds used by an association to conduct horse or greyhound racing.

(60) [~~(61)~~] Racetrack official--an individual appointed or approved by the Commission to officiate at a race meeting.

(61) [~~(62)~~] Racing judge--the executive racing official at a greyhound track.

(62) [~~(63)~~] Reasonable belief--a belief that would be held by an ordinary and prudent person in the same circumstances as the actor.

(63) [~~(64)~~] Recognized race meeting--a race meeting held under the sanction of a turf authority.

(64) [~~(65)~~] Refunded ticket--a pari-mutuel ticket that has been refunded for the value of a wager that is no longer valid.

(65) [~~(66)~~] Rule off--to bar an individual from the enclosure of an association and to deny all racing privileges to the individual.

(66) [~~(67)~~] Rules--the rules adopted by the Texas Racing Commission found in Title 16, Part VIII of the Texas Administrative Code.

(67) [~~(68)~~] Schooling race--a practice race conducted under actual racing conditions but for which wagering is not permitted.

(68) [~~(69)~~] Scratch--to withdraw an entered horse or greyhound from a race after the closing of entries.

(69) [~~(70)~~] Scratch time--the closing time set by an association for written requests to withdraw from a race.

(70) [~~(71)~~] Show--to finish third in a race.

(71) [~~(72)~~] Specimen--a bodily substance, such as blood, urine, or saliva, taken for analysis from a horse, greyhound, or individual in a manner prescribed by the Commission.

(72) [~~(73)~~] Stakes payments--the fees paid by subscribers in the form of nomination, entry, or starting fees to be eligible to participate.

(73) [~~(74)~~] Stallion owner--a person who is owner of record, at the time of conception, of the stallion that sired the accredited Texas-bred horse.

(74) [~~(75)~~] Starter--a horse or greyhound entered in a race when the doors of the starting gate or box open in front of the horse or greyhound at the time the official starter dispatches the horses or greyhounds.

(75) [~~(76)~~] Straight pool--a mutuel pool that involves wagers on a horse or greyhound to win, place, or show.

(76) [~~(77)~~] Subscription--money paid to nominate, enter, or start a horse or greyhound in a stakes race.

(77) [~~(78)~~] Tack room--a room in the stable area of a horse racetrack in which equipment for training and racing the horses is stored.

(78) [~~(79)~~] Totalisator--a machine or system for registering and computing the wagering and payoffs in pari-mutuel wagering.

(79) [~~(80)~~] Tote board--a facility at a racetrack that is easily visible to the public on which odds, payoffs, advertising, or other pertinent information is posted.

(80) [~~(81)~~] Tote room--the room in which the totalisator equipment is maintained.

(81) [~~(82)~~] Tout--an individual licensed to furnish selections on a race in return for a set fee.

(82) [~~(83)~~] Trial--a race designed primarily to determine qualifiers for finals of a stakes race.

(83) [~~(84)~~] Uplink--an earth station broadcasting facility, whether mobile or fixed, which is used to transmit audio-visual signals and/or data emanating from a sending racetrack, and includes the electronic transfer of received signals from the receiving antenna to TV monitors within the receiving location.

(84) [~~(85)~~] Weigh in--the process by which a jockey is weighed after a race or by which a greyhound is weighed before being placed in the lockout kennel.

(85) [~~(86)~~] Weighing in weight--the weight of a greyhound on weighing in to the lockout kennel.

(86) [~~(87)~~] Weigh out--the process by which a jockey or greyhound is weighed before a race.

(87) [~~(88)~~] Weighing out weight--the weight of a greyhound on weighing out of the lockout kennel immediately before post time for the race in which the greyhound is entered.

(88) [~~(88)~~] Win--to finish first in a race.

(89) [~~(90)~~] Winner--

(A) for horse racing, the horse whose nose reaches the finish line first, while carrying the weight of the jockey or is placed first through disqualification by the stewards; and

(B) for greyhound racing, the greyhound whose muzzle, or if the muzzle is lost or hanging, whose nose reaches the finish line first or is placed first through disqualification by the judges.

(90) [~~(91)~~] Active license--a racetrack license designated by the commission as active.

(91) [~~(92)~~] Inactive license--a racetrack license designated by the commission as inactive.

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 June 15, 2015.

TRD-201502243
Mark Fenner
General Counsel
Texas Racing Commission
Earliest possible date of adoption: July 26, 2015
For further information, please call: (512) 833-6699

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CHAPTER 303. GENERAL PROVISIONS
SUBCHAPTER B. POWERS AND DUTIES OF THE COMMISSION

16 TAC §303.31, §303.42

The Texas Racing Commission proposes amendments to 16 TAC §303.31, concerning the regulation of racing, and §303.42, concerning the approval of charity race days. These changes are proposed in conjunction with the proposed repeal of rules authorizing and regulating historical racing under Chapter 321, Subchapter F, Regulation of Historical Racing, which is published elsewhere within this issue of the *Texas Register.*

The proposed amendments restore the rules to the language that existed prior to the adoption of the historical racing rules. To accomplish this goal, the amendment to §303.31 reinserts the phrase "live and simulcast" into the rule and the amendments to §303.42 eliminate all provisions and references related to historical racing.

Chuck Trout, Executive Director, has determined that for the first five-year period that these amendments, as well as the repeal of rules authorizing and regulating historical racing, are in effect there will be no fiscal implications for state or local government as a result of enforcing the amendment since the rules authoriz-

ing historical racing have never been put into practice after the adverse ruling by the 261st District Court of Travis County.

Mr. Trout has determined that for each year of the first five years that these amendments, as well as the repeal of rules authorizing and regulating historical racing, are in effect the anticipated public benefit will be to bring the rules into conformity with the decision by the 261st District Court of Travis County that the rules relating to historical racing exceeded the Commission's authority.

The amendments will have no adverse economic effect on small or micro-businesses since the rules authorizing historical racing have never been put into practice after the adverse ruling by the 261st District Court of Travis County, therefore preparation of an economic impact statement and a regulatory flexibility analysis is not required.

There are no negative impacts upon employment conditions in this state as a result of the proposed amendments since the rules authorizing historical racing have never been put into practice after the adverse ruling by the 261st District Court of Travis County.

The amendments will have no effect on the state's agricultural, horse breeding, horse training, greyhound breeding, and greyhound training industry since the rules authorizing historical racing have never been put into practice after the adverse ruling by the 261st District Court of Travis County.

All comments or questions regarding the proposed amendments may be submitted in writing within 30 days following publication of this notice in the *Texas Register* to Mary Welch, Assistant to the Executive Director for the Texas Racing Commission, at P.O. Box 12080, Austin, Texas 78711-2080, telephone (512) 833-6699, or fax (512) 833-6907.

The amendment to §303.31 is proposed under Texas Revised Civil Statutes Annotated, Article 179e, §3.02, which requires the Commission to adopt rules for conducting greyhound or horse racing in this state involving wagering, §3.021, which authorizes the Commission to license and regulate all aspects of greyhound racing and horse racing in this state, whether or not that racing involves pari-mutuel wagering, and §11.01, which requires the Commission to adopt rules to regulate wagering on greyhound races and horse races under the system known as pari-mutuel wagering. The amendment to §303.42 is proposed under Texas Revised Civil Statutes Annotated, Article 179e, §8.02 and §10.01, which require the Commission to adopt rules relating to the conduct of race days.

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

§303.31. Regulation of Racing.

The commission shall regulate each live and simulcast race meeting conducted in this state and supervise the operation of racetracks and the persons other than patrons who participate in a race meeting.

§303.42. Approval of Charity Race Days.

(a) An association shall conduct charity days as required by the Act. A greyhound association shall conduct at least five charity race days each year. A Class 1 or Class 2 horse racetrack [~~that is not conducting historical racing~~] shall conduct at least two and not more than five charity race days each year. [~~A Class 1 or Class 2 horse racetrack that is conducting historical racing shall conduct at least three and not more than five charity race days each year.~~]

(b) An association shall apply to the commission not later than July 1 of each year for charity race dates to be conducted in the next calendar year. [~~During each application period in which an association applies for live race dates, the association shall also apply for charity race dates as necessary to comply with subsection (a) of this section.~~] The application must be in writing and contain:

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

(c) An association shall pay to the charity at least 2.0% of the total pari-mutuel handle generated at the association's racetrack on live races and imported simulcast races on the charity race day.

(d) [~~Charities.~~]

[~~(1)~~] At least one of the charity days must be conducted for a [~~percent of the pari-mutuel handle from live racing and simulcasting on charity racing days shall be contributed to~~ a] charity that directly benefits the persons who work in the stable or kennel area of the racetrack. At least one of the charity days must be conducted for[~~, and at least one percent shall be contributed to~~] a charity that primarily benefits research into the health or safety of race animals.

[~~(2) For a horse racing association conducting historical racing, at least 1.5% of the pari-mutuel handle from historical racing on charity racing days shall be contributed to a charity that directly funds veterinary research beneficial to promoting the health and soundness of horses; and at least one-half of one percent of the pari-mutuel handle from historical racing on charity racing days shall be contributed to a charity that facilitates youth participation in equestrian sports and activities.~~]

[~~(3) For a greyhound association conducting historical racing, at least two percent of the pari-mutuel handle from historical racing on charity racing days shall be contributed to a charity that provides for the medical care and rehabilitation of injured greyhounds.~~]

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

CHAPTER 309. RACETRACK LICENSES AND OPERATIONS

The Texas Racing Commission proposes amendments to 16 TAC §309.8, concerning racetrack license fees, §309.297, concerning purse accounts, §309.299, concerning the horsemen's representative, and §309.361, concerning the Greyhound Purse Account and Kennel Account. These changes are proposed in conjunction with the proposed repeal of rules authorizing and regulating historical racing under Chapter 321, Subchapter F, Regulation of Historical Racing, which is published elsewhere within this issue of the *Texas Register.* In addition, amendments to §309.8 are proposed to address the timing of certain payments and to remove obsolete language.

The proposed amendments to §§309.8, 309.297, 309.299, and 309.361 restore the rules to the language that existed prior to the adoption of the historical racing rules. In addition, the proposed

amendment to §309.8 changes the payment schedule for racetracks that are not conducting either live racing or simulcasting. Currently these tracks must pay their annual fee on September 1 of each year. The proposed amendment would allow these racetracks to pay in four equal installments on September 1, December 1, March 1, and June 1. Further, the amendments to §309.8 remove obsolete language referring to payments to be made in the state fiscal year beginning September 1, 2011.

Chuck Trout, Executive Director, has determined that for the first five-year period that these amendments, as well as the repeal of rules authorizing and regulating historical racing, are in effect there will be no fiscal implications for state or local government as a result of enforcing the amendment since the rules authorizing historical racing have never been put into practice after the adverse ruling by the 261st District Court of Travis County. In addition, allowing the non-operating racetracks to pay annual fees on a quarterly basis will have no fiscal implications for state or local government since the same total amount will be paid.

Mr. Trout has determined that for each year of the first five years that these amendments, as well as the repeal of rules authorizing and regulating historical racing, are in effect the anticipated public benefit will be to bring the rules into conformity with the decision by the 261st District Court of Travis County that the rules relating to historical racing exceeded the Commission's authority. The public benefit of allowing non-operating racetracks to pay their annual fees on a quarterly basis will be to ease the impact on those racetracks' cash flow.

The amendments will have no adverse economic effect on small or micro-businesses since the rules authorizing historical racing have never been put into practice after the adverse ruling by the 261st District Court of Travis County, therefore preparation of an economic impact statement and a regulatory flexibility analysis is not required. Allowing non-operating racetracks to pay their annual fees on a quarterly basis will have a positive economic effect on those tracks.

There are no negative impacts upon employment conditions in this state as a result of the proposed amendments since the rules authorizing historical racing have never been put into practice after the adverse ruling by the 261st District Court of Travis County and because non-operating racetracks have no employees.

The amendments will have no effect on the state's agricultural, horse breeding, horse training, greyhound breeding, and greyhound training industry since the rules authorizing historical racing have never been put into practice after the adverse ruling by the 261st District Court of Travis County. Since the annual fees paid by the non-operating racetracks support the costs of regulation at operating racetracks, facilitating their continued payment of fees by allowing them to do so on a quarterly basis will have a positive effect on these industries.

All comments or questions regarding the proposed amendment may be submitted in writing within 30 days following publication of this notice in the *Texas Register* to Mary Welch, Assistant to the Executive Director for the Texas Racing Commission, at P.O. Box 12080, Austin, Texas 78711-2080, telephone (512) 833-6699, or fax (512) 833-6907.

SUBCHAPTER A. RACETRACK LICENSES
DIVISION 1. GENERAL PROVISIONS

16 TAC §309.8

The amendments are proposed under Texas Revised Civil Statutes Annotated, Article 179e, §3.02, which requires the Commission to adopt rules for conducting greyhound or horse racing in this state involving wagering, §3.021, which authorizes the Commission to license and regulate all aspects of greyhound racing and horse racing in this state, whether or not that racing involves pari-mutuel wagering, and §11.01, which requires the Commission to adopt rules to regulate wagering on greyhound races and horse races under the system known as pari-mutuel wagering.

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

§309.8. Racetrack License Fees.

(a) Purpose of Fees. An association shall pay a license fee to the Commission to pay the Commission's costs to administer and enforce the Act, and to regulate, oversee, and license live and simulcast racing [~~and pari-mutuel wagering~~] at racetracks.

(b) Annual License Fee.

(1) (No change.)

(2) An association that is conducting live racing, historical racing or simulcasting shall pay its annual license fee by remitting to the Commission 1/12th of the fee on the first business day of each month. [~~For the State Fiscal Year that begins on September 1, 2011, the monthly remittance shall begin in the month of January.~~]

(3) An association that is not conducting live racing[~~, historical racing~~] or simulcasting shall pay its annual license fee in four equal installments on September 1, December 1, March 1, and June 1 [~~on September 1~~] of each fiscal year. [~~For the State Fiscal Year that begins on September 1, 2011, the annual license fees shall be paid in two separate payments. The first payment will be of $100,000 and is due on September 1, 2011. The second payment will be of the remaining unpaid balance and shall be paid on January 1, 2012.~~]

(c) (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.

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

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SUBCHAPTER C. HORSE RACETRACKS
DIVISION 4. OPERATIONS

16 TAC §309.297, §309.299

The amendments are proposed under Texas Revised Civil Statutes Annotated, Article 179e, §6.08, which provides that legal title to purse accounts at a horse racing association is vested in the horsemen's organization, and §1.03(77), which establishes that the horsemen's organization is recognized by the commission to represent horse owners and trainers in negotiating and contracting with associations on subjects relating to racing.

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

§309.297. Purse Accounts.

(a) All money required to be set aside for purses, whether from wagering on live races or on simulcast wagering, are trust funds held by an association as custodial trustee for the benefit of horsemen. No more than three business days after the end of each week's wagering, the association shall deposit the amount set aside for purses into purse accounts maintained as trust accounts for the benefit of horsemen by breed by the horsemen's organization in one or more federally or privately insured depositories.

(b) - (f) (No change.)

§309.299. Horsemen's Representative.

(a) Findings. The Commission finds a need for horse owners and trainers to negotiate and covenant with associations as to the conditions of live race meetings, the distribution of purses not governed by statute, simulcast transmission and reception, and other matters relating to the welfare of the owners and trainers participating in live racing at an association. To ensure the uninterrupted, orderly conduct of racing in this state, the Commission shall recognize one organization to represent horse owners and trainers on matters relating to the conduct of live racing and simulcasting at Texas racetracks.

(b) (No change.)

(c) Authority and Responsibilities.

(1) An organization recognized under this section shall negotiate with each association regarding the association's live racing program, including but not limited to the allocation of purse money to various live races, the exporting of simulcast signals, [~~issues related to historical racing,~~] and the importing of simulcast signals during live race meetings.

(2) - (6) (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.

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SUBCHAPTER D. GREYHOUND RACETRACKS
DIVISION 2. OPERATIONS

16 TAC §309.361

The amendment is proposed under Texas Revised Civil Statutes Annotated, Article 179e, §3.02, which requires the Commission to adopt rules for conducting greyhound or horse racing in this state involving wagering, §3.021, which authorizes the Commission to license and regulate all aspects of greyhound racing and horse racing in this state, whether or not that racing involves pari-mutuel wagering, and §10.05, which recognizes the Texas Greyhound Association as the officially designated state greyhound breed registry.

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

§309.361. Greyhound Purse Account and Kennel Account.

(a) Greyhound Purse Account.

(1) All money required to be set aside for purses, whether from wagering on live races or simulcast races, are trust funds held by an association as custodial trustee for the benefit of kennel owners and greyhound owners. No more than three business days after the end of each week's wagering, the association shall deposit the amount set aside for purses into a greyhound purse account maintained in a federally or privately insured depository.

(2) (No change.)

(b) (No change.)

(c) The Texas Greyhound Association ("TGA") shall negotiate with each association regarding the association's live racing program, including but not limited to the allocation of purse money to various live races, the exporting of simulcast signals, [~~issues related to historical racing,~~] and the importing of simulcast signals during live race meetings.

(d) - (f) (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.

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General Counsel
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16 TAC §309.365

The Texas Racing Commission proposes new rule 16 TAC §309.365. The section relates to breakage generated at greyhound racing associations. The proposed new rule requires a greyhound racing association to pay fifty percent of the breakage from a live pari-mutuel pool or a simulcast pari-mutuel pool to the Texas Greyhound Association. The rule also provides that the greyhound racing association will retain the remaining fifty percent of the breakage. The rule formalizes the existing practice in place at greyhound racing associations.

Chuck Trout, Executive Director, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing the new rule since the rule will not affect current practices.

Mr. Trout has determined that for each year of the first five years that the new rule is in effect the anticipated public benefit will be to give the greyhound racing associations certainty as to how breakage should be distributed.

The new rule will have no adverse economic effect on small or micro-businesses since the rule will not affect current practices, and therefore preparation of an economic impact statement and a regulatory flexibility analysis is not required.

There are no negative impacts upon employment conditions in this state as a result of the new rule since the rule will not affect current practices.

The new rule will have no effect on the state's agricultural, horse breeding, horse training, greyhound breeding, and greyhound training industry since the rule will not affect current practices.

All comments or questions regarding the proposed new rule may be submitted in writing within 30 days following publication of this notice in the *Texas Register* to Mary Welch, Assistant to the Executive Director for the Texas Racing Commission, at P.O. Box 12080, Austin, Texas 78711-2080, telephone (512) 833-6699, or fax (512) 833-6907.

The new rule is proposed under Texas Revised Civil Statutes Annotated, Article 179e, §3.02, which authorizes the Commission to adopt rules to administer the Act.

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

§309.365. Breakage.

A greyhound racing association shall pay fifty percent of the breakage from a live pari-mutuel pool or a simulcast pari-mutuel pool to the Texas Greyhound Association in accordance with §6.09 of the Act and §303.102(c) of this title (relating to Greyhound Rules). A greyhound racing association shall retain the remaining fifty percent of the breakage from a live pari-mutuel pool or a simulcast pari-mutuel pool.

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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CHAPTER 311. OTHER LICENSES
SUBCHAPTER B. SPECIFIC LICENSES
16 TAC §311.101, §311.102

The Texas Racing Commission proposes amendments to 16 TAC §311.101 and §311.102. The sections relate to horse owners and to greyhound owners. The proposed amendments to §311.101 would address two issues. First, to be licensed as an Owner, Owner/Trainer, or Owner/Assistant Trainer, a person must be the owner of record of a properly registered horse that the person intends to race in Texas. The purpose of the restriction is to prevent individuals from obtaining an Owner's license merely to improperly gain its associated privileges, such as unrestricted access to the secured backside. However, the restriction does not take into consideration that trainers and assistant trainers, who already have these privileges, often buy and sell horses over the period of licensure and therefore may not own a horse at the particular time of applying for a license. Under the current rule, when the applicant for an Owner/Trainer type license cannot show proof of horse ownership, the agency issues a Trainer's license only rather than an Owner/Trainer. Then, when the Trainer or Assistant Trainer becomes an owner of a properly registered horse, he or she must reapply for an Owner/Trainer license and again pay the $100 license fee. The proposal would address this issue by allowing an applicant for a Trainer's or Assistant Trainer's license to also obtain an Owner's license if the person states an intention to own horses during the term of the license.

The second issue affects both §311.101 and §311.102. If a horse or greyhound owner is unable to complete an application for an owner's license because of absence or illness, the licensed trainer may apply for an emergency license on behalf of the owner. Currently the trainer must submit at least the following information: the owner's full name, home or business address, telephone number, and social security number. However, the trainer sometimes cannot get in touch with the owner to obtain the social security number. On other occasions, the owner is reluctant to provide this personal information to the trainer due to concerns about identity theft. Aware of these concerns, agency staff has determined that the social security number is not crucial to the issuance of the emergency license, especially since the owner must provide all of the required licensing information, including the social security number, within 21 days of issuance of the emergency license. The proposed amendment would remove the social security number from the list of required information in order to secure an emergency owner's license.

Chuck Trout, Executive Director, has determined that for the first five-year period the amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing the rules as amended.

Mr. Trout has determined that for each year of the first five years that the rules as amended are in effect the anticipated public benefit will be to simplify the licensing process for trainers and assistant trainers and to avoid imposing unnecessary costs. The change to eliminate the social security number as a requirement to secure an emergency horse or greyhound owner's license will provide a public benefit by facilitating participation in racing.

The amendments will have no adverse economic effect on small or micro-businesses, and therefore preparation of an economic impact statement and a regulatory flexibility analysis is not required.

There are no negative impacts upon employment conditions in this state as a result of the proposed amendments.

The amendments will have a positive effect on the state's agricultural, horse breeding, horse training, greyhound breeding, and greyhound training industries by simplifying the licensing process for trainers and assistant trainers, by reducing licensing costs, and by facilitating participation in racing.

All comments or questions regarding the proposed amendment may be submitted in writing within 30 days following publication of this notice in the *Texas Register* to Mary Welch, Assistant to the Executive Director for the Texas Racing Commission, at P.O. Box 12080, Austin, Texas 78711-2080, telephone (512) 833-6699, or fax (512) 833-6907.

The amendments are proposed under Texas Revised Civil Statutes Annotated, Article 179e, §3.02, which authorizes the Commission to adopt rules to administer the Act.

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

§311.101. Horse Owners.

(a) General Provisions.

(1) The owner of a horse, as listed on the animal's registration paper, must obtain an owner's license from the Commission. Except as otherwise provided by §313.301(a)(2) of this title (relating to Officials and Rules of Horse Racing), a person may not be licensed as an owner if the person is not the owner of record of a properly registered horse that the person intends to race in Texas. A person who meets the qualifications for a trainer's or assistant trainer's license may also be licensed as an owner if the person intends to be the owner of record of a properly registered horse during the time of licensure. Except as otherwise provided by this subsection, the owner must be licensed one hour prior to the post time of the first race of the day in which the owner intends to race the animal.

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

(b) - (f) (No change.)

(g) Emergency License.

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

(3) The trainer applying for an emergency owner's license must submit at least the following information: the owner's full name, home or business address, and telephone number [~~, and social security number~~]. At the time of application, the appropriate licensing fee must be paid to the Commission. Failure to provide all of the foregoing information is grounds for denial of an emergency owner's license.

(4) - (6) (No change.)

§311.102. Greyhound Owners.

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

(c) Emergency License.

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

(3) The trainer applying for an emergency owner's license must submit at least the following information: the owner's full name, home or business address, and telephone number[~~, and social security number~~]. At the time of application, the appropriate licensing fee must be paid to the Commission. Failure to provide all of the foregoing information is grounds for denial of an emergency owner's license.

(4) - (5) (No change.)

(d) (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.

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Mark Fenner
General Counsel
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SUBCHAPTER C. RESPONSIBILITIES OF INDIVIDUALS

16 TAC §311.216, §311.218

The Texas Racing Commission proposes an amendment to 16 TAC §311.216, relating to conduct in the stable area, and the creation of new 16 TAC §311.218, relating to safety equipment. The current rules require that anyone on association grounds who is mounted on a horse or who is holding a horse in a starting gate must wear an A.S.T.M. safety helmet. The rules also require a jockey in a race to wear a vest "designed to provide shock absorbing protection to the upper body of at least a rating of five, as defined by the British Equestrian Trade Association." However, these rules are no longer consistent with the model rules of the Association of Racing Commissioners International (ARCI). ARCI's model rules recognize alternative safety standards in addition to those of A.S.T.M. Many licensees from other states have safety equipment that meets these other standards, yet if the Commission were strictly apply its own rules to these licensees, they would have to purchase new A.S.T.M. equipment that may or may not be as safe as the ARCI-compliant equipment they already own. This proposal for new §211.218, Safety Equipment, directly follows the relevant language of ARCI's model rule. The proposal to amend §311.216 amends an existing reference to safety equipment so it refers instead to the standards of new §311.218.

Chuck Trout, Executive Director, has determined that for the first five-year period the new rule and amendment are in effect there will be no fiscal implications for state or local government as a result of enforcing the new rule.

Mr. Trout has determined that for each year of the first five years that the new rule and amendment are in effect the anticipated public benefit will be to comply with the national standards for safety equipment in racing. In addition, licensees traveling to Texas from other states will not have to incur the expense of purchasing A.S.T.M.-compliant equipment if the licensee already owns other equipment meeting one of the ARCI-recognized standards.

The new rule and amendment will have no adverse economic effect on small or micro-businesses, and therefore preparation of an economic impact statement and a regulatory flexibility analysis is not required. However, any horse racetrack that does not already provide safety vests to its starting crew may have the additional expense of providing such equipment since the model rule requires each member of the starting crew to wear a safety vest while performing their duties or handing a horse.

There are no negative impacts upon employment conditions in this state as a result of the proposed new rule and amendment.

The new rule and amendment will have a positive effect on the state's agricultural, horse breeding, and horse training industries by broadening the available choices for required safety equipment. The new rule and amendment will have no effect on the greyhound breeding or greyhound training industries since greyhound racing does not require equivalent safety equipment.

All comments or questions regarding the proposed new rule and amendment may be submitted in writing within 30 days following publication of this notice in the *Texas Register* to Mary Welch, Assistant to the Executive Director for the Texas Racing Commission, at P.O. Box 12080, Austin, Texas 78711-2080, telephone (512) 833-6699, or fax (512) 833-6907.

The new rule and amendment are proposed under Texas Revised Civil Statutes Annotated, Article 179e, §3.02, which authorizes the Commission to adopt rules to administer the Act.

The new rule and amendment implement Texas Revised Civil Statutes Annotated, Article 179e.

§311.216. Conduct in Stable Area.

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

(c) A licensee who is mounted on a horse or stable pony on association grounds must wear a [~~an A.S.T.M. approved~~] safety helmet meeting the requirements of §311.218 of this title (relating to Safety Equipment) at all times.

(d) A licensee may not hold a horse in a starting gate unless the licensee wears a properly fastened safety helmet meeting the requirements of §311.218 of this title. [~~approved by A.S.T.M.~~]

(e) (No change.)

§311.218. Safety Equipment.

(a) Helmets. Any licensee mounted on a horse or stable pony on association grounds must wear a properly secured safety helmet at all times. Additionally, all members of the starting gate crew must adhere to this regulation at all times while performing their duties or handling a horse. For the purpose of this regulation, a member of the starting crew means any person licensed as an assistant starter or any licensee who handles a horse in the starting gate. The helmet must comply with one of the following minimum safety standards or later revisions:

(1) American Society for Testing and Materials (ASTM 1163);

(2) UK Standards (EN-1384 and PAS-015); or

(3) Australian/New Zealand Standard (AS/NZ 3838).

(b) Vests. Any licensee mounted on a horse or stable pony on the association grounds must wear a properly-secured safety vest at all times. Additionally, all members of the starting gate crew must also adhere to this regulation at all times while performing their duties or handling a horse. For the purpose of this regulation, a member of the starting gate crew means any person licensed as an assistant starter or any licensee who handles a horse at the starting gate. The safety vest must comply with one of the following minimum standards or later revisions:

(1) British Equestrian Trade Association (BETA):2000 Level 1;

(2) Euro Norm (EN) 13158:2000 Level 1;

(3) American Society for Testing and Materials (ASTM) F2681-08 or F1937;

(4) Shoe and Allied Trade Research Association (SATRA) Jockey Vest Document M6 Issue 3; or

(5) Australian Racing Board (ARB) Standard 1.1998.

(c) A safety helmet or a safety vest shall not be altered in any manner nor shall the product marking be removed or defaced.

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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CHAPTER 313. OFFICIALS AND RULES OF HORSE RACING

SUBCHAPTER D. RUNNING OF THE RACE

DIVISION 1. JOCKEYS

16 TAC §313.405, §313.406

The Texas Racing Commission proposes amendments to 16 TAC §313.405, relating to whips and other equipment, and 16 TAC §313.406, relating to colors and number. The proposals are made in conjunction with a proposal to adopt new rule §311.218, Safety Equipment, which is published elsewhere in this edition of the *Texas Register.* The proposals amend existing descriptions of safety equipment in §313.405 and §313.406 so they refer instead to the standards of new §311.218. In addition, the proposal to amend §313.406 addresses an issue with the requirement that Quarter Horses, Paints, and Appaloosas wear head numbers. On occasions, a head number will fall off during the post parade due to equipment failure and the association will not have a ready supply of extras. On other occasions, a particular horse may have a strong aversion to wearing a head number. On these occasions, the stewards do not currently have the authority to waive the head number requirement for Quarter Horses, Paints, and Appaloosas. The proposed change to §313.406 would provide the stewards with the authority to waive the head number requirement in the case of equipment failure, missing equipment, or in the interest of safety.

Chuck Trout, Executive Director, has determined that for the first five-year period the amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing the new rule.

Mr. Trout has determined that for each year of the first five years that the amendments are in effect the anticipated public benefit will be to comply with the national standards for safety equipment in racing. In addition, licensees traveling to Texas from other states will not have to incur the expense of purchasing A.S.T.M.-compliant equipment if the licensee already owns other equipment meeting one of the ARCI-recognized standards. The anticipated public benefit of amending §313.406 to allow the stewards to waive the head number requirement under certain circumstances is that it will facilitate the participation of horses that would otherwise be scratched.

The amendments will have no adverse economic effect on small or micro-businesses, and therefore preparation of an economic impact statement and a regulatory flexibility analysis is not required. However, any horse racetrack that does not already provide safety vests to its starting crew may have the additional expense of providing such equipment since the model rule requires each member of the starting crew to wear a safety vest while performing their duties or handing a horse.

There are no negative impacts upon employment conditions in this state as a result of the proposed amendments.

The amendments will have a positive effect on the state's agricultural, horse breeding, and horse training industries by broadening the available choices for required safety equipment and by facilitating greater participation in racing. The amendments will have no effect on the greyhound breeding or greyhound training industries since greyhound racing does not require equivalent safety equipment and do not require head numbers.

All comments or questions regarding the proposed amendment may be submitted in writing within 30 days following publica-

tion of this notice in the *Texas Register* to Mary Welch, Assistant to the Executive Director for the Texas Racing Commission, at P.O. Box 12080, Austin, Texas 78711-2080, telephone (512) 833-6699, or fax (512) 833-6907.

The amendments are proposed under Texas Revised Civil Statutes Annotated, Article 179e, §3.02, which authorizes the Commission to adopt rules to administer the Act.

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

§313.405. Whips and Other Equipment.

(a) - (d) (No change.)

(e) A jockey may not ride in a race unless the jockey wears a safety vest meeting the requirements of §311.218 of this title (relating to Safety Equipment). A safety vest may weigh no more than two pounds [and must be designed to provide shock absorbing protection to the upper body of at least a rating of five, as defined by the British Equestrian Trade Association].

§313.406. Colors and Number.

(a) A horse starting in a race must carry a conspicuous saddle cloth number corresponding to its number in the official program. Quarter Horses, Paints, and Appaloosas shall, and Thoroughbreds and Arabians may, wear head numbers that correspond to their numbers in the official program. The Stewards may waive the requirement for a horse to wear a head number in the interest of safety or in the case of missing or damaged equipment.

(b) The jockey for a horse starting in a race shall be properly attired for riding in the race and wear:

(1) the racing colors provided by the owner of the horse the jockey is to ride, plus white riding pants, boots, and a number on the right shoulder corresponding to the mount's number as shown on the saddle cloth, head number if provided, and in the official program; and

(2) a [an A.S.T.M. approved] safety helmet meeting the requirements of §311.218 of this title (relating to Safety Equipment). [while mounted on any horse at a licensed racetrack.]

(c) (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.

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CHAPTER 315. OFFICIALS AND RULES FOR GREYHOUND RACING
SUBCHAPTER B. ENTRIES AND PRE-RACE PROCEDURES

16 TAC §315.111

The Texas Racing Commission proposes an amendment to 16 TAC §315.111. The section relates to greyhound schooling races. The proposed amendment corrects an error in subsection (b) of the rule, which currently concerns scratches rather than schooling races. The amendment follows the model rules of the Association of Racing Commissioners International by establishing that all schooling races shall be at a distance of no less than three-sixteenths of a mile unless otherwise approved by the judges.

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

Mr. Trout has determined that for each year of the first five years that the amended rule is in effect the anticipated public benefit will be bring the rules into conformity with the national standards for schooling races.

The amendment will have no adverse economic effect on small or micro-businesses, and therefore preparation of an economic impact statement and a regulatory flexibility analysis is not required.

There are no negative impacts upon employment conditions in this state as a result of the proposed amendment.

The amendment will have no effect on the state's agricultural, horse breeding, or horse training industries, and will have a positive effect on the greyhound breeding and greyhound training industries by establishing a standard minimum distance for greyhound schooling races.

All comments or questions regarding the proposed amendment may be submitted in writing within 30 days following publication of this notice in the *Texas Register* to Mary Welch, Assistant to the Executive Director for the Texas Racing Commission, at P.O. Box 12080, Austin, Texas 78711-2080, telephone (512) 833-6699, or fax (512) 833-6907.

The amendment is proposed under Texas Revised Civil Statutes Annotated, Article 179e, §3.02, which authorizes the Commission to adopt rules to administer the Act.

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

§315.111. Schooling.

(a) (No change.)

(b) All schooling races shall be at a distance not less than three-sixteenths of a mile unless otherwise approved by the judges. [A scratch that occurs as a result of a violation of a racing rule carries a penalty and/or suspension of the greyhound for six race days. The racing judges shall review the cause for a scratch and may take disciplinary action. If a greyhound is scratched because the owner or trainer of the greyhound fails to have the greyhound at the track at the appointed time for weighing-in, the racing judges may take disciplinary action against the person responsible.]

(c) - (g) (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.

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CHAPTER 319. VETERINARY PRACTICES AND DRUG TESTING
SUBCHAPTER A. GENERAL PROVISIONS

16 TAC §319.1

The Texas Racing Commission proposes an amendment to 16 TAC §319.1. The section relates to the purpose and definitions within Chapter 319, Veterinary Practices and Drug Testing. As drug testing technologies and skills have improved, racing laboratories have developed the ability to detect when otherwise naturally-occurring substances have been administered in inappropriate levels to race animals. The significance of this issue has been increased recently by the discovery of high levels of cobalt in race horses, particularly at the Meadowlands and in Australia. Cobalt is a mineral that is essential in all mammals, and is normally ingested as part of Vitamin B12. However, administration of bulk cobalt salts to humans and other species has been demonstrated to increase red blood cell production, and such administration in race horses should be regarded as an attempt to improperly influence the outcome of a race. Currently, the Commission's rules do not include artificially high levels of naturally occurring substances within the definition of a "prohibited drug, chemical or other substance." Therefore, it would be difficult to prosecute a trainer for high levels of cobalt or any other naturally-occurring substance. The proposed amendment would address this problem by including in the definition of a "prohibited drug, chemical or other substance" those substances present in a race animal in excess of concentrations at which such substances could occur naturally.

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

Mr. Trout has determined that for each year of the first five years that the amended rule is in effect the anticipated public benefit will be to enhance the integrity of racing by providing the Commission with the authority to prosecute those who attempt to influence the outcome of a race by administering high levels of naturally-occurring substances.

The amendment will have no adverse economic effect on small or micro-businesses, and therefore preparation of an economic impact statement and a regulatory flexibility analysis is not required.

There are no negative impacts upon employment conditions in this state as a result of the proposed amendment.

The amendment will have a positive effect on the state's agricultural, horse breeding, horse training, greyhound breeding, and greyhound training industry by enhancing the integrity of horse and greyhound racing.

All comments or questions regarding the proposed amendment may be submitted in writing within 30 days following publication of this notice in the *Texas Register* to Mary Welch, Assistant to the Executive Director for the Texas Racing Commission, at P.O. Box 12080, Austin, Texas 78711-2080, telephone (512) 833-6699, or fax (512) 833-6907.

The amendment is proposed under Texas Revised Civil Statutes Annotated, Article 179e, §3.02, which authorizes the Commission to adopt rules to administer the Act.

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

§319.1. Purpose and Definitions.

(a) (No change.)

(b) For purposes of this chapter, "prohibited drugs, chemicals, or other substances" means:

(1) any stimulants, depressants, tranquilizers, local anesthetics, drugs, other drug metabolites which could affect the health or performance of a race animal, however minimal, except as expressly permitted by this chapter;

(2) a drug permitted by this chapter in excess of the maximum or other restrictions in this chapter; [~~and~~]

(3) a substance present in the race animal in excess of a concentration at which such a substance could occur naturally; and

(4) [~~(3)~~] a drug or substance, regardless of how harmless or innocuous it might be, which interferes with the detection of stimulants, depressants, tranquilizers, local anesthetics, drugs, or drug metabolites which could affect the health or performance of a race animal, however minimal, or quantitation of drugs permitted by 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 June 15, 2015.

TRD-201502241
Mark Fenner
General Counsel
Texas Racing Commission
Earliest possible date of adoption: July 26, 2015
For further information, please call: (512) 833-6699

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CHAPTER 321. PARI-MUTUEL WAGERING
SUBCHAPTER A. MUTUEL OPERATIONS

The Texas Racing Commission proposes amendments to 16 TAC §321.5, concerning the pari-mutuel auditor, §321.12, concerning time synchronization, 321.13, concerning the pari-mutuel track report, §321.23, concerning wagering explanations, §321.25, concerning wagering information, and §321.27, concerning the posting of race results. These changes are proposed in conjunction with the proposed repeal of rules authorizing and regulating historical racing under Chapter 321, Subchapter F, Regulation of Historical Racing, which is published elsewhere within this issue of the *Texas Register.*

The proposed amendments to §§321.5, 321.12, 321.13, 321.23, 321.25, and 321.27 restore the rules to the language that existed prior to the adoption of the historical racing rules.

Chuck Trout, Executive Director, has determined that for the first five-year period these amendments, as well as the repeal of rules authorizing and regulating historical racing, are in effect there will

be no fiscal implications for state or local government as a result of enforcing the amendments since the rules authorizing historical racing have never been put into practice after the adverse ruling by the 261st District Court of Travis County.

Mr. Trout has determined that for each year of the first five years that these amendments, as well as the repeal of rules authorizing and regulating historical racing, are in effect the anticipated public benefit will be to bring the rules into conformity with the decision by the 261st District Court of Travis County that the rules relating to historical racing exceeded the Commission's authority.

The amendments will have no adverse economic effect on small or micro-businesses since the rules authorizing historical racing have never been put into practice after the adverse ruling by the 261st District Court of Travis County, therefore preparation of an economic impact statement and a regulatory flexibility analysis is not required.

There are no negative impacts upon employment conditions in this state as a result of the proposed amendments since the rules authorizing historical racing have never been put into practice after the adverse ruling by the 261st District Court of Travis County.

The amendments will have no effect on the state's agricultural, horse breeding, horse training, greyhound breeding, and greyhound training industry since the rules authorizing historical racing have never been put into practice after the adverse ruling by the 261st District Court of Travis County.

All comments or questions regarding the proposed amendments may be submitted in writing within 30 days following publication of this notice in the *Texas Register* to Mary Welch, Assistant to the Executive Director for the Texas Racing Commission, at P.O. Box 12080, Austin, Texas 78711-2080, telephone (512) 833-6699, or fax (512) 833-6907.

DIVISION 1. GENERAL PROVISIONS

16 TAC §§321.5, 321.12, 321.13

The amendments are proposed under Texas Revised Civil Statutes Annotated, Article 179e, §3.02, which requires the Commission to adopt rules for conducting greyhound or horse racing in this state involving wagering, §3.021, which authorizes the Commission to license and regulate all aspects of greyhound racing and horse racing in this state, whether or not that racing involves pari-mutuel wagering, and §11.01, which requires the Commission to adopt rules to regulate wagering on greyhound races and horse races under the system known as pari-mutuel wagering.

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

§321.5. Pari-mutuel Auditor.

(a) (No change.)

(b) The pari-mutuel auditor shall verify the wagering pool totals for each live and simulcast performance [~~and any historical racing pools~~]. The pari-mutuel auditor's verification of the pool totals is the basis for computing the amount of money to be set aside from each pool for the following:

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

(c) (No change.)

§321.12. Time Synchronization.

(a) Display and verification of the accurate off time and start of a [~~live or simulcast~~] race is critical. To ensure accurate verification of off time with the close of betting on all [~~live and simulcast~~] races, the association shall ensure:

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

(b) (No change.)

§321.13. Pari-mutuel Track Report.

(a) Daily Pari-Mutuel Summary Report.

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

(4) The report must contain, by each live and simulcast performance[~~, and for each day historical racing is conducted~~], the following:

(A) - (D) (No change.)

(E) all purses earned, broken out by source, such as live, [~~historical racing,~~] simulcast, cross species, and export;

(F) - (H) (No change.)

(b) (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 June 15, 2015.

TRD-201502252
Mark Fenner
General Counsel
Texas Racing Commission
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For further information, please call: (512) 833-6699

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DIVISION 2. WAGERING INFORMATION AND RESULTS

16 TAC §§321.23, 321.25, 321.27

The amendments are proposed under Texas Revised Civil Statutes Annotated, Article 179e, §3.02, which requires the Commission to adopt rules for conducting greyhound or horse racing in this state involving wagering, §3.021, which authorizes the Commission to license and regulate all aspects of greyhound racing and horse racing in this state, whether or not that racing involves pari-mutuel wagering, and §11.01, which requires the Commission to adopt rules to regulate wagering on greyhound races and horse races under the system known as pari-mutuel wagering.

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

§321.23. Wagering Explanations.

(a) (No change.)

[~~(b) Historical racing terminals operated by an association must provide:~~]

[~~(1) an explanation of the rules of the various types of wagers offered through that terminal; and~~]

[~~(2) information about the expiration date of vouchers issued by the terminal, which must be printed on the vouchers.~~]

(b) [~~(c)~~] Wagering explanations must be reviewed and approved by the executive secretary before publication.

§321.25. Wagering Information.

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

[~~(d) Wagering information for historical racing must be audited by an independent third party approved by the executive secretary before the information is displayed or wagers taken on the associated race.~~]

§321.27. Posting of Race Results.

An association shall submit to the executive secretary for approval a plan for providing live and simulcast race results to the wagering public. The plan must include:

(1) methods by which the results will be provided;

(2) types of results to be provided; and

(3) the retention period of the race results.

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 June 15, 2015.

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Mark Fenner
General Counsel
Texas Racing Commission
Earliest possible date of adoption: July 26, 2015
For further information, please call: (512) 833-6699

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SUBCHAPTER F. REGULATION OF HISTORICAL RACING

16 TAC §§321.701, 321.703, 321.705, 321.707, 321.709, 321.711, 321.713, 321.715, 321.717, 321.719

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

The Texas Racing Commission proposes the repeal of 16 TAC §321.701, concerning the purpose of historical racing, §321.703, concerning historical racing, §321.705, concerning requests to conduct historical racing, §321.707, concerning the requirements for operating a historical racing totalisator system, §321.709, concerning types of pari-mutuel wagers for historical racing, §321.711, concerning historical racing pool and seed pools, §321.713, concerning deductions from pari-mutuel pools, §321.715, concerning contract retention and pari-mutuel wagering record retention, §321.717, effect of conflict, and §321.719, severability.

The repeal of these rules is necessary to bring the Commission's rules into conformity with the decision by the 261st District Court of Travis County that the rules relating to historical racing exceeded the Commission's authority.

Chuck Trout, Executive Director, has determined that for the first five-year period that the rules are repealed there will be no fiscal implications for state or local government as a result of enforcing the amendments since the rules authorizing historical racing have never been put into practice after the adverse ruling by the 261st District Court of Travis County.

Mr. Trout has determined that for each year of the first five years that the rules are repealed the anticipated public benefit will be to bring the rules into conformity with the decision by the 261st District Court of Travis County that the rules relating to historical racing exceeded the Commission's authority.

The repeal of these rules will have no adverse economic effect on small or micro-businesses since the rules authorizing historical racing have never been put into practice after the adverse ruling by the 261st District Court of Travis County, therefore preparation of an economic impact statement and a regulatory flexibility analysis is not required.

There are no negative impacts upon employment conditions in this state as a result of the repeal of these rules since the rules authorizing historical racing have never been put into practice after the adverse ruling by the 261st District Court of Travis County.

The repeal of these rules will have no effect on the state's agricultural, horse breeding, horse training, greyhound breeding, and greyhound training industry since the rules authorizing historical racing have never been put into practice after the adverse ruling by the 261st District Court of Travis County.

All comments or questions regarding the proposed repeal of these rules may be submitted in writing within 30 days following publication of this notice in the *Texas Register* to Mary Welch, Assistant to the Executive Director for the Texas Racing Commission, at P.O. Box 12080, Austin, Texas 78711-2080, telephone (512) 833-6699, or fax (512) 833-6907.

The repeal of these rules is proposed under Texas Revised Civil Statutes Annotated, Article 179e, §3.02, which requires the Commission to adopt rules for conducting greyhound or horse racing in this state involving wagering, §3.021, which authorizes the Commission to license and regulate all aspects of greyhound racing and horse racing in this state, whether or not that racing involves pari-mutuel wagering, and §11.01, which requires the Commission to adopt rules to regulate wagering on greyhound races and horse races under the system known as pari-mutuel wagering.

The proposed repeal of these rules implements Texas Revised Civil Statutes Annotated, Article 179e.

§321.701. Purpose.
§321.703. Historical Racing.
§321.705. Request to Conduct Historical Racing.
§321.707. Requirements for Operating a Historical Racing Totalisator System.
§321.709. Types of Pari-mutuel Wagers for Historical Racing.
§321.711. Historical Racing Pools; Seed Pools.
§321.713. Deductions from Pari-mutuel Pools.
§321.715. Contract Retention, Pari-mutuel Wagering Record Retention.
§321.717. Effect of Conflict.
§321.719. Severability.

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 June 15, 2015.

TRD-201502256

Mark Fenner
General Counsel
Texas Racing Commission
Earliest possible date of adoption: July 26, 2015
For further information, please call: (512) 833-6699

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TITLE 22. EXAMINING BOARDS

PART 10. TEXAS FUNERAL SERVICE COMMISSION

CHAPTER 201. LICENSING AND ENFORCEMENT--PRACTICE AND PROCEDURE

22 TAC §§201.1 - 201.5, 201.8 - 201.12, 201.14 - 201.16, 201.18, 201.19

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

The Texas Funeral Service Commission (Commission) proposes the repeal of Chapter 201, §§201.1 - 201.5, 201.8 - 201.12, 201.14 - 201.16, 201.18, and 201.19. Pursuant to Texas Government Code §2001.039, the Commission reviewed this chapter and determined the reasons for initially adopting the rules continue to exist, but extensive rewriting, rearranging and updating are necessary. Therefore, the repeal of this chapter is filed simultaneously with a proposal for public comment of an extensively rewritten, rearranged and updated proposed new Chapter 201.

The review of Chapter 201 by the Commission included several stakeholders' meetings attended by industry members, consumers, continuing education providers and college representatives. Commission staff presented strikethrough and underlined proposals of the rules at those meetings and on the Commission's website throughout the months-long process.

As a result of these meetings and Commission review, the Commission decided to extensively reorder and update the rules to provide more clarity to both industry members and consumers. The Commission determined that because of the extensive rewriting and reordering (with concomitant renumbering), a reviewer of the proposed new Chapter 201 would have difficulty understanding the content of the new chapter. Therefore, in reordering the rules, the Commission will repeal Chapter 201 in its entirety and propose a new Chapter 201.

In the reordering process, it is important to note the substance of §§201.2, 201.3, 201.11, and 201.12 is now included in proposed Chapter 203, which deals with more substantive rules and procedures of the Commission.

There are no proposed changes to §201.15 and §201.16 concerning the Commission's Joint Memorandums of Understanding. The rules are being repealed and will be included in the new Chapter 201 as currently written.

The remaining rules will remain in the new Chapter 201 in a reordered format with edits for style consistency, grammar and proper references to statute. Substance changes are discussed in the filing for the proposed Chapter 201.

Janice McCoy, Executive Director, has determined for each year of the first five-year period the repeal is in effect there will be no fiscal implications for state or local government, or local economies.

Ms. McCoy has determined there will be no adverse economic effect on small businesses or micro-businesses required to comply with the repeal as proposed.

There is no anticipated economic cost to individuals who are required to comply with the repeal as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. McCoy has determined for each year of the first five-year period the repeal is in effect, the public benefit anticipated as a result of enforcing the repeal will be that funeral service providers and consumers will be informed of new requirements and the Commission's practice and procedure rules will be updated to reflect all recent legislative changes.

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

The Commission has determined Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the Commission is not required to complete a takings impact assessment regarding this proposal.

Comments on the proposal may be submitted in writing to Mr. Kyle Smith at P.O. Box 12217, Capitol Station, Austin, Texas 78711-1440, (512) 479-5064 (fax) or electronically to info@tfsc.texas.gov. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Occupations Code §651.152, which authorizes the Texas Funeral Service Commission to adopt rules considered necessary for carrying out the Commission's work, and Texas Government Code §2001.039, which requires state agencies to review their rules and readopt, readopt with amendments, or repeal rules as the result of reviewing the rules under this section.

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

§201.1. Computation of Time.
§201.2. Procedures and Criteria for Inspections of Funeral Establishments.
§201.3. Complaints and Investigations.
§201.4. Subpoenas.
§201.5. Executive Director.
§201.8. Procedures for the Petition for Adoption of Rules.
§201.9. Preparation and Dissemination of Consumer Information.
§201.10. Witness Travel Reimbursement.
§201.11. Disciplinary Guidelines.
§201.12. Retired Licenses.
§201.14. Introduction to Joint Memorandum of Understanding.
§201.15. Joint Memorandum of Understanding.
§201.16. Joint Memorandum of Understanding with the Texas Department of State Health Services.
§201.18. Charges for Providing Copies of Public Information.
§201.19. Correspondence and Notice.

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 June 12, 2015.

TRD-201502221
Janice McCoy
Executive Director
Texas Funeral Service Commission
Earliest possible date of adoption: July 26, 2015
For further information, please call: (512) 936-2469

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22 TAC §§201.1 - 201.17

The Texas Funeral Service Commission (Commission) proposes new Chapter 201, §§201.1 - 201.17, concerning Licensing and Enforcement--Practice and Procedure, simultaneously with the repeal of the current Chapter 201. Pursuant to Texas Government Code §2001.039, the Commission reviewed this chapter and determined the initial reasons for its adoption continue to exist and it should be readopted with revisions. The extensive rewriting, reordering and renumbering necessary to incorporate the needed revisions (including changes made in Texas Occupations Code Chapter 651) make it impractical to underline, bracket, and strike language used when commonly amending rules.

As noted, proposed new Chapter 201 is filed simultaneously with the proposed repeal of the current Chapter 201.

The Commission intends the new rules to improve ease of use for both consumers and industry and to improve efficiencies for agency staff as the new rules are reordered and clarified.

The review of Chapter 201 by the Commission included several stakeholders' meetings attended by industry members, consumers, continuing education providers and college representatives. Commission staff presented strikethrough and underlined proposals of the rules at those meetings and on the Commission's website throughout the months-long process.

As a result of those meetings and Commission review, the Commission decided to extensively reorder and update the rules to provide more clarity to both industry members and consumers. The Commission determined because of the extensive rewriting and reordering (with concomitant renumbering), a reviewer of the proposed new Chapter 201 would have difficulty understanding the content of the new chapter. Therefore, in reordering the rules, the Commission will repeal Chapter 201 in its entirety and propose a new Chapter 201.

Newly written rules found in the proposed Chapter 201 include §§201.1 - 201.3 which outline the general rights of the Commission. Additionally, the definitions have been moved from the current Chapter 203 to proposed §201.4 and include a definition for SOAH. The language proposed for §201.17 was previously numbered as §203.13(b).

Substantive changes have been made to Commission rules in §201.5 and §201.6 to include a new provision regarding how the Commission will address negotiated rulemaking and a provision to allow the Executive Director to deny a petition for rule changes if Commissioners cannot review it within 60 days.

There are no proposed changes to §201.15 and §201.16, concerning the Commission's Joint Memorandums of Understanding.

The remaining rules are being proposed in new Chapter 201 with edits for style consistency, grammar and proper references to statute. Additionally the rules have been reordered to provide more clarity to both industry members and consumers.

Janice McCoy, Executive Director, has determined for each year of the first five-year period these rules are in effect there will be no fiscal implications for state or local government, or local economies.

Ms. McCoy has determined there will be no adverse economic effect on small businesses or micro-businesses required to comply with these rules as proposed. There is no anticipated economic cost to individuals who are required to comply with these rules as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. McCoy has determined for each year of the first five-year period the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be that funeral service providers and consumers will be informed of new requirements and the Commission's practice and procedure rules will be updated to reflect all recent legislative changes.

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

The Commission has determined Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

Comments on the proposal may be submitted in writing to Mr. Kyle Smith at P.O. Box 12217, Capitol Station, Austin, Texas 78711-1440, (512) 479-5064 (fax) or electronically to info@tfsc.texas.gov. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Occupations Code §651.152, which authorizes the Texas Funeral Service Commission to adopt rules considered necessary for carrying out the Commission's work, and Texas Government Code §2001.039, which requires state agencies to review their rules and readopt, readopt with amendments, or repeal rules as the result of reviewing the rules under this section.

The rules provisions comply with statutory provisions under Government Code Chapters 2001 and 2008.

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

§201.1. Right of Licensure.

The Commission shall establish standards for the licensure of establishments and individuals provided for in Occupations Code Chapter 651.

§201.2. Right of Inspection.

The Commission shall inspect funeral establishments as provided for in Occupations Code Chapter 651.

§201.3. Right of Investigation.

The Commission may investigate complaints as provided for in Occupations Code Chapter 651.

§201.4. Definitions.

The following words and terms, when used in Tex. Admin. Code, Title 22, Part 10, shall have the following meanings:

(1) Advertising--The act of making publicly and generally known: the act of announcing publicly especially by a printed notice, electronic medium or a broadcast.

(2) Alternative container--An unfinished wood box or other non-metal receptacle or enclosure, without ornamentation or a fixed interior lining, which is designed for the encasement of human remains and which is made of fiberboard, pressed-wood, composition materials (with or without an outside covering) or like materials.

(3) At-need--The time of need of funeral services or merchandise when a human being has become deceased.

(4) Cash Advance item--Any item of service or merchandise described to a purchaser as a "cash advance", "accommodation", "cash disbursement" or similar term. A cash advance item is also any item obtained from a third party and paid for by the funeral provider on the purchaser's behalf. Cash advance items may include, but are not limited to: cemetery or crematory services; pallbearers; public transportation; clergy honoraria; flowers; musicians or singers; nurses; obituary notices; gratuities and death certificates.

(5) Casket--A rigid container which is designed for the encasement of human remains and which is usually constructed of wood, metal, fiberglass, plastic, or like material, and ornamented and lined with fabric.

(6) Commission--The Texas Funeral Service Commission.

(7) Cremation--A heating process which incinerates human remains.

(8) Cremation Society--A resource for sharing a common interest of learning about cremation and providing consumers the assistance to locate cremation providers in their local area or outside their local area.

(9) Direct Cremation--Disposition of human remains by cremation, without formal viewing, visitation, or ceremony with the body present.

(10) Funeral ceremony--A service commemorating the deceased with the body present.

(11) Funeral goods--Goods which are sold or offered for sale directly to the public for use in connection with funeral services. Also referred to as funeral merchandise.

(12) Funeral provider--Any person, partnership or corporation that sells or offers to sell funeral merchandise and funeral services to the public at need.

(13) Graveside service--A funeral ceremony with the body present held at the burial site.

(14) Holding the body hostage--Refusing for any reason to transfer or allow the transfer of a dead human body to the person responsible for making arrangements for final disposition.

(15) Immediate burial--Disposition of human remains by burial, without formal viewing, visitation, or ceremony with the body present, except for a graveside service.

(16) Memorial service--A ceremony commemorating the deceased without the body present.

(17) Morgue--A place where bodies of unidentified persons or those who have died of violence or unknown causes are kept until release for burial or other lawful disposition.

(18) Person--Any individual, partnership, corporation, association, government or governmental subdivision or agency or other entity.

(19) Pre-need--Prearranged or prepaid funeral or cemetery services or funeral merchandise, including an alternative container, casket, or outer burial container. The term does not include a grave, marker, monument, tombstone, crypt, niche, plot, or lawn crypt unless it is sold in contemplation of trade for funeral services or funeral merchandise as defined by Finance Code Chapter 154.

(20) Refrigeration of body--Maintenance of an unembalmed dead human body at a temperature of 34-40 degrees Fahrenheit.

(21) SOAH--The State Office of Administrative Hearings.

(22) Unreasonable Time--The retention of excess funds for a period that exceeds ten days from the time the funds were received by the funeral establishment or its agent.

§201.5. Procedures for the Petition for Adoption of Rules.

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

(1) Person--Any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character other than an agency.

(2) Rule--Any Commission statement of general applicability that implements, interprets, or explains any statute, law, or policy related to the death care industry or describes the procedure or practice requirements of the Commission. The term includes the amendment or repeal of a prior rule. It does not include statements concerning only the internal management or organization of the Commission not affecting private rights or procedures.

(b) Any interested person may submit a petition to the Commission requesting the adoption, amendment, or repeal of a rule. Petitions will be deemed submitted only when actually received in printed form by the Executive Director or his/her designee.

(c) Each petition will clearly state:

(1) the proposed rule(s), including the specific language recommended;

(2) a brief explanation of the proposed rule;

(3) the statutory or other authority under which the rule is proposed to be promulgated, including a concise explanation of the particular statute or other provisions under which the rule is proposed;

(4) the rationale or justification for the adoption, amendment, or repeal of the rule, including the public benefit to be expected.

(d) If the petition cannot be placed on the next regularly scheduled Commission agenda within 60 days after receiving the petition, the Executive Director shall automatically deny the petition and notify the petitioner of the denial. A petitioner may waive the 60 day response period in writing.

(e) When a petition is received that meets the requirements of subsection (c) of this section and is not automatically denied under subsection (d) of this section, the Executive Director will forward the petition to the Presiding Officer of the Commission who will either assign the task to staff or an appropriate group of interested persons to study the petition and make a recommendation to the Commissioners.

(f) The Commissioners will consider the submission of a petition and may either deny the petition or instruct the Executive Director to initiate rulemaking proceedings in accordance with the Administrative Procedure and Texas Register Act.

(g) In the event a petition is denied, the Executive Director will advise the interested person who submitted the petition in writing of the denial and will state the reason for the denial by the Commissioners.

§201.6. Negotiated Rulemaking.

The Commission may engage in negotiated rulemaking to assist in the drafting of proposed rules if the Executive Director determines it is advisable to proceed under the procedures established in Government Code Chapter 2008. If the Executive Director concludes that formal negotiated rulemaking is not advisable, the Commission may nonetheless engage in informal negotiated rulemaking.

§201.7. Preparation and Dissemination of Consumer Information.

(a) The Commission shall prepare and disseminate to the general public information of consumer interest explaining matters relating to funerals and the funeral industry, describing the regulatory functions of the Commission, and describing the Commission's procedure by which consumer complaints are filed and resolved by the Commission.

(b) The Commission shall review and revise the information of consumer interest prepared and disseminated by the Commission on a biennial basis.

(1) Any person or groups of persons may submit in writing any proposal concerning the content and/or the methods of dissemination of information of consumer interest prepared and disseminated by the Commission. Once submitted, such proposal shall become the property of the Commission and will not be returned.

(2) The Commission shall review any proposals submitted to the Commission in writing concerning the content and/or method of dissemination of information of consumer interest.

(c) Information of consumer interest prepared and disseminated by the Commission shall be available to the general public through funeral establishments. The Funeral Director in Charge shall prominently display Commission consumer brochures in the public view within the funeral establishment.

(d) Information of consumer interest prepared and disseminated by the Commission shall also be available, upon request, to individuals and interested organizations or institutions, such as, better business bureaus, hospice groups, consumer groups, libraries, and legislators.

§201.8. Computation of Time.

In computing any period of time prescribed or allowed by Tex. Admin. Code, Title 22, Part 10, by Order of the Commission, or by any applicable statute, the period shall begin on the day after the act, event, or default in controversy and conclude on the last day the act occurred, unless it be a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday.

§201.9. Subpoenas.

The Executive Director may issue subpoenas and subpoenas duces tecum to compel the attendance of witnesses and the production of books, records, documents and/or other material relevant to the complaint under investigation or pending at SOAH.

§201.10. Witness Travel Reimbursement.

The Commission may reimburse a witness in a SOAH hearing for travel expenses at the rates established by the General Appropriations Act for classified employees of the Commission. All documentation required of classified employees would be required of witnesses in order to be compensated.

§201.11. Correspondence and Notice.

(a) All correspondence to an establishment or to a licensee shall be sent to the mailing address of record as reflected on the initial license application or as otherwise provided by the establishment or licensee.

(b) Notice shall be deemed complete upon deposit by the Commission in a postpaid, properly addressed envelope. The correspondence must be placed in a post office or official depository under the care and custody of the United States Postal Service, FedEx, UPS or any other over-night mail delivery service.

§201.12. Charges for Providing Copies of Public Information.

The Commission determines charges for public information in accordance with the rules of the Office of the Attorney General at Tex. Admin. Code, Title 1, Part 3, §70.3.

§201.13. Executive Director.

(a) The Commission shall employ an Executive Director to manage the administrative affairs of the Commission under the Commissioners' discretion.

(b) The Commission may delegate the Commissioners' duties to the Executive Director.

(c) In the event of the Executive Director's absence or if the Executive Director is unable to act, the Presiding Officer of the Commission may designate an Acting Executive Director to perform the Executive Director's duties.

§201.14. Introduction to Joint Memorandum of Understanding.

(a) Occupations Code §651.159 mandates the Texas Department of Banking, the Texas Funeral Service Commission, and the Texas Department of Insurance to adopt by rule a Joint Memorandum of Understanding (JMOU) relating to prepaid funeral services and transactions that:

(1) outlines the responsibilities of each agency in regulating these services and transactions;

(2) establishes procedures to be used by each agency in referring complaints to one of the other agencies;

(3) establishes procedures to be used by each agency in investigating complaints;

(4) establishes procedures to be used by each agency in notifying the other agencies of a complaint or of the investigation of a complaint;

(5) describes actions the agencies regard as deceptive trade practices;

(6) specifies the information the agencies provide consumers and when that information is to be provided; and

(7) sets the administrative penalties each agency imposes for violation.

(b) Any revisions to the JMOU will be adopted by rule by each agency.

(c) The JMOU entered into by the three agencies is found at §201.15 of this title.

(d) Nothing in this rule or in §§201.15 - 201.16 of this title shall be construed as prohibiting any agency from taking independent disciplinary action or assessing administrative penalties under their own statute or rules. The JMOU does not limit the authority of any agency, acting in its own capacity under state or federal law, to investigate complaints that fall within that agency's statutory jurisdiction.

§201.15. Joint Memorandum of Understanding.

(a) Pursuant to Occupations Code §651.159, the Texas Funeral Service Commission (herein referred to as the "TFSC"), the Texas Department of Insurance (herein referred to as the "TDI"), and the Texas Department of Banking (herein referred to as the "DOB") hereby adopt the following joint memorandum of understanding (JMOU) relating to

prepaid funeral benefits as defined in Finance Code Chapter 154. The TFSC, TDI, and DOB intend this memorandum of understanding to serve as a vehicle to assist the three agencies in their regulatory activities, and to make it as easy as possible for a consumer with a complaint to have the complaint acted upon by all three agencies, where appropriate. In order to accomplish this end, where not statutorily prohibited, the three agencies will share information between the agencies which may not be available to the public generally under the Public Information Act, Government Code Chapter 552. Such information will be transmitted between agencies with the understanding that it is considered confidential, is being furnished to the other agencies in furtherance of their joint responsibilities as state agencies in enforcing their respective statutes, and that it may not be disseminated to others except as required.

(b) Responsibilities of each agency in regulating prepaid funeral benefits:

(1) The Texas Funeral Service Commission is responsible for the following:

(A) licensing funeral directors, embalmers, provisional funeral directors, provisional embalmers, crematory, and funeral establishments. The TFSC may refuse to license a person or establishment which violates Finance Code Chapter 154 under Occupations Code §651.460(b)(3);

(B) taking action under Occupations Code §651.460(b)(3) against any licensee violating Finance Code Chapter 154; and

(C) taking action under Occupations Code §651.460(b)(3) against any funeral director in charge, crematory owner, and/or funeral establishment owner for violations of Finance Code Chapter 154 by persons directly or indirectly connected to the crematory or funeral establishment.

(2) The Texas Department of Banking is responsible for administering Finance Code Chapter 154, and 7 Texas Administrative Code (TAC) Chapter 25, including, but not limited to, the following:

(A) bringing enforcement actions against any person, including licensees of TFSC and TDI, who violate Finance Code Chapter 154 and/or 7 TAC Chapter 25; and

(B) all other actions authorized by Finance Code Chapter 154 and 7 TAC Chapter 25.

(3) The Texas Department of Insurance is responsible for the following:

(A) regulating insurers that issue or propose to issue life insurance policies or annuity contracts which may fund prepaid funeral contracts;

(B) regulating individuals/entities that perform the acts of an insurance agent(s) as defined in the Insurance Code Article 21.02 and Chapter 101;

(C) regulating insurance/annuity contracts that may fund prepaid funeral contracts;

(D) regulating unfair trade practices relating to the insurance/annuity contracts which may fund prepaid funeral contracts pursuant to the Insurance Code Article 21.21;

(E) regulating unfair claims settlement practices by insurance companies pursuant to the Insurance Code Chapter 542.

(c) Procedures used by each agency in exchanging information with or referring complaint to one of the other agencies.

(1) Exchanging information. If, upon receipt of a complaint, or during the course of an investigation, an agency (referred to as the receiving agency) receives any information that might be deemed of value to another of the agencies (referred to as the reviewing agency), the receiving agency will contact the reviewing agency and will forward the relevant information to the reviewing agency at its request.

(2) Referral of complaints for handling. When an agency receiving a complaint refers the complaint to another agency for handling, the receiving agency will contact the complainant in writing informing him or her of the referral, provide contact information to the reviewing agency's processing of the complaint.

(3) Complaint procedures. The three agencies will work together to establish procedures to ensure complaints will be fully resolved by the reviewing agency.

(d) Procedures to be used by each agency in investigating a complaint.

(1) All agencies.

(A) Each agency will develop internal complaint procedures for violations relating to prepaid funeral benefits. The procedures should at a minimum provide for:

(i) identification of necessary data and documents to be obtained from the complainant; and

(ii) such other steps deemed necessary for the agency to perform an adequate and appropriate investigation.

(B) Each agency may assist either of the other agencies with investigations relating to prepaid funeral benefits.

(2) The Texas Funeral Service Commission.

(A) Complaints received by the TFSC will be logged in and investigated as required under Occupations Code Chapter 651. A complaint about violations of Finance Code Chapter 154 and/or 7 TAC Chapter 25 will be referred to the DOB.

(B) If disciplinary action against a licensee of the TFSC is found to be appropriate, the matter will be referred to the Administrator of Consumer Affairs & Compliance Division of TFSC.

(C) If the complaint involves a matter handled by either the DOB or TDI, as well as a violation of the TFSC statutes or regulations, it will be referred to the appropriate agency for further action. DOB will be primarily responsible for enforcing violations of Finance Code Chapter 154 or 7 TAC Chapter 25. The agencies will coordinate their investigations to avoid duplication of effort.

(3) Texas Department of Banking.

(A) Complaints received by the Special Audits Division will be entered into a complaint log and assigned a reference number. If, after agency notice to the subject of the complaint, the complaint is not resolved, the DOB will investigate.

(B) If disciplinary action against a person who violated Finance Code Chapter 154 or 7 TAC Chapter 25 is appropriate, the matter will be referred to the agency's legal staff.

(C) If the complaint involves a matter handled by either the TDI or TFSC, as well as a violation of Finance Code Chapter 154 or 7 TAC Chapter 25, the DOB will coordinate with those agencies DOB will be primarily responsible for enforcing violations of Finance Code Chapter 154 or 7 TAC Chapter 25.

(D) In the event that the DOB issues an order against a person or entity who is a licensee under the jurisdiction of the TFSC or the TDI, the DOB will send the TFSC and the TDI a copy of the order.

(4) Texas Department of Insurance.

(A) Complaints received by the Consumer Protection Division of TDI will be logged in and investigated, except that if a complaint is solely violations of Finance Code Chapter 154 and/or 7 TAC Chapter 25, the complaint will be referred to the DOB. Other areas of TDI can be called upon for assistance in the investigation of the complaint where appropriate.

(B) If disciplinary or other regulatory action against a licensee of the TDI is found to be appropriate, the matter will be referred to the Compliance Intake Unit of TDI.

(C) If the complaint involves a matter handled by either the DOB or TFSC, as well as a violation of the TDI statutes or regulations, it will be referred to the appropriate agency for further action. DOB will be primarily responsible for enforcing violations of Finance Code Chapter 154 or 7 TAC Chapter 25. The agencies will coordinate their investigations to avoid duplication of effort.

(D) In the event that the Commissioner of Insurance issues an order against a person that also sells, funds or provides prepaid funeral benefits or is subject to the jurisdiction of the DOB or the TFSC, the TDI will send the DOB and the TFSC a copy of the order.

(e) Actions the agencies regard as deceptive trade practices.

(1) The TFSC, the DOB, and the TDI regard as deceptive trade practices those actions found under Business and Commerce Code §17.46.

(2) With respect to trade practices within the business of insurance, the TDI regards as deceptive trade practices those actions found under Insurance Code Chapter 541, other chapters of the Code and the regulations promulgated by the TDI there under.

(f) Information the agencies will provide consumers and when that information is to be provided.

(1) TFSC, DOB, and TDI will continue to provide consumers with the brochure entitled "Facts About Funerals" developed by TFSC (in Spanish and in English). DOB will continue to provide consumers with information on its website in accordance with Finance Code §154.132, including the informational brochure developed in accordance with Finance Code §154.131.

(2) DOB, TDI, and TFSC will maintain their toll free numbers.

(3) TFSC, DOB, and TDI, as state agencies, are subject to the Public Information Act, Government Code Chapter 552. Upon written request, the three agencies will provide consumers with public information which is not exempt from disclosure under that Act. As noted in the preamble to this JMOU, the agencies may, where not statutorily prohibited, exchange information necessary to fulfill their statutory responsibilities among each other, without making such information public information under the Public Information Act.

(g) Administrative penalties each agency imposes for violations.

(1) Texas Funeral Service Commission. The TFSC may impose an administrative penalty, issue a reprimand, or revoke, suspend, or place on probation any licensee who violates Finance Code Chapter 154. TFSC administrative penalties vary based on the violation; TFSC sanctions are imposed under Occupations Code Chapter 651.

(2) Texas Department of Banking. DOB administrative penalties vary based on the violation; DOB sanctions are imposed under Finance Code Chapter 154.

(3) Texas Department of Insurance. TDI administrative penalties vary based on the violation; TDI sanctions are imposed under Insurance Code Chapter 82.

§201.16. Memorandum of Understanding with the Texas Department of State Health Services.

(a) Purpose. The purpose of this section is to implement Texas Occupations Code Chapter 651, 76th Legislature, 1999, and Health and Safety Code Chapters 193 and 195. In an effort to better protect the public health, safety and welfare, it is the legislative intent of the laws of the Texas Department of State Health Services (Department) and the Texas Funeral Service Commission (TFSC) to adopt by rule a memorandum of understanding to facilitate cooperation between the agencies by establishing joint procedures and describing the actual duties of each agency for the referral, investigation, and resolution of complaints affecting the administration and enforcement of state laws relating to vital statistics and the licensing of funeral directors and funeral establishments.

(b) Scope.

(1) The Memorandum of Understanding (MOU) includes the respective responsibilities of the Department and the TFSC in regulating any person or entity under the Health and Safety Code Chapters 193 and 195, concerning the completion and filing of death records.

(2) The Department and the TFSC will implement the cooperative procedure described in this memorandum to refer complaints to the other agency when that complaint falls within the other agency's jurisdiction or may have an effect on the administration and enforcement of the law for which the other agency is responsible.

(3) The Department and the TFSC will implement the cooperative procedure described in this MOU in order to notify the other agency of violations of Health and Safety Code Chapters 193 and 195; and Texas Occupations Code Chapter 651 by funeral directors and funeral establishments, and to assist and encourage funeral directors, embalmers, and funeral establishments to conform their activities relating to the completion and filing of death records.

(4) The MOU does not limit the authority of either agency, acting in its own capacity under state or federal law, to investigate complaints that fall within that agency's statutory jurisdiction.

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

(1) Agency--Texas Department of State Health Services or the Texas Funeral Service Commission.

(2) Death record--A report of death, death certificate, or a burial-transit permit, and such other forms as the Texas Department of State Health Services determine to be necessary.

(3) Department--The Texas Department of State Health Services or any local registrar.

(4) Funeral Director--A person who for compensation engages in or conducts, or who holds himself out as being engaged, for compensation, in preparing, other than the embalming, for the burial or disposition of dead human bodies, and maintaining or operating a funeral establishment for the preparation and disposition, or for the care of dead human bodies.

(5) Funeral establishment--A place of business used in the care and preparation for burial or transportation of dead human bodies, or any other place where one or more persons, either as sole owner, in co-partnership, or through corporate status, represent themselves to be

engaged in the business of embalming and/or funeral directing, or is so engaged.

(6) Local registrar--

(A) The justice of the peace is a local registrar of births and deaths in a justice of the peace precinct. However, the duty of registering births and deaths may be transferred to the county clerk if the justice of the peace and the county clerk agree in writing and the agreement is ratified by the commissioners court.

(B) The municipal clerk or secretary is the local registrar of births and deaths in a municipality with a population of 2,500 or more.

(C) If a local registrar fails or refuses to register each birth and death in the district or neglects duties, the county judge or the mayor, as appropriate, shall appoint a new local registrar and shall send the name and mailing address of the appointee to the state registrar.

(7) Person--

(A) includes corporation, organization, government, or governmental subdivision or agency, business trust, estate, trust, partnership, association, and any other legal entity; or

(B) includes individual, corporation, or association where enforcement of Health and Safety Code Chapter 195 is involved.

(8) Physician--Any individual licensed by the Texas Medical Board to practice medicine in this state.

(d) Delegation of responsibilities. The Department and TFSC agree that the agencies shall have the following responsibilities.

(1) The Department shall have primary responsibility for the enforcement of the laws, rules, and policies governing the collection and maintenance of a system of vital statistics, including the collection and maintenance of death records for the State of Texas. Except as may be otherwise provided by law, the Department shall:

(A) design the format and prescribe the data to be entered on all forms that constitute the death records of the state;

(B) prescribe the rules and procedures to be followed by a funeral director licensed by TFSC in executing his/her responsibility to secure the required data and file the completed death record;

(C) establish rules or policies to determine when a local registrar may accept the filing of a death record by a funeral director or the funeral director's designee and the purposes for which each record may be used, including the filing and uses of a delayed death certificate; and

(D) enforce the provisions of the Health & Safety Code (Code) Chapter 193, in accordance with Chapter 195 of the Code relating to criminal penalties for violations of laws relating to vital statistics. These laws include Chapters 191, 192, and 193 of the Code and rules adopted thereunder. If the state registrar knows or suspects that a funeral director or a funeral establishment has violated the provisions of §195.003 or other provisions of Title 3 of the Code, he or she shall report the violation to the appropriate district or county attorney for prosecution.

(2) The Texas Funeral Service Commission (TFSC) shall have primary responsibility for the enforcement of the laws, rules, and policies governing the licensing of funeral directors, embalmers, funeral and commercial embalming establishments. Except as may be otherwise provided by law, the TFSC has authority:

(A) to inspect a funeral establishment for violations of Chapter 193 of the Code; and

(B) to assess an administrative penalty or to reprimand, revoke, suspend, probate, deny or impose any combination of sanctions against a licensee in accordance with Texas Occupations Code Chapter 651, if the licensee has violated Chapter 193 or 195 of the Code or 25 TAC Chapter 181 of the Department rules;

(3) Referral, investigation, and resolution of complaint.

(A) If the Department receives a complaint that alleges conduct by a funeral director or a funeral establishment that constitutes possible violations of Texas Occupations Code Chapter 651, or the rules adopted by TFSC under authority of Texas Occupations Code Chapter 651, the Department may refer the complaint to the TFSC for investigation and disposition; however, if the complaint describes conduct by any person or entity licensed under Texas Occupations Code Chapter 651 that constitutes possible violations of Chapters 193 and 195 of the Code, the Department shall retain jurisdiction over the subject matter of the complaint, investigate the complaint, and if valid, shall file a complaint with TFSC; or the Department or any local vital statistics registrar may refer the complaint to TFSC for investigation and adjudication.

(B) If TFSC receives a complaint that alleges conduct by any person that constitutes possible violations of Title 3 of the Code, TFSC shall immediately notify the Department of the complaint for any appropriate action by the Department.

(C) If either agency receives a complaint that alleges facts that constitute a violation of any other law, the complaint shall be referred to the appropriate state administrative agency or state or local law enforcement agency.

(D) Each agency shall appoint at least one person to an interagency team that will meet at least biannually and at that time review each unresolved complaint that affects the agencies jointly.

(i) If the complaint has not been referred for investigation and resolution, the team will refer the complaint to the Department, TFSC, or other appropriate state administrative or law enforcement agency, including the State Board of Medical Examiners, or local law enforcement agency.

(ii) If the Department and the TFSC determine that a complaint has been incorrectly referred, they will refer the complaint appropriately.

(E) To the extent allowed by law, each agency shall cooperate and assist the other in the investigation and resolution of complaints. The following actions may be taken where indicated in the other's enforcement actions.

(i) Either agency may request the assistance of the other in the investigation of a complaint.

(ii) Each agency may share information obtained during the complaint investigation with the other agency when the subject matter of the complaint affects both agencies.

(iii) Any information obtained by the TFSC as a result of a complaint investigation is not subject to public disclosure under the Government Code §552.101, by virtue of Texas Occupations Code Chapter 651, §651.203, until the case has reached its final disposition.

(iv) Each agency shall make its personnel available to testify in an administrative or judicial proceeding brought on behalf of the other agency, when the personnel has knowledge of information that is material to the subject matter of the proceeding.

(e) Effective date. This section shall become effective on August 1, 1994. The MOU may be amended at any time upon mutual

agreement of the agencies and the amendments are effective as to each agency 20 days after the adopted amendments are filed with the *Texas Register.*

§201.17. Severability Clause.

The provisions of each section of the rules of the Commission are separate and severable from one another. If any provision is determined to be invalid, it is the Commission's intention that the remaining provisions shall continue in effect.

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 June 12, 2015.

TRD-201502216
Janice McCoy
Executive Director
Texas Funeral Service Commission
Earliest possible date of adoption: July 26, 2015
For further information, please call: (512) 936-2469

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CHAPTER 203. LICENSING AND ENFORCEMENT--SPECIFIC SUBSTANTIVE RULES

22 TAC §§203.1 - 203.14, 203.16, 203.17, 203.20 - 203.27, 203.29 - 203.33, 203.35, 203.36, 203.38 - 203.42

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

The Texas Funeral Service Commission (Commission) proposes the repeal of Chapter 203, §§203.1 - 203.14, 203.16, 203.17, 203.20 - 203.27, 203.29 - 203.33, 203.35, 203.36, and 203.38 - 203.42. Pursuant to Texas Government Code §2001.039, the Commission reviewed this chapter and determined the reasons for initially adopting the rules continue to exist, but that extensive rewriting, rearranging and updating are necessary. Therefore, the repeal of this chapter is filed simultaneously with a proposal for public comment on an extensively rewritten, rearranged and updated proposed new Chapter 203, filed in three separate submissions for each of the proposed subchapters.

The review of Chapter 203 by the Commission included several stakeholders' meetings attended by industry members, consumers, continuing education providers and college representatives. Commission staff presented strikethrough and underlined proposals of the rules at those meetings and on the Commission's website throughout the months-long process.

As a result of these meetings and Commission review, the Commission decided to extensively reorder and update the rules to provide more clarity to both industry members and consumers. The Commission determined because of the extensive rewriting and reordering (with concomitant renumbering), a reviewer of the proposed new Chapter 203 would have difficulty understanding the content of the new chapter. Therefore, in reordering the rules, the Commission will repeal Chapter 203 in its entirety and propose a new Chapter 203.

Section 203.1, Definitions, and §203.5, Right of Investigation, are being moved with updates to the newly proposed Chapter 201 as the rules are more general in nature. Section 203.20, Cash Advance Items, is being repealed in its entirety because it is duplicative of another rule (see proposed §203.46(f)).

The Commission's rules which mirror the Federal Trade Commission's rules (§§203.7 - 203.13) can be found in proposed Chapter 203 at §203.33 and §§203.46 - 203.52. Section 203.7(b)(6) has been included in its own rule at §203.47. Section 203.13(c) was deleted as the Commission does not regulate the business of insurance and §203.13(b) was moved to the newly proposed Chapter 201. Otherwise, the FTC rules only have been updated in proposed Chapter 203 to include minor edits for clarity.

The remaining rules are being proposed to be included in new Chapter 203 with edits for procedure, style consistency, grammar and proper references to statute. Additionally, the rules have been reordered into subchapters to provide more clarity to both industry members and consumers.

Janice McCoy, Executive Director, has determined for each year of the first five-year period the repeal is in effect there will be no fiscal implications for state or local government, or local economies.

Ms. McCoy has determined there will be no adverse economic effect on small businesses or micro-businesses required to comply with the repeal as proposed. There is no anticipated economic cost to individuals who are required to comply with the repeal as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. McCoy has determined for each year of the first five-year period the repeal is in effect, the public benefit anticipated as a result of enforcing the repeal will be that funeral service providers and consumers will be informed of new requirements and the Commission's practice and procedure rules will be updated to reflect all recent legislative changes.

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

The Commission has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the Commission is not required to complete a takings impact assessment regarding this proposal.

Comments on the proposal may be submitted in writing to Mr. Kyle Smith at P.O. Box 12217, Capitol Station, Austin, Texas 78711-1440, (512) 479-5064 (fax) or electronically to info@tfsc.texas.gov. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Occupations Code §651.152, which authorizes the Texas Funeral Service Commission to adopt rules considered necessary for carrying out the Commission's work, and Texas Government Code §2001.039, which requires state agencies to review their rules and readopt, readopt with amendments, or repeal rules as the result of reviewing the rules under this section.

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

§203.1. Definitions.

§203.2. Clarification of First Call Definition.

§203.3. Funeral Director in Charge.

§203.4. Licensure of Funeral Establishments and Commercial Embalming Establishments and Display of License.
§203.5. Right of Investigation.
§203.6. Provisional Licensees.
§203.7. Price Disclosure.
§203.8. Misrepresentations.
§203.9. Required Purchase of Funeral Goods or Funeral Services.
§203.10. Services Provided Without Prior Approval.
§203.11. Retention of Documents.
§203.12. Comprehension of Disclosures.
§203.13. Declaration of Intent.
§203.14. Display of Funeral Merchandise.
§203.16. Requirements Relating to Embalming.
§203.17. Clarification of Other Facilities Necessary in a Preparation Room.
§203.20. Cash Advance Items.
§203.21. Presentation of Consumer Brochure.
§203.22. Required Documentation for Embalming.
§203.23. Location of Retained Records.
§203.24. Unprofessional Conduct.
§203.25. Franchise Tax.
§203.26. Funeral Directors and Embalmers License Requirements and Procedure.
§203.27. Military Licensing.
§203.29. Establishment Names and Advertising.
§203.30. Continuing Education.
§203.31. Inspections of Licensed or Registered Facilities.
§203.32. State Agency Action as Basis for License Suspension, Revocation, or Denial.
§203.33. Consequences of Criminal Conviction.
§203.35. Clarification of Establishment Chapel Requirements.
§203.36. Temporary Operation Authorization--Damaged Establishments.
§203.38. Reinstatement of Funeral Director and/or Embalmer Licenses.
§203.39. Embalmer in Charge.
§203.40. Provisional License; Hardship.
§203.41. In-Casket Identification.
§203.42. New License Applications.

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 June 12, 2015.

TRD-201502223
Janice McCoy
Executive Director
Texas Funeral Service Commission
Earliest possible date of adoption: July 26, 2015
For further information, please call: (512) 936-2469

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SUBCHAPTER A. LICENSING

22 TAC §§203.1 - 203.18

The Texas Funeral Service Commission (Commission) proposes new Chapter 203, Subchapter A, §§203.1 - 203.18, simultaneously with the repeal of the current Chapter 203. Pursuant to Texas Government Code §2001.039, the Commission reviewed this chapter and determined the initial reasons for its adoption continue and it should be readopted with amendments. The extensive rewriting, reordering and renumbering necessary to incorporate the needed revisions (including changes made in Texas Occupations Code Chapter 651) makes it impractical to underline, bracket, and strike language used when commonly amending a rule.

As noted, the proposed new Chapter 203 is filed simultaneously with the repeal of the current Chapter 203. New Chapter 203 is filed in three submissions--one for each proposed subchapter.

Chapter 203 is proposed to be reordered in subchapters to provide more clarity to both industry members and consumers. Subchapter A includes rules relating to Licensing Issues. Subchapter B includes rules relating to Duties of a Funeral Establishment/Licensee, and Subchapter C includes rules relating to Enforcement.

The Commission intends the new rules to improve ease of use for both consumers and industry and to improve efficiencies for agency staff as the new rules are reordered and clarified.

The review of Chapter 203 by the Commission included several stakeholders' meetings attended by industry members, consumers, continuing education providers and college representatives. Commission staff presented strikethrough and underlined proposals of the rules at those meetings and on the Commission's website throughout the months-long process.

As a result of those meetings and Commission review, the Commission decided to extensively reorder and update the rules to provide more clarity to both industry members and consumers. The Commission determined because of the extensive rewriting and reordering (with concomitant renumbering), a reviewer of the proposed Chapter 203 would have difficulty understanding the content of the new chapter. Therefore, in reordering the rules, the Commission will repeal Chapter 203 in its entirety and propose new Chapter 203, filed in three submissions.

Proposed Subchapter A incorporates the provisions of HB 1219 enacted by the 84th Legislature. The substantive changes related to this legislation can be found in §203.5, Provisional License, §203.6, Provisional License Case and Reporting Requirements, and §203.7, Provisional License Reinstatement and Reapplication. Additionally, the proposed rules require an applicant for a provisional license to take and pass the State Mortuary Law Exam prior to the provisional license being issued.

Proposed Subchapter A incorporates the provisions of SB 807 and SB 1307 enacted by the 84th Legislature. The substantive changes related to this legislation can be found in §203.2, Military Licensing, and §203.6(h), Provisional License Case and Reporting Requirements.

Chapter 203 rules deleted from the proposed new chapter include only §203.36(d).

In the reordering process, it is important to note the substance of current §201.2 is now included in proposed Chapter 203, which deals with more substantive rules and procedures of the commission. The reordered and updated rule can be found at §203.3, Retired/Disabled License (updated to include disabled licensees and not just retired).

Proposed new language to the Commission's rules can be found at §203.1(e), Funeral Director and Embalmer License Requirements and Procedure; §203.4, Reciprocal License; §203.9(c), New License Applications; and §203.10, Preparation Room Exemption. These provisions are not found in the current rules of the Commission and are substantive changes to the Commission's rules. They are wholly based on provisions found in Texas Occupations Code Chapter 651.

A change was made to §203.14, State Agency Action as a Basis for License Suspension, Revocation or Denial, to clarify that any licensee, not just establishments, may be subject to administrative action by the Commission for default or delinquency in an obligation to the state. A change was made to §203.16, Consequences of Criminal Conviction, to give the Executive Director authority to enter into an Agreed Order with a person placed on probation and to allow a person denied a license to appeal to SOAH.

A change was made to §203.18, Reissuance of Revoked Funeral Director and/or Embalmer License, to allow Commissioners additional options for compliance from an applicant seeking license reissuance.

The remaining rules are being proposed in new Chapter 203 with edits for style consistency, grammar and proper references to statute.

The following sections are reserved for expansion: §203.19 and §203.20.

Janice McCoy, Executive Director, has determined for each year of the first five-year period these rules are in effect there will be no fiscal implications for state or local government, or local economies.

Ms. McCoy has determined there will be no adverse economic effect on small businesses or micro-businesses required to comply with these rules as proposed. There is no anticipated economic cost to individuals who are required to comply with these rules as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. McCoy has determined for each year of the first five-year period the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be funeral service providers and consumers will be informed of new requirements and the Commission's practice and procedure rules will be updated to reflect all recent legislative changes.

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

The Commission has determined Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

Comments on the proposal may be submitted in writing to Mr. Kyle Smith at P.O. Box 12217, Capitol Station, Austin, Texas 78711-1440, (512) 479-5064 (fax) or electronically to info@tfsc.texas.gov. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Occupations Code §651.152, which authorizes the Texas Funeral Service Commission to adopt rules considered necessary for carrying out the Commission's work, and Texas Government Code §2001.039, which requires state agencies to review their rules and readopt, readopt with amendments, or repeal rules as the result of reviewing the rules under this section.

These changes also are made pursuant to Texas Occupations Code Chapter 53 and 55.

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

§203.1. Funeral Director and Embalmer License Requirements and Procedure.

(a) A person may not engage in funeral directing or embalming in this state without holding a license issued by the Commission, unless the person is a mortuary student acting under the supervision and direction of a licensed funeral director or embalmer.

(b) An applicant for a license shall meet the eligibility requirements of Occupations Code §651.253.

(c) The period of a license is two years beginning on the first day of the licensee's birth month. The initial licensing period may be less than two years.

(d) The licensing fee must be paid before a license is issued. If the initial licensing period is less than two years, the licensing fee shall be prorated.

(e) A person who does not receive a full license by exiting directly from the Commission's provisional license program or reciprocate from another state may apply for full licensure. The person must have been a provisional license holder in Texas no more than 24 months prior to application. The applicant shall complete an application, provide required proof of eligibility, pay an application fee, re-take and pass the State Mortuary Law Examination, and submit to a criminal background check.

(f) Renewal Procedures and Conditions.

(1) A license may be renewed prior to its expiration if the licensee has paid the renewal fee and met the continuing education requirements of §203.8 of this title.

(2) A person whose license is expired for 90 days or less may renew the license by meeting the continuing education requirements of §203.8 of this title and paying a renewal fee that is 1 and 1/2 times the amount of the normal renewal fee.

(3) A person whose license is expired for more than 90 days but less than one year may renew the license by meeting the continuing education requirements of §203.8 of this title and paying a renewal fee that is two times the amount of the normal renewal fee.

(4) A person whose license has been expired for one year or more may reinstate the license by meeting the following requirements:

(A) retaking and passing the State Mortuary Law Examination;

(B) payment of any applicable fees, including a renewal fee that is equal to two times the normally required renewal fee; and

(C) completion of the continuing education requirements of §203.8 of this title.

(5) Notwithstanding paragraph (4) of this subsection, a person whose license has been expired for one year or more may reinstate the license without retaking the applicable examination if the person has been licensed and practicing in another state for the two years preceding the application for reinstatement. The applicant must pay a renewal fee that is equal to two times the normally required renewal fee.

(6) A licensee serving as an active military service member as defined by Occupations Code Chapter 55 is exempt from the payment of license fees for the duration of the holder's military service or for anytime the Commission considers advisable.

§203.2. Military Licensing.

(a) This subsection applies to a military service member, military veteran or military spouse as defined by Occupations Code Chapter 55.

(b) The Commission shall issue an expedited license to an applicant described in subsection (a) of this section who:

(1) holds a current license issued by another jurisdiction that has licensing requirements that are substantially equivalent to the requirements for the license in this state; or

(2) within the five years preceding the application date held a license in this state.

(c) The Executive Director may allow an applicant described under subsection (b) of this section to demonstrate competency by alternative methods in order to meet the requirements for obtaining a particular license issued by the Commission. In lieu of the standard method(s) of demonstrating competency for a particular license, and based on the applicant's circumstances, the alternative methods for demonstrating competency may include any combination of the following as determined by the Commission:

(1) education;

(2) continuing education;

(3) examinations (written and/or practical);

(4) letters of good standing;

(5) letters of recommendation;

(6) work experience; or

(7) other methods required by the Executive Director.

(d) The Commission shall waive any application or examination fees for an applicant who is:

(1) a military service member or military veteran whose military service, training, or education substantially meets all of the requirements for the license; or

(2) a military service member, military veteran, or military spouse who holds a current license issued by another jurisdiction that has licensing requirements that are substantially equivalent to the requirements for the license in this state.

§203.3. Retired/Disabled License.

(a) At the time of license renewal, any licensed Funeral Director, Embalmer or dual licensee aged 65 or older will be placed in a Retired, Active status. Upon written application to the Commission, a licensee may be placed in a Retired, Inactive status.

(b) Upon written application to the Commission, any licensed Funeral Director, Embalmer or dual licensee with a disability of 75% or greater will be placed in a Disabled, Active or Disabled, Inactive status. Proof of disability will be required at the time of the application. If the Commission questions the validity of the certification, a certification from a second source may be required. Submission of required documentation does not imply a guarantee of acceptance of documentation or approval of the application.

(c) Any individual holding an inactive license will be subject to disciplinary action if the individual performs any act of funeral directing and/or embalming.

(d) Any individual holding an inactive license may convert at any time to either a Retired, Active or Disabled, Active license upon written notification to the Commission, payment of applicable licensing fees, and meeting the continuing education requirements of §203.8 of this title.

§203.4. Reciprocal License.

(a) A person who holds a funeral director's license or an embalmer's license issued by another state, country or territory may reciprocate the license with the Commission.

(b) Any applicant for a license under this section shall file a sworn application. The application must include the following information:

(1) a statement the applicant is the person who holds the license, the applicant's license is current and in good standing, and no criminal prosecution is pending against the applicant;

(2) an affidavit made by the governmental entity or a registration officer of the state, country or territory that issued the license that verifies the license is active and the qualifications provided by the applicant are correct;

(3) a copy of a certified transcript showing the applicant graduated from an accredited college of mortuary science; and

(4) any other requirements necessary for licensure under Occupations Code §651.253.

(c) An applicant under this section must show that the applicant has practiced for at least:

(1) one year in a state with license requirements similar to those of the Commission; or

(2) five years in a state that does not have license requirements similar to those of the Commission.

(d) All applicants under this section shall sit for the State Mortuary Law Examination administered by the Commission. A passing score of at least 75% is required.

(e) Each applicant shall submit to a criminal background check. An applicant is not eligible for a license under this section if the applicant has, in the 10 years preceding the date of the application, been finally convicted of a misdemeanor involving moral turpitude or a felony.

(f) The Executive Director shall waive licensure requirements under Occupations Code §651.253, if the applicant meets the licensure term under (c)(1) of this section. The Executive Director may waive licensure requirements under Occupations Code §651.253, if the applicant meets the licensure term under (c)(2) of this section.

(g) The applicant shall pay a license fee in an amount set by the Commission.

§203.5. Provisional License.

(a) An applicant for a provisional license must meet the eligibility requirements of Occupations Code §651.302 and shall submit to a criminal background check. Upon written application, the Commission shall waive the requirements of Occupations Code §651.302(a)(2) and (b)(2) for a period not to exceed 12 months to an applicant who is otherwise qualified.

(b) An applicant who is enrolled in an accredited mortuary college must have the college forward a letter of enrollment prior to a provisional license being issued. A provisional license holder who was granted an education waiver under Occupations Code §651.302(c) must have the college forward a letter of enrollment prior to a provisional licensed being renewed.

(c) If a school or college of mortuary science loses its accreditation, a student who is enrolled and actively attending classes related to mortuary science will be considered to have graduated from an accredited school or college of mortuary science for the purpose of complying with Occupations Code §651.253, if the student graduates within 12 months of the loss of accreditation.

(d) A provisional license holder may work only in a funeral establishment or commercial embalming establishment licensed by the Commission. All work must be performed under the direct and personal supervision of a duly licensed funeral director or embalmer, depending on the provisional license.

(e) The provisional funeral director program may not be served in a commercial embalming establishment.

(f) A provisional license holder must maintain employment with a funeral establishment or commercial embalming establishment, as applicable, throughout the provisional license period. A provisional license holder must notify the Commission where he/she is employed and if he/she changes employer. If the license holder is not employed, the Commission will cancel the provisional license.

(g) A provisional license is valid for a term of 12 consecutive months. If a provisional license holder fails to complete the license requirements in the 12 month license period, the holder's license may be renewed for an additional 12 months, for a maximum term of 24 months.

(h) Notwithstanding subsection (f), if a provisional license holder who was granted an education waiver under Occupations Code §651.302(c) fails to complete the license requirements in the 12 month license period, the holder's license may be renewed for an additional 12 months up to two times, for a maximum term of 36 months.

(i) Fees will not be refunded to a provisional license holder who fails to complete the program.

(j) The Commission shall exit a provisional license holder from the program at any time during the license term if the license holder shows he/she has met the eligibility requirements of Occupations Code §651.253.

(k) Upon the completion of the provisional license program, the provisional license holder shall submit the Commission promulgated Exit Application and all required documentation to the Commission. The Commission shall verify the information received to ensure the provisional licensee has met all requirements. All information submitted is subject to inspection.

(l) Once the Commission confirms licensing requirements have been met, the Commission shall issue to the provisional license holder a written affidavit to be executed by the Funeral Director in Charge or the Embalmer in Charge, as applicable, which attests to the proficiency of the provisional license holder.

(m) Prior to issuing a regular license, the Commission must receive the affidavit described by subsection (l) of this section and the fees required for regular licensure.

(n) Examination Requirements

(1) An applicant for full licensure as a funeral director from the certificate program must pass the Texas State Board Examination as described in Occupations Code §651.255.

(2) An applicant for full licensure who holds an Associate of Applied Science degree is required to pass either or both of the examinations as described in Occupations Code §§651.255 - 651.256.

(3) Prior to being issued a provisional license, an applicant must pass the State Mortuary Law Examination administered by the Commission.

(4) A passing score of at least 75% is required for each examination described in paragraphs (1) - (3) of this subsection.

§203.6. Provisional License Case and Reporting Requirements.

(a) Forty five (45) cases are required for the provisional funeral director license program, at least 10 of which must be complete cases. A complete funeral directing case consists of all major actions from the time of first call through interment or other disposition of the body.

(b) Forty five (45) cases are required for the provisional embalmer license program, at least 10 of which must be complete cases. A complete embalming requires the provisional embalmer to handle all major actions included in §203.32 of this title performed on a particular body.

(c) It is the responsibility of the Funeral Director in Charge or the Embalmer in Charge, whichever is applicable, and the provisional licensee to schedule case work sufficient to fulfill the requirements of the provisional program.

(d) Each case on a case report form shall be certified by the licensee under whom the provisional licensee performed the work. Both the supervising licensee and the provisional licensee are subject to disciplinary action if the information submitted to the Commission is not true and accurate.

(e) The provisional licensee must file with the Funeral Director in Charge or the Embalmer in Charge, whichever is applicable, a report outlining the number of cases performed and the name of the funeral director or embalmer under whom the cases were supervised. If a provisional licensee adds/moves to a new funeral establishment or commercial embalming facility, a separate case report form must be started. If a Funeral Director in Charge or the Embalmer in Charge changes, a separate case report form must be started. All signed case report forms accumulated during the provisional period may be used to verify the total number of cases performed.

(f) Provisional licensees shall retain copies of all case report forms with supporting documentation for two years from the completion date of the provisional program.

(g) Of the 45 required cases, a provisional license holder may include up to 10 cases performed at an accredited mortuary college whether or not the person held a provisional license at the time the cases were performed and if the college certifies to the Commission that the cases were successfully completed.

(h) Case Reporting for Military Provisional Licensees

(1) This subsection applies to an applicant who is military service member or military veteran as defined by Occupations Code Chapter 55 and does not have an unacceptable criminal history as defined by §203.16(h) of this title.

(2) The Commission shall credit verified military service or training of the applicant described under paragraph (1) of this subsection toward the requirements outlined under this section.

(3) A Joint Services Transcript, or comparable document issued by the United States military, is required to verify military training or education.

§203.7. Provisional License Reinstatement and Reapplication.

(a) A person whose provisional license is cancelled for failure to timely renew the license as described in Occupations Code §651.305

may apply for reinstatement no later than the date the license would have expired if the license had been timely renewed. The applicant must pay the renewal fee and penalty upon application. The reinstated provisional license has the same expiration date as if the license had been timely renewed.

(b) A person whose provisional license is cancelled for failure to complete the program within the proscribed time may apply for a new provisional license. Casework completed under a previous license may not be counted toward the requirements of the new license unless the applicant petitions the Executive Director for a hardship exemption. The petition must demonstrate the personal situation and reasons why the casework should count. If the Executive Director determines that the previously completed casework should not be counted under the new license, the Executive Director's decision may be appealed, in writing, and the appeal will be considered at the Commission's next regularly scheduled meeting.

§203.8. Continuing Education.

(a) Each person holding an active license and practicing as a funeral director or embalmer in this state is required to participate in continuing education as a condition of license renewal.

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

(1) Approved provider--Any person or organization conducting or sponsoring a specific program of instruction that has been approved by the Commission.

(2) Approved program--A continuing education program activity that has been approved by the Commission. The program shall contribute to the advancement, extension, and enhancement of the professional skills and knowledge of the licensee in the practice of funeral directing and embalming by providing information relative to the funeral service industry and be open to all licensees.

(3) Hour of continuing education--A 50 minute clock hour completed by a licensee in attendance at an approved continuing education program.

(c) Approval of continuing education providers.

(1) A person or entity seeking approval as a continuing education provider shall file a completed application on a form provided by the Commission and include the continuing education provider fee and the fee for each course submitted. Governmental agencies are exempt from paying this fee.

(2) National or state funeral industry professional organizations may apply for approval of seminars or other courses of study given during a convention.

(3) An application for approval must be accompanied by a syllabus for each course to be offered which specifies the course objectives, course content and teaching methods to be used, and the number of credit hours each course is requesting to be granted, and a resume and description of the instructor's qualifications.

(4) A provider is not approved until the Commission accepts the application and issues a Provider Number for the provider and a course number for each course offered under that Provider Number. The Commission may refuse to approve a provider's application for any valid reason, as determined by the Commission.

(5) A Provider Number and course number are valid for one year, expiring on December 31st of each year, regardless of when the number was granted.

(d) Responsibilities of approved providers.

(1) The provider shall verify attendance at each program and provide a certificate of attendance to each attendee. The certificate of attendance shall contain:

(A) the name of the provider and approval number;

(B) the name of the participant;

(C) the title of the course or program, including the course or program number;

(D) the number of credit hours given;

(E) the date and place the course was held;

(F) the signature of the provider or provider's representative; and

(G) the signature of the attendee.

(2) The provider shall provide a mechanism for evaluation of the program by the participants, to be completed at the time the program concludes.

(3) The provider shall maintain the attendance records and evaluations for a minimum of two years after the course is presented. A copy of the evaluations and/or attendance roster shall be submitted to the Commission upon request.

(4) The provider shall be responsible for ensuring that no licensee receives continuing education credit for time not actually spent attending the program.

(5) The Commission may monitor any continuing education course with or without prior notice.

(e) Credit hours required.

(1) Licensed funeral directors and embalmers who actively practice in this state are required to obtain 16 hours of continuing education every two year renewal period. A licensee may receive credit for a course only once during a renewal period.

(2) The following are mandatory continuing education hours and subjects for each renewal period:

(A) Ethics--two credit hours--this course must at least cover principals of right and wrong, the philosophy of morals, and standards of professional behavior.

(B) Law Updates--two credit hours--this course must at least cover the most current versions of Occupations Code Chapter 651, and the Rules of the Commission.

(C) Vital Statistics Requirements and Regulations--two credit hours--this course must at least cover Health and Safety Code Chapters 193, 711 - 715, and Tex. Admin. Code, Title 25, Chapter 181.

(3) It is the responsibility of the licensee to track the number of hours accumulated during a licensing period.

(f) The Commission will grant the following credit hours toward the continuing education requirements for license renewal.

(1) One credit hour is given for each hour of participation, except in accredited college courses taken for school credit. Such college courses will be evaluated by the Commission on an individual basis for a certification fee set by the Commission. College hour credit does not count toward the mandatory continuing education outlined in subsection (e)(2) of this section.

(2) A person is eligible for a maximum of five credit hours per renewal period for provisional licensee supervision, regardless of the number of provisional licensees supervised.

(3) A presenter or instructor of approved continuing education is eligible for a maximum of five credit hours per renewal period for instruction, regardless of the number of times the course is presented.

(4) All required hours may be obtained through independent study, including home study or Internet presentation with a maximum of three hours credit per course.

(5) A person is eligible for a maximum of four credit hours per renewal period for attendance at Commission meetings, provided the licensee signs in and is present during the entirety of the meeting.

(g) Exemptions, waivers, reactivation, and conversion.

(1) An individual whose renewal date is 12 months or less following initial licensure is not required to obtain continuing education hours prior to renewal of the license. An individual whose renewal date is more than 12 months following first licensure is required to complete the mandatory continuing education outlined in subsection (e)(2) of this section.

(2) Individuals licensed in Texas, but not practicing in the state, are required to obtain the mandatory continuing education outlined in subsection (e)(2) of this section. Any individual who returns to practice in this state shall, before the next license renewal period, meet the continuing education requirements before resuming any funeral directing and/or embalming activities in the state.

(3) Persons in Retired, Inactive or Disabled, Inactive status are exempt from continuing education requirements.

(4) Persons in Retired, Active or Disabled, Active status are required to obtain 10 hours of continuing education, including the mandatory continuing education outlined in subsection (e)(2) of this section.

(5) Persons converting from an inactive status to a Retired, Active or Disabled, Active status shall obtain the continuing education hours required in paragraph (4) of this subsection.

(6) Persons in an active military status are eligible for exemption from the continuing education requirements, upon request. A copy of the active duty orders must be included in the request. Upon release from active duty and return to residency in the state, the individual shall meet the continuing education requirements before the next renewal period after the release and return.

(7) The Commission may allow a licensee to carry over to the next renewal period up to 10 credit hours earned in excess of the continuing education renewal requirements, except for the mandatory continuing education outlined in subsection (e)(2) of this section.

(8) The Executive Director may authorize full or partial hardship exemptions from the requirements of this section based on personal or family circumstances and may require documentation of such circumstances.

(A) The hardship request must be submitted in writing at least 30 days prior to the expiration of the license.

(B) Hardship exemptions will not be granted for consecutive licensing periods.

(h) Failure to comply.

(1) The Commission will not renew the license of an individual who fails to obtain the required 16 hours of continuing education, except as provided by paragraph (2) of this subsection.

(2) A noncompliance fee must be paid before a license is eligible for renewal if the individual has not obtained the required 16 hours of continuing education.

(A) The noncompliance fee may only be used in lieu of obtaining the required continuing education for every other biennial renewal period.

(B) The noncompliance fee and allowance for every other renewal period does not eliminate the necessity of obtaining the mandatory continuing education outlined in subsection (e)(2) of this section.

(i) Any licensee receiving or submitting for credit continuing education hours in a fraudulent manner shall be required to obtain all continuing education on site and not online for two consecutive renewal periods and shall be subject to any applicable disciplinary action.

§203.9. Licensure of Funeral Establishments and Commercial Embalming Establishments.

(a) New License Applications.

(1) Applications for licensure must be submitted on forms developed by the Commission. Applications shall be accompanied by applicable licensing fees, purchase agreement forms, all price lists, and embalming case report forms to be used, if applicable, which reflect the establishment's name.

(2) The passage of an inspection is mandatory for a new establishment seeking its initial licensure and for previously licensed establishments that have changed physical location.

(3) The license shall be issued to the establishment's owner.

(4) A change of name or physical address requires the submission of a new establishment license application.

(5) A new license will not be issued unless all fees have been paid. Prior to a new license being issued under subsection (4) of this section, any outstanding penalties of the previous establishment, if any, must be paid or the Commission must be in possession of evidence that the applicant is current on a payment plan or that the penalties are the subject of an administrative hearing or judicial review.

(6) A license expires on the last day of the month 12 months from the date of issue.

(b) Renewal Applications

(1) The renewal period of a license is 12 months.

(2) A late renewal fee will be assessed for an application for renewal which has been postmarked after its renewal date.

(3) Establishments may be inspected upon the submission of a renewal application.

(4) A renewal license will not be issued unless all fees and outstanding penalties, if any, have been paid or the Commission's records reflect that the applicant is current on a payment plan or that penalties previously assessed are the subject of an administrative hearing or judicial review.

(5) The Commission may investigate any circumstances involved with the renewal of any license as provided for in Occupations Code Chapter 651.

(c) A funeral establishment or commercial embalming facility may effect a change of ownership by either submitting a new license application under subsection (a) or by notifying the Commission, on a form prescribed by the Commission, within 30 days. In submitting the form, the new owner must attest to the information contained on the form and must submit any documentation required by the Commission.

(d) The Commission may refuse to issue a new license or to renew an outstanding license or may revoke an establishment's license if it determines that the license application or the change of ownership affidavit contains materially false information or that a person whose individual license to practice funeral directing or embalming is currently suspended or revoked owns the establishment or an interest in the establishment.

§203.10. Preparation Room Exemption.

(a) A funeral establishment may request, in writing, the Executive Director exempt a funeral establishment from the requirement of having a preparation room. The Executive Director may grant the request only if the establishment is within 50 miles of another funeral establishment that contains a preparation room and has the same ownership.

(b) The funeral establishment seeking the exemption must attest that no embalming services will be performed at the exempt establishment.

(c) An applicant for an exemption may appeal, in writing, the Executive Director's denial of the request to the Commissioners. The Commissioners' decision is final.

§203.11. Establishment Names and Advertising.

(a) Each application for licensure shall contain the name to be used on the license.

(b) Upon receiving an application for a new establishment license, the Commission shall review establishment names in its database. The Commission shall issue the license in the requested name when all licensing requirements are satisfied, unless the Commission determines that the name is deceptively or substantially similar to the name of another licensed establishment in the same county, metropolitan area, municipality, or service area. In these instances, the Executive Director shall deny a license for a name that is deceptively or substantially similar to the name of another establishment, unless that establishment agrees in writing to the name's use.

(c) An establishment's licensed name may be changed by following the procedure outlined in §203.9 of this title and by satisfying the requirements of subsection (b) of this section.

(d) An applicant for approval of a new or changed name may appeal the Executive Director's denial of the request to the Commissioners. The Commissioners' decision is final.

(e) All advertising on a website controlled by an entity licensed by the Commission must operate as follows:

(1) The licensed name of the entity, or a registered trademark or registered trade name belonging to the licensed entity must appear on the contact information page.

(2) Irrespective of the name on the website, provisions must be made on the website so that an individual who wishes to enter into a funeral-related transaction must not be able to complete such a transaction without openly and apparently dealing with the licensed entity under the licensed name as reflected in the records of the Commission.

(3) All locations advertised shall be licensed by the Commission.

(f) No funeral establishment, commercial embalming establishment, crematory, or cemetery shall advertise in a manner which is false, misleading, or deceptive.

(g) A cremation society's website and any advertising shall be linked with a licensed funeral establishment or licensed crematory establishment. The licensed funeral establishment and its location shall be provided on the website or advertising.

§203.12. Temporary Operation Authorization--Damaged Establishments.

(a) The Commission may grant a temporary operation authorization to a funeral establishment, commercial embalming facility, or crematory to operate at a temporary location if the licensed location is damaged by fire, flood, or other natural disaster.

(b) The temporary location must meet all the requirements for establishments under Occupations Code Chapter 651 and the Rules of the Commission.

(c) The application for a temporary operation authorization shall be in writing, shall detail the circumstances which prevent the conduct of business at the licensed location, and shall provide an estimated date by which the licensed location will be made ready for operation.

§203.13. Franchise Tax.

(a) Any taxable entity, as defined under Tax Code §171.0002, contracting with the Commission and/or any taxable entity that is an applicant for a license or permit issued by the agency must certify in writing, on a form provided by the agency, that its right to transact business in Texas is active, that it is exempt from payment of the franchise tax or that it is an out-of-state entity that is not subject to the franchise tax.

(b) The making of a false statement as to franchise tax status on any license or permit application shall be grounds for disciplinary action.

(c) The making of a false statement as to franchise tax status with regards to a state contract shall be grounds for cancellation of the contract at the option of the agency by treating the statement as a material breach of contract.

§203.14. State Agency Action as a Basis for License Suspension, Revocation or Denial.

(a) Any licensed establishment, funeral director or embalmer shall be subject to license revocation or denial of license renewal upon a verified showing by any state agency with statutory authority that such licensee is delinquent or in default of an obligation to, a guarantee by, or an interest protected by the state.

(b) Any licensee subject to action under this section by the Commission shall be afforded an opportunity for a hearing before SOAH in the same manner as other licensees subject to Commission action unless such hearing has been provided under other applicable laws.

§203.15. Required Notification of Criminal Conviction.

(a) An applicant for licensure shall disclose in writing to the Commission any conviction against him or her related to the occupations of funeral directing or embalming as defined by §203.16(h) of this title at the time of application.

(b) A current licensee shall disclose in writing to the Commission any conviction against him or her related to the occupations of funeral directing or embalming as defined by §203.16(h) of this title at the time of renewal or no later than 30 days after judgment in the trial court, whichever date is earlier.

(c) Upon notification of a conviction, the Commission shall request that the person respond by filing information demonstrating why

the Commission should not deny the application or take disciplinary action against the person, if already licensed. The response must be filed within 21 days of the date of receipt of notice from the Commission. An applicant for licensure is responsible for filing documentation that will allow the Commission to take action under §203.16 of this title.

§203.16. Consequences of Criminal Conviction.

(a) The Commission may suspend or revoke a license or deny a person from receiving a license on the grounds that the person has been convicted of a felony or misdemeanor that directly relates to the duties and responsibilities of an occupation required to be licensed by Occupations Code Chapter 651 (Chapter 651).

(b) The Commissioners may place an applicant or licensee who has been convicted of an offense on probation by authorizing the Executive Director to enter into an Agreed Order with the licensee. The Agreed Order shall specify the terms of the probation and the consequences of violating the Order.

(c) If the Commissioners suspend or revoke a license or deny a person from getting a license, the licensee or applicant may appeal that decision to SOAH.

(d) The Commission shall immediately revoke the license of a person who is imprisoned following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision. Revocations under this subsection are not subject to appeal at SOAH.

(e) A person in prison is ineligible for licensure. Revocation or denial of licensure under this subsection is not subject to appeal at SOAH.

(f) The Commission shall consider the following factors in determining whether a criminal conviction directly relates to an occupation required to be licensed by Chapter 651:

(1) the nature and seriousness of the crime;

(2) the relationship of the crime to the purposes for requiring a license to engage in the occupation;

(3) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and

(4) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of the licensed occupation.

(g) If a person has been convicted of a crime, the Commission shall consider the following in determining a person's fitness to perform the duties and discharge the responsibilities of a Chapter 651 occupation:

(1) the extent and nature of the person's past criminal activity;

(2) the age of the person when the crime was committed;

(3) the amount of time that has elapsed since the person's last criminal activity;

(4) the conduct and work activity of the person before and after the criminal activity;

(5) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release;

(6) letters of recommendation from:

(A) prosecutors and law enforcement and correctional officers who prosecuted, arrested, or had custodial responsibility for the person;

(B) the sheriff or chief of police in the community where the person resides; and

(C) any other person in contact with the convicted person; and

(7) evidence that the applicant has:

(A) maintained a record of steady employment;

(B) supported the applicant's dependents;

(C) maintained a record of good conduct; and

(D) paid all outstanding court costs, supervision fees, fines, and restitution ordered in any criminal case in which the applicant has been convicted.

(h) The following crimes are related to the occupations of funeral directing or embalming:

(1) Class B misdemeanors classified by Occupations Code §651.602:

(A) acting or holding oneself out as a funeral director, embalmer, or provisional license holder without being licensed under Chapter 651 and the Rules of the Commission;

(B) making a first call in a manner that violates Occupations Code §651.401;

(C) engaging in a funeral practice that violates Chapter 651 or the Rules of the Commission; or

(D) violating Finance Code Chapter 154, or a rule adopted under that chapter, regardless of whether the Texas Department of Banking or another governmental agency takes action relating to the violation.

(2) The commission of acts within the definition of Abuse of Corpse under Penal Code §42.08, because those acts indicate a lack of respect for the dead.

(3) The following crimes because the commission of each reflects a lack of respect for human life and dignity or a lack of fitness to practice the occupations:

(A) a misdemeanor or felony offense involving:

(i) murder;

(ii) assault;

(iii) burglary;

(iv) robbery;

(v) theft;

(vi) sexual assault;

(vii) injury to a child;

(viii) injury to an elderly person;

(ix) child abuse or neglect;

(x) tampering with a governmental record;

(xi) forgery;

(xii) perjury;

(xiii) bribery;

(xiv) harassment;

(xv) insurance claim fraud; or

(xvi) mail fraud;

(B) delivery, possession, manufacture, or use of or the dispensing or prescribing a controlled substance, dangerous drug, or narcotic; or

(C) violations of the Penal Code Titles 4, 5, 7, 9, and 10, which indicate an inability or tendency for the person to be unable to perform as a licensee or to be unfit for licensure or registration.

§203.17. Criminal History Evaluation Letter.

(a) Prior to submitting an application for licensure, a person may request the Commission issue a criminal history evaluation letter regarding the person's eligibility for a license if the person is enrolled or planning to enroll in an educational program that prepares a person for an initial license.

(b) A person may request a criminal history evaluation letter if he or she has reason to believe the Commission may determine that he or she is ineligible for a license due to a conviction or deferred adjudication for a felony or misdemeanor offense outlined in §203.16(h) of this title. The request must state the basis for the potential ineligibility.

(c) The Commissioners must consider the application for a criminal history evaluation letter at the next regularly scheduled Commission meeting if all requested information is received in a timely manner.

(d) If the Commissioners determine that a ground for ineligibility does not exist, the Commission shall notify the requestor in writing of the Commission's determination of eligibility. The motion for eligibility is subject to the criminal behavior known to the Commission as of the date of the determination. Any future criminal behavior could impact the issuance of a license.

(e) If the Commissioners determine that a ground for ineligibility does exist, the Commission shall notify the requestor in writing of the Commission's determination of ineligibility.

(f) The Commission may charge a person requesting an evaluation under this section a fee. Fees must be in an amount sufficient to cover the cost of administering this section.

(g) The Commissioners may issue a probated license to an applicant who is not ineligible under subsection (d) of this section, but has been convicted of an offense by authorizing the Executive Director to enter into an Agreed Order with the licensee. The Agreed Order shall specify the terms of the probation and the consequences of violating the Order. Once the terms of the probated license have been satisfied, the person shall be licensed as any other licensee who had not been on probation.

(h) The Commission shall revoke, without hearing, a probated license if the license holder commits a new offense; commits an act or omission that causes the person's community supervision, mandatory supervision, or parole to be revoked, if applicable; or violates Occupations Code Chapter 651 or the Rules of the Commission.

(i) A person who is on community supervision, mandatory supervision, or parole and who is issued a license under this section shall provide to the Commission the name and contact information of the probation or parole department to which the person reports. The Commission shall notify the probation or parole department that a license has been issued.

§203.18. Reissuance of Revoked Funeral Director and/or Embalmer License.

(a) A person whose license to practice funeral directing and/or embalming has been revoked may, after at least three years from the effective date of such revocation, petition the Commission for reissuance of the license, unless another time is provided in the revocation order.

(b) The petition shall be in writing.

(c) The Commissioners may grant or deny the petition. If the petition is denied by the Commissioners, a subsequent petition may not be considered by the Commissioners until 12 months have lapsed from the date of denial of the previous petition.

(d) The petitioner or his legal representative may appear before the Commissioners to present the request for reissuance of the license.

(e) The petitioner shall have the burden of showing good cause why the license should be reissued.

(f) In considering a petition for reissuance, the Commissioners may consider the petitioner's:

(1) moral character;

(2) employment history;

(3) status of financial support to his family;

(4) participation in continuing education programs or other methods of staying current with the practice of funeral directing and/or embalming;

(5) criminal history record, including felonies or misdemeanors relating to the practice of funeral directing, embalming and/or moral turpitude;

(6) offers of employment as a funeral director and/or embalmer;

(7) involvement in public service activities in the community;

(8) compliance with the provisions of the Commission Order revoking or canceling the petitioner's license;

(9) compliance with provisions of Occupations Code Chapter 651, regarding unauthorized practice;

(10) history of acts or actions by any other state and federal regulatory agencies; or

(11) any physical, chemical, emotional, or mental impairment.

(g) In considering a petition for reissuance, the Commissioners may also consider:

(1) the nature and seriousness of the crime for which the petitioner's license was cancelled or revoked;

(2) the length of time since the petitioner's license was cancelled or revoked as a factor in determining whether the time period has been sufficient for the petitioner to have rehabilitated himself to be able to practice funeral directing or embalming in a manner consistent with the public health, safety and welfare;

(3) whether the license was submitted voluntarily for cancellation or revocation at the request of the licensee; or

(4) other rehabilitative actions taken by the petitioner.

(h) If the Commissioners grant the petition for reissuance, the petitioner must:

(1) take and pass the State Mortuary Law Examination;

(2) pay a fee that is equal to two times the normally required renewal fee; and

(3) satisfy continuing education requirements of §203.8 of this title. The Commissioners may require the petitioner to complete additional training to assure the petitioner's competency to practice funeral directing and/or embalming.

(i) The Commissioners may place the licensee on probation for a period of not less than two years by authorizing the Executive Director to enter into an Agreed Order with the licensee. The Agreed Order shall specify the terms of the probation and the consequences of violating the Order.

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 June 12, 2015.

TRD-201502219
Janice McCoy
Executive Director
Texas Funeral Service Commission
Earliest possible date of adoption: July 26, 2015
For further information, please call: (512) 936-2469

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SUBCHAPTER B. DUTIES OF A FUNERAL ESTABLISHMENT/LICENSEE

22 TAC §§203.21 - 203.35

The Texas Funeral Service Commission (Commission) proposes to adopt a new Chapter 203, Subchapter B, §§203.21 - 203.35, simultaneously with the repeal of the current Chapter 203. Pursuant to Texas Government Code §2001.039, the Commission reviewed this chapter and determined the initial reasons for its adoption continue and it should be readopted with revisions. The extensive rewriting, reordering and renumbering necessary to incorporate the needed revisions (including changes made in Texas Occupations Code Chapter 651) makes it impractical to underline, bracket, and strike language used when commonly amending a rule.

As noted, the proposed adoption of this new Chapter 203 is filed simultaneously with the repeal of the current Chapter 203. New Chapter 203 is filed in three submissions--one for each proposed subchapter.

Chapter 203 is proposed to be reordered in subchapters to provide more clarity to both industry members and consumers. Subchapter A includes rules relating to Licensing Issues. Subchapter B includes rules relating to Duties of a Funeral Establishment/Licensee, and Subchapter C includes rules relating to Enforcement.

The Commission intends the new rules to improve ease of use for both consumers and industry and to improve efficiencies for agency staff as the new rules are reordered and clarified.

The review of Chapter 203 by the Commission included several stakeholders' meetings attended by industry members, consumers, continuing education providers and college representatives. Commission staff presented strikethrough and underlined proposals of the rules at those meetings and on the Commission's website throughout the months-long process.

As a result of those meetings and Commission review, the Commission decided to extensively reorder and update the rules to provide more clarity to both industry members and consumers. The Commission determined because of the extensive rewriting and reordering (with concomitant renumbering), a reviewer of proposed Chapter 203 would have difficulty understanding the content of the new chapter. Therefore, in reordering the rules, the Commission will repeal Chapter 203 in its entirety and propose new Chapter 203, filed in three submissions.

Chapter 203 rules that were deleted from the proposed new Chapter include only §203.36(d).

Proposed new language to the Commission's rules can be found at §203.21(d), First Call Definition; §203.27, Identification of Person Making Arrangement; §203.29(c), In-Casket Identification; and §203.30(a), Interment or Entombment. These proposals are not found in the current rules of the Commission and are substantive changes to the Commission's rules. They are wholly based on provisions found in Texas Occupations Code Chapter 651.

A change was made to §203.24 to clarify that all displayed licenses must be originals issued by the Commission.

One of the Commission's rules that mirror the Federal Trade Commission's rules can be found in proposed Chapter 203 at §203.34 with the remainder found in the proposed Subchapter C filed concurrently with this submission.

The remaining rules are being proposed in the new Chapter 203 with edits for style consistency, grammar and proper references to statute.

The following sections are being reserved for expansion: §203.36; §203.37; §203.38; and §203.39.

Janice McCoy, Executive Director, has determined for each year of the first five-year period these rules are in effect there will be no fiscal implications for state or local government, or local economies.

Ms. McCoy has determined there will be no adverse economic effect on small businesses or micro-businesses required to comply with these rules as proposed. There is no anticipated economic cost to individuals who are required to comply with these rules as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. McCoy has determined for each year of the first five-year period the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be that funeral service providers and consumers will be informed of new requirements and the Commission's practice and procedure rules will be updated to reflect all recent legislative changes.

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

The Commission has determined Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

Comments on the proposal may be submitted in writing to Mr. Kyle Smith at P.O. Box 12217, Capitol Station, Austin, Texas 78711-1440, (512) 479-5064 (fax) or electronically to

info@tfsc.texas.gov. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Occupations Code §651.152, which authorizes the Texas Funeral Service Commission to adopt rules considered necessary for carrying out the Commission's work, and Texas Government Code §2001.039, which requires state agencies to review their rules and readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule under this section.

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

§203.21. First Call Definition.

(a) First Call is the beginning of the relationship between the consumer and the licensed funeral director acting on behalf of a licensed funeral establishment to prepare the body for burial or other disposition. The relationship is initiated by a family member or the person responsible for making arrangements for final disposition.

(b) Transportation of a body sent to a morgue, or a funeral establishment for identification or autopsy at the request of a Justice of the Peace, Medical Examiner, or other official under Code of Criminal Procedure Chapter 49 does not constitute a First Call. Any expenses or items used specifically for the transportation of a body under this subsection are not items of choice for the consumer, including storage, and therefore are not the responsibility of the consumer to pay.

(c) Licensed commercial embalming establishments are prohibited from authorizing first calls or dealing directly with the public for services or merchandise. Any removal of a deceased human body by a commercial embalming establishment must be initiated by a licensed funeral establishment prior to the removal. The commercial embalming facility must notate the name of the funeral establishment authorizing the removal on the release form.

(d) Transportation of a body does not constitute a first call if the removal is done at the request of a health care facility or employee. However, if a family member or the person responsible for making arrangements for final disposition is present the provisions of Occupations Code §651.401 prevail.

§203.22. Funeral Director in Charge.

(a) Each licensed funeral establishment must at all times have a designated Funeral Director in Charge, who is ultimately responsible for compliance with all mortuary, health, and vital statistics laws in the funeral establishment. A funeral establishment must designate a Funeral Director in Charge at the time it receives its establishment license, and any time the Funeral Director in Charge changes the funeral establishment must notify the Commission, on a form prescribed by the Commission, within 15 days.

(b) The Funeral Director in Charge must be generally available in the routine functions of the funeral establishment in order to personally carry out his or her responsibilities.

(c) The Funeral Director in Charge may be served with administrative process when violations are alleged to have been committed in a funeral establishment.

(d) An individual may not be designated as the Funeral Director and/or an Embalmer in Charge of more than one establishment unless the additional establishments are under the same ownership and no establishment is more than 100 miles from any other establishment held under the same ownership conditions.

(e) In order to be designated Funeral Director in Charge of more than one establishment, the licensee must submit a petition to the Commission that clearly explains how each of the criteria in subsection (d) of this section has been met. The Executive Director shall decide whether to grant the petition. The request and decision will be made part of the permanent licensing file. The Executive Director's decision to deny may be appealed, in writing, to the Commissioners, and the appeal will be considered at the Commission's next regularly scheduled meeting.

(f) If the establishment employs a provisional licensee it is the responsibility of the Funeral Director in Charge and the provisional licensee to schedule case work sufficient for the provisional program. It is the responsibility of the Funeral Director in Charge to ensure that each provisional licensee is properly supervised while performing cases.

(g) The Funeral Director in Charge shall retain the originals of all provisional license case reports with supporting documentation for two years from the completion date of the provisional program.

(h) If a provisional licensee leaves the employment of a Funeral Director in Charge, the Funeral Director in Charge must file an affidavit as described in Occupations Code §651.304(d) within 15 days of employment termination.

§203.23. Embalmer in Charge.

(a) Each licensed commercial embalming establishment must at all times have a designated Embalmer in Charge, who is ultimately responsible for compliance with all mortuary, health, and vital statistics laws in the commercial embalming establishment. A commercial embalming establishment must designate an Embalmer in Charge at the time it receives its establishment license, and any time the Embalmer in Charge changes the commercial embalming establishment must notify the commission, on a form prescribed by the Commission, within 15 days.

(b) The Embalmer in Charge must be generally available in the routine functions of the commercial embalming establishment in order to personally carry out his or her responsibilities.

(c) The Embalmer in Charge may be served with administrative process when violations are alleged to have been committed in a commercial embalming establishment.

(d) An individual may not be designated as the Embalmer and/or the Funeral Director in Charge of more than one establishment unless the additional establishments are operated as branches or satellites of a primary establishment, all of the establishments are under the same ownership, and no establishment is more than 100 miles from any other establishment held under the same ownership conditions.

(e) In order to be designated Embalmer in Charge of more than one establishment, the licensee must submit a petition to the Commission that clearly explains how each of the criteria in subsection (d) of this section has been met. The Executive Director shall decide whether to grant the petition. The request and decision will be made part of the permanent licensing file. The Executive Director's decision to deny may be appealed, in writing, to the Commissioners, and the appeal will be considered at the Commission's next regularly scheduled meeting. The Executive Director shall advise interested parties of the action taken by the Commission in writing.

(f) If the commercial embalming establishment employs a provisional licensee it is the responsibility of the embalmer in charge and the provisional licensee to schedule case work sufficient for the provisional program. It is the responsibility of the embalmer in charge to ensure that each provisional licensee is properly supervised while performing cases.

(g) The Embalmer in Charge shall retain the originals of all provisional license case reports with supporting documentation for two years from the completion date of the provisional program.

(h) If a provisional license holder leaves the employment of an Embalmer in Charge, the Embalmer in Charge must file an affidavit as described in Occupations Code §651.304(d), within 15 days of employment termination.

§203.24. Display of License.

(a) The funeral establishment license shall be conspicuously displayed in an area of the establishment open and accessible to the general public.

(b) If a license holder is in contact with the public during the course of his or her job, the funeral establishment shall conspicuously display the holder's license in each place of business at which the license holder practices.

(c) If a license holder is not in contact with the public during the course of his or her job, the funeral establishment shall make the license available for inspection in each place of business at which the license holder practices.

(d) A license is conspicuously displayed when it is placed in an area of the funeral establishment generally accessed by a consumer making funeral arrangements.

(e) The displayed license must be an original license issued by the Commission.

§203.25. Display of Funeral Merchandise.

The Commission will approve only those display rooms in licensed funeral establishments which meet the requirements of Occupations Code Chapter 651, which are designed and utilized to allow the public to make a private inspection and selection of merchandise. Regardless of the type or method of overall merchandise selection used by the licensed funeral establishment, there must be a display of at least two full-size adult caskets one of which must be the lowest priced casket offered for sale by the establishment. The funeral establishment also must display at least three adult caskets that are not required to be full-size:

(1) in a partial panel display; or

(2) by video or brochure, online, or in any other manner.

§203.26. Presentation of Consumer Brochure

(a) Consumer brochures as promulgated under §201.7 of this title shall be prominently displayed in the public view, offered free of charge for keeping to any person, and presented at the beginning of the arrangement conference for the disposition of a dead body.

(b) Consumer brochures are designed and printed by the Commission and may be copied only when the Commission is unable to furnish the funeral establishment with an ordered supply.

(c) The Commission determines the minimum order size and the fees for the brochures.

§203.27. Identification of Person Responsible for Making Arrangements.

Prior to discussing funeral arrangements, a funeral director should attempt to identify the person responsible for making arrangements for final disposition as outlined by Health and Safety Code §711.002(a). The written disclosure should list the name of the person and his or her relationship to the deceased.

§203.28. Establishment Chapel Requirements.

All funeral establishments must have a chapel in which funeral services may be conducted. All chapels shall provide, at a minimum:

(1) seating for 10;

(2) public access;

(3) space for the casket; and

(4) a lectern or a podium.

§203.29. In-Casket Identification.

(a) The inside of each casket must contain a durable, waterproof identification of the deceased person, including the person's name, date of birth, and date of death.

(b) Funeral establishments are exempt from complying with subsection (a) of this section if the deceased, family of the deceased, religious norms or cultural norms oppose such inclusion. A funeral establishment must keep a record of each instance of use of this exemption and on what grounds the exemption was applied.

(c) If a casket is not used for interment, the identification may be placed on the body with written permission from the family.

§203.30. Interment or Entombment.

(a) A funeral director contracted to perform funeral directing services shall be present for the public portion of graveside services unless the graveside services take place outside Texas.

(b) Once the public portion of the graveside service is concluded or if no graveside service is performed, either a funeral director or an agent of the funeral establishment contracted to perform funeral directing services must be present when the casket containing a human body is placed in a grave, crypt or burial vault unless the interment or entombment takes place outside Texas.

§203.31. Facilities Necessary in a Preparation Room.

The Commission will approve only those preparation rooms which meet the requirements of Occupations Code Chapter 651 and the following minimum standards:

(1) must be of sufficient size and dimensions to accommodate an operating table, a sink with water connections, and an instrument table, cabinet, or shelves:

(A) the operating table must have a rust proof metal or porcelain top, with edges raised at least 3/4 inch around the entire table and a drain opening at the lower end;

(B) the sink must have hot and cold running water and drain freely;

(C) the faucet must be equipped with an aspirator;

(2) must contain an injection/embalming machine and sufficient supplies and equipment for normal operations;

(3) must be clean, sanitary, and not used for other purposes;

(4) must not have defective construction which permits the entrance of rodents;

(5) must not have evidence of infestation of insects or rodents;

(6) must be private and have no general passageway through it;

(7) must be properly ventilated with an exhaust fan that provides at least five room air exchanges per hour;

(8) must not have unenclosed or public restroom facilities located within the room;

(9) must have walls which run from floor to ceiling and be covered with tile, or by plaster or sheetrock painted with washable paint;

(10) must have floors of concrete with a glazed surface, or tiled in order to provide the greatest sanitary condition possible, if tile is used, any grout or joint sealant must be unbroken and intact;

(11) must have doors, windows, and walls constructed to prevent odors from entering any other part of the building; and

(12) must have all windows and openings to the outside screened.

§203.32. Requirements Relating to Embalming.

(a) In order to ensure the maximum inhibition of pathogenic organisms in the dead human body, the following minimum standards of performance shall be required of each licensed embalmer in the State of Texas in each instance in which he or she is authorized or required to embalm a dead human body.

(1) Embalming shall be performed only by embalmers licensed by the Commission, in properly equipped and licensed establishments, or in the event of a disaster of major proportions, in facilities designated by a Medical Examiner, Coroner, or state health official. Only three types of people may under certain circumstances assist licensed embalmers in embalming: provisional licensed embalmers under the personal supervision of a licensed embalmer; students who are enrolled in an accredited school of mortuary science working on a case intended toward completion of the student's clinical requirements, under the personal supervision of a licensed embalmer and with written permission to assist the embalmer from a family member or the person responsible for making arrangements for final disposition; and, in the event of a disaster of major proportions and with the prior approval of the Executive Director, embalmers licensed in another state as long as they are working with or under the general supervision of a person licensed as an embalmer in this state.

(2) Embalmers are required to utilize all personal protective equipment required by either OSHA or its corresponding state agency during the embalming procedure.

(3) Clothing and/or personal effects of the decedent shall either be thoroughly disinfected before delivery to any person or discarded in a manner consistent with the disposal of biohazardous material.

(4) The technique utilized to effect eye, mouth, and lip closure shall be any technique accepted as standard in the profession. Regardless of the technique chosen, the embalmer shall be required to achieve the best results possible under prevailing conditions.

(5) The entire body may be thoroughly cleaned before arterial injection and shall be cleaned immediately after the embalming procedure with an antiseptic soap or detergent.

(6) Body orifices (nostrils, mouth, anus, vagina, ear canals, and urethra) open lesions, and other surgical incisions shall be treated with appropriate topical disinfectants either before or immediately after arterial injection. After cavity treatment has been completed, body orifices shall be packed in cotton saturated with a suitable disinfectant of a phenol coefficient not less than one in cases where purge is evident or is likely to occur and/or when the body is to be transported out of state or by common carrier.

(7) The arterial fluid to be injected shall be one commercially prepared and marketed with its percent of formaldehyde, or other approved substance, by volume (index) clearly marked on the label or in printed material supplied by the manufacturer.

(8) The fluids selected shall be injected into all bodies in such dilutions and at such pressures as the professional experience of the embalmer shall indicate, except that in no instance shall dilute solution contain less than 1.0% formaldehyde, or an approved substance that acts the same as formaldehyde, and as the professional experience of the embalmer indicates, one gallon of dilute solution shall be used for each 50 pounds of body weight. Computation of solution strength is as follows: C x V = C' x V', where C = strength of concentrated fluid, V = volume of ounces of concentrated fluid, C' = strength of dilute fluid, and V' = volume of ounces of dilute fluid.

(9) Abdominal and thoracic cavities shall be treated in the following manner.

(A) Liquid, semi-solid, and gaseous contents which can be withdrawn through a trocar shall be aspirated by the use of the highest vacuum pressure attainable.

(B) Concentrated, commercially prepared cavity fluid which is acidic in nature (6.5 pH or lower) and contains at least two preservative chemicals shall be injected and evenly distributed throughout the aspirated cavities. A minimum of 16 ounces of concentrated cavity fluid shall be used in any embalming case in which a minimum of two gallons of arterial solution has been injected.

(C) Should distension and/or purge occur after treatment, aspiration and injection as required shall be repeated as necessary.

(10) The embalmer shall be required to check each body thoroughly after treatment has been completed. Any area not adequately disinfected by arterial and/or cavity treatment shall be injected hypodermically with disinfectant and preservative fluid of maximum results. A disinfectant and preservative medium shall be applied topically in those cases which require further treatment.

(11) On bodies in which the arterial circulation is incomplete or impaired by advance decomposition, burns, trauma, autopsy, or any other cause, the embalmer shall be required to use the hypodermic method to inject all areas which cannot be properly treated through whatever arterial circulation remains intact (if any).

(12) In the event that the procedures in paragraphs (1) - (11) of this subsection leave a dead human body in condition to constitute a high risk of infection to anyone handling the body, the embalmer shall be required to apply to the exterior of the body an appropriate embalming medium in powder or gel form and to enclose the body in a zippered plastic or rubber pouch prior to burial or other disposal.

(13) Dead human bodies donated to the State Anatomical Board shall be embalmed as required by the State Anatomical Board and where conflicting requirements exist, those requirements of the State Anatomical Board shall prevail.

(14) All bodies should be treated in such manner and maintained in such an atmosphere as to avoid infestation by vermin, maggots, ants, and other insects; however, should these conditions occur, the body should be treated with an effective vermicide and/or insecticide to eliminate these conditions.

(15) No licensed establishment or licensed embalmer shall take into its or the embalmer's care any dead human body for embalming without exerting every professional effort, and employing every possible technique or chemical, to achieve the highest level of disinfecting.

(16) Nothing in this section shall be interpreted to prohibit the use of supplemental or additional procedures or chemicals which are known to and accepted in the funeral service profession and which are not specifically mentioned in this subsection.

(b) Minor variations in these procedures shall be permitted as long as they do not compromise the purpose of this rule as stated in subsection (a) of this section.

(c) All embalming case reports must contain, at a minimum, all the information on the case-report form promulgated by the Commission. Funeral establishments may use other forms, so long as the forms contain all the information on the promulgated form. A case report shall be completed for each embalming procedure not later than the date of disposition of the body which was embalmed. The embalmer shall ensure that all information contained in the case report is correct and legible. The completed form shall be retained for two years following the procedure date. The embalming case report must be completed and signed by the licensed embalmer who performed the embalming procedure.

(d) Nothing in this section shall be interpreted to require embalming if a family member or the person responsible for making arrangements for final disposition does not authorize embalming.

§203.33. Required Documentation for Embalming.

(a) If permission to embalm is oral, the funeral establishment must maintain for two years written documentation of the name of the person authorizing embalming, that person's relationship to the deceased, and the time permission was obtained.

(b) When oral or written permission to embalm cannot be obtained from the person authorized to make funeral arrangements, the funeral establishment must maintain for two years written documentation of the efforts taken as mandated by Occupations Code §651.457 to obtain permission to embalm.

(c) Custody of Body.

(1) In cases where a Medical Examiner or Justice of the Peace has given permission to a funeral establishment to take custody of a body, the receiving funeral establishment may not embalm the body until the person responsible for making arrangements for final disposition has given permission. Nothing in this subsection shall be construed as allowing a funeral establishment to initiate contact with the person authorized to make funeral arrangements.

(2) Health and Safety Code Chapter 694 authorizes county officials to dispose of unclaimed bodies, and Health and Safety Code Chapter 691 authorizes the Anatomical Board to receive unclaimed bodies.

(d) Authorization to Embalm Form.

(1) If embalming is performed, the Commission promulgated Authorization to Embalm Form must be signed by a family member or the person responsible for making arrangements for final disposition when written authorization is secured.

(2) The Commission's Authorization to Embalm Form may not be altered and must be used in its adopted form. A copy of this form may be obtained from the Commission and may be reproduced by a licensed funeral establishment.

(e) If a mortuary student who is not a provisional licensee is to assist the licensed embalmer, the authorization pursuant to Occupations Code §651.407 must be in the possession of the funeral establishment and/or embalmer at the time of the embalming. A copy of the mortuary student authorization shall be retained according to Occupations Code §651.407.

(f) Nothing in this rule diminishes the requirement of the establishment to abide by the Federal Trade Commission funeral rule regarding embalming disclosures. In the event of a conflict between this rule and the Federal Trade Commission funeral rule, the Federal Trade Commission funeral rule prevails.

§203.34. Retention of Documents.

To prevent the unfair or deceptive acts or practices specified in §203.46 of this title and §203.48 of this title, funeral providers must retain and make available for inspection by Commission officials true and accurate copies of the price lists specified in §203.46(b)(2) - (5) of this title, as applicable, for at least two years after the date of their last distribution to customers, and a copy of each Purchase Agreement, as required by §203.47 of this title, for at least two years from the date of the arrangements conference.

§203.35. Location of Retained Records.

(a) All records required for retention by Occupations Code Chapter 651 and Rules of the Commission, will be maintained for a minimum of two years within the physical confines of the licensed establishment where the funeral arrangements were made. The records must be made available to a family member or the person responsible for making arrangements for final disposition during regular business hours. Copies must be provided upon request to the Commission during the course of an investigation or inspection.

(b) Any licensed establishment may submit a petition to the Commission requesting an exemption to the portion of subsection (a) of this section which requires that retained records be kept within the physical confines of the licensed funeral establishment where the funeral arrangements were made.

(c) Each petition will clearly state:

(1) a brief explanation of the problem(s) created by maintaining the records at that location;

(2) the rational or justification for the granting of the exemption;

(3) the specific remedy requested, including the alternative location selected;

(4) assurances that the Commission will be able to easily access all records by name of the establishment, name of individual, or by date of service.

(d) The Executive Director will grant, deny, or modify the requested relief.

(e) The Executive Director will advise the licensed establishment in writing of the action taken.

(f) Each petition will be considered separately and upon its own merit. When considering the petition, the Executive Director will take into account the proposed geographical location of the records and the licensee's demonstrated ability to substantially comply with the mortuary laws and the rules and regulations of the Commission as demonstrated in prior inspection reports and other documents submitted to the 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.

Filed with the Office of the Secretary of State on June 12, 2015.

TRD-201502222
Janice McCoy
Executive Director
Texas Funeral Service Commission
Earliest possible date of adoption: July 26, 2015
For further information, please call: (512) 936-2469

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SUBCHAPTER C. ENFORCEMENT

22 TAC §§203.40 - 203.52

The Texas Funeral Service Commission (Commission) proposes new Chapter 203, Subchapter C, Enforcement, §§203.40 - 203.52, simultaneously with the repeal of the current Chapter 203. Pursuant to Texas Government Code, §2001.039, the Commission reviewed this chapter and determined the initial reasons for its adoption continue and it should be readopted with revisions. The extensive rewriting, reordering and renumbering necessary to incorporate the needed revisions (including changes made in Texas Occupations Code, Chapter 651) makes it impractical to underline, bracket, and strike language used when commonly amending a rule.

As noted, the proposed adoption of this new Chapter 203 is filed simultaneously with the repeal of the current Chapter 203. New Chapter 203 is filed in three submissions--one for each proposed subchapter.

Chapter 203 is proposed to be reordered in subchapters to provide more clarity to both industry members and consumers. Subchapter A includes rules relating to Licensing Issues. Subchapter B includes rules relating to Duties of a Funeral Establishment/Licensee, and Subchapter C includes rules relating to Enforcement.

The Commission intends the new rules to improve ease of use for both consumers and industry and to improve efficiencies for agency staff as the new rules are reordered and clarified.

The review of Chapter 203 by the Commission included several stakeholders' meetings attended by industry members, consumers, continuing education providers and college representatives. Commission staff presented strikethrough and underlined proposals of the rules at those meetings and on the Commission's website throughout the months-long process.

As a result of those meetings and Commission review, the Commission decided to extensively reorder and update the rules to provide more clarity to both industry members and consumers. The Commission determined because of the extensive rewriting and reordering (with concomitant renumbering), a reviewer of the proposed Chapter 203 would have difficulty understanding the content of the new chapter. Therefore, in reordering the rules, the Commission will repeal chapter 203 in its entirety and propose a new Chapter 203, filed in three submissions.

Only §203.36(d) from old Chapter 203 is not included in the proposed new chapter.

In the reordering process, it is important to note the substance of current §§201.3, 201.11, and 201.12 are now included in the proposed Chapter 203, which deals with more substantive rules and procedures of the commission. The reordered and updated rules can be found at §203.40, Complaints; §203.41, Investigations; §203.42, Notice and Hearings; §203.43, Administrative Penalties and Sanctions (all four sections updated as noted below); and §203.44, Procedures and Criteria for Inspections of Licensed Establishments (updated to include language from the current §203.31).

Proposed new language to the Commission's rules can be found at §203.45(b)(14), Unprofessional Conduct. This proposal is not found in the current rules of the Commission and is a substantive change to the Commission's rules. It is wholly based on provisions found in Texas Occupations Code Chapter 651.

Major substantive changes to the complaints process and to administrative penalties are found at §§203.40 - 203.43. These changes include a two-year time limit on when complaints can be filed and a change in when Commissioners review complaint cases and determine final action on a case. Additionally, the rules provide for a penalty matrix which outlines exact penalties for violations of statute and rules. The penalty matrix includes the new penalty outlined by SB 988 enacted by the 84th Legislature. The matrix is a graphic associated with the rules submission and is open to comment and review.

The Commission's rules that mirror the Federal Trade Commission's rules can be found in proposed Chapter 203 at §203.34 and §§203.46 - 203.52. Section 203.7(b)(6) has been included in its own rule at §203.47. Section 203.13(c) was deleted as the Commission does not regulate the business of insurance and §203.13(b) was moved to newly proposed Chapter 201. Otherwise, the FTC rules only have been updated in the proposed Chapter 203 to include minor edits for clarity.

The remaining rules are being proposed in the new Chapter 203 with edits for style consistency, grammar and proper references to statute.

Janice McCoy, Executive Director, has determined that for each year of the first five-year period these rules are in effect there will be no fiscal implications for state or local government, or local economies.

Ms. McCoy has determined there will be no adverse economic effect on small businesses or micro-businesses required to comply with these rules as proposed. There is no anticipated economic cost to individuals who are required to comply with these rules as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. McCoy has determined for each year of the first five-year period the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be that funeral service providers and consumers will be informed of new requirements and the Commission's practice and procedure rules will be updated to reflect all recent legislative changes.

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

The Commission has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

Comments on the proposal may be submitted in writing to Mr. Kyle Smith at P.O. Box 12217, Capitol Station, Austin, Texas 78711-1440, (512) 479-5064 (fax) or electronically to info@tfsc.texas.gov. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Occupations Code §651.152, which authorizes the Texas Funeral Service Commission to adopt rules considered necessary for carrying out the Commission's work, and Texas Government Code §2001.039, which requires state agencies to review their rules and readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule under this section.

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

§203.40. Complaints.

(a) Any person may file a written complaint with the Commission concerning alleged violations of any statute over which the Commission has regulatory authority as well as the Rules of the Commission. A written complaint must be filed within two years of the event giving rise to the complaint. Complaints filed after the above stated period will not be accepted by the Commission unless the complainant can show good cause to the Executive Director for the late filing.

(b) The Commission's complaint form provides space for the following information:

(1) the name and business address of the licensee or establishment complained of;

(2) the time and place where the act(s) occurred;

(3) the nature of the act(s) set out in sufficient detail to enable the Commission to investigate the complaint and the licensee or establishment complained of to identify the incident and prepare a response; and

(4) the names, addresses, and telephone numbers of any persons who witnessed the acts.

(c) The complaint form asks the complainant to provide any pertinent contracts, photographs, letters, advertisements or other documents that show evidence of the alleged violation.

(d) All complaints must be in writing, other than complaints alleging conduct which, if true, would constitute an imminent or continuing threat to the public health, safety, or welfare. These latter complaints must be reduced to writing by the Complainant before the conclusion of the investigative process.

§203.41. Investigations.

(a) Upon receiving a written complaint, the complaint is given a complaint number and assigned to an Investigator for review. The Investigator performs an initial analysis to determine if the Commission has jurisdiction over the alleged violation and whether a violation of a statute or rule may have occurred.

(b) If the Investigator, in consultation with the Staff Attorney, determines that the Commission does not have jurisdiction of the matter or that the complaint does not reflect a violation, the case is administratively closed.

(c) If the Investigator, in consultation with the Staff Attorney, determines that the Commission has jurisdiction of the matter and that the complaint reflects a violation, the Investigator will send a copy of the complaint to the Respondent(s) along with a letter which outlines the alleged violation(s) and requests a written narrative response and relevant documents. The Respondent(s) has 15 days to respond.

(d) In the course of the investigation or upon request of the Staff Attorney, the Investigator may request additional information from the Complainant, the Respondent(s), or any witnesses.

(e) The Investigator will prepare an Investigative Report (Report) for the Staff Attorney's review. The Report must contain the Investigator's findings and any applicable administrative penalties or license sanctions based upon the Administrative Penalties and Sanctions Schedule under §203.43 of this title.

§203.42. Notice and Hearings.

(a) Upon Staff Attorney approval of an Investigative Report (Report) finding a violation has occurred, the Investigator will send the Respondent(s) a copy of the Report and a letter notifying the Respondent(s) of the Commission's determination to assess an administrative penalty and/or sanction the Respondent's license(s).

(b) The Respondent(s) has 30 days to respond to this correspondence. The Respondent(s) can accept the Commission's determination or can request to settle the case by formal or informal methods. Failure to respond within 30 days waives the right to a hearing and requires payment of the assessed penalty and/or enforcement of the license sanction.

(c) If the Respondent accepts the Commission's determination to assess an administrative penalty and/or license sanction or if a settlement is reached, the Respondent shall pay the penalty or shall enter into an Agreed Order with the Commission which is signed by the Executive Director. Once an Agreed Order is signed or the penalty is paid, the case is closed.

(d) If no resolution is reached as outlined by subsection (c) of this section, the Respondent is sent a Notice of Hearing and Complaint and the Commission sets the case on the SOAH Docket for a hearing before a SOAH Administrative Law Judge (ALJ).

(e) Once the ALJ renders a Proposal for Decision (PFD), the PFD is presented to the Commissioners at the Commission's next regularly scheduled meeting.

(f) The Commissioners accept or modify the PFD by Commission Order.

(g) The Respondent can either accept the Commission's Order, or after exhausting all administrative remedies, the Respondent can appeal the Commission's decision by filing suit for judicial review in accordance with Government Code Chapter 2001 and Occupations Code §651.555.

(h) All correspondence to the Respondent(s) will be sent by both certified mail and first class mail to the Respondent's address of record on file with the Commission.

(i) The Commission will notify the Complainant of the final disposition of the complaint.

(j) Government Code §§2001.051 - 2001.103; Occupations Code §651.506; and SOAH's Rules of Practice and Procedure (Tex. Admin. Code, Title 1, §155) govern hearings held at SOAH.

(k) The Commission's Alternative Dispute Resolution Policy and Procedure Rule, found in §207.1 of this title, and SOAH's Rules of Practice and Procedure, Tex. Admin. Code, Title 1, §155.351, govern ADR with Commission staff and mediation at SOAH.

§203.43. Administrative Penalties and Sanctions.

(a) If a person violates any provision of Occupations Code Chapter 651; Health & Safety Code Chapters 193, 361, 695, 711, 716; Finance Code Chapter 154; Tex. Admin. Code, Title 22, Part 10; or an order of the Executive Director or Commissioners, proceedings may be instituted to impose administrative penalties, administrative sanctions, or both administrative penalties and sanctions in accordance with the provisions of Occupations Code §§651.5515 - 651.552.

(b) The Administrative Penalties and Sanctions Schedule published following this section sets penalty limits and ranges by class of offense and number of offenses.

(c) The Commission may negotiate a lower penalty than outlined in the Administrative Penalties and Sanctions Schedule based on the following factors:

(1) Attempts by the licensee to correct or stop the violation;

(2) Number of complaints previously found justified against licensee;

(3) Whether the act was unintentional; and

(4) Other mitigating factors that could warrant a lower penalty.

Figure: 22 TAC §203.43(c)(4)

§203.44. Procedures and Criteria for Inspections of Licensed Establishments.

(a) Inspection Procedures.

(1) All licensed funeral establishments, commercial embalming facilities, and crematories shall be inspected at least once every two years.

(2) All inspections shall be unannounced.

(3) The inspector shall review prior inspection reports before inspecting an establishment. If prior reports reveal problems, the inspector shall determine whether the establishment has corrected the previously identified problems or whether a pattern of violations or new violations exist.

(4) Inspectors shall use reasonable efforts to conduct inspections between the hours of 8:00 a.m. and 5:00 p.m., but an establishment is required to be open at all times to inspections for violations of Occupations Code Chapter 651 and Health and Safety Code Chapters 193, 361, 711, 714, 715 and 716.

(5) If an establishment is not open for business and an inspector is unable to contact any employee or owner to open the establishment to conduct the inspection, the inspector shall notify the establishment by mail of the attempted inspection. If an establishment is unavailable for inspection twice during a six month period, the Commission may file a complaint against the establishment, making the establishment subject to an administrative penalty or other action.

(b) Criteria for Risk-Based Inspections.

(1) If the Commission previously found violations of Occupations Code Chapter 651 and Health and Safety Code Chapters 193, 361, 711, 714, 715 and 716, following a biennial inspection, an establishment shall be inspected annually until it is free of all violations.

(2) Establishments that have received a reprimand or letter of warning, that have been assessed administrative penalties, that have had licenses suspended, or that have received a letter ordering the establishment to cease and desist for violations of Occupations Code Chapter 651 or Rules of the Commission are subject to inspection at anytime within three years following the date that the Commission's action became final.

(3) If the Commission is in the process of conducting an investigation of an establishment, staff may inspect the establishment for the limited purpose of proving or disproving the validity of the complaint. The scope of inspections under this paragraph shall be limited to matters relating to the subject of the complaint.

§203.45. Unprofessional Conduct.

(a) The Commission may, in its discretion, refuse to issue or renew a license or may fine, revoke, or suspend any license granted by the Commission if the Commission finds that the applicant or licensee has engaged in unprofessional conduct as defined in this section.

(b) For the purpose of this section, unprofessional conduct shall include but not be limited to:

(1) providing funeral goods and services or performing acts of embalming in violation of Occupations Code Chapter 651, the Rules of the Commission or applicable health and vital statistics laws and rules;

(2) refusing or failing to keep, maintain or furnish any record or information required by law or rule, including a failure to timely submit any documentation requested during the course of a Commission investigation;

(3) operating a funeral establishment in an unsanitary manner;

(4) failing to practice funeral directing or embalming in a manner consistent with the public health or welfare;

(5) obstructing a Commission employee in the lawful performance of such employee's duties of enforcing Occupations Code Chapter 651 or the Rules of the Commission;

(6) copying, retaining, repeating, or transmitting in any manner the questions contained in any examination administered by the Commission;

(7) physically abusing or threatening to physically abuse a Commission employee during the performance of his lawful duties;

(8) conduct which is willful, flagrant, or shameless or which shows a moral indifference to the standards of the community;

(9) in the practice of funeral directing or embalming, engaging in:

(A) fraud, which means an intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him, or to surrender a legal right, or to issue a license; a false representation of a matter of fact, whether by words or conduct, by false or misleading allegations, or by concealment of that which should have been disclosed, which deceives or is intended to deceive another;

(B) deceit, which means the assertion, as a fact, of that which is not true by any means whatsoever to deceive or defraud another;

(C) misrepresentation, which means a manifestation by words or other conduct which is a false representation of a matter of fact;

(10) communicating directly or indirectly with a Commissioner during the pendency of a complaint in connection with an issue of fact or law, except upon notice and opportunity for each party to participate;

(11) attempting to influence a complainant or witness in any complaint case to change the nature of the complaint, or withdraw the complaint by means of coercion, harassment, bribery, or by force, or threat of force;

(12) retaliating or threatening to retaliate against a complainant who has filed a complaint with the Commission in good faith;

(13) violating any Texas law or administrative rules governing the transportation, storage, refrigeration, interment, cremation, or disinterment of the dead; or

(14) performing any duties as a licensee in a manner that is dishonest, deceptive, or shows a lack of trustworthiness and integrity.

§203.46. Price Disclosure.

(a) In selling or offering to sell funeral goods or funeral services to the public it is an unfair or deceptive act or practice for a funeral provider to fail to furnish accurate price information disclosing the cost to the purchaser or prospective customer for each of the specific funeral goods and funeral services used in connection with the disposition of deceased human bodies. Such price information must include at least the price of embalming, transportation of remains, use of facilities, caskets, outer burial containers, urns, immediate burials, or direct cremations. Any funeral provider who complies with the pre-

ventive requirements in subsection (b) of this section is not engaged in the unfair or deceptive acts or practices defined here.

(b) To prevent these unfair or deceptive acts or practices, as well as the unfair or deceptive acts or practices defined in §203.49(b)(1) of this title, funeral providers must:

(1) Telephone price disclosure. Tell persons who ask by telephone about the funeral provider's offerings or prices any accurate information from the price lists described in paragraphs (2) - (5) of this subsection and any other readily available information that reasonably answers the question.

(2) Casket price list.

(A) Give a printed or typewritten price list to people who inquire in person about the offerings or prices of caskets or alternative containers. The funeral provider must offer the list upon beginning discussion of, but in any event before showing caskets. In lieu of a written list, other formats, such as notebooks, brochures, or charts may be used if they contain the same information as would the printed or typewritten list, and display it in a clear and conspicuous manner. Provided, however, that funeral providers do not have to make a casket price list available if the funeral providers place on the general price list, specified in paragraph (5) of this subsection, the information required by this subsection.

(B) The list must contain the effective date and the retail prices of all caskets and alternative containers offered which do not require special ordering, and must include, at a minimum, the following specifications:

(i) The type of material that is predominately used in the construction of the merchandise, i.e.:

(I) steel, identified as stainless or by gauge, e.g., 18 gauge;

(II) wood, identified by type, e.g., pecan or cherry;

(III) bronze, described by weight, e.g., 32 oz.;

(IV) copper, described by weight, e.g., 32 oz.; or

(V) other specifically named material, e.g., such as cardboard or corrugated wood;

(ii) The type of sealing feature, e.g., sealer, non-sealer, gasketed, or non-gasketed, if specified on the funeral provider's general price list; and

(iii) The material lining the interior of the casket, e.g., crepe, velvet, satin, twill or silk.

(C) Place on the list, however produced, the name of the funeral provider's place of business and a caption describing the list as a "casket price list."

(3) Outer burial container price list.

(A) Give a printed or typewritten price list to persons who inquire in person about outer burial container offerings or prices. The funeral provider must offer the list upon beginning discussion of, but in any event before showing the containers. The list must contain at least the retail prices of all outer burial containers offered which do not require special ordering, enough information to identify each container, and the effective date for the prices listed. In lieu of a written list, the funeral provider may use other formats, such as notebooks, brochures, or charts, if they contain the same information as the printed or typewritten list, and display it in a clear and conspicuous manner. Provided, however, that funeral providers do not have to make an outer burial container price list available if the funeral providers place on the general price list, specified in paragraph (5) of this subsection, the information required by this subsection. The description of an outer burial container under this section must, at a minimum, include the following specifications:

(i) The type of material that is predominantly used in the construction of the merchandise, i.e.:

(I) concrete, specifying type of construction, e.g., liner, box, or vault;

(II) steel, identified as stainless or by gauge, e.g., 12 gauge (or described as galvanized of a particular gauge);

(III) wood;

(IV) bronze or copper, described by weight or gauge, e.g., 32 oz. or 18 gauge; or

(V) other specifically named material; and

(ii) The type of sealing feature, e.g., sealer, non-sealer, gasketed, or non-gasketed, if specified on the funeral establishment price list.

(B) Place on the list, however produced, the name of the funeral provider's place of business, address, and telephone number, and a caption describing the list as an "outer burial container price list."

(4) Urn price list.

(A) Give a printed or typewritten price list to persons who inquire in person about urn offerings or prices. The funeral provider must offer the list upon beginning discussion of, but in any event, before showing the containers. The list must contain at least the retail prices of all urns offered which do not require special ordering, the description of an urn under this section must, at a minimum, include the type of material predominately used in its construction. Bronze urns must be described as sheet bronze or caste bronze, whichever is applicable. The price list must include the effective date for the prices listed. In lieu of a written list, the funeral provider may use other formats, such as notebooks, brochures, or charts, if they contain the same information as the printed or typewritten list, and display it in a clear and conspicuous manner. Provided, however, that funeral providers do not have to make an urn price list available if the funeral providers place on the general price list, specified in paragraph (5) of this subsection, the information required by this subsection.

(B) Place on the list, however produced, the name of the funeral provider's place of business, address and telephone number and a caption describing the list as an "urn price list."

(5) General price list.

(A) Availability of general price list.

(i) Give a printed or typewritten price list for retention to persons who inquire in person about the funeral goods, funeral services or prices of funeral goods or services offered by the funeral provider. The funeral provider must give the list upon beginning discussion of any of the following:

(I) the prices of funeral goods or funeral services;

(II) the overall type of funeral service or disposition; or

(III) specific funeral goods or funeral services offered by the funeral provider.

(ii) The requirement in clause (i) of this subparagraph applies whether the discussion takes place in the funeral home or

elsewhere. Provided, however, that when the deceased is removed for transportation to the funeral home, an in-person request at that time for authorization to embalm, required by §203.50(a)(2) of this title, does not, by itself, trigger the requirement to offer the general price list if the provider in seeking prior embalming approval discloses that embalming is not required by law except in certain special cases, if any. Any other discussion during that time about prices or the selection of funeral goods or services triggers the requirement under clause (i) of this subparagraph to give consumers a general price list.

(iii) The list required in clause (i) of this subparagraph must contain at least the following information:

(I) the name, address, and telephone number of the funeral provider's place of business;

(II) a caption describing the list as a "general price list"; and

(III) the effective date for the price list.

(B) Include on the price list, in any order, the retail prices (expressed either as the flat fee, or as the price per hour, mile or other unit of computation) and the other information specified below for at least each of the following items, if offered for sale:

(i) forwarding of remains to another funeral home, together with a list of the services provided for any quoted price;

(ii) receiving remains from another funeral home, together with a list of the services provided for any quoted price;

(iii) the price range for the direct cremations offered by the funeral provider, together with:

(I) a separate price for a direct cremation where the purchaser provides the container;

(II) separate prices for each direct cremation offered including an alternative container; and

(III) a description of the services and container (where applicable), included in each price;

(iv) the price range for the immediate burials offered by the funeral provider, together with:

(I) a separate price for an immediate burial where the purchaser provides the casket;

(II) separate prices for each immediate burial offered including a casket or alternative container; and

(III) a description of the services and container (where applicable) included in that price;

(v) transfer of remains to funeral home;

(vi) embalming;

(vii) other preparation of the body;

(viii) use of facilities and staff for viewing;

(ix) use of facilities and staff for funeral ceremony;

(x) use of facilities and staff for memorial service;

(xi) use of equipment and staff for graveside service;

(xii) hearse;

(xiii) limousine; and

(xiv) filing a claim seeking life insurance proceeds on behalf of the beneficiaries.

(C) Include on the general price list, in any order, the following information:

(i) Either of the following:

(I) The price range for the caskets offered by the funeral provider, together with the statement: "A complete price list will be provided at the funeral home."; or

(II) The prices of individual caskets, disclosed in the manner specified by paragraph (2)(A) of this subsection; and

(ii) Either of the following:

(I) The price range for the outer burial containers offered by the funeral provider, together with the statement: "A complete price list will be provided at the funeral home."; or

(II) The prices of individual outer burial containers, disclosed in the manner specified by paragraph (3)(A) of this subsection; and

(iii) Either of the following:

(I) The price for the basic services of funeral director and staff, together with a list of the principal basic services provided for any quoted price and, if the charge cannot be declined by the purchaser, the statement: "This fee for our basic services will be added to the total cost of the funeral arrangements you select. (This fee is already included in our charges for direct cremations, immediate burials, and forwarding or receiving remains.)." If the charge cannot be declined by the purchaser, the quoted price shall include all charges for the recovery of unallocated funeral provider overhead, and funeral providers may include in the required disclosure the phrase "and overhead" after the word "services"; or

(II) The following statement: "Please note that a fee of (specify dollar amount) for the use of our basic services is included in the price of our caskets. This same fee shall be added to the total cost of your funeral arrangements if you provide the casket. Our services include (specify)." The fee shall include all charges for the recovery of unallocated funeral provider overhead, and funeral providers may include in the required disclosure the phrase "and overhead" after the word "services." The statement must be placed on the general price list together with the casket price range, required by clause (i)(I) of this subparagraph, or together with the prices of individual caskets, required by clause (i)(II) of this subparagraph.

(iv) If the funeral home charges for processing the insurance claim, that fee shall be disclosed.

(v) If a consumer intends to use the proceeds from an insurance policy to pay for a funeral and the funeral provider requires payment before the proceeds from such policy can be obtained and, if the funeral provider does not provide the service of filing a claim seeking life insurance proceeds on behalf of the beneficiary (or, if the funeral provides the service and the consumer does not wish to utilize the services of the funeral provider), the funeral provider shall include the following statement on the general price list: "Please note that if you utilize a third party to file a claim seeking expedited receipt of life insurance proceeds on behalf of a beneficiary, there will be a fee to be paid associated with the filing of such a claim."

(D) The services fee permitted by subparagraph (C)(iii)(I) or (II) of this paragraph is the only funeral provider fee for services, facilities or unallocated overhead permitted by this part to be non-declinable, unless otherwise required by law.

(6) Funeral providers may give persons any other price information, in any other format, in addition to that required by para-

graphs (2) - (5) of this subsection so long as the statement required by §203.47 of this title is provided when required.

§203.47. Purchase Agreement (Statement of Funeral Goods and Services Selected).

(a) Funeral providers must give an itemized written statement for retention to each person who arranges a funeral or other disposition of human remains, at the conclusion of the discussion of arrangements. The Purchase Agreement must list at least the following information:

(1) the funeral goods and funeral services selected by that person and the prices to be paid for each of them, unless there is a discounted package arrangement that itemizes the discount provided by the package arrangement;

(2) specifically itemized cash advance items. (These prices must be given to the extent then known or reasonably ascertainable. If the prices are not known or reasonably ascertainable, a good faith estimate shall be given and a written statement of the actual charges shall be provided before the final bill is paid.);

(3) the total cost of the goods and services selected;

(4) the complete description of all goods purchased as described in §203.46(2) - (5) of this title.

(b) The information required by this section may be included on any contract, statement, or other document which the funeral provider would otherwise provide at the conclusion of discussion of arrangements.

(c) If a funeral provider's graphically illustrated logo or a bold listing of the logo is included in an obituary, the funeral provider shall list separately the additional cost, if any, related to the inclusion of such logo in the cash advance portion of the Purchase Agreement.

§203.48. Misrepresentations.

(a) Embalming provisions.

(1) In selling or offering to sell funeral goods or funeral services to the public, it is deceptive act or practice for a funeral provider to:

(A) represent that state or local law requires that a deceased person be embalmed when such is not the case; or

(B) fail to disclose that embalming is not required by law except in certain special cases, if any.

(2) To prevent these deceptive acts or practices, as well as the unfair or deceptive acts or practices defined in §203.49(b)(1) of this title and §203.50(a) of this title, funeral providers must:

(A) not represent that a deceased person is required to be embalmed for:

(i) Direct cremation;

(ii) Immediate burial; or

(iii) A closed casket funeral without viewing or visitation when refrigeration is available and when state or local law does not require embalming; and

(B) Place the following disclosure on the general price list, required by §203.46(b)(5) of this title, in immediate conjunction with the price shown for embalming: "Except in certain special cases, embalming is not required by law. Embalming may be necessary, however, if you select certain funeral arrangements, such as a funeral with viewing. If you do not want embalming, you usually have the right to choose an arrangement that does not require you to pay for it, such as direct cremation or immediate burial." The phrase "except in certain special cases" need not be included in this disclosure if state or local law in the area(s) where the provider does business does not require embalming under any circumstances.

(b) Casket for cremation provisions.

(1) In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for a funeral provider to:

(A) represent that state or local law requires a casket for direct cremations; or

(B) represent that a casket is required for direct cremations.

(2) To prevent these deceptive acts or practices, as well as the unfair or deceptive acts or practices defined in §203.49(a)(1) of this title, funeral providers must place the following disclosure in immediate conjunction with the price range shown for direct cremations: "If you want to arrange a direct cremation, you can use an alternative container. Alternative containers encase the body and can be made of materials like fiberboard or composition materials (with or without an outside covering). The containers we provide are (specify containers)." This disclosure only has to be placed on the general price list if the funeral provider arranges direct cremations.

(c) Outer burial container provisions.

(1) In selling or offering to sell funeral goods and funeral services to the public, it is a deceptive act or practice for a funeral provider to:

(A) represent that state or local laws or regulations, or particular cemeteries, require outer burial containers when such is not the case; or

(B) fail to disclose to persons arranging funerals that state law does not require the purchase of an outer burial container.

(2) To prevent these deceptive acts or practices, funeral providers must place the following disclosure on the outer burial container price list, required by §203.46(b)(3)(A) of this title, or, if the prices of outer burial containers are listed on the general price list, required by §203.46(b)(5) of this title, in immediate conjunction with those prices: "In most areas of the country, state or local law does not require that you buy a container to surround the casket in the grave. However, many cemeteries require that you have such a container so that the grave will not sink in. Either a grave liner or a burial vault will satisfy these requirements." The phrase "in most areas of the country" need not be included in this disclosure if state or local law in the area(s) where the provider does business does not require a container to surround the casket in the grave.

(d) General provisions on legal and cemetery requirements.

(1) In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for funeral providers to represent that federal, state, or local laws, or particular cemeteries or crematories, require the purchase of any funeral goods or funeral services when such is not the case.

(2) To prevent these deceptive acts or practices, as well as the deceptive acts or practices identified in subsections (a)(1), (b)(1), and (c)(1) of this section, funeral providers must identify and briefly describe in writing on the Purchase Agreement required by §203.47 of this title any legal, cemetery, or crematory requirement which the funeral provider represents to persons as compelling the purchase of funeral goods or funeral services for the funeral which that person is arranging.

(e) Provisions on preservative and protective value claims. In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for a funeral provider to:

(1) represent that funeral goods or funeral services will delay the natural decomposition of human remains for a long-term or indefinite time; or

(2) represent that funeral goods have protective features or will protect the body from gravesite substances, when such is not the case.

(f) Cash advance provisions.

(1) In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for a funeral provider to:

(A) represent that the price charged for a cash advance item is the same as the cost to the funeral provider for the item when such is not the case; or

(B) fail to disclose to persons arranging funerals that the price being charged for a cash advance item is not the same as the cost to the funeral provider for the item when such is the case.

(2) To prevent these deceptive acts or practices: Funeral providers must place the following sentence in the itemized Purchase Agreement in immediate conjunction with the list of itemized cash advance items required by §203.49 of this title: "We charge you for our services in obtaining: (specify cash advance items)," if the funeral provider makes a charge upon, or receives and retains a rebate, commission or trade or volume discount upon a cash advance item.

§203.49. Required Purchase of Funeral Goods or Funeral Services.

(a) Casket for cremation provisions.

(1) In selling or offering to sell funeral goods or funeral services to the public, it is an unfair or deceptive act or practice for a funeral provider, or a crematory, to require that a casket be purchased for direct cremation.

(2) To prevent this unfair or deceptive act or practice, funeral providers must make an alternative container available for direct cremations, if they arrange direct cremations.

(b) Other required purchases of funeral goods or funeral services.

(1) In selling or offering to sell funeral goods or funeral services, it is an unfair or deceptive act or practice for a funeral provider to:

(A) condition the furnishing of any funeral good or funeral service to a person arranging a funeral upon the purchase of any other funeral good or funeral service, except as required by law or as otherwise permitted by this part; or

(B) charge any fee as a condition to furnishing any funeral goods or funeral services to a person arranging a funeral, other than the fees for:

(i) services of funeral director and staff, permitted by §203.46(b)(5)(C)(iii) of this title;

(ii) other funeral services and funeral goods selected by the purchaser; and

(iii) other funeral goods or services required to be purchased, as explained on the itemized statement in accordance with §203.48(d)(2) of this title.

(2) To prevent these unfair or deceptive acts or practices, funeral providers must:

(A) Place the following disclosure in the general price list, immediately above the prices required by §203.46(b)(5)(B) and (C) of this title: "The goods and services shown below are those we can provide to our customers. You may choose only the items you desire. If legal or other requirements mean you must buy any items you did not specifically ask for, we will explain the reason in writing on the statement we provide describing the funeral goods and services you selected." Provided, however, that if the charge for "services of funeral director and staff" cannot be declined by the purchaser, the statement shall include the sentence: "However, any funeral arrangements you select will include a charge for our basic services" between the second and third sentences of the statement specified above herein. The statement may include the phrase "and overhead" after the word "services" if the fee includes a charge for the recovery of unallocated funeral provider overhead;

(B) Place the following disclosure in the Purchase Agreement, required by §203.47 of this title: "Charges are only for those items that you selected or that are required. If we are required by law or by a cemetery or crematory to use any items, we will explain the reasons in writing below."

(3) A funeral provider shall not violate this section by failing to comply with a request for a combination of goods or services which would be impossible, impractical, or excessively burdensome to provide.

§203.50. Embalming Provided Without Prior Approval.

(a) In selling or offering to sell funeral goods or funeral services to the public, it is an unfair or deceptive act or practice for any provider to embalm a deceased human body for a fee unless:

(1) state or local law or regulation requires embalming in the particular circumstances regardless of any funeral choice which the family might make;

(2) prior approval for embalming (expressly so described) has been obtained from a family member or other authorized person; or

(3) the funeral provider is unable to contact a family member or other authorized person after exercising due diligence, has no reason to believe the family does not want embalming performed, and obtains subsequent approval for embalming already performed (expressly so described). In seeking approval, the funeral provider must disclose that a fee will be charged if the family selects a funeral which requires embalming, such as a funeral with viewing, and that no fee will be charged if the family selects a service which does not require embalming, such as direct cremation or immediate burial.

(b) To prevent these unfair or deceptive acts or practices, funeral providers must include on the itemized Purchase Agreement, required by §203.47 of this title, the statement: "If you selected a funeral that may require embalming, such as a funeral with viewing, you may have to pay for embalming. You do not have to pay for embalming you did not approve if you selected arrangements such as a direct cremation or immediate burial. If we charged for embalming, we will explain why below."

§203.51. Comprehensive of Disclosures.

To prevent the unfair or deceptive acts or practices specified in §§203.46 - 203.50 of this title, funeral providers must make all disclosures required by those sections in a clear and conspicuous manner. Providers shall not include in the casket, outer burial container, urn,

and general price lists, required by §203.46(b)(2) - (5) of this title, any statement or information that alters or contradicts the information required to be included in those lists.

§203.52. Violation to Engage in Unfair or Deceptive Acts or Practices.

Except as otherwise provided in §203.46(a) of this title, it is a violation to engage in any unfair or deceptive acts or practices specified in Occupations Code Chapter 651 or in the Rules of the Commission, or to fail to comply with any of the preventive requirements specified in Occupations Code Chapter 651 or in the Rules of the 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.

Filed with the Office of the Secretary of State on June 12, 2015.

TRD-201502218
Janice McCoy
Executive Director
Texas Funeral Service Commission
Earliest possible date of adoption: July 26, 2015
For further information, please call: (512) 936-2469

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PART 11. TEXAS BOARD OF NURSING

CHAPTER 223. FEES

22 TAC §223.1

The Texas Board of Nursing (Board) proposes an amendment to §223.1, concerning Fees. The amendment is proposed under the authority of the Occupations Code §§301.151, 301.155, and 554.006 and is necessary to meet anticipated funding requirements resulting from the 84th Texas Legislative Session.

Senate Bill (SB) 195 was enacted by the 84th Texas Legislature and will become effective on September 1, 2015. The bill, among other things, transfers the prescription monitoring program (program) from the Department of Public Safety to the Texas Board of Pharmacy. The bill authorizes the Texas Board of Pharmacy to charge a fee to cover the cost of establishing and maintaining the program. Each agency that licenses individuals or entities to prescribe or dispense controlled substances is authorized to increase its occupational fees in order to generate sufficient revenue to support the operation of the program. The fees that are generated are then to be remitted to the Texas Board of Pharmacy to support the funding of the program.

The Board licenses advanced practice registered nurses with prescriptive authority. These licensees are authorized to prescribe controlled substances. As such, the Board is subject to the requirements of SB 195. The Board anticipates that it will be assessed approximately $171,696 for fiscal years 2016-2017 to support the funding of the program. To obtain this funding, the Board has determined it will be necessary to assess new renewal fees for advanced practice registered nurses with prescriptive authority. The Board has determined that instituting a new prescriptive authority renewal fee, not to exceed $15 each biennium, should generate sufficient revenue to support the program under SB 195. The Board anticipates that the new renewal fee will become effective September 1, 2015.

Section by Section Overview. Proposed new §223.1(a)(26) authorizes a new prescriptive authority renewal surcharge, not to exceed $15 each biennium, for advanced practice registered nurses with prescriptive authority.

Fiscal Note. Katherine Thomas, Executive Director, has determined that for each year of the first five years the proposed amendment will be in effect, there may be an approximate $92,500 total annual increase in revenue to state government as a result of the enforcement or administration of the proposal due to the new prescriptive authority renewal surcharge for advanced practice registered nurses with prescriptive authority. This estimate is based on the following factors. The proposed amendment imposes a new, not to exceed $15 biennial renewal surcharge, on those advanced practice registered nurses who have prescriptive authority. Currently, 16,581 individuals hold advanced practice registered nursing licenses with prescriptive authority in this state. Based on a biennial renewal and a 5% increase in advanced practice registered nurses with prescriptive authority, the Board estimates that up to 9,000 advanced practice registered nurses with prescriptive authority will renew their licenses in fiscal year 2016, and 9,500 advanced practice registered nurses will renew their licenses in fiscal year 2017, resulting in an approximate $92,500 annual increase in revenue to state government. This amount is based upon the timely renewal of an advanced practice registered nurse's license with prescriptive authority and establishing the initial surcharge at $10 a renewal.

Public Benefit/Cost Note. Ms. Thomas has also determined that for each year of the first five years the proposed amendment is in effect, the anticipated public benefit will be the Board's compliance with the provisions of SB 195 and the availability of resources to fund the prescription monitoring program.

Potential Costs for Persons Required to Comply with the Proposal. The proposed amendment may impact advanced practice registered nurses with prescriptive authority. The Board estimates that the total probable cost of compliance with the proposed amendment for these nurses will be an additional renewal fee, not to exceed $15 each biennium. This proposed new fee will be in addition to the renewal fee currently required for the renewal of an individual's advanced practice registered nursing license. This proposed cost is the result of the legislative enactment of SB 195 and Texas Occupations Chapter 301.

Economic Impact Statement and Regulatory Flexibility Analysis for Small and Micro Businesses. The Government Code §2006.002(c) and (f) require that if a proposed rule may have an economic impact on small businesses or micro businesses, state agencies must prepare, as part of the rulemaking process, an economic impact statement that assesses the potential impact of the proposed rule on these businesses and a regulatory flexibility analysis that considers alternative methods of achieving the purpose of the rule. The Government Code §2006.001(1) defines a micro business as a legal entity, including a corporation, partnership, or sole proprietorship that: (i) is formed for the purpose of making a profit; (ii) is independently owned and operated; and (iii) has not more than 20 employees. The Government Code §2006.001(2) defines a small business as a legal entity, including a corporation, partnership, or sole proprietorship, that: (i) is formed for the purpose of making a profit; (ii) is independently owned and operated; and (iii) has fewer than 100 employees or less than $6 million in annual gross receipts. Each of the elements in §2006.001(1) and (2) must be met in order for an entity to qualify as a micro business or small business.

As required by the Government Code §2006.002(c) and (f), the Board has determined that the proposed amendment will not

have an adverse economic effect on any individual, Board regulated entity, or other entity required to comply with the proposed amendment. Only individual nurses are subject to the proposal. Because individual nurses do not meet the statutory definitions of a small or micro business under the Government Code §2006.001(1) or (2), the Board is not required to prepare a regulatory flexibility analysis.

Takings Impact Assessment. The Board has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

Request for Public Comment. To be considered, written comments on the proposal or any request for a public hearing must be submitted no later than 5:00 p.m. on July 26, 2015 to Mark Majek, Director of Operations, Texas Board of Nursing, 333 Guadalupe, Suite 3-460, Austin, Texas 78701, or by e-mail to mark.majek@bon.texas.gov, or faxed to (512) 305-8101. An additional copy of the comments on the proposal or any request for a public hearing must be simultaneously submitted to James W. Johnston, General Counsel, Texas Board of Nursing, 333 Guadalupe, Suite 3-460, Austin, Texas 78701, or by e-mail to dusty.johnston@bon.texas.gov, or faxed to (512) 305-8101. If a hearing is held, written and oral comments presented at the hearing will be considered.

Statutory Authority. The amendment is proposed under the Occupations Code §§301.151, 301.155, and 554.006.

Section 301.151 authorizes the Board to adopt and enforce rules consistent with Chapter 301 and necessary to: (i) perform its duties and conduct proceedings before the Board; (ii) regulate the practice of professional nursing and vocational nursing; (iii) establish standards of professional conduct for license holders Chapter 301; and (iv) determine whether an act constitutes the practice of professional nursing or vocational nursing.

Section 301.155(a) provides that the Board by rule shall establish fees in amounts reasonable and necessary to cover the costs of administering the Occupations Code Chapter 301. Further, §301.155(a) provides that the Board may not set a fee that existed on September 1, 1993, in an amount less than the amount of that fee on that date.

Section 554.006(d) provides that each agency that licenses individuals or entities authorized to prescribe or dispense controlled substances under Chapter 481, Health and Safety Code, and to access the program described by §§481.075, 481.076, and 481.0761, Health and Safety Code, shall increase the occupational license, permit, or registration fee of the license holders or use available excess revenue in an amount sufficient to operate that program as specified by the board.

Section 554.006(e) provides that a fee collected by an agency under Subsection (d) shall be transferred to the board for the purpose of establishing and maintaining the program described by §§481.075, 481.076, and 481.0761, Health and Safety Code.

Cross Reference To Statute. The following statutes are affected by this proposal: Occupations Code §§301.151, 301.155, and 554.006.

§223.1. Fees.

(a) The Texas Board of Nursing has established reasonable and necessary fees for the administration of its functions.

(1) - (23) (No change.)

(24) renewal of remedial education course: $100 per course; [~~and~~]

(25) approval of a nursing education program outside Texas' jurisdiction to conduct clinical learning experiences in Texas: $500; and[~~,~~]

(26) Prescriptive Authority Renewal Surcharge: Not to exceed $15.

(b) (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 June 15, 2015.

TRD-201502257
James W. Johnston
General Counsel
Texas Board of Nursing
Earliest possible date of adoption: July 26, 2015
For further information, please call: (512) 305-6821

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PART 15. TEXAS STATE BOARD OF PHARMACY

CHAPTER 283. LICENSING REQUIREMENTS FOR PHARMACISTS

22 TAC §283.9

The Texas State Board of Pharmacy proposes amendments to §283.9 concerning Fee Requirements for Licensure by Examination, Score Transfer, and Reciprocity. The amendments, if adopted, increase the examination fee from $52 to $103.

Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five-year period the rule is in effect, there will be fiscal implications for state government as a result of enforcing or administering the amended rule as follows:

Revenue increase

FY2016: $49,632

FY2017: $49,623

FY2018: $49,623

FY2019: $49,623

FY2020: $49,623

There are no anticipated fiscal implications for local government.

Ms. Dodson has determined that, for each year of the first five-year period the amendments will be in effect, the public benefit anticipated as a result of enforcing the rule will be assuring that the Texas State Board of Pharmacy is adequately funded to carry out its mission. The effect on large, small or micro-businesses (pharmacies) will be the same as the economic cost to an individual, if the pharmacy chooses to pay the fee for the individual.

Economic cost to persons who are required to comply with the amended rule will be an increase of $51 for an examination fees.

Comments on the amendments may be submitted to Allison Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Austin, Texas 78701, FAX (512) 305-8008. Comments must be received by 5:00 p.m., August 3, 2015.

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

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

§283.9. Fee Requirements for Licensure by Examination, Score Transfer and Reciprocity.

(a) The fees for licensure by examination, score transfer, and reciprocity shall include one exam administration. The fees are as follows:

(1) Examination Fee. The fee to submit an application for licensure by examination will include:

(A) An examination processing fee of $103 [~~$52~~], which is to be paid to the Texas State Board of Pharmacy and includes the processing of the Texas application.

(B) NAPLEX administrative and examination fees as determined by NABP, which are to be paid to NABP in accordance with NABP policy.

(C) MPJE administrative and examination fees as determined by NABP, which are to be paid to NABP in accordance with NABP policy.

(2) Reciprocity Fee. The fee to submit an application for licensure by reciprocity will include.

(A) A reciprocity fee of $255, which is to be paid to the Texas State Board of Pharmacy.

(B) MPJE administrative and examination fees as determined by NABP, which are to be paid to NABP in accordance with NABP policy.

(C) A license verification fee as determined by NABP, which is to be paid to NABP in accordance with NABP policy.

(3) Score Transfer Fee. The fees to transfer a score to Texas, using the NAPLEX Score Transfer system will include:

(A) An examination processing fee of $103 [~~$52~~], which is to be paid to the Texas State Board of Pharmacy and includes the processing of the Texas application.

(B) MPJE administrative and examination fees as determined by NABP, which are to be paid to NABP in accordance with NABP policy.

(C) A score transfer fee as determined by NABP, which is to be paid to NABP in accordance with NABP policy.

(b) If an applicant fails an examination or is required to take an examination by the Board, the application fee is $103 [~~$52~~] for each examination the applicant is required to take.

(c) Rescheduling or canceling an examination appointment.

(1) Refunds for fees charged by NABP for the administration of the NAPLEX and MPJE are in accordance with NABP policy. Rescheduling of an examination appointment shall be in accordance with NABP policy.

(2) The Board may refund fifty percent of an examination fee paid to the Board by an applicant if the applicant:

(A) provides advance notice of their inability to take the examination prior to the board providing authorization to take the examination; or

(B) is unable to take the examination due to an emergency situation including but not limited to a manmade or natural disaster, documented serious medical illness, or other circumstance deemed an emergency by the Executive Director of the Board.

(d) A person who takes NAPLEX and/or the Texas Pharmacy Jurisprudence Examination will be notified of the results of the examination(s) within two weeks of receipt of the results of the examination(s) from the testing service. If both NAPLEX and the Texas Pharmacy Jurisprudence Examination are taken, the applicant will not be notified until the results of both examinations have been received. Such notification will be made within two weeks after receipt of the results of both examinations.

(e) Once an applicant has successfully completed all requirements of licensure, the applicant will be notified of licensure as a pharmacist and of his or her pharmacist license number and the following is applicable.

(1) The notice letter shall serve as authorization for the person to practice pharmacy in Texas for a period of 30 days from the date of the notice letter.

(2) The applicant shall complete a pharmacist license application and pay one pharmacist licensee fee as specified in §295.5 of this title (relating to Pharmacist License or Renewal Fees).

(3) The provisions of §295.7 of this title (relating to Pharmacist License Renewal) apply to the timely receipt of an application and licensure fee.

(4) If application and payment of the pharmacist license fee are not received by the board within 30 days from the date of the notice letter, the person's license to practice pharmacy shall expire. A person may not practice pharmacy with an expired license. The license may be renewed according to the following schedule.

(A) If the notice letter has been expired for 90 days or less, the person may become licensed by making application and paying to the board one license fee and a fee that is one-half of the examination fee for the license.

(B) If the notice letter has been expired for more than 90 days but less than one year, the person may become licensed by making application and paying to the board all unpaid renewal fees and a fee that is equal to the examination fee for the license.

(C) If the notice letter has been expired for one year or more, the person shall apply for a new license.

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 June 12, 2015.

TRD-201502224

Gay Dodson, R.Ph.
Executive Director
Texas State Board of Pharmacy
Earliest possible date of adoption: July 26, 2015
For further information, please call: (512) 305-8073

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CHAPTER 291. PHARMACIES
SUBCHAPTER A. ALL CLASSES OF PHARMACIES

22 TAC §291.6

The Texas State Board of Pharmacy proposes amendments to §291.6, concerning Pharmacy License Fees. The amendments, if adopted, add a fee to fund the Prescription Drug Monitoring Program as passed by Senate Bill 195 of the 84th Texas Legislature and increase the fee to obtain an amended pharmacy license from $20 to $100.

Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five-year period the rule is in effect, there will be fiscal implications for state government as a result of enforcing or administering the amended rule as follows:

Revenue increase

FY2016: $99,776

FY2017: $108,400

FY2018: $108,400

FY2019: $108,400

FY2020: $108,400

There are no anticipated fiscal implications for local government.

Ms. Dodson has determined that, for each year of the first five year period the amendments will be in effect, the public benefit anticipated as a result of enforcing the rule will be assuring that the Texas State Board of Pharmacy is adequately funded to carry out its mission. The effect on large, small or micro-businesses (pharmacies) will be the same as the economic cost to an individual, if the pharmacy chooses to pay the fee for the individual.

Economic cost to persons who are required to comply with the amended rule will be an increase of $21 for an initial license and renewal of a license; and an increase of $80 for an amended license.

Comments on the amendments may be submitted to Allison Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Austin, Texas, 78701, FAX (512) 305-8008. Comments must be received by 5:00 p.m., August 3, 2015.

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

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

§291.6. Pharmacy License Fees.

(a) Initial License Fee.

(1) Prior to October 1, 2015, the fee for an initial license shall be $500 for the initial registration period and for processing the application and issuance of the pharmacy license as authorized by the Act §554.006. Effective October 1, 2015, the fee for an initial license shall be $401 for the initial registration period and for processing the application and issuance of the pharmacy license as authorized by the Act §554.006.

(2) In addition, the following fees shall be collected:

(A) $15 surcharge to fund a program to aid impaired pharmacists and pharmacy students as authorized by the Act §564.051;

(B) prior to October 1, 2015, $15 surcharge to fund TexasOnline as authorized by Chapter 2054, Subchapter I, Government Code; and effective October 1, 2015, $12 surcharge to fund TexasOnline as authorized by Chapter 2054, Subchapter I, Government Code; [~~and~~]

(C) $5 surcharge to fund the Office of Patient Protection as authorized by Chapter 101, Subchapter G, Occupations Code; and

(D) $21 surcharge to fund the Prescription Drug Monitoring Program as authorized by §554.006, Occupations Code, effective October 1, 2015.

(b) Biennial License Renewal. The Texas State Board of Pharmacy shall require biennial renewal of all pharmacy licenses provided under the Act §561.002.

(c) Renewal Fee.

(1) Prior to October 1, 2015, the fee for biennial renewal of a pharmacy license shall be $500 for processing the application and issuance of the pharmacy license as authorized by the Act §554.006. Effective October 1, 2015, the fee for biennial renewal of a pharmacy license shall be $401 for processing the application and issuance of the pharmacy license as authorized by the Act §554.006.

(2) In addition, the following fees shall be collected:

(A) $15 surcharge to fund a program to aid impaired pharmacists and pharmacy students as authorized by the Act §564.051;

(B) prior to October 1, 2015, $15 surcharge to fund TexasOnline as authorized by Chapter 2054, Subchapter I, Government Code; and effective October 1, 2015, $12 surcharge to fund TexasOnline as authorized by Chapter 2054, Subchapter I, Government Code; [~~and~~]

(C) $2 surcharge to fund the Office of Patient Protection as authorized by Chapter 101, Subchapter G, Occupations Code; and

(D) $21 surcharge to fund the Prescription Drug Monitoring Program as authorized by §554.006, Occupations Code, effective October 1, 2015.

(d) Duplicate or Amended Certificates. The fee for issuance of a duplicate [~~an amended~~] pharmacy license renewal certificate shall be $20. The fee for issuance of an amended pharmacy license renewal certificate shall be $100.

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 June 12, 2015.

TRD-201502225

Gay Dodson
Executive Director
Texas State Board of Pharmacy
Earliest possible date of adoption: July 26, 2015
For further information, please call: (512) 305-8073

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SUBCHAPTER C. NUCLEAR PHARMACY (CLASS B)

22 TAC §§291.51 - 291.54

The Texas State Board of Pharmacy proposes amendments to §291.51 concerning Purpose, §291.52 concerning Definitions, §291.53 concerning Personnel, and §291.54 concerning Operational Standards. The amendments to §291.51 clarify the purpose of the subchapter. The amendments to §291.52, if adopted, update the definitions and remove definitions that are no longer necessary. The amendments to §291.53, if adopted, clarify the requirements for pharmacy personnel compounding sterile radiopharmaceuticals. The amendments to §291.54, if adopted, clarify and update the procedures for nuclear pharmacies; require nuclear pharmacies to be inspected prior to renewal; and remove requirements that are referenced in other sections of the rules.

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

Ms. Dodson has determined that, for each year of the first five-year period the rules will be in effect, the public benefit anticipated as a result of enforcing the amendments will ensure the health, safety, and welfare of the citizens of Texas when receiving prescriptions from nuclear pharmacies. There is no fiscal impact for individuals, small or large businesses, or to other entities which are required to comply with these sections.

Comments on the amendments may be submitted to Allison Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Austin, Texas 78701, FAX (512) 305-8008. Comments must be received by 5:00 p.m., August 3, 2015.

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

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

§291.51. Purpose.

The purpose of this subchapter is to provide standards for the preparation, labeling, and distribution of [~~compounded~~] radiopharmaceuticals by licensed nuclear pharmacies, pursuant to a radioactive prescription drug order. The intent of this subchapter is to establish a minimum acceptable level of pharmaceutical care to the patient so that the patient's health is protected while contributing to positive patient outcomes. The board has determined that this subchapter is necessary to protect the health and welfare of the citizens of this state.

§291.52. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise. Any term not defined in this section shall have the definition set forth in the Act, §551.003.

(1) Act--The Texas Pharmacy Act, Chapters 551 - 569 [~~551 - 566 and 568 - 569~~], Occupations Code, as amended.

(2) Accurately as prescribed--Dispensing, delivering, and/or distributing a prescription drug order or radioactive prescription drug order:

(A) to the correct patient (or agent of the patient) for whom the drug or device was prescribed;

(B) with the correct drug in the correct strength, quantity, and dosage form ordered by the practitioner; and

(C) with correct labeling (including directions for use) as ordered by the practitioner. Provided, however, that nothing herein shall prohibit pharmacist substitution if substitution is conducted in strict accordance with applicable laws and rules, including Subchapter A, Chapter 562 of the Act.

(3) ACPE--Accreditation Council for Pharmacy Education.

(4) Administer--The direct application of a prescription drug and/or radiopharmaceutical, by injection, inhalation, ingestion, or any other means to the body of a patient by:

(A) a practitioner, an authorized agent under his supervision, or other person authorized by law; or

(B) the patient at the direction of a practitioner.

[~~(5) Airborne particulate cleanliness class--The level of cleanliness specified by the maximum allowable number of particles per cubic meter of air as specified in the International Organization of Standardization (ISO) Classification Air Cleanliness (ISO 14644-1). For example:~~]

[~~(A) ISO Class 5 (formerly Class 100) is an atmospheric environment that contains less than 3,520 particles 0.5 microns in diameter per cubic meter of air (formerly stated as 100 particles 0.5 microns in diameter per cubic foot of air);~~]

[~~(B) ISO Class 7 (formerly Class 10,000) is an atmospheric environment that contains less than 352,000 particles 0.5 microns in diameter per cubic meter of air (formerly stated as 10,000 particles 0.5 microns in diameter per cubic foot of air); and~~]

[~~(C) ISO Class 8 (formerly Class 100,000) is an atmospheric environment that contains less than 3,520,000 particles 0.5 microns in diameter per cubic meter of air (formerly stated as 100,000 particles 0.5 microns in diameter per cubic foot of air).~~]

[~~(6) Ancillary supplies--Supplies necessary for the administration of compounded sterile radiopharmaceuticals.~~]

[~~(7) Aseptic processing--The technique involving procedures designed to preclude contamination of drugs, packaging, equipment, or supplies by microorganisms during processing.~~]

(5) [~~(8)~~] Authentication of product history--Identifying the purchasing source, the intermediate handling, and the ultimate disposition of any component of a radioactive drug.

(6) [~~(9)~~] Authorized nuclear pharmacist--A pharmacist who:

(A) has completed the specialized training requirements specified by this subchapter for the preparation and distribution of radiopharmaceuticals; and

(B) is named on a Texas radioactive material license, issued by the Texas Department of State Health Services, Radiation Control Program.

(7) [~~(10)~~] Authorized user--Any individual named on a Texas radioactive material license, issued by the Texas Department of State Health Services, Radiation Control Program.

~~[(11) Automated compounding or drug dispensing device--An automated device that compounds, measures, counts, packages, and/or labels a specified quantity of dosage units for a designated drug product.]~~

~~[(12) Biological Safety Cabinet, Class II--A ventilated cabinet for personnel, product, and environmental protection having an open front with inward airflow for personnel protection, downward HEPA filtered laminar airflow for product protection, and HEPA filtered exhausted air for environmental protection.]~~

(8) [~~(13)~~] Board--The Texas State Board of Pharmacy.

~~[(14) Clean room or controlled area--A room in which the concentration of airborne particles is controlled to meet a specified airborne particulate cleanliness class. Microorganisms in the environment are monitored so that a microbial level for air, surface, and personnel gear are not exceeded for a specified cleanliness class.]~~

(9) [~~(15)~~] Component--Any ingredient intended for use in the compounding of a drug preparation, including those that may not appear in such preparation.

(10) [~~(16)~~] Compounding--The preparation, mixing, assembling, packaging, or labeling of a drug or device:

(A) as the result of a practitioner's prescription drug or medication order based on the practitioner-patient-pharmacist relationship in the course of professional practice;

(B) for administration to a patient by a practitioner as the result of a practitioner's initiative based on the practitioner-patient-pharmacist relationship in the course of professional practice;

(C) in anticipation of prescription drug or medication orders based on routine, regularly observed prescribing patterns; or

(D) for or as an incident to research, teaching, or chemical analysis and not for sale or dispensing, except as allowed under §562.154 or Chapter 563 of the Act.

(11) [~~(17)~~] Controlled substance--A drug, immediate precursor, or other substance listed in Schedules I - V or Penalty Groups 1-4 of the Texas Controlled Substances Act, as amended, or a drug, immediate precursor, or other substance included in Schedule I, II, III, IV, or V of the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970, as amended (Public Law 91-513).

~~[(18) Critical site--Sterile ingredients of compounded sterile preparations and locations on devices and components used to prepare, package, and transfer compounded sterile preparations that provide opportunity for exposure to contamination.]~~

(12) [~~(19)~~] Dangerous drug--A drug or device that:

(A) is not included in Penalty Group 1, 2, 3, or 4, Chapter 481, Health and Safety Code, and is unsafe for self-medication; or

(B) bears or is required to bear the legend:

(i) "Caution: federal law prohibits dispensing without prescription" or "Rx only" or another legend that complies with federal law; or

(ii) "Caution: federal law restricts this drug to use by or on the order of a licensed veterinarian."

(13) [~~(20)~~] Data communication device--An electronic device that receives electronic information from one source and transmits or routes it to another (e.g., bridge, router, switch, or gateway).

(14) [~~(21)~~] Deliver or delivery--The actual, constructive, or attempted transfer of a prescription drug or device, radiopharmaceutical, or controlled substance from one person to another, whether or not for a consideration.

(15) [~~(22)~~] Designated agent--

(A) an individual, including a licensed nurse, physician assistant, nuclear medicine technologist, or pharmacist:

(i) who is designated by a practitioner and authorized to communicate a prescription drug order to a pharmacist; and

(ii) for whom the practitioner assumes legal responsibility;

(B) a licensed nurse, physician assistant, or pharmacist employed in a health care facility to whom a practitioner communicates a prescription drug order; or

(C) a registered nurse or physician assistant authorized by a practitioner to administer a prescription drug order for a dangerous drug under Subchapter B, Chapter 157 (Occupations Code).

(16) [~~(23)~~] Device--An instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related articles, including any component parts or accessory that is required under federal or state law to be ordered or prescribed by a practitioner.

(17) [~~(24)~~] Diagnostic prescription drug order--A radioactive prescription drug order issued for a diagnostic purpose.

(18) [~~(25)~~] Dispense--Preparing, packaging, compounding, or labeling for delivery a prescription drug or device, or a radiopharmaceutical in the course of professional practice to an ultimate user or his agent by or pursuant to the lawful order of a practitioner.

(19) [~~(26)~~] Dispensing pharmacist--The authorized nuclear pharmacist responsible for the final check of the dispensed prescription before delivery to the patient.

(20) [~~(27)~~] Distribute--The delivering of a prescription drug or device, or a radiopharmaceutical other than by administering or dispensing.

(21) [~~(28)~~] Electronic radioactive prescription drug order--A radioactive prescription drug order which is transmitted by an electronic device to the receiver (pharmacy).

(22) Hot water--The temperature of water from the pharmacy's sink maintained at a minimum of 105 degrees F (41 degrees C).

~~[(29) Internal test assessment--Validation of tests for quality control necessary to insure the integrity of the test.]~~

(23) [~~(30)~~] Nuclear pharmacy technique--The mechanical ability required to perform the nonjudgmental, technical aspects of preparing and dispensing radiopharmaceuticals.

(24) [~~(31)~~] Original prescription--The:

(A) original written radioactive prescription drug orders; or

(B) original verbal or electronic radioactive prescription drug orders maintained either manually or electronically by the pharmacist.

(25) [~~(32)~~] Pharmacist-in-charge--The pharmacist designated on a pharmacy license as the pharmacist who has the authority or responsibility for a pharmacy's compliance with laws and rules pertaining to the practice of pharmacy.

(26) [~~(33)~~] Pharmacy technician--An individual whose responsibility in a pharmacy is to provide technical services that do not require professional judgment regarding preparing and distributing drugs and who works under the direct supervision of and is responsible to a pharmacist.

(27) [~~(34)~~] Pharmacy technician trainee--An individual who is registered with the board as a pharmacy technician trainee and is authorized to participate in a pharmacy's technician training program.

~~[(35) Process validation--Documented evidence providing a high degree of assurance that a specific process will consistently produce a product meeting its predetermined specifications and quality attributes.]~~

~~[(36) Quality assurance--The set of activities used to ensure that the process used in the preparation of sterile radiopharmaceuticals lead to preparations that meet predetermined standards of quality.]~~

(28) [~~(37)~~] Radiopharmaceutical--A prescription drug or device that exhibits spontaneous disintegration of unstable nuclei with the emission of a nuclear particle(s) or photon(s), including any nonradioactive reagent kit or nuclide generator that is intended to be used in preparation of any such substance.

~~[(38) Radioactive drug quality control--The set of testing activities used to determine that the ingredients, components (e.g., containers), and final radiopharmaceutical prepared meets predetermined requirements with respect to identity, purity, non-pyrogenicity, and sterility and the interpretation of the resulting data in order to determine the feasibility for use in humans and animals including internal test assessment, authentication of product history, and the keeping of mandatory records.]~~

(29) [~~(39)~~] Radioactive drug service--The act of distributing radiopharmaceuticals; the participation in radiopharmaceutical selection and the performance of radiopharmaceutical drug reviews.

(30) [~~(40)~~] Radioactive prescription drug order--An order from a practitioner or a practitioner's designated agent for a radiopharmaceutical to be dispensed.

(31) [~~(41)~~] Sterile radiopharmaceutical--A dosage form of a radiopharmaceutical free from living micro-organisms.

(32) [~~(42)~~] Therapeutic prescription drug order--A radioactive prescription drug order issued for a specific patient for a therapeutic purpose.

(33) [~~(43)~~] Ultimate user--A person who has obtained and possesses a prescription drug or radiopharmaceutical for administration to a patient by a practitioner.

§291.53. Personnel.

(a) Pharmacists-in-Charge.

(1) General.

(A) Every nuclear pharmacy shall have an authorized nuclear pharmacist designated on the nuclear pharmacy license as the pharmacist-in-charge who shall be responsible for a nuclear pharmacy's compliance with laws and regulations, both state and federal, pertaining to the practice of nuclear pharmacy.

(B) The nuclear pharmacy pharmacist-in-charge shall see that directives from the board are communicated to the owner(s), management, other pharmacists, and interns of the nuclear pharmacy.

(C) Each Class B pharmacy shall have one pharmacist-in-charge who is employed on a full-time basis, who may be the pharmacist-in-charge for only one such pharmacy; provided, however, such pharmacist-in-charge may be the pharmacist-in-charge of:

(i) more than one Class B pharmacy, if the additional Class B pharmacies are not open to provide pharmacy services simultaneously; or

(ii) during an emergency, up to two Class B pharmacies open simultaneously if the pharmacist-in-charge works at least 10 hours per week in each pharmacy for no more than a period of 30 consecutive days.

(2) Responsibilities. The pharmacist-in-charge shall have the responsibility for, at a minimum, the following:

(A) ensuring that radiopharmaceuticals are dispensed and delivered safely and accurately as prescribed;

(B) developing a system to assure that all pharmacy personnel responsible for compounding and/or supervising the compounding of radiopharmaceuticals within the pharmacy receive appropriate education and training and competency evaluation;

(C) determining that all pharmacists involved in compounding sterile radiopharmaceuticals obtain continuing education appropriate for the type of compounding done by the pharmacist;

(D) supervising a system to assure appropriate procurement of drugs and devices and storage of all pharmaceutical materials including radiopharmaceuticals, components used in the compounding of radiopharmaceuticals, and drug delivery devices;

(E) assuring that the equipment used in compounding is properly maintained;

(F) developing a system for the disposal and distribution of drugs from the Class B pharmacy;

(G) developing a system for bulk compounding or batch preparation of radiopharmaceuticals;

(H) developing a system for the compounding, sterility assurance, and quality control of sterile radiopharmaceuticals;

(I) maintaining records of all transactions of the Class B pharmacy necessary to maintain accurate control over and accountability for all pharmaceutical materials including radiopharmaceuticals, required by applicable state and federal laws and rules;

(J) developing a system to assure the maintenance of effective controls against the theft or diversion of prescription drugs, and records for such drugs;

(K) assuring that the pharmacy has a system to dispose of radioactive and cytotoxic waste in a manner so as not to endanger the public health; and

(L) legally operating the pharmacy, including meeting all inspection and other requirements of all state and federal laws or rules governing the practice of pharmacy.

(b) Owner. The owner of a Class B pharmacy shall have responsibility for all administrative and operational functions of the pharmacy. The pharmacist-in-charge may advise the owner on administrative and operational concerns. The owner shall have responsibility for, at a minimum, the following, and if the owner is not a Texas licensed pharmacist, the owner shall consult with the pharmacist-in-charge or another Texas licensed pharmacist:

(1) establishing policies for procurement of prescription drugs and devices and other products dispensed from the Class B pharmacy;

(2) establishing policies and procedures for the security of the prescription department including the maintenance of effective controls against the theft or diversion of prescription drugs;

(3) if the pharmacy uses an automated pharmacy dispensing system, reviewing and approving all policies and procedures for system operation, safety, security, accuracy and access, patient confidentiality, prevention of unauthorized access, and malfunction;

(4) providing the pharmacy with the necessary equipment and resources commensurate with its level and type of practice; and

(5) establishing policies and procedures regarding maintenance, storage, and retrieval of records in a data processing system such that the system is in compliance with state and federal requirements.

(c) Authorized nuclear pharmacists.

(1) General.

(A) The pharmacist-in-charge shall be assisted by a sufficient number of additional authorized nuclear pharmacists as may be required to operate the pharmacy competently, safely, and adequately to meet the needs of the patients of the pharmacy.

(B) All personnel performing tasks in the preparation and distribution of radiopharmaceuticals shall be under the direct supervision of an authorized nuclear pharmacist. General qualifications for an authorized nuclear pharmacist are the following. A pharmacist shall:

(i) meet minimal standards of training and experience in the handling of radioactive materials in accordance with the requirements of the Texas Regulations for Control of Radiation of the Radiation Control Program, Texas Department of State Health Services;

(ii) be a pharmacist licensed by the board to practice pharmacy in Texas; and

(iii) submit to the board either:

(I) written certification that he or she has current board certification as a nuclear pharmacist by the Board of Pharmaceutical Specialties; or

(II) written certification signed by a preceptor authorized nuclear pharmacist that he or she has achieved a level of competency sufficient to independently operate as an authorized nuclear pharmacist and has satisfactorily completed 700 hours in a structured educational program consisting of both:

(-a-) 200 hours of didactic training in a program accepted by the Radiation Control Program, Texas Department of State Health Services in the following areas:

(-1-) radiation physics and instrumentation;

(-2-) radiation protection;

(-3-) mathematics pertaining to the use and measurement of radioactivity;

(-4-) radiation biology; and

(-5-) chemistry of radioactive material for medical use; and

(-b-) 500 hours of supervised practical experience in a nuclear pharmacy involving the following:

(-1-) shipping, receiving, and performing related radiation surveys;

(-2-) using and performing checks for proper operation of instruments used to determine the activity of dosages, survey meters, and, if appropriate, instruments used to measure alpha- or beta-emitting radionuclides;

(-3-) calculating, assaying, and safely preparing dosages for patients or human research subjects;

(-4-) using administrative controls to avoid adverse medical events in the administration of radioactive material; and

(-5-) using procedures to prevent or minimize contamination and using proper decontamination procedures.

~~[(C) The board may issue a letter of notification that the evidence submitted by the pharmacist meets the requirements of subparagraph (B)(i) - (iii) of this paragraph and has been accepted by the board and that, based thereon, the pharmacist is recognized as an authorized nuclear pharmacist.]~~

(C) [~~(D)~~] Authorized nuclear pharmacists are solely responsible for the direct supervision of pharmacy technicians and pharmacy technician trainees and for delegating nuclear pharmacy techniques and additional duties, other than those listed in paragraph (3) [~~(2)~~] of this subsection, to pharmacy technicians and pharmacy technician trainees. Each authorized nuclear pharmacist shall:

(i) verify the accuracy of all acts, tasks, or functions performed by pharmacy technicians and pharmacy technician trainees; and

(ii) be responsible for any delegated act performed by pharmacy technicians and pharmacy technician trainees under his or her supervision.

(D) [~~(E)~~] All authorized nuclear pharmacists while on duty, shall be responsible for complying with all state and federal laws or rules governing the practice of pharmacy.

(E) [~~(F)~~] The dispensing pharmacist shall ensure that the drug is dispensed and delivered safely and accurately as prescribed.

(2) Special requirements for compounding.

(A) Non-sterile preparations. All pharmacists engaged in compounding non-sterile preparations, including radioactive preparations [~~radiopharmaceuticals~~] shall meet the training requirements specified in §291.131 of this title (relating to Pharmacies Compounding Non-Sterile Preparations).

(B) Sterile Preparations. All pharmacists engaged in compounding sterile preparations, including radioactive preparations [~~radiopharmaceuticals~~] shall meet the training requirements specified in §291.133 of this title (relating to Pharmacies Compounding Sterile Preparations).

(3) Duties. Duties which may only be performed by an authorized nuclear pharmacist are as follows:

(A) receiving verbal therapeutic prescription drug orders and reducing these orders to writing, either manually or electronically;

(B) receiving verbal, diagnostic prescription drug orders in instances where patient specificity is required for patient safety (e.g., radiolabeled blood products, radiolabeled antibodies) and reducing these orders to writing, either manually or electronically;

(C) interpreting and evaluating radioactive prescription drug orders;

(D) selecting drug products; and

(E) performing the final check of the dispensed prescription before delivery to the patient to ensure that the radioactive prescription drug order has been dispensed accurately as prescribed.

(d) Pharmacy Technicians and Pharmacy Technician Trainees.

(1) General. All pharmacy technicians and pharmacy technician trainees shall meet the training requirements specified in §297.6 of this title (relating to Pharmacy Technician and Pharmacy Technician Trainee Training).

(2) Special requirements for compounding.

(A) Non-sterile preparations. All pharmacy technicians and pharmacy technician trainees engaged in compounding non-sterile preparations, including radioactive preparations [~~radiopharmaceuticals~~] shall meet the training requirements specified in §291.131 of this title.

(B) Sterile Preparations. All pharmacy technicians and pharmacy technician trainees engaged in compounding sterile preparations, including radioactive preparations [~~radiopharmaceuticals~~] shall meet the training requirements specified in §291.133 of this title.

(3) Duties.

(A) Pharmacy technicians and pharmacy technician trainees may not perform any of the duties listed in subsection (c)(3) of this section.

(B) An authorized nuclear pharmacist may delegate to pharmacy technicians and pharmacy technician trainees any nuclear pharmacy technique which is associated with the preparation and distribution of radiopharmaceuticals provided:

(i) an authorized nuclear pharmacist verifies the accuracy of all acts, tasks, and functions performed by pharmacy technicians and pharmacy technician trainees; and

(ii) pharmacy technicians and pharmacy technician trainees are under the direct supervision of and responsible to a pharmacist.

(4) Ratio of authorized nuclear pharmacist to pharmacy technicians and pharmacy technician trainees.

(A) The ratio of authorized nuclear pharmacists to pharmacy technicians and pharmacy technician trainees may be 1:4, provided at least one of the four is a pharmacy technician and is trained in the handling of radioactive materials.

(B) The ratio of authorized nuclear pharmacists to pharmacy technician trainees may not exceed 1:3.

~~[(e) Special education, training, and evaluation requirements for pharmacy personnel compounding or responsible for the direct supervision of pharmacy personnel compounding sterile radiopharmaceuticals. All pharmacy personnel preparing sterile radiopharmaceuticals shall meet the training requirements specified in §291.133 of this title.]~~

§291.54. Operational Standards.

(a) Licensing requirements.

(1) It is unlawful for a person to provide radioactive drug services unless such provision is performed by a person licensed to act as an authorized nuclear pharmacist, as defined by the board, or is a person acting under the direct supervision of an authorized nuclear pharmacist acting in accordance with the Act and its rules, and the regulations of the Texas Department of State Health Services, Radiation Control Program. Subsection (a) of this section does not apply to:

(A) a licensed practitioner or his or her designated agent for administration to his or her patient, provided no person may receive, possess, use, transfer, own, acquire, or dispose of radiopharmaceuticals except as authorized in a specific or a general license as provided in accordance with the requirements of the Texas Department of State Health Services, Radiation Control Program, Texas Administrative Code, Title 25, Part 1, Subchapter F, §289.252 relating to Licensing of Radioactive Material, or the Act;

(B) institutions and/or facilities with nuclear medicine services operated by practitioners and who are licensed by the Texas Department of State Health Services, Radiation Control Program, to prescribe, administer, and dispense radioactive materials (drugs and/or devices).

(2) An applicant for a Class B pharmacy shall provide evidence to the board of the possession of a Texas Department of State Health Services radioactive material license or proof of application for a radioactive material license.

(3) A Class B pharmacy shall register with the board on a pharmacy license application provided by the board, following the procedures specified in §291.1 of this title (relating to Pharmacy License Application).

(4) A Class B pharmacy which changes ownership shall notify the board within ten days of the change of ownership and apply for a new and separate license as specified in §291.3 of this title (relating to Required Notifications).

(5) A Class B pharmacy which changes location and/or name shall notify the board within ten days of the change and file for an amended license as specified in §291.3 of this title.

(6) A Class B pharmacy owned by a partnership or corporation which changes managing officers shall notify the board in writing of the names of the new managing officers within ten days of the change, following the procedures in §291.3 of this title.

(7) A Class B pharmacy shall notify the board in writing within ten days of closing, following the procedures in §291.5 of this title (relating to Closing a Pharmacy).

(8) A separate license is required for each principal place of business and only one pharmacy license may be issued to a specific location.

(9) A fee as specified in §291.6 of this title (relating to Pharmacy License Fees) will be charged for the issuance and renewal of a license and the issuance of an amended license.

(10) A Class B pharmacy, licensed under the provisions of the Act, §560.051(a)(2), which also operates another type of pharmacy which would otherwise be required to be licensed under the Act, §560.051(a)(1), concerning community pharmacy (Class A), is not required to secure a license for such other type of pharmacy; provided, however, such licensee is required to comply with the provisions of §291.31 of this title (relating to Definitions); §291.32 of this title (relating to Personnel); §291.33 of this title (relating to Operational Standards); §291.34 of this title (relating to Records); and §291.35 of this

title (relating to Official Prescription Requirements), to the extent such rules are applicable to the operation of the pharmacy.

(11) A Class B [~~(nuclear)~~] pharmacy engaged in the compounding of non-sterile [~~non-radioactive~~] preparations, including radioactive preparations, shall comply with the provisions of §291.131 of this title (relating to Pharmacies Compounding Non-Sterile Preparations).

(12) A Class B [~~(nuclear)~~] pharmacy engaged in the compounding of sterile [~~non-radioactive~~] preparations, including radioactive preparations, shall comply with the provisions of §291.133 of this title (relating to Pharmacies Compounding Sterile Preparations) using only radiopharmaceuticals from FDA-approved drug products.

(13) Effective June 1, 2016, a Class B pharmacy may not renew a pharmacy license unless the pharmacy has been inspected by the board within the last renewal period.

[~~(b) Risk levels for compounded sterile radiopharmaceuticals. Risk Levels for sterile compounded radiopharmaceuticals shall be as listed below.~~]

[~~(1) Low-risk level compounded sterile radiopharmaceuticals.~~]

[~~(A) Low-risk level compounded sterile radiopharmaceuticals are those compounded under all of the following conditions.~~]

~~*(i)* The compounded sterile preparations are compounded with aseptic manipulations entirely within ISO Class 5 or better air quality using only sterile ingredients, products, components, and devices.~~]

~~*(ii)* The compounding involves only transfer, measuring, and mixing manipulations with closed or sealed packaging systems that are performed promptly and attentively.~~]

~~*(iii)* Manipulations are limited to aseptically opening ampuls, penetrating sterile stoppers on vials with sterile needles and syringes, and transferring sterile liquids in sterile syringes to sterile administration devices and packages of other sterile products.~~]

~~*(iv)* For a low-risk preparation, in the absence of passing a sterility test, the storage periods cannot exceed the following periods: before administration, 48 hours at controlled room temperature, for not more than 14 days if stored in cold temperatures, and for 45 days if stored in a frozen state at minus 20 degrees Celsius or colder). For delayed activation device systems, the storage period begins when the device is activated.~~]

[~~(B) Examples of low-risk compounding include radiopharmaceuticals compounded from sterile components in closed sterile containers and with a volume of 100 mL or less for a single-dose injection or not more than 30 mL taken from a multidose container.~~]

[~~(2) Medium-risk level compounded sterile radiopharmaceuticals.~~]

[~~(A) Medium-risk level compounded sterile radiopharmaceuticals are those compounded aseptically under low-risk conditions and one or more of the of the following conditions exists.~~]

~~*(i)* Multiple individual or small doses of sterile products are combined or pooled to prepare a compounded sterile radiopharmaceuticals that will be administered either to multiple patients or to one patient on multiple occasions.~~]

~~*(ii)* The compounding process includes complex aseptic manipulations other than the single-volume transfer.~~]

~~*(iii)* The compounding process requires unusually long duration, such as that required to complete the dissolution or homogenous mixing.~~]

~~*(iv)* The sterile compounded radiopharmaceuticals do not contain broad-spectrum bacteriostatic substances, and they are administered over several days.~~]

~~*(v)* For a medium-risk preparation, in the absence of passing sterility test, the storage periods cannot exceed the following time periods: before administration, the compounded sterile preparations are properly stored and are exposed for not more than 30 hours at controlled room temperature for not more than 7 days at a cold temperature, and for 45 days in solid frozen state at minus 20 degrees or colder.~~]

[~~(B) Examples of medium-risk compounding include the following.~~]

~~*(i)* Compounding of total parenteral nutrition fluids using a manual or automated device during which there are multiple injections, detachments, and attachments of nutrient source products to the device or machine to deliver all nutritional components to a final sterile container.~~]

~~*(ii)* Filling of reservoirs of injection and infusion devices with multiple sterile drug products and evacuations of air from those reservoirs before the filled device is dispensed.~~]

~~*(iii)* Filling of reservoirs of injection and infusion devices with volumes of sterile drug solutions that will be administered over several days at ambient temperatures between 25 and 40 degrees Celsius (77 and 104 degrees Fahrenheit).~~]

~~*(iv)* Transfer of volumes from multiple ampuls or vials into a single, final sterile container or product.~~]

[~~(3) High-risk level compounded sterile radiopharmaceuticals.~~]

[~~(A) High-risk level compounded sterile radiopharmaceuticals are those compounded under any of the following conditions.~~]

~~*(i)* Non-sterile ingredients, including manufactured products are incorporated, or a non-sterile device is employed before terminal sterilization.~~]

~~*(ii)* Sterile ingredients, components, devices, and mixtures are exposed to air quality inferior to ISO Class 5. This includes storage in environments inferior to ISO Class 5 of opened or partially used packages of manufactured sterile products that lack antimicrobial preservatives.~~]

~~*(iii)* Non-sterile preparations are exposed no more than 6 hours before being sterilized.~~]

~~*(iv)* It is assumed, and not verified by examination of labeling and documentation from suppliers or by direct determination, that the chemical purity and content strength of ingredients meet their original or compendial specifications in unopened or in opened packages of bulk ingredients.~~]

~~*(v)* For a high-risk preparation, in the absence of passing sterility test, the storage periods cannot exceed the following time periods: before administration, the compounded sterile preparations are properly stored and are exposed for not more than 24 hours at controlled room temperature for not more than 3 days at a cold temperature, and for 45 days in solid frozen state at minus 20 degrees or colder.~~]

[~~(B) Examples of high-risk compounding include the following.~~]

[*(i)* Dissolving non-sterile bulk drug and nutrient powders to make solutions, which will be terminally sterilized.]

[*(ii)* Sterile ingredients, components, devices, and mixtures are exposed to air quality inferior to ISO Class 5. This includes storage in environments inferior to ISO Class 5 of opened or partially used packages of manufactured sterile products that lack antimicrobial preservatives.]

[*(iii)* Measuring and mixing sterile ingredients in non-sterile devices before sterilization is performed.]

[*(iv)* Assuming, without appropriate evidence or direct determination, that packages of bulk ingredients contain at least 95% by weight of their active chemical moiety and have not been contaminated or adulterated between uses.]

[(c) Environment.]

[(1) Special requirements for the compounding of sterile radiopharmaceuticals. When the pharmacy compounds sterile radiopharmaceuticals, the following is applicable.]

[(A) Low and Medium Risk Preparations.]

[*(i)* The pharmacy shall have a designated controlled area for the compounding of sterile radiopharmaceuticals that is functionally separate from areas for the preparation of non-sterile radiopharmaceuticals and is constructed to minimize the opportunities for particulate and microbial contamination. This controlled area for the preparation of sterile radiopharmaceuticals shall:]

[*(I)* have a controlled environment that is aseptic or contains an aseptic environmental control device(s). If the aseptic environmental control device is located within the controlled area, the controlled area must extend a minimum of six feet from the device and clearly marked to identify the separation between the controlled and non-controlled area;]

[*(II)* be clean, well lighted, and of sufficient size to support sterile compounding activities;]

[*(III)* be used only for the compounding of sterile radiopharmaceuticals;]

[*(IV)* be designed to avoid outside traffic and airflow;]

[*(V)* be designed such that hand sanitizing and gowning occurs outside the controlled area but accessible without use of the hands of the compounding personnel;]

[*(VI)* have non-porous and washable floors or floor covering to enable regular disinfection;]

[*(VII)* be ventilated in a manner not interfering with aseptic environmental control conditions;]

[*(VIII)* have walls, ceilings, and fixtures, shelving, counters, and cabinets that are smooth, impervious, free from cracks and crevices, and nonshedding (acoustical ceiling tiles that are coated with an acrylic paint are acceptable);]

[*(IX)* have drugs and supplies stored on shelving areas above the floor to permit adequate floor cleaning; and]

[*(X)* contain only the appropriate compounding supplies and not be used for bulk storage for supplies and materials. Objects that shed particles may not be brought into the controlled area.]

[*(ii)* The pharmacy shall prepare sterile radiopharmaceuticals in a primary engineering control device, such as a vertical air flow hood, which is capable of maintaining at least ISO Class 5 conditions during normal activity.]

[*(I)* The primary engineering control shall:]

[(-a-) be located in the buffer area or room and placed in the buffer area in a manner as to avoid conditions that could adversely affect its operation such as strong air currents from opened doors, personnel traffic, or air streams from the heating, ventilating and air condition system;]

[(-b-) be certified by an independent contractor according to the International Organization of Standardization (ISO) Classification of Particulate Matter in Room Air (ISO 14644-1) for operational efficiency at least every six months and when it is relocated, in accordance with the manufacturer's specifications; and]

[(-c-) have pre-filters inspected periodically and replaced as needed, in accordance with written policies and procedures and the manufacturer's specification, and the inspection and/or replacement date documented.]

[*(II)* The compounding aseptic isolator or compounding aseptic containment isolator must be placed in an ISO Class 8 buffer area unless the isolator meets all of the following conditions.]

[(-a-) The isolator must provide isolation from the room and maintain ISO Class 5 during dynamic operating conditions including transferring ingredients, components, and devices into and out of the isolator and during preparation of compounded sterile preparations.]

[(-b-) Particle counts sampled approximately 6 to 12 inches upstream of the critical exposure site must maintain ISO Class 5 levels during compounding operations.]

[(-c-) The pharmacy shall maintain documentation from the manufacturer that the isolator meets this standard when located in worse than ISO Class 7 environments.]

[(B) High-risk Preparations. In addition to the requirements in subparagraph (A)(i)(I) of this paragraph, when high-risk preparations are compounded, the aseptic environment control device(s) shall be located in a controlled area that maintains at least an ISO Class 7 environment.]

[(C) Automated compounding device(s). If automated compounding device(s) are used, the pharmacy shall have a method to calibrate and verify the accuracy of automated compounding devices used in aseptic processing and document the calibration and verification on a routine basis.]

(b) Environment.

(1) General requirements.

(A) The pharmacy shall be arranged in an orderly fashion and kept clean. All required equipment shall be clean and in good operating condition.

(B) The pharmacy shall have a sink with hot and cold running water within the pharmacy, exclusive of restroom facilities, available to all pharmacy personnel and maintained in a sanitary condition.

(C) The pharmacy shall be properly lighted and ventilated.

(D) The temperature of the pharmacy shall be maintained within a range compatible with the proper storage of drugs. The temperature of the refrigerator shall be maintained within a range compatible with the proper storage of drugs requiring refrigeration.

(E) If the pharmacy has flammable materials, the pharmacy shall have a designated area for the storage of flammable mate-

rials. Such area shall meet the requirements set by local and state fire laws.

(2) Security requirements.

(A) All areas occupied by a pharmacy shall be capable of being locked by key, combination or other mechanical or electronic means to prohibit unauthorized access, when a pharmacist is not on-site except as provided in subparagraph (B) of this paragraph.

(B) The pharmacy may authorize personnel to gain access to that area of the pharmacy containing dispensed [~~sterile~~] radiopharmaceuticals, in the absence of the pharmacist, for the purpose of retrieving the radiopharmaceuticals [~~dispensed prescriptions~~] to be delivered [~~deliver to~~] patients. If the pharmacy allows such after-hours access, the area containing the dispensed [~~sterile~~] radiopharmaceuticals shall be an enclosed and lockable area separate from the area containing undispensed prescription drugs. A list of the authorized personnel having such access shall be in the pharmacy's policy and procedure manual.

(C) Each pharmacist while on duty shall be responsible for the security of the prescription department, including provisions for effective control against theft or diversion of prescription drugs, and records for such drugs

(c) [~~(d)~~] Prescription dispensing and delivery.

(1) Generic Substitution. A pharmacist may substitute on a prescription drug order issued for a brand name product provided the substitution is authorized and performed in compliance with Chapter 309 of this title (relating to Substitution of Drug Products).

(2) Prescription containers (immediate inner containers).

(A) A drug dispensed pursuant to a radioactive prescription drug order shall be dispensed in an appropriate immediate inner container as follows.

(i) If a drug is susceptible to light, the drug shall be dispensed in a light-resistant container.

(ii) If a drug is susceptible to moisture, the drug shall be dispensed in a tight container.

(iii) The container should not interact physically or chemically with the drug product placed in it so as to alter the strength, quality, or purity of the drug beyond the official requirements.

(B) Immediate inner prescription containers or closures shall not be re-used.

(3) Delivery containers (outer containers).

(A) Prescription containers may be placed in suitable containers for delivery which will transport the radiopharmaceutical safely in compliance with all applicable laws and regulations.

(B) Delivery containers may be re-used provided they are maintained in a manner to prevent cross contamination.

(4) Labeling.

(A) The immediate inner container of a radiopharmaceutical shall be labeled with:

(i) standard radiation symbol;

(ii) the words "caution-radioactive material" or "danger, radioactive material";

(iii) the name of the radiopharmaceutical or its abbreviation; and

(iv) the unique identification number of the prescription.

(B) The outer container of a radiopharmaceutical shall be labeled with:

(i) the name, address, and phone number of the pharmacy;

(ii) the date dispensed;

(iii) the directions for use, if applicable;

(iv) the unique identification number of the prescription;

(v) the name of the patient if known, or the statement, "for physician use" if the patient is unknown;

(vi) the standard radiation symbol;

(vii) the words "caution-radioactive material" or "danger, radioactive material";

(viii) the name of the radiopharmaceutical or its abbreviation;

(ix) the amount of radioactive material contained in millicuries (mCi), microcuries (uCi), or bequerels (Bq) and the corresponding time that applies to this activity, if different from the requested calibration date and time;

(x) the initials or identification codes of the person preparing the product and the authorized nuclear pharmacist who checked and released the final product unless recorded in the pharmacy's data processing system. The record of the identity of these individuals shall not be altered in the pharmacy's data processing system.

(xi) if a liquid, the volume in milliliters;

(xii) the requested calibration date and time; and

(xiii) the expiration date and/or time.

(C) The amount of radioactivity shall be determined by radiometric methods for each individual preparation immediately at the time of dispensing and calculations shall be made to determine the amount of activity that will be present at the requested calibration date and time, due to radioactive decay in the intervening period, and this activity and time shall be placed on the label per requirements set out in paragraph (4) of this subsection.

(d) [~~(e)~~] Equipment. The following minimum equipment is required in a nuclear pharmacy:

(1) vertical laminar flow hood;

(2) dose calibrator;

(3) a calibrated system or device (i.e., thermometer) to monitor the temperature to ensure that proper storage requirements are met, if [~~sterile~~] preparations are stored in the refrigerator;

(4) if applicable, a Class A prescription balance, or analytical balance and weights. Such balance shall be properly maintained and subject to periodic inspection by the board.

(5) scintillation analyzer;

(6) microscope and hemocytometer;

(7) equipment and utensils necessary for the proper compounding of prescription drug or medication orders. Such equipment and utensils used in the compounding process shall be:

(A) of appropriate design, appropriate capacity, and be operated within designed operational limits;

(B) of suitable composition so that surfaces that contact components, in-process material, or drug products shall not be reactive, additive, or absorptive so as to alter the safety, identity, strength, quality, or purity of the drug product beyond acceptable standards;

(C) cleaned and sanitized immediately prior to each use; and

(D) routinely inspected, calibrated (if necessary), or checked to ensure proper performance;

(8) appropriate disposal containers for used needles, syringes, etc., and if applicable, cytotoxic waste from the preparation of chemotherapeutic agents, and/or biohazardous waste;

(9) all necessary supplies, including:

(A) disposable needles, syringes, and other aseptic mixing;

(B) disinfectant cleaning solutions;

(C) hand washing agents with bactericidal action;

(D) disposable, lint free towels or wipes;

(E) appropriate filters and filtration equipment;

(F) radioactive [~~cytotoxic~~] spill kits, if applicable; and

(G) masks, caps, coveralls or gowns with tight cuffs, shoe covers, and gloves, as applicable.

(10) adequate glassware, utensils, gloves, syringe shields and remote handling devices, and adequate equipment for product quality control;

(11) adequate shielding material;

(12) data processing system including a printer or comparable equipment;

(13) radiation dosimeters for visitors and personnel and log entry book;

(14) exhaust/fume hood with monitor, for storage and handling of all volatile radioactive drugs if applicable, to be determined by the Texas Department of State Health Services, Radiation Control Program; and

(15) adequate radiation monitor(s).

(e) [~~(f)~~] Library. A nuclear pharmacy shall maintain a reference library which shall include the following in hard copy or electronic format current or updated copies of the following:

(1) [~~current copies of the following:~~]

[~~(A)~~] Texas Pharmacy Act and rules;

(2) [~~(B)~~] Texas Dangerous Drug Act and rules;

(3) [~~(C)~~] Texas Controlled Substances Act and rules; and

(4) [~~(D)~~] Federal Controlled Substances Act and rules (or official publication describing the requirements of the Federal Controlled Substances Act and rules); and

[~~(2) a current or updated version of Chapter 797 of the USP/NF concerning Pharmacy Compounding Sterile Preparations and other USP chapters applicable to the practice (e.g., USP Chapter 823 Radiopharmaceuticals for Positron Emission Tomography - Compounding); and~~]

(5) [~~(3)~~] a minimum of one [~~current or updated~~] text dealing with nuclear medicine science.

(f) [~~(g)~~] Radiopharmaceuticals and/or radioactive materials.

(1) General requirements.

(A) Radiopharmaceuticals may only be dispensed pursuant to a radioactive prescription drug order.

(B) An authorized nuclear pharmacist may distribute radiopharmaceuticals to authorized users for patient use. A nuclear pharmacy may [~~also~~] furnish radiopharmaceuticals for departmental or physicians' use if such authorized users maintain a Texas radioactive materials license[~~, and the radiopharmaceutical is labeled "for physician use, provided such distribution is documented in the control system~~].

(C) An authorized nuclear pharmacist may transfer to authorized users radioactive materials not intended for drug use in accordance with the requirements of the Texas Department of State Health Services, Radiation Control Program, Texas Administrative Code, Title 25, Part 1, Subchapter F, §289.252 relating to Licensing of Radioactive Material.

(D) The transportation of radioactive materials from the nuclear pharmacy must be in accordance with current state and federal transportation regulations.

(2) Procurement and storage.

(A) The pharmacist-in-charge shall have the responsibility for the procurement and storage of drugs, but may receive input from other appropriate staff relative to such responsibility.

(B) Prescription drugs and devices shall be stored within the prescription department or a locked storage area.

(C) All drugs shall be stored at the proper temperature, as defined in the USP/NF and §291.15 of this title (relating to Storage of Drugs).

(D) The pharmacy's generator(s) shall be stored and eluted in an ISO Class 7 or ISO Class 8 environment as specified in §`291.133 of this title.

(3) Out-of-date and other unusable drugs or devices.

(A) Any drug or device bearing an expiration date shall not be dispensed beyond the expiration date of the drug or device.

(B) Outdated and other unusable drugs or devices shall be removed from dispensing stock and shall be quarantined together until such drugs or devices are disposed of properly.

[~~(h) Loading bulk drugs into automated compounding devices.~~]

[~~(1) Automated compounding device may be loaded with bulk drugs only by an authorized nuclear pharmacist or by supportive personnel under the direction and direct supervision of an authorized pharmacist.~~]

[~~(2) The label of an automated compounding device container shall indicate the brand name and strength of the drug; or if no brand name, then the generic name, strength, and name of the manufacturer or distributor.~~]

[~~(3) Records of loading bulk drugs into an automated compounding device shall be maintained to show:~~]

[~~(A) name of the drug, strength, and dosage form;~~]

[~~(B) manufacturer or distributor;~~]

[(C) manufacturer's lot number;]

[(D) expiration date;]

[(E) quantity added to the automated compounding device;]

[(F) date of loading;]

[(G) name, initials, or electronic signature of the person loading the automated compounding device; and]

[(H) name, initials, or electronic signature of the responsible authorized nuclear pharmacist.]

[(4) The automated compounding device shall not be used until an authorized nuclear pharmacist verifies that the system is properly loaded and affixes his or her signature or electronic signature to the record specified in paragraph (3) of this subsection.]

[(i) Sterile radiopharmaceuticals.]

[(1) Beyond-use date.]

[(A) The beyond-use date assigned shall be based on:]

[(i) established manufacturer's guidelines;]

[(ii) published literature; or]

[(iii) in-house or contracted stability studies.]

[(B) The method for establishing beyond-use dates shall be documented.]

[(2) Radioactive Drug Quality control. There shall be a documented, ongoing quality control program that monitors and evaluates personnel performance, equipment and facilities. Procedures shall be in place to assure that the pharmacy is capable of consistently preparing radiopharmaceuticals which are sterile and stable. Quality control procedures shall include, but are not limited to, the following:]

[(A) recall procedures;]

[(B) storage and dating;]

[(C) documentation of appropriate functioning of refrigerator, freezer, and other equipment;]

[(D) documentation of aseptic environmental control device(s) certification at least every year and the regular replacement of pre-filters as necessary;]

[(E) a process to evaluate and confirm the quality of the prepared radiopharmaceutical; and]

[(F) documentation of facility maintenance such as cleaning and environmental testing.]

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 June 12, 2015.

TRD-201502227
Gay Dodson, R.Ph.
Executive Director
Texas State Board of Pharmacy
Earliest possible date of adoption: July 26, 2015
For further information, please call: (512) 305-8073

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SUBCHAPTER G. SERVICES PROVIDED BY PHARMACIES

22 TAC §291.133

The Texas State Board of Pharmacy proposes amendments to §291.133 concerning Pharmacies Compounding Sterile Preparations. The proposed amendments, if adopted, clarify the requirements for nuclear pharmacies compounding sterile radiopharmaceuticals.

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

Ms. Dodson has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendments will be to ensure that nuclear pharmacies are compounding sterile preparations under appropriate conditions.

Written comments on the amendments may be submitted to Allison Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Austin, Texas 78701, FAX (512) 305-8008. Comments must be received by 5:00 p.m., August 3, 2015.

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

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

§291.133. Pharmacies Compounding Sterile Preparations.

(a) (No change.)

(b) Definitions. In addition to the definitions for specific license classifications, the following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (10) (No change.)

(11) Buffer Area--An ISO Class 7 or, if a Class B pharmacy, ISO Class 8 or better, area where the primary engineering control area is physically located. Activities that occur in this area include the preparation and staging of components and supplies used when compounding sterile preparations.

(12) - (23) (No change.)

(24) Hazardous Drugs--Drugs that, studies in animals or humans indicate exposure to the drugs, have a potential for causing cancer, development or reproductive toxicity, or harm to organs. For the purposes of this chapter, radiopharmaceuticals are not considered hazardous drugs.

(25) - (39) (No change.)

[(40) Positive Pressure Room--A room that is at a higher pressure compared to adjacent spaces and, therefore, the net airflow is out of the room.]

(40) [~~(41)~~] Quality assurance--The set of activities used to ensure that the process used in the preparation of sterile drug preparations lead to preparations that meet predetermined standards of quality.

(41) [~~(42)~~] Quality control--The set of testing activities used to determine that the ingredients, components (e.g., containers), and final compounded sterile preparations prepared meet predetermined requirements with respect to identity, purity, non-pyrogenicity, and sterility.

(42) [~~(43)~~] Reasonable quantity--An amount of a compounded drug that:

(A) does not exceed the amount a practitioner anticipates may be used in the practitioner's office or facility before the beyond use date of the drug;

(B) is reasonable considering the intended use of the compounded drug and the nature of the practitioner's practice; and

(C) for any practitioner and all practitioners as a whole, is not greater than an amount the pharmacy is capable of compounding in compliance with pharmaceutical standards for identity, strength, quality, and purity of the compounded drug that are consistent with United States Pharmacopoeia guidelines and accreditation practices.

(43) [~~(44)~~] Segregated Compounding Area--A designated space, either a demarcated area or room, that is restricted to preparing low-risk level compounded sterile preparations with 12-hour or less beyond-use date. Such area shall contain a device that provides unidirectional airflow of ISO Class 5 air quality for preparation of compounded sterile preparations and shall be void of activities and materials that are extraneous to sterile compounding.

(44) [~~(45)~~] Single-dose container--A single-unit container for articles or preparations intended for parenteral administration only. It is intended for a single use. A single-dose container is labeled as such. Examples of single-dose containers include pre-filled syringes, cartridges, fusion-sealed containers, and closure-sealed containers when so labeled.

(45) [~~(46)~~] SOPs--Standard operating procedures.

(46) [~~(47)~~] Sterilizing Grade Membranes--Membranes that are documented to retain 100% of a culture of 107 microorganisms of a strain of Brevundimonas (Pseudomonas) diminuta per square centimeter of membrane surface under a pressure of not less than 30 psi (2.0 bar). Such filter membranes are nominally at 0.22-micrometer or 0.2-micrometer nominal pore size, depending on the manufacturer's practice.

(47) [~~(48)~~] Sterilization by Filtration--Passage of a fluid or solution through a sterilizing grade membrane to produce a sterile effluent.

(48) [~~(49)~~] Terminal Sterilization--The application of a lethal process, e.g., steam under pressure or autoclaving, to sealed final preparation containers for the purpose of achieving a predetermined sterility assurance level of usually less than 10-6 or a probability of less than one in one million of a non-sterile unit.

(49) [~~(50)~~] Unidirectional Flow--An airflow moving in a single direction in a robust and uniform manner and at sufficient speed to reproducibly sweep particles away from the critical processing or testing area.

(50) [~~(51)~~] USP/NF--The current edition of the United States Pharmacopeia/National Formulary.

(c) Personnel.

(1) (No change.)

(2) Pharmacists.

(A) General.

(i) A pharmacist is responsible for ensuring that compounded sterile preparations are accurately identified, measured, diluted, and mixed and are correctly purified, sterilized, packaged, sealed, labeled, stored, dispensed, and distributed.

(ii) A pharmacist shall inspect and approve all components, drug preparation containers, closures, labeling, and any other materials involved in the compounding process.

(iii) A pharmacist shall review all compounding records for accuracy and conduct periodic in-process checks as defined in the pharmacy's policy and procedures. [~~and final checks and verification of calculations to ensure that errors have not occurred in the compounding process.~~]

(iv) A pharmacist shall review all compounding records for accuracy and conduct a final check.

(v) [~~(iv)~~] A pharmacist is responsible for ensuring the proper maintenance, cleanliness, and use of all equipment used in the compounding process.

(vi) [~~(v)~~] A pharmacist shall be accessible at all times, 24 hours a day, to respond to patients' and other health professionals' questions and needs.

(B) - (C) (No change.)

(3) (No change.)

(4) Evaluation and testing requirements.

(A) - (H) (No change.)

(I) Commercially available sterile fluid culture media, such as Soybean-Casein Digest Medium shall be able to promote exponential colonization of bacteria that are most likely to be transmitted to compounding sterile preparations from the compounding personnel and environment. Media-filled vials are generally incubated at 20 to 25 degrees Celsius or at 30 to 35 degrees Celsius for a minimum of 14 days. If two temperatures are used for incubation of media-filled samples, then these filled containers should be incubated for at least 7 days at each temperature. Failure is indicated by visible turbidity in the medium on or before 14 days.

(J) - (L) (No change.)

(5) (No change.)

(d) Operational Standards.

(1) General Requirements.

(A) - (B) (No change.)

(C) Commercially available products may be compounded for dispensing to individual patients or for office use provided the following conditions are met:

(i) the commercial product is not reasonably available from normal distribution channels in a timely manner to meet individual patient's needs;

(ii) the pharmacy maintains documentation that the product is not reasonably available due to a drug shortage or unavailability from the manufacturer; and

(iii) the prescribing practitioner has requested that the drug be compounded as described in subparagraph (D) of this paragraph.

(D) A pharmacy may not compound preparations that are essentially copies of commercially available products (e.g., the preparation is dispensed in a strength that is only slightly different from a commercially available product) unless the prescribing practitioner specifically orders the strength or dosage form and specifies why the individual patient needs the particular strength or dosage form of the preparation or why the preparation for office use is needed in the particular strength or dosage form of the preparation. The prescribing practitioner shall provide documentation of a patient specific medical need and the preparation produces a clinically significant therapeutic response (e.g., the physician requests an alternate preparation due to hypersensitivity to excipients or preservative in the FDA-approved product, or the physician requests an effective alternate dosage form) or if the drug product is not commercially available. The unavailability of such drug product must be documented prior to compounding. The methodology for documenting unavailability includes maintaining a copy of the wholesaler's notification showing back-ordered, discontinued, or out-of-stock items. This documentation must be available in hard-copy or electronic format for inspection by the board.

(E) - (G) (No change.)

(H) Compounded sterile preparations, including hazardous drugs and radiopharmaceuticals, shall be prepared only under conditions that protect the pharmacy personnel in the preparation and storage areas.

(2) Microbial Contamination Risk Levels. Risk Levels for sterile compounded preparations shall be as outlined in Chapter 797, Pharmacy Compounding--Sterile Preparations of the USP/NF and as listed in this paragraph.

(A) (No change.)

(B) Low-Risk Level compounded sterile preparations with 12-hour or less beyond-use date. Low-risk level compounded sterile preparations are those compounded pursuant to a physician's order for a specific patient under all of the following conditions.

(i) The compounded sterile preparations are compounded in compounding aseptic isolator or compounding aseptic containment isolator that does not meet the requirements described in paragraph (7)(C) or (D) of this subsection (relating to Primary Engineering Control Device) or the compounded sterile preparations are compounded in laminar airflow workbench or a biological safety cabinet that cannot be located within the [~~an ISO Class 7~~] buffer area.

(ii) The primary engineering control device shall be certified and maintain ISO Class 5 for exposure of critical sites and shall be located in a segregated compounding area restricted to sterile compounding activities that minimizes the risk of contamination of the compounded sterile preparation.

(iii) The segregated compounding area shall not be in a location that has unsealed windows or doors that connect to the outdoors or high traffic flow, or that is adjacent to construction sites, warehouses, or food preparation.

(iv) For a low-risk preparation compounded as described in clauses (i) - (iii) of this subparagraph, administration of such compounded sterile preparations must commence within 12 hours of preparation or as recommended in the manufacturers' package insert, whichever is less. However, the administration of sterile radiopharmaceuticals, with documented testing of chemical stability, may be administered beyond 12 hours of preparation.

(C) - (D) (No change.)

(3) - (4) (No change.)

(5) Library. In addition to the library requirements of the pharmacy's specific license classification, a pharmacy shall maintain current or updated copies in hard-copy or electronic format of each of the following:

(A) a reference text on injectable drug preparations, such as Handbook on Injectable Drug Products;

(B) a specialty reference text appropriate for the scope of pharmacy services provided by the pharmacy, e.g., if the pharmacy prepares hazardous drugs, a reference text on the preparation of hazardous drugs; and

(C) the United States Pharmacopeia/National Formulary containing USP Chapter 71, Sterility Tests, USP Chapter 85, Bacterial Endotoxins Test, Pharmaceutical Compounding--Nonsterile Preparations, USP Chapter 795, USP Chapter 797, Pharmaceutical Compounding--Sterile Preparations, and USP Chapter 1163, Quality Assurance in Pharmaceutical Compounding; and[~~.~~]

(D) any additional USP/NF chapters applicable to the practice of the pharmacy (e.g., USP Chapter 800, Hazardous Drugs--Handling in Healthcare Settings, USP Chapter 823, Positron Emission Tomography Drugs for Compounding, Investigational, and Research Uses).

(6) Environment. Compounding facilities shall be physically designed and environmentally controlled to minimize airborne contamination from contacting critical sites.

(A) Low and Medium Risk Preparations. A pharmacy that prepares low- and medium-risk preparations shall have a clean room for the compounding of sterile preparations that is constructed to minimize the opportunities for particulate and microbial contamination. The clean room shall:

(i) - (ix) (No change.)

(x) contain only the appropriate compounding supplies and not be used for bulk storage for supplies and materials. Objects that shed particles shall not be brought into the clean room. A Class B pharmacy may use low-linting absorbent materials in the primary engineering control device;

(xi) contain an ante-area that [~~provides at least an ISO class 8 air quality and~~] contains a sink with hot and cold running water that enables hands-free use with a closed system of soap dispensing to minimize the risk of extrinsic contamination. A Class B pharmacy may have a sink with hot and cold running water that enables hands-free use with a closed system of soap dispensing immediately outside the ante-area if antiseptic hand cleansing is performed using a waterless alcohol-based surgical hand scrub with persistent activity following manufacturers' recommendations once inside the ante-area; and

(xii) contain a buffer area [~~designed to maintain at least ISO Class 7 conditions for 0.5-micrometer and larger particles under dynamic working conditions~~]. The following is applicable for the buffer area.

(I) There shall be some demarcation designation that delineates the ante-area from the buffer area. The demarcation shall be such that it does not create conditions that could adversely affect the cleanliness of the area.

(II) The buffer area shall be segregated from surrounding, unclassified spaces to reduce the risk of contaminants being blown, dragged, or otherwise introduced into the filtered unidirectional airflow environment, and this segregation should be continuously monitored.

(III) A buffer area that is not physically separated from the ante-area shall employ the principle of displacement airflow as defined in Chapter 797, Pharmaceutical Compounding--Sterile Preparations, of the USP/NF, with limited access to personnel.

(IV) The buffer area shall not contain sources of water (i.e., sinks) or floor drains other than distilled or sterile water introduced for facilitating the use of heat block wells for radiopharmaceuticals.

(B) High-risk Preparations.

(i) In addition to the requirements in subparagraph (A) of this paragraph, when high-risk preparations are compounded, the primary engineering control shall be located in a buffer area that provides a physical separation, through the use of walls, doors and pass-throughs and has a minimum differential positive pressure of 0.02 to 0.05 inches water column.

(ii) Presterilization procedures for high-risk level compounded sterile preparations, such as weighing and mixing, shall be completed in no worse than an ISO Class 8 environment.

(C) Automated compounding device. [~~If automated compounding devices are used, the pharmacy shall have a method to calibrate and verify the accuracy of automated compounding devices used in aseptic processing and document the calibration and verification on a daily basis, based on the manufacturer's recommendations, and review the results at least weekly.~~]

(i) General. If automated compounding devices are used, the pharmacy shall have a method to calibrate and verify the accuracy of automated compounding devices used in aseptic processing and document the calibration and verification on a daily basis, based on the manufacturer's recommendations, and review the results at least weekly.

(ii) Loading bulk drugs into automated compounding devices.

(I) Automated compounding device may be loaded with bulk drugs only by a pharmacist or by pharmacy technicians or pharmacy technician trainees under the direction and direct supervision of a pharmacist.

(II) The label of an automated compounding device container shall indicate the brand name and strength of the drug; or if no brand name, then the generic name, strength, and name of the manufacturer or distributor.

(III) Records of loading bulk drugs into an automated compounding device shall be maintained to show:

(-a-) name of the drug, strength, and dosage form;

(-b-) manufacturer or distributor;

(-c-) manufacturer's lot number;

(-d-) manufacturer's expiration date;

(-e-) quantity added to the automated compounding device;

(-f-) date of loading;

(-g-) name, initials, or electronic signature of the person loading the automated compounding device; and

(-h-) name, initials, or electronic signature of the responsible pharmacist.

(IV) The automated compounding device shall not be used until a pharmacist verifies that the system is properly loaded and affixes his or her signature or electronic signature to the record specified in subclause (III) of this clause.

(D) (No change.)

(E) Blood-labeling procedures. When compounding activities require the manipulation of a patient's blood-derived material (e.g., radiolabeling a patient's or donor's white blood cells), the manipulations shall be clearly separated from routine material-handling procedures and equipment used in preparation activities to avoid any cross-contamination. The preparations shall not require sterilization.

(F) [~~(E)~~] Cleaning and disinfecting the sterile compounding areas. The following cleaning and disinfecting practices and frequencies apply to direct and contiguous compounding areas, which include ISO Class 5 compounding areas for exposure of critical sites as well as buffer areas, ante-areas, and segregated compounding areas.

(i) The pharmacist-in-charge is responsible for developing written procedures for cleaning and disinfecting the direct and contiguous compounding areas and assuring the procedures are followed.

(ii) These procedures shall be conducted at the beginning of each work shift, before each batch preparation is started, when there are spills, and when surface contamination is known or suspected resulting from procedural breaches, and every 30 minutes during continuous compounding of individual compounded sterile preparations, unless a particular compounding procedure requires more than 30 minutes to complete, in which case, the direct compounding area is to be cleaned immediately after the compounding activity is completed.

(iii) Before compounding is performed, all items shall be removed from the direct and contiguous compounding areas and all surfaces are cleaned by removing loose material and residue from spills, followed by an application of a residue-free disinfecting agent (e.g., IPA), which is allowed to dry before compounding begins. In a Class B pharmacy, objects used in preparing sterile radiopharmaceuticals (e.g., dose calibrator) which cannot be reasonably removed from the compounding area shall be sterilized with an application of a residue-free disinfection agent.

(iv) Work surfaces in the [~~ISO Class 7~~] buffer areas and [~~ISO Class 8~~] ante-areas, as well as segregated compounding areas, shall be cleaned and disinfected at least daily. Dust and debris shall be removed when necessary from storage sites for compounding ingredients and supplies using a method that does not degrade the ISO Class 7 or 8 air quality.

(v) Floors in the buffer area, ante-area, and segregated compounding area are cleaned by mopping with a cleaning and disinfecting agent at least once daily when no aseptic operations are in progress. Mopping shall be performed by trained personnel using approved agents and procedures described in the written SOPs. It is incumbent on compounding personnel to ensure that such cleaning is performed properly.

(vi) In the buffer area, ante-area, and segregated compounding area, walls, ceilings, and shelving shall be cleaned and disinfected monthly. Cleaning and disinfecting agents shall be used with careful consideration of compatibilities, effectiveness, and inappropriate or toxic residues.

(vii) All cleaning materials, such as wipers, sponges, and mops, shall be non-shedding, and dedicated to use in the buffer area, ante-area, and segregated compounding areas and shall not be removed from these areas except for disposal. Floor mops may be used in both the buffer area and ante-area, but only in that order. If cleaning materials are reused, procedures shall be developed that ensure that the effectiveness of the cleaning device is maintained and that repeated use does not add to the bio-burden of the area being cleaned.

(viii) Supplies and equipment removed from shipping cartons must be wiped with a disinfecting agent, such as sterile IPA. After the disinfectant is sprayed or wiped on a surface to be disinfected, the disinfectant shall be allowed to dry, during which time the item shall not be used for compounding purposes. However, if sterile supplies are received in sealed pouches, the pouches may be removed as the supplies are introduced into the ISO Class 5 area without the need to disinfect the individual sterile supply items. No shipping or other external cartons may be taken into the buffer area or segregated compounding area.

(ix) Storage shelving emptied of all supplies, walls, and ceilings are cleaned and disinfected at planned intervals, monthly, if not more frequently.

(x) Cleaning must be done by personnel trained in appropriate cleaning techniques.

(xi) Proper documentation and frequency of cleaning must be maintained and shall contain the following:

(I) date and time of cleaning;

(II) type of cleaning performed; and

(III) name of individual who performed the cleaning.

(G) [~~(F)~~] Security requirements. The pharmacist-in-charge may authorize personnel to gain access to that area of the pharmacy containing dispensed sterile preparations, in the absence of the pharmacist, for the purpose of retrieving dispensed prescriptions to deliver to patients. If the pharmacy allows such after-hours access, the area containing the dispensed sterile preparations shall be an enclosed and lockable area separate from the area containing undispensed prescription drugs. A list of the authorized personnel having such access shall be in the pharmacy's policy and procedure manual.

(H) [~~(G)~~] Storage requirements and beyond-use dating.

(i) Storage requirements. All drugs shall be stored at the proper temperature and conditions, as defined in the USP/NF and in §291.15 of this title (relating to Storage of Drugs).

(ii) Beyond-use dating.

(I) Beyond-use dates for compounded sterile preparations shall be assigned based on professional experience, which shall include careful interpretation of appropriate information sources for the same or similar formulations.

(II) Beyond-use dates for compounded sterile preparations that are prepared strictly in accordance with manufacturers' product labeling must be those specified in that labeling, or from appropriate literature sources or direct testing.

(III) When assigning a beyond-use date, compounding personnel shall consult and apply drug-specific and general stability documentation and literature where available, and they should consider the nature of the drug and its degradation mechanism, the container in which it is packaged, the expected storage conditions, and the intended duration of therapy.

(IV) The sterility and storage and stability beyond-use date for attached and activated container pairs of drug products for intravascular administration shall be applied as indicated by the manufacturer.

(7) - (8) (No change.)

(9) Labeling.

(A) Prescription drug or medication orders. In addition to the labeling requirements for the pharmacy's specific license classification, the label dispensed or distributed pursuant to a prescription drug or medication order shall contain the following:

(i) the generic name(s) or the official name(s) of the principal active ingredient(s) of the compounded sterile preparation;

(ii) for outpatient prescription orders other than sterile radiopharmaceuticals [~~only~~], a statement that the compounded sterile preparation has been compounded by the pharmacy. (An auxiliary label may be used on the container to meet this requirement);

(iii) a beyond-use date. The beyond-use date shall be determined as outlined in Chapter 797, Pharmacy Compounding--Sterile Preparations of the USP/NF, and paragraph (7)(G) of this subsection;

(B) - (C) (No change.)

(10) Written drug information for prescription drug orders only. Written information about the compounded preparation or its major active ingredient(s) shall be given to the patient at the time of dispensing a prescription drug order. A statement which indicates that the preparation was compounded by the pharmacy must be included in this written information. If there is no written information available, the patient shall be advised that the drug has been compounded and how to contact a pharmacist, and if appropriate, the prescriber, concerning the drug. This paragraph does not apply to the preparation of radiopharmaceuticals.

(11) Pharmaceutical Care Services. In addition to the pharmaceutical care requirements for the pharmacy's specific license classification, the following requirements for sterile preparations compounded pursuant to prescription drug orders must be met. This paragraph does not apply to the preparation of radiopharmaceuticals.

(A) - (D) (No change.)

(12) (No change.)

(13) Compounding process.

(A) Standard operating procedures (SOPs). All significant procedures performed in the compounding area shall be covered by written SOPs designed to ensure accountability, accuracy, quality, safety, and uniformity in the compounding process. At a minimum, SOPs shall be developed and implemented for:

(i) the facility;

(ii) equipment;

(iii) personnel;

(iv) preparation evaluation;

(v) quality assurance;

(vi) preparation recall;

(vii) packaging; and

(viii) storage of compounded sterile preparations.

(B) USP/NF. Any compounded formulation with an official monograph in the USP/NF shall be compounded, labeled, and packaged in conformity with the USP/NF monograph for the drug.

(C) Personnel Cleansing and Garbing.

(i) Any person with an apparent illness or open lesion, including rashes, sunburn, weeping sores, conjunctivitis, and active respiratory infection, that may adversely affect the safety or quality of a drug preparation being compounded shall be excluded from work-

ing in ISO Class 5, [and] ISO Class 7, and ISO Class 8 compounding areas until the condition is remedied.

(ii) Before entering the buffer area, compounding personnel must remove the following:

(I) personal outer garments (e.g., bandanas, coats, hats, jackets, scarves, sweaters, vests);

(II) all cosmetics, because they shed flakes and particles; and

(III) all hand, wrist, and other body jewelry or piercings (e.g., earrings, lip or eyebrow piercings) that can interfere with the effectiveness of personal protective equipment (e.g., fit of gloves and cuffs of sleeves).

(iii) The wearing of artificial nails or extenders is prohibited while working in the sterile compounding environment. Natural nails shall be kept neat and trimmed.

(iv) Personnel shall don personal protective equipment and perform hand hygiene in an order that proceeds from the dirtiest to the cleanest activities as follows:

(I) Activities considered the dirtiest include donning of dedicated shoes or shoe covers, head and facial hair covers (e.g., beard covers in addition to face masks), and face mask/eye shield. Eye shields are optional unless working with irritants like germicidal disinfecting agents or when preparing hazardous drugs.

(II) After donning dedicated shoes or shoe covers, head and facial hair covers, and face masks, personnel shall perform a hand hygiene procedure by removing debris from underneath fingernails using a nail cleaner under running warm water followed by vigorous hand washing. Personnel shall begin washing arms at the hands and continue washing to elbows for at least 30 seconds with either a plain (non-antimicrobial) soap, or antimicrobial soap, and water while in the ante-area. Hands and forearms to the elbows shall be completely dried using lint-free disposable towels, an electronic hands-free hand dryer, or a HEPA filtered hand dryer.

(III) After completion of hand washing, personnel shall don clean non-shedding gowns with sleeves that fit snugly around the wrists and enclosed at the neck.

(IV) Once inside the buffer area or segregated compounding area, and prior to donning sterile powder-free gloves, antiseptic hand cleansing shall be performed using a waterless alcohol-based surgical hand scrub with persistent activity following manufacturers' recommendations. Hands shall be allowed to dry thoroughly before donning sterile gloves.

(V) Sterile gloves that form a continuous barrier with the gown shall be the last item donned before compounding begins. Sterile gloves shall be donned using proper technique to ensure the sterility of the glove is not compromised while donning. The cuff of the sterile glove shall cover the cuff of the gown at the wrist. When preparing hazardous preparations, the compounder shall double glove or shall use single gloves ensuring that the gloves are sterile powder-free chemotherapy-rated gloves. Routine application of sterile 70% IPA shall occur throughout the compounding day and whenever non-sterile surfaces are touched.

(v) When compounding personnel shall temporarily exit the buffer area [ISO Class 7 environment] during a work shift, the exterior gown, if not visibly soiled, may be removed and retained in the [ISO Class 8] ante-area, to be re-donned during that same work shift only. However, shoe covers, hair and facial hair covers, face mask/eye shield, and gloves shall be replaced with new ones before re-entering the buffer area [ISO Class 7 clean environment] along with performing proper hand hygiene.

(vi) During high-risk compounding activities that precede terminal sterilization, such as weighing and mixing of non-sterile ingredients, compounding personnel shall be garbed and gloved the same as when performing compounding in an ISO Class 5 environment. Properly garbed and gloved compounding personnel who are exposed to air quality that is either known or suspected to be worse than ISO Class 7 shall re-garb personal protective equipment along with washing their hands properly, performing antiseptic hand cleansing with a sterile 70% IPA-based or another suitable sterile alcohol-based surgical hand scrub, and donning sterile gloves upon re-entering the ISO Class 7 buffer area.

(vii) When compounding aseptic isolators or compounding aseptic containment isolators are the source of the ISO Class 5 environment, at the start of each new compounding procedure, a new pair of sterile gloves shall be donned within the CAI or CACI. In addition, the compounding personnel should follow the requirements as specified in this subparagraph, unless the isolator manufacturer can provide written documentation based on validated environmental testing that any components of personal protective equipment or cleansing are not required.

(14) Quality Assurance.

(A) Initial Formula Validation. Prior to routine compounding of a sterile preparation, a pharmacy shall conduct an evaluation that shows that the pharmacy is capable of compounding a preparation that is sterile and that contains the stated amount of active ingredient(s).

(i) Low risk preparations.

(I) Quality assurance practices include, but are not limited to the following:

(-a-) Routine disinfection and air quality testing of the direct compounding environment to minimize microbial surface contamination and maintain ISO Class 5 air quality.

(-b-) Visual confirmation that compounding personnel are properly donning and wearing appropriate items and types of protective garments and goggles.

(-c-) Review of all orders and packages of ingredients to ensure that the correct identity and amounts of ingredients were compounded.

(-d-) Visual inspection of compounded sterile preparations, except for sterile radiopharmaceuticals, to ensure the absence of particulate matter in solutions, the absence of leakage from vials and bags, and the accuracy and thoroughness of labeling.

(II) Example of a Media-Fill Test Procedure. This, or an equivalent test, is performed at least annually by each person authorized to compound in a low-risk level under conditions that closely simulate the most challenging or stressful conditions encountered during compounding of low-risk level sterile preparations. Once begun, this test is completed without interruption within an ISO Class 5 air quality environment. Three sets of four 5-milliliter aliquots of sterile Soybean-Casein Digest Medium are transferred with the same sterile 10-milliliter syringe and vented needle combination into separate sealed, empty, sterile 30-milliliter clear vials (i.e., four 5-milliliter aliquots into each of three 30-milliliter vials). Sterile adhesive seals are aseptically affixed to the rubber closures on the three filled vials. The vials are incubated within a range of 20 - 35 degrees Celsius for a minimum of 14 days. Failure is indicated by visible turbidity in the medium on or before 14 days. The media-fill test must include a positive-control sample.

(ii) - (iii) (No change.)

(B) Finished preparation release checks and tests.

(i) (No change.)

(ii) All compounded sterile preparations, except for sterile radiopharmaceuticals, that are intended to be solutions must be visually examined for the presence of particulate matter and not administered or dispensed when such matter is observed.

(iii) - (iv) (No change.)

(C) Environmental Testing.

(i) - (ii) (No change.)

(iii) Pressure differential monitoring. A pressure gauge or velocity meter shall be installed to monitor the pressure differential or airflow between the buffer area and the ante-area and between the ante-area and the general environment outside the compounding area. The results shall be reviewed and documented on a log at least every work shift (minimum frequency shall be at least daily) or by a continuous recording device. The pressure between the ISO Class 7 or ISO Class 8 and the general pharmacy area shall not be less than 0.02 inch water column.

(iv) - (vii) (No change.)

(15) Quality control.

(A) Quality control procedures. The pharmacy shall follow established quality control procedures to monitor the compounding environment and quality of compounded drug preparations for conformity with the quality indicators established for the preparation. When developing these procedures, pharmacy personnel shall consider the provisions of USP Chapter 71, Sterility Tests, USP Chapter 85, Bacterial Endotoxins Test, Pharmaceutical Compounding-Non-sterile Preparations, USP Chapter 795, USP Chapter 797, Pharmaceutical Compounding--Sterile Preparations, USP Chapter 800, Hazardous Drugs--Handling in Healthcare Settings, USP Chapter 823, Positron Emission Tomography Drugs for Compounding, Investigational, and Research Uses, USP [~~Chapter 1075, Good Compounding Practices, and~~] Chapter 1160, Pharmaceutical Calculations in Prescription Compounding, and USP Chapter 1163, Quality Assurance in Pharmaceutical Compounding of the current USP/NF. Such procedures shall be documented and be available for inspection.

(B) (No change.)

(e) (No change.)

(f) Office Use Compounding and Distribution of Sterile Compounded Preparations

(1) General.

(A) A pharmacy may compound, dispense, deliver, and distribute a compounded sterile preparation as specified in Subchapter D, Texas Pharmacy Act Chapter 562.

(B) A Class A-S pharmacy is not required to register or be licensed under Chapter 431, Health and Safety Code, to distribute sterile compounded preparations to a Class C or Class C-S pharmacy.

(C) A Class C-S pharmacy is not required to register or be licensed under Chapter 431, Health and Safety Code, to distribute sterile compounded preparations that the Class C-S pharmacy has compounded for other Class C or Class C-S pharmacies under common ownership.

(D) To compound and deliver a compounded preparation under this subsection, a pharmacy must:

(i) verify the source of the raw materials to be used in a compounded drug;

(ii) comply with applicable United States Pharmacopoeia guidelines, including the testing requirements, and the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191);

(iii) enter into a written agreement with a practitioner for the practitioner's office use of a compounded preparation;

(iv) comply with all applicable competency and accrediting standards as determined by the board; and

(v) comply with the provisions of this subsection.

(E) This subsection does not apply to Class B pharmacies compounding sterile radiopharmaceuticals that are furnished for departmental or physicians' use if such authorized users maintain a Texas radioactive materials license.

(2) - (4) (No change.)

(g) (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 June 12, 2015.

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Gay Dodson, R.Ph.
Executive Director
Texas State Board of Pharmacy
Earliest possible date of adoption: July 26, 2015
For further information, please call: (512) 305-8073

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CHAPTER 295. PHARMACISTS

22 TAC §295.5

The Texas State Board of Pharmacy proposes amendments to §295.5, concerning Pharmacist License or Renewal Fees. The amendments, if adopted, add a fee to fund the Prescription Drug Monitoring Program as passed by Senate Bill 195 of the 84th Texas Legislature.

Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five-year period the rule is in effect, there will be fiscal implications for state government as a result of enforcing or administering the amended rule as follows:

Revenue increase

FY2016: $320,082

FY2017: $380,100

FY2018: $380,100

FY2019: $380,100

FY2020: $380,100

There are no anticipated fiscal implications for local government.

Ms. Dodson has determined that, for each year of the first five year period the amendments will be in effect, the public benefit anticipated as a result of enforcing the rule will be assuring that the Texas State Board of Pharmacy is adequately funded to carry out its mission. The effect on large, small or micro-businesses

(pharmacies) will be the same as the economic cost to an individual, if the pharmacy chooses to pay the fee for the individual.

Economic cost to persons who are required to comply with the amended rule will be an increase of $21 for an initial license and renewal of a license.

Comments on the amendments may be submitted to Allison Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Austin, Texas 78701, FAX (512) 305-8008. Comments must be received by 5:00 p.m., August 3, 2015.

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

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

§295.5. Pharmacist License or Renewal Fees.

(a) Biennial Registration. The Texas State Board of Pharmacy shall require biennial renewal of all pharmacist licenses provided under the Pharmacy Act, §559.002.

(b) Initial License Fee.

(1) Prior to October 1, 2015, the fee for the initial license shall be $281 for a two year registration and for processing the application and issuance of the pharmacist license as authorized by the Act, §554.006. Effective October 1, 2015, the fee for an initial license shall be $235 for a two year registration and for processing the application and issuance of the pharmacist license as authorized by the Act, §554.006.

(2) In addition, the following fees shall be collected:

(A) $13 surcharge to fund a program to aid impaired pharmacists and pharmacy students as authorized by the Act, §564.051;

(B) $5 surcharge to fund TexasOnline as authorized by Chapter 2054, Subchapter I, Government Code; [~~and~~]

(C) $5 surcharge to fund the Office of Patient Protection as authorized by Chapter 101, Subchapter G, and Occupations Code; and[.]

(D) $21 surcharge to fund the Prescription Monitoring Program as authorized by §554.006, Occupations Code, effective October 1, 2015.

(3) New pharmacist licenses shall be assigned an expiration date and initial fee shall be prorated based on the assigned expiration date.

(c) Renewal Fee.

(1) Prior to October 1, 2015, the fee for biennial renewal of a pharmacist license shall be $281 for processing the application and issuance of the pharmacist license as authorized by the Act, §554.006. Effective October 1, 2015, the fee for biennial renewal of a pharmacist license shall be $235 for processing the application and issuance of the pharmacist license as authorized by the Act, §554.006.

(2) In addition, the following fees shall be collected:

(A) $13 surcharge to fund a program to aid impaired pharmacists and pharmacy students as authorized by the Act, §564.051;

(B) $5 surcharge to fund TexasOnline as authorized by Chapter 2054, Subchapter I, Government Code; [~~and~~]

(C) $2 surcharge to fund the Office of Patient Protection as authorized by Chapter 101, Subchapter G, Occupations Code; and[.]

(D) $21 surcharge to fund the Prescription Drug Monitoring Program as authorized by §554.006, Occupations Code, effective October 1, 2015.

(d) Exemption from fee. The license of a pharmacist who has been licensed by the Texas State Board of Pharmacy for at least 50 years or who is at least 72 years old shall be renewed without payment of a fee provided such pharmacist is not actively practicing pharmacy. The renewal certificate of such pharmacist issued by the board shall reflect an inactive status. A person whose license is renewed pursuant to this subsection may not engage in the active practice of pharmacy without first paying the renewal fee as set out in subsection (b) of this section.

(e) Duplicate or Amended Certificates.

(1) The fee for issuance of an amended pharmacist's license renewal certificate shall be $20.

(2) The fee for issuance of an amended license to practice pharmacy (wall certificate) only, or renewal certificate and wall certificate shall be $35.

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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Gay Dodson, R.Ph.
Executive Director
Texas State Board of Pharmacy
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For further information, please call: (512) 305-8073

CHAPTER 297. PHARMACY TECHNICIANS AND PHARMACY TECHNICIAN TRAINEES

22 TAC §297.8

The Texas State Board of Pharmacy proposes amendments to §297.8, concerning Continuing Education Requirements. The amendments, if adopted, decrease the number of in-service hours allowed for continuing education from 10 to 5 hours; clarify the requirements for continuing education hours; and clarify the types of programs pharmacy technicians may count for continuing education.

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

Ms. Dodson has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the amendment will be ensuring pharmacy technicians have the appropriate continuing education. There is no fiscal impact for individuals, small or large businesses, or to other entities which are required to comply with this section.

Comments on the amendments may be submitted to Allison Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Austin, Texas 78701, FAX (512) 305-8008. Comments must be received by 5:00 p.m., August 3, 2015.

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

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

§297.8. Continuing Education Requirements.

(a) Pharmacy Technician Trainees. Pharmacy technician trainees are not required to complete continuing education.

(b) Pharmacy Technicians.

(1) All pharmacy technicians shall be exempt from the continuing education requirements during their initial registration period.

(2) All pharmacy technicians must complete and report 20 contact hours of approved continuing education obtained during the previous [~~per~~] renewal period in pharmacy related subjects in order to renew their registration as a pharmacy technician. No more than 5 [~~10~~] of the 20 hours may be earned at the pharmacy technician's workplace through in-service education and training under the direct supervision of the pharmacist(s).

(3) A pharmacy technician may satisfy the continuing education requirements by: [~~For renewals received after January 1, 2015, one hour specified in paragraph (2) of this subsection shall be related to Texas pharmacy laws or rules.~~]

(A) successfully completing the number of continuing education hours necessary to renew a registration as specified in paragraph (2) of this subsection;

(B) successfully completing during the preceding license period, one credit hour for each year of the renewal period, in pharmacy related college course(s); or

(C) taking and passing the Pharmacy Technician Certification Exam (PTCE) during the preceding renewal period, which shall be equivalent to the number of continuing education hours necessary to renew a registration as specified in paragraph (2) of this subsection.

(4) To renew a registration, a pharmacy technician must report on the renewal application completion of at least twenty contact hours of continuing education. The following is applicable to the reporting of continuing education contact hours.

(A) For renewals received after January 1, 2015, at least one contact hour of the 20 contact hours specified in paragraph (2) of this subsection shall be related to Texas pharmacy laws or rules.

(B) Any continuing education requirements which are imposed upon a pharmacy technician as a part of a board order or agreed board order shall be in addition to the requirements of this section.

(5) [~~(4)~~] Pharmacy technicians are required to maintain records of completion of continuing education for three years from the date of reporting the hours on a renewal application. The records must contain at least the following information:

(A) name of participant;

(B) title and date of program;

(C) program sponsor or provider (the organization);

(D) number of hours awarded; and

(E) dated signature of sponsor representative.

(6) [~~(5)~~] The board shall audit the records of pharmacy technicians for verification of reported continuing education credit. The following is applicable for such audits.

(A) Upon written request, a pharmacy technician shall provide to the board copies of the record required to be maintained in paragraph (5) [~~(4)~~] of this subsection or certificates of completion for all continuing education contact hours reported during a specified registration period. Failure to provide all requested records by the specified deadline constitutes prima facie evidence of a violation of this rule.

(B) Credit for continuing education contact hours shall only be allowed for programs for which the pharmacy technician submits copies of records reflecting that the hours were completed during the specified registration period(s). Any other reported hours shall be disallowed.

(C) A pharmacy technician who submits false or fraudulent records to the board shall be subject to disciplinary action by the board [~~shall not submit false or fraudulent records to the board~~].

(7) The following is applicable if a pharmacy technician fails to report completion of the required continuing education.

(A) The registration of a pharmacy technician who fails to report completion of the required number of continuing education contact hours shall not be renewed and the pharmacy technician shall not be issued a renewal certificate for the license period until such time as the pharmacy technician successfully completes the required continuing education and reports the completion to the board.

(B) A person shall not practice as a pharmacy technician without a current renewal certificate.

(8) A pharmacy technician who has had a physical disability, illness, or other extenuating circumstances which prohibits the pharmacy technician from obtaining continuing education credit during the preceding license period may be granted an extension of time to complete the continued education requirement. The following is applicable for this extension:

(A) The pharmacy technician shall submit a petition to the board with his/her registration renewal application which contains:

(i) the name, address, and registration number of the pharmacy technician;

(ii) a statement of the reason for the request for extension;

(iii) if the reason for the request for extension is health related, a statement from the attending physician(s) treating the pharmacy technician which includes the nature of the physical disability or illness and the dates the pharmacy technician was incapacitated; and

(iv) if the reason for the request for the extension is for other extenuating circumstances, a detailed explanation of the extenuating circumstances and if because of military deployment, documentation of the dates of the deployment.

(B) After review and approval of the petition, a pharmacy technician may be granted an extension of time to comply with the continuing education requirement which shall not exceed one license renewal period.

(C) An extension of time to complete continuing education credit does not relieve a pharmacy technician from the continuing education requirement during the current license period.

(D) If a petition for extension to the reporting period for continuing education is denied, the pharmacy technician shall:

(i) have 60 days to complete and report completion of the required continuing education requirements; and

(ii) be subject to the requirements of paragraph (6) of this subsection relating to failure to report completion of the required continuing education if the required continuing education is not completed and reported within the required 60-day time period.

(9) The following are considered approved programs for pharmacy technicians.

(A) Any program presented by an Accreditation Council for Pharmacy Education (ACPE) approved provider subject to the following conditions.

(i) Pharmacy technicians may receive credit for the completion of the same ACPE course only once during a renewal period.

(ii) Pharmacy technicians who present approved ACPE continuing education programs may receive credit for the time expended during the actual presentation of the program. Pharmacy technicians may receive credit for the same presentation only once during a license period.

(iii) Proof of completion of an ACPE course shall contain the following information:

(I) name of the participant;

(II) title and completion date of the program;

(III) name of the approved provider sponsoring or cosponsoring the program;

(IV) number of contact hours awarded;

(V) the assigned ACPE universal program number and a "T" designation indicating that the CE is targeted to pharmacy technicians; and

(VI) either:

(-a-) a dated certifying signature of the approved provider and the official ACPE logo; or

(-b-) the Continuing Pharmacy Education Monitor logo.

(B) Pharmacy related college courses which are part of a pharmacy technician training program or part of a professional degree program offered by a college of pharmacy.

(i) Pharmacy technicians may receive credit for the completion of the same course only once during a license period. A course is equivalent to one credit hour for each year of the renewal period. One credit hour is equal to 15 contact hours.

(ii) Pharmacy technicians who teach these courses may receive credit towards their continuing education, but such credit may be received only once for teaching the same course during a license period.

(C) Basic cardiopulmonary resuscitation (CPR) courses which lead to CPR certification by the American Red Cross or the American Heart Association or its equivalent shall be recognized as approved programs. Pharmacy technicians may receive credit for one contact hour towards their continuing education requirement for completion of a CPR course only once during a renewal period. Proof of completion of a CPR course shall be the certificate issued by the American Red Cross or the American Heart Association or its equivalent.

(D) Advanced cardiovascular life support courses (ACLS) or pediatric advanced life support (PALS) courses which lead to initial ACLS or PALS certification by the American Heart Association or its equivalent shall be recognized as approved programs. Pharmacy technicians may receive credit for twelve contact hours towards their continuing education requirement for completion of an ACLS or PALS course only once during a renewal period. Proof of completion of an ACLS or PALS course shall be the certificate issued by the American Heart Association or its equivalent.

(E) Advanced cardiovascular life support courses (ACLS) or pediatric advanced life support (PALS) courses which lead to ACLS or PALS recertification by the American Heart Association or its equivalent shall be recognized as approved programs. Pharmacy may receive credit for four contact hours towards their continuing education requirement for completion of an ACLS or PALS recertification course only once during a renewal period. Proof of completion of an ACLS or PALS recertification course shall be the certificate issued by the American Heart Association or its equivalent.

(F) Attendance at Texas State Board of Pharmacy Board Meetings shall be recognized for continuing education credit as follows.

(i) Pharmacy technicians shall receive credit for three contact hours towards their continuing education requirement for attending a full, public board business meeting in its entirety.

(ii) A maximum of six contact hours are allowed for attendance at a board meeting during a renewal period.

(iii) Proof of attendance for a complete board meeting shall be a certificate issued by the Texas State Board of Pharmacy.

(G) Participation in a Texas State Board of Pharmacy appointed Task Force shall be recognized for continuing education credit as follows.

(i) Pharmacy technicians shall receive credit for three contact hours towards their continuing education requirement for participating in a Texas State Board of Pharmacy appointed Task Force.

(ii) Proof of participation for a Task Force shall be a certificate issued by the Texas State Board of Pharmacy.

(H) Attendance at programs presented by the Texas State Board of Pharmacy or courses offered by the Texas State Board of Pharmacy as follows:

(i) Pharmacy technicians shall receive credit for the number of hours for the program or course as stated by the Texas State Board of Pharmacy.

(ii) Proof of attendance at a program presented by the Texas State Board of Pharmacy or completion of a course offered by the Texas State Board of Pharmacy shall be a certificate issued by the Texas State Board of Pharmacy.

(I) Pharmacy technicians shall receive credit toward their continuing education requirements for programs or courses approved by other state boards of pharmacy as follows:

(i) Pharmacy technicians shall receive credit for the number of hours for the program or course as specified by the other state board of pharmacy.

(ii) Proof of attendance at a program or course approved by another state board of pharmacy shall be a certificate or other documentation that indicates:

(I) name of the participant;

(II) title and completion date of the program;

(III) name of the approved provider sponsoring or cosponsoring the program;

(IV) number of contact hours awarded;

(V) a dated certifying signature of the provider; and

(VI) documentation that the program is approved by the other state board of pharmacy.

(J) Completion of an Institute for Safe Medication Practices' (ISMP) Medication Safety Self-Assessment for hospital pharmacies or for community/ambulatory pharmacies shall be recognized for continuing education credit as follows.

(i) Pharmacy technicians shall receive credit for three contact hours towards their continuing education requirement for completion of an ISMP Medication Safety Self-Assessment.

(ii) Proof of completion of an ISMP Medication Safety Self-Assessment shall be:

(I) a continuing education certificate provided by an ACPE approved provider for completion of an assessment; or

(II) a document from ISMP showing completion of an assessment.

(K) Programs approved by the American Medical Association (AMA) as Category 1 Continuing Medical Education (CME) and accredited by the Accreditation Council for Continuing Medical Education subject to the following conditions.

(i) Pharmacy technicians may receive credit for the completion of the same CME course only once during a license period.

(ii) Pharmacy technicians who present approved CME programs may receive credit for the time expended during the actual presentation of the program. Pharmacy technicians may receive credit for the same presentation only once during a license period.

(iii) Proof of completion of a CME course shall contain the following information:

(I) name of the participant;

(II) title and completion date of the program;

(III) name of the approved provider sponsoring or cosponsoring the program;

(IV) number of contact hours awarded; and

(V) a dated certifying signature of the approved provider.

(L) In-service education provided under the direct supervision of a pharmacist shall be recognized as continuing education as follows:

(i) Pharmacy technicians shall receive credit for the number of hours provided by pharmacist(s) at the pharmacy technician's place of employment.

(ii) Proof of completion of in-service education shall contain the following information:

(I) name of the participant;

(II) title or description of the program;

(III) completion date of the program;

(IV) name of the pharmacist supervising the in-service education;

(V) number of hours; and

(VI) a dated signature of the pharmacist providing the in-service education.

(10) [~~(6)~~] Pharmacy technicians who are certified by the Pharmacy Technician Certification Board and maintain this certification shall be considered as having met the continuing education requirements of this section and shall not be subject to audit by the board provided one hour of continuing education is related to Texas pharmacy law or rules.

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 June 12, 2015.

TRD-201502228
Gay Dodson, R.Ph.
Executive Director
Texas State Board of Pharmacy
Earliest possible date of adoption: July 26, 2015
For further information, please call: (512) 305-8073

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 416. MENTAL HEALTH COMMUNITY-BASED SERVICES SUBCHAPTER C. JAIL-BASED COMPETENCY RESTORATION PROGRAM

25 TAC §§416.76 - 416.93

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes new §§416.76 - 416.93, concerning the standards for a Jail-based Competency Restoration Program.

BACKGROUND AND PURPOSE

The new rules are necessary to comply with Senate Bill (SB) 1475, 83rd Legislative Session, Regular Session, 2013, which amended the Code of Criminal Procedure, Article 46B.073 by adding subsection (e) and new Article 46B.090. The new provisions require that the department contract with an entity to provide jail-based competency restoration services under a pilot program for two years for people with a mental health or a co-occurring psychiatric and substance use disorder, including competency education for persons found incompetent to stand trial.

SECTION-BY-SECTION SUMMARY

New §416.76 describes the purpose of the subchapter which is to outline standards and requirements for operating jail-based competency restoration services.

New §416.77 sets forth the subchapter's application to providers of jail-based competency restoration services.

New §416.78 sets forth the definitions that are used in the subchapter. Definitions that are proposed include the terms "Co-occurring psychiatric and substance use disorder (COPSD)," "Community provider," "Competency restoration," "Competency restoration training module or training module," "DSHS," "DSHS Statewide Forensic Hospital Clearinghouse Waitlist or clearinghouse waitlist," "Incompetent to stand trial (IST)," "Inpatient forensic facility," "Jail-based competency restoration," "Legally authorized representative (LAR)," "Licensed practitioner of the healing arts (LPHA)," "Local behavioral health authority (LBHA)," "Local mental health authority (LMHA)," "Managed care organization (MCO)," "Mental illness," "Peer Provider," "Provider," "Qualified mental health professional-community services (QMHP-CS)," "Specially trained security officer," "Sub-contractor," and "Texas Commission on Jail Standards."

New §416.79 sets forth the requirements for eligibility criteria to participate in the jail-based competency restoration program.

New §416.80 sets forth standards for operating a program.

New §416.81 sets forth the requirements for program admission, assessment, and reassessment.

New §416.82 sets forth the requirements for written policies and procedures for the program.

New §416.83 sets forth the requirements for staff member training for the program.

New §416.84 sets forth the requirements for responsibilities of the LMHA, LBHA, or MCO in screening, continuity of care planning, and data reporting of services provided to participants in the program.

New §416.85 sets forth the requirements of treatment planning for participants in the program.

New §416.86 sets forth the requirements for program staffing of the program.

New §416.87 sets forth the requirements for rights afforded to participants in the program.

New §416.88 sets forth the requirements for competency restoration services provided in the program.

New §416.89 sets forth the requirements for using a DSHS-approved competency restoration module for the program.

New §416.90 sets forth the requirements for coordination of transitional services for participants' post-treatment in the program.

New §416.91 sets forth the requirements for participants' discharge planning post-treatment.

New §416.92 sets forth the requirements for compliance with statutes, rules, and other documents related to providing jail-based competency restoration services.

New §416.93 sets forth the requirements for collecting and reporting outcome measures associated with the program.

FISCAL NOTE

Lauren Lacefield Lewis, Assistant Commissioner for the Mental Health and Substance Abuse Division, has determined that for each year of the first five years that the sections will be in effect, there will be no fiscal implications to state or local governments as a result of enforcing and administering the sections as proposed.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Mrs. Lacefield Lewis has also determined that the proposed rules will have no direct adverse economic impact on small businesses or micro-businesses. This was determined by interpretation that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the sections.

The rules may have direct application to a private provider, an LMHA, an LBHA, or an MCO, none of which meet the definition of small or micro-businesses under the Government Code, §2006.001. Therefore, an economic impact statement and regulatory flexibility analysis for small businesses are not required.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no anticipated impact on local employment.

PUBLIC BENEFIT

Mrs. Lacefield Lewis has determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. The public benefit anticipated as a result of enforcing or administering the sections is to provide the contractor of jail-based competency restoration with standards for delivering competency restoration services in a jail setting. These services will: reduce the number of maximum security and non-maximum security defendants on the state mental health program clearinghouse waiting list determined to be IST due to mental illness and/or COPSD; provide a cost-effective alternative to restoration in a state hospital; and reduce the demand for forensic state hospital bed days in the area served by the pilot.

REGULATORY ANALYSIS

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

TAKINGS IMPACT ASSESSMENT

The department has determined that the proposed new rules do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Dr. Courtney Heard, Adult Mental Health Program Services, Department

of State Health Services, Mail Code 2091, P.O. Box 149347, Austin, Texas 78714-9347, telephone (512) 206-5081 or by email to *MHSArules@dshs.state.tx.us.* Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

LEGAL CERTIFICATION

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

STATUTORY AUTHORITY

The new sections are authorized by Texas Code of Criminal Procedure, Articles 46B.073 and 46B.090; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The new sections affect Government Code, §531.0055; and Health and Safety Code, §§534.053, 534.058, and 1001.075.

§416.76. Purpose.

The purpose of this subchapter is to provide standards which are consistent with the state hospital standards for competency restoration for the Jail-based Competency Restoration Program (program), as required by Texas Code of Criminal Procedure, Articles 46B.073 and 46B.090, through Acts of the 83rd Texas Legislature, Regular Session, as Senate Bill 1475. The program shall include mental health and co-occurring psychiatric and substance use disorder (COPSD) treatment services, as well as competency education in the jail for adult men or women found incompetent to stand trial (IST), under Texas Code of Criminal Procedure, Chapter 46B.

§416.77. Application.

This subchapter applies to potential and current providers of jail-based competency restoration services authorized by Texas Code of Criminal Procedure, Chapter 46B, including local mental health authorities (LMHAs), local behavioral health authorities (LBHAs), and managed care organizations (MCOs).

§416.78. Definitions.

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

(1) Co-occurring psychiatric and substance disorder (COPSD)--The co-occurring diagnoses of psychiatric and substance use disorders.

(2) Community provider--Any person or legal entity that contracts with DSHS, an LMHA, LBHA, or MCO to provide mental health and substance disorder community services to individuals, including that part of an LMHA, LBHA or MCO directly providing mental health community services to individuals. The term includes providers of mental health case management services and providers of mental health rehabilitative services.

(3) Competency restoration--The treatment process for restoring one's ability to consult with his or her attorney with a reasonable degree of rational understanding and a rational and factual understanding of the proceedings against them.

(4) Competency restoration training module or training module--The DSHS-approved training module to be used by provider staff members who provide competency education during competency restoration.

(5) DSHS--The Department of State Health Services.

(6) DSHS Statewide Forensic Hospital Clearinghouse Waitlist or clearinghouse waitlist--A forensic waiting list for persons committed to one of the state mental health hospitals under the Texas Code of Criminal Procedure, Chapter 46B as incompetent to stand trial (IST) or 46C not guilty by reason of insanity.

(7) Incompetent to stand trial (IST)--A person is incompetent to stand trial if the person does not have:

(A) sufficient present ability to consult with the person's lawyer with a reasonable degree of rational understanding; and

(B) a rational as well as factual understanding of the proceedings against the person.

(8) Inpatient forensic facility--An entity that provides inpatient forensic mental health treatment such as a state mental health facility.

(9) Jail-based competency restoration--Competency restoration conducted in a county jail setting that is provided in a dedicated mental health unit.

(10) Legally authorized representative (LAR)--A person authorized by law to act on behalf of an individual with regard to a matter described in this subchapter, who may be a parent, guardian, or managing conservator of a minor, the guardian of an adult, or the legal representative of a deceased individual.

(11) Licensed practitioner of the healing arts (LPHA)--A staff member who is:

(A) a physician;

(B) a licensed professional counselor;

(C) a licensed clinical social worker (formally a licensed master social worker-advanced clinical practitioner) as determined by the Texas State Board of Social Work Examiners in accordance with Texas Occupations Code, Chapter 505;

(D) a psychologist;

(E) an advanced practice nurse recognized by the Board of Nurse Examiners for the State of Texas as a clinical nurse specialist in psych/mental health or nurse practitioner in psych/mental health; or

(F) a licensed marriage and family therapist.

(12) Local behavioral health authority (LBHA)--An entity designated as the local behavioral health authority in accordance with Texas Health and Safety Code, §533.0356.

(13) Local mental health authority (LMHA)--An entity designated as the local mental authority by DSHS in accordance with the Texas Health and Safety Code, §533.035(a). For purposes of this subchapter, the term includes an entity designated as a local behavioral health authority pursuant to Texas Health and Safety Code, §533.0356.

(14) Managed care organization (MCO)--An entity that has a current Texas Department of Insurance certificate of authority to operate as a health maintenance organization (HMO) in the Texas Insurance Code, Chapter 843, or as an approved nonprofit health corporation in the Texas Insurance Code, Chapter 844, and that provides mental health community services pursuant to a contract with the DSHS.

(15) Mental illness--An illness, disease, or condition (other than a sole diagnosis of epilepsy, senility, substance use disorder or dependency, intellectual or developmental disorder, or autism) that:

(A) substantially impairs an individual's thought, perception of reality, emotional process, or judgment; or

(B) grossly impairs an individual's behavior as demonstrated by recent disturbed behavior.

(16) Peer provider--A staff member who:

(A) has received:

(i) a high school diploma; or

(ii) a high school equivalency certificate issued in accordance with the law of the issuing state;

(B) has at least one cumulative year of receiving mental health community services; and

(C) is under the direct clinical supervision of an LPHA.

(17) Provider--A person or entity that contracts with the DSHS to provide jail-based competency restoration services.

(18) Qualified mental health professional-community services (QMHP-CS)--A staff member who is credentialed as a QMHP-CS who has demonstrated and documented competency in the work to be performed and:

(A) has a bachelor's degree from an accredited college or university with a minimum number of hours that is equivalent to a major (as determined by the LMHA or MCO in accordance with §412.316(d) of this title (relating to Competency and Credentialing) in psychology, social work, medicine, nursing, rehabilitation, counseling, sociology, human growth and development, physician assistant, gerontology, special education, educational psychology, early childhood education, or early childhood intervention;

(B) is a registered nurse; or

(C) completes an alternative credentialing process identified by the DSHS.

(19) Specially trained security officer--A county jailer that has obtained certification as a special officer for offenders with mental illness as provided through the Texas Commission on Law Enforcement, and has received staff member training in accordance with this subchapter.

(20) Sub-contractor--A person or entity that contracts with the provider of jail-based competency restoration services.

(21) Texas Commission on Jail Standards--The regulatory agency for all county jails and privately operated municipal jails in the state as established in 37 TAC Part 9.

§416.79. Program Eligibility.

(a) To be eligible to participate in the program, participants shall be adult males or females who are determined by the court to be incompetent to stand trial (IST) pursuant to Texas Code of Criminal Procedure, Article 46B.

(b) Participants must be screened for outpatient competency restoration (OCR) by the LMHA, LBHA, or MCO and determined to be ineligible for those services before being admitted into the jail-based competency restoration program.

(c) Potential participants who are found to have an intellectual or developmental disability in the absence of any serious mental illness must be referred to the Local Intellectual and Developmental Authority through the LMHA, LBHA, or MCO for a decision regarding the appropriate services for these individuals.

(d) Evaluation for eligibility shall also include assessment and testing to include participant's current psychological functioning, and the likeliness to restore to competency.

§416.80. Program Standards.

(a) The program shall meet the standards set forth in Texas Code of Criminal Procedure, Article 46B.090(f), as may be amended, and:

(1) upon operation of program services be certified by a nationwide nonprofit organization that accredits health care organizations and programs and maintain this accreditation while under contract with DSHS to provide competency restoration services under this subchapter;

(2) use a non-punitive behavior management program; and

(3) use a DSHS-approved protocol for preventing and managing aggressive behavior.

(b) The contractor shall ensure that the county jail requires jail staff be trained and demonstrate competency in preventing and managing aggressive behavior such as the Prevention and Management of Aggressive Behavior, Satori Alternatives to Managing Aggression, or other approved preventative de-escalation intervention strategies.

(c) The provider shall through contract obligate sub-contractors to comply with the sections contained in this subchapter.

§416.81. Admission, Assessment, and Reassessment.

(a) Specific deficits in rational and factual understandings of legal proceedings and/or inability to consult with the person's lawyer with a reasonable degree of rational understanding that result in incompetence to stand trial, as detailed in Texas Code of Criminal Procedure, Chapter 46B, shall be assessed upon admission to the program. These specific deficits, as appropriate, shall be listed individually in the treatment plan and targeted specifically in the participant's treatment. The treatment team shall work to identify participant strengths which may assist the participant in overcoming barriers to achieving a factual and rational understanding of legal proceedings and their ability to consult with the person's lawyer with a reasonable degree of rational understanding.

(b) The treatment team will review at minimum every two weeks the participant's progression towards attaining competency.

§416.82. Written Policies and Procedures.

The provider shall develop and implement written policies and procedures that:

(1) describe the eligibility, intake and assessment, and treatment planning processes and address coordination and continuity of care planning with the LMHA, LBHA, or MCO, beginning at admission. Any admission to the program requires a physician's confirmation of eligibility, an order of the court with jurisdiction over the participant, as well as cooperation and close coordination with the LMHA, LBHA, or MCO;

(2) assess participants for suicidality and homicidality and address any facility-based issues as well as address the degree of suicidality and homicidality by developing an individualized suicide and homicide prevention plan;

(3) outline the provider staff members' ability to monitor and report to the court a participant's restoration to competency status and readiness for return to court as specified in Texas Code of Criminal Procedure, Article 46.B.079;

(4) by the 21st day, if it is determined that a participant is not likely to be restored by the 60th day, then the participant shall be added to the DSHS Statewide Forensic Clearinghouse Waitlist;

(5) track the maximum length of stay for participants based on criminal charges. The expiration date of the competency restoration commitment shall be forwarded to the clearinghouse waitlist in the event that the participant is transferred to a state mental health facility;

(6) address how provider staff members ensure the ongoing care, treatment, and overall therapeutic environment during evenings and weekends including, but not limited to behavioral and physical health crisis consistent with §412.321(a) and (e) of this title (relating to Crisis Services);

(7) address how a participant's competency is maintained after restoration and before adjudication or transfer to a forensic hospital or discharge to the community. If a person is deemed not likely to restore and is awaiting transfer to a state mental health facility, then treatment in the program (except for competency education) shall continue until the transfer is complete; and

(8) if a participant is restored to competency he or she shall be placed in the mental health unit pending disposition of the criminal charges.

§416.83. Staff Member Training.

(a) The provider shall recruit, train, and maintain qualified staff members, with documented competency in accordance with Chapter 416, Subchapter A of this title (relating to Mental Health Rehabilitative Services) and shall also comply with the following:

(1) §412.314(e) of this title (relating to Access to Mental Health Community Services);

(2) §412.315 of this title (relating to Medical Records System); and

(3) §412.316 of this title (relating to Competency and Credentialing).

(b) Before providing services, all provider staff members shall be trained and demonstrate competence in:

(1) Rights of Participants Receiving Jail-Based Competency Restoration Services, Exhibit A, in §416.87 of this title (relating to Participant's Rights);

(2) identifying, preventing, and reporting abuse, neglect, and exploitation in accordance with the Commission on Jail Standards; Department of Family and Protective Services, Adult Protective Services; or DSHS Office of Consumer Services and Rights Protection as set forth in applicable state laws and rules concerning abuse, neglect, and exploitation; and

(3) using the protocol for preventing and managing aggressive behavior.

§416.84. LMHA, LBHA, or MCO Responsibilities.

The LMHA, LBHA or MCO is responsible for:

(1) screening participants who are determined by the court to be IST for OCR services prior to their admission to the program;

(2) participating in continuity of care planning for participants; and

(3) reporting encounters with participants in the DSHS-approved clinical records management system (e.g., Clinical Management of Behavioral Health Symptoms).

§416.85. Treatment Planning.

Based on a comprehensive assessment, the provider shall complete the treatment plan with the participant within five business days of a participant's admission to the program. Treatment planning shall include the participant and any family members or other members of a participant's natural support system. The treatments shall address the following needs as applicable:

(1) trauma-informed care;

(2) physical health concerns/issues;

(3) medication and medication management;

(4) level of family and community support;

(5) mental health concerns or issues;

(6) intellectual and developmental disabilities;

(7) substance use disorder or COPSD concerns or issues; and

(8) discharge plans developed in conjunction with the participant, LAR, and LMHA, LBHA, or MCO, as appropriate, in the event that participant is released to the community upon restoration.

§416.86. Program Staffing.

(a) The program coordinator shall be a licensed practitioner of the healing arts (LPHA), who shall also act as a liaison between the program and the courts. A multidisciplinary treatment team (team) is used to provide clinical treatment that is directed toward the specific objective of restoring the participant's competency to stand trial and is similar to the clinical treatment provided as part of a competency restoration program at a state mental health facility. The team shall include a psychiatrist, a registered nurse, a psychologist, and an LPHA, each of whom must be licensed by his or her respective Texas licensing board. The provider is encouraged to employ peer providers in addition to the program staff members required in subsection (b) of this section.

(b) Program staff members shall be on-site 24 hours per day, seven days per week, which is consistent with a state mental health facility setting.

(c) Program staff members shall be assigned to participants at an average ratio over the three shifts of not lower than 1 program staff member to 3.7 participants.

(1) Day shift program staffing shall include a minimum of a psychiatrist, a registered nurse, a half-time psychologist, and an LPHA. Two specially trained county jail security staff will be present as well.

(2) Evening shift program staffing shall include a registered nurse and a psychiatrist shall be available on call. Consistent with jail standards, two specially trained county jail security staff shall be present as well.

(3) Night shift program staffing shall include a registered nurse and a psychiatrist shall be available on call. Consistent with jail standards, two specially trained county jail security staff shall be present as well.

§416.87. Participant's Rights.

Although program participants are incarcerated while receiving program services, their rights are paramount. The provider shall comply with the Rights of Participants Receiving Jail-based Competency Restoration Services, unless otherwise limited by the rules of the Texas Commission on Jail Standards. The Rights of Participants Receiving Jail-based Competency Restoration Services, Exhibit A, can be obtained by written request addressed to The Department of State Health Services, Mental Health and Substance Abuse Services, TAC rules, P.O. Box 149347, Mail Code 2018-552, Austin, Texas 78714-9347, or by visiting http://www.dshs.state.tx.us/mhsa-rights/.

§416.88. Competency Restoration Services.

(a) Competency restoration services shall include the treatment of the underlying mental illness by a psychiatrist, and the provision of competency education, rehabilitative skills training, case management, and counseling as clinically indicated for competency restoration.

(b) Provider staff members shall provide weekly treatment hours consistent with the treatment hours provided as part of a competency restoration program at a state mental health facility, including but not limited to, 15 hours weekly of rehabilitative services, skills training, substance use disorder treatment and counseling.

(c) The provider shall deliver competency restoration services that provide a full array of mental health and COPSD treatment services that are effective, responsive, individualized, culturally competent, trauma informed, and person-centered. Services shall include, but are not limited to:

(1) psychiatric evaluation;

(2) medications;

(3) nursing services;

(4) general medical care;

(5) psychoactive medication, including court-ordered medication;

(6) rehabilitative services, including skills training or psychosocial rehabilitation provided in accordance with the Chapter 416, Subchapter A of this title (relating to Mental Health Rehabilitative Services);

(7) competency restoration education; and

(8) peer provider services, if available.

(d) The provider shall, when necessary, seek a court order for psychiatric medications in accordance with the Texas Health and Safety Code, §574.106 and Texas Code of Criminal Procedure, Chapter 46B.

§416.89. Competency Restoration Module.

(a) The provider shall use a DSHS-approved competency training module to provide legal education for each participant.

(b) Each participant shall be educated in multiple learning formats by multiple provider staff members, including but not limited to: discussion, reading, video and experiential methods such as role-playing, or mock trial. Participants with accommodation needs shall receive adapted materials and approach as needed.

§416.90. Transition Services.

While waiting for his or her case to be resolved, provider staff members shall provide transition services in an effort to minimize the length of time a participant is in the program. Transition services shall be provided in a mental health unit, if a participant is:

(1) restored to competency;

(2) deemed not likely to restore and waiting for an inpatient forensic hospital bed; or

(3) deemed not likely to restore and awaiting return to the community.

§416.91. Discharge Planning.

(a) Upon discharge or transfer of a participant, the participant's medical record shall identify the services provided, diagnoses, treatment plan, medication and medication allergies and/or other known precautions.

(b) A reasonable and appropriate discharge plan developed in accordance with Chapter 412, Subchapter D of this title (relating to Mental Health Services--Admission, Continuity, and Discharge), shall be jointly developed by the provider staff, the participant, the LAR if available, the courts, the LMHA, LBHA, or MCO, state mental health facility, or other inpatient forensic facility. If applicable, discharge planning shall include, at a minimum, the following activities.

(1) If a participant is restored to competency and he or she is returning to the community or other provider (including jail), the provider shall:

(A) deliver counseling to prepare the participant and LAR, if any, for care after discharge or transfer;

(B) identify and recommend the clinical services and supports needed by the participant after discharge to the community or other provider, including jail;

(C) identify a community provider in collaboration with the participant and LAR to determine where the participant will be referred for any services or supports after discharge or transfer;

(D) prepare and forward to the LMHA, LBHA, MCO, or other provider (including jail) a continuing care plan signed by the participant's treating physician that includes all elements relating to discharge planning that are required by Chapter 412, Subchapter D of this title; and

(E) provide seven days of psychoactive medication if a participant is being discharged to the community.

(2) If a participant is not restored to competency and is transferring to a state mental health facility or other inpatient forensic facility, the provider shall:

(A) notify the DSHS staff member responsible for maintaining the clearinghouse waitlist within 24 hours;

(B) deliver counseling to prepare the participant and LAR, if any, for care after transfer;

(C) identify and recommend the clinical services and supports needed by the participant after transfer; and

(D) prepare and forward to the state mental health facility or other inpatient forensic facility a continuing care plan signed by the participant's treating physician that includes all elements relating to discharge planning that are required by Chapter 412, Subchapter D of this title.

(c) The psychiatrist for the provider shall conduct at least two full psychiatric evaluations of the defendant during the period the defendant receives competency restoration services in the jail. The psychiatrist must conduct one evaluation not later than the 21st day and one evaluation not later than the 55th day after the date the defendant begins to participate in the program. The psychiatrist shall submit to the court a report concerning each evaluation required under this subsection.

(d) The provider staff shall notify the court immediately if a participant has attained competency or is deemed not likely to attain competency within the 60-day period.

(e) If the psychiatrist for the provider determines that a participant ordered to participate in the program and charged with a felony has not been restored to competency by the end of the 55th day after the date the participant entered the program, the psychiatrist shall advise the court whether the participant is likely to restore within the next five days. If the participant is deemed:

(1) not likely to restore within the next five days, a provider staff member shall:

(A) contact the DSHS staff member responsible for the clearinghouse waitlist to add the participant's name within 24 hours of the psychiatrist's determination;

(B) send via fax or other electronic means all medical and legal records required by the staff member who maintains the clearinghouse waitlist within 48 hours of the psychiatrist's determination; and

(C) ensure that the participant is transported to a state mental health facility for continued treatment within 48 hours; or

(2) If likely to restore within the next five days, the participant may remain in the program until the 60th day.

(f) If the psychiatrist for the provider determines that a participant ordered to participate in the program and charged with a misdemeanor has not been restored to competency by the end of the 55th day after the date the participant entered the program, the psychiatrist shall advise the court whether the participant is likely to restore within the next five days. If the participant is deemed not likely to restore within the next five days:

(1) the court may order a single extension under Texas Code of Criminal Procedure, Article 46B.080 and the transfer of the defendant without unnecessary delay to the appropriate state mental health facility or residential care facility as provided by the Texas Code of Criminal Procedure, Article 46B.073(d) for the remainder of the period under the extension;

(A) provider staff shall contact the DSHS staff member responsible for the clearinghouse waitlist to add the participant's name within 24 hours of the psychiatrist's determination;

(B) provider staff shall send via fax or other electronic means all medical and legal records required by the staff member who maintains the clearinghouse waitlist within 48 hours of the psychiatrist's determination; and

(C) provider staff shall ensure that the participant is transported to a state mental health facility for continued treatment within 48 hours; or

(2) the court may proceed under Subchapter E or F of the Texas Code of Criminal Procedure, Article 46B; or

(3) the court may release the participant on bail as permitted under the Texas Code of Criminal Procedure, Chapter 17; or

(4) the court may dismiss the charges in accordance with the Texas Code of Criminal Procedure, Article 46B.010.

§416.92. Compliance with Statutes, Rules, and Other Documents.

(a) The provider shall comply with the following:

(1) Texas Code of Criminal Procedure, Chapter 46B;

(2) Texas Health and Safety Code, Chapter 574;

(3) 25 Texas Administrative Code Part 1:

(A) Chapter 405, Subchapter K (relating to Deaths of Persons Served by TXMHMR Facilities or Community Mental Health and Mental Retardation Centers);

(B) Chapter 411, Subchapter N (relating to Standards for Services to Individuals with Co-occurring Psychiatric and Substance Use Disorders (COPSD));

(C) Chapter 414, Subchapter I (relating to Consent to Treatment with Psychoactive Medication--Mental Health Services);

(D) Chapter 414, Subchapter K (relating to Criminal History and Registry Clearances);

(E) Chapter 415, Subchapter A (relating to Prescribing of Psychoactive Medication);

(F) Chapter 415, Subchapter F (relating to Interventions in Mental Health Programs); and

(G) Chapter 417, Subchapter K (relating to Abuse, Neglect, and Exploitation in TDMHMR Facilities);

(4) 37 TAC Part 9 (relating to Texas Commission on Jail Standards); and

(5) Rights of Participants Receiving Jail-based Competency Restoration Services, Exhibit A, in §416.87 of this title (relating to Participant's Rights).

(b) Concerning confidentiality, the provider shall comply with the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and other applicable federal and state laws, including, but not limited to:

(1) 42 Code of Federal Regulations (CFR) Part 2 and Part 51, Subpart D;

(2) 45 CFR Parts 160 and 164, and §1386.22;

(3) Texas Health and Safety Code, Chapter 81, Subchapter F;

(4) Texas Health and Safety Code, Chapter 241, Subchapter G;

(5) Texas Health and Safety Code, Chapters 181, 595, and 611; and §533.009, §533.035(a), §572.004, §576.005, §576.007, and §614.017;

(6) Texas Government Code, Chapters 552 and 559, and §531.042;

(7) Texas Human Resources Code, Chapter 48;

(8) Texas Occupations Code, Chapter 159; and

(9) Texas Business and Commerce Code, §521.053.

§416.93. Outcome Measures.

The following measures shall be used to determine if a participant's outcomes justify continuing the program. The provider shall collect data on the following:

(1) participant outcomes:

(A) the number of participants on felony charges;

(B) the number of participants on misdemeanor charges;

(C) the average number of days for a participant charged with a felony to be restored to competency;

(D) the average number of days for a participant charged with a misdemeanor to be restored to competency;

(E) the number of participants for whom an extension was sought;

(F) the number of participants who were restored to competency;

(G) the average length of time between determination of non-restorability and transfer to a state mental health facility; and

(H) the percentage of participants:

(i) who are restored to competency in 60 days or less; and

(ii) who are restored to competency and avoid re-arrest for six months following discharge to the community;

(I) the number of jail inmates found IST who were screened out of or deemed inappropriate for the program and the reason why; and

(J) the number of participants who were not restored and who were transferred to a state mental health facility.

(2) administrative outcomes:

(A) the costs associated with operating the program relative to an OCR program or hospitalization in a state mental health facility; and

(B) the number of reported, and, confirmed cases of abuse, neglect, and exploitation, rights violations, use of restraint and seclusion, emergency medication, injury, and deaths.

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

Filed with the Office of the Secretary of State on June 10, 2015.

TRD-201502191
Lisa Hernandez
General Counsel
Department of State Health Services
Earliest possible date of adoption: July 26, 2015
For further information, please call: (512) 776-6972

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 41. CONSUMER DIRECTED SERVICES OPTION

SUBCHAPTER E. BUDGETS

40 TAC §41.505

The Texas Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), an amendment to §41.505, concerning payroll budgeting, in Chapter 41, Consumer Directed Services Option.

BACKGROUND AND PURPOSE

The proposal implements the 2016-17 General Appropriations Act (Article II, Special Provisions, House Bill 1, 84th Legislature, Regular Session, 2015), which requires certain community services contractors and financial management service agencies to pay a minimum base wage to employees, contract staff, or subcontractors providing certain attendant services. Specifically, the amendment changes, from $7.86/hour to $8.00/hour, the minimum amount an employer or designated representative (DR) must budget for the base wage of an employee providing, through the consumer directed service option (CDS), primary home care, family care, or community attendant services; flexible family support and respite services in the Medically Dependent Children Program; habilitation in the Community Living Assistance and Support Services Program; residential habilitation in the Deaf Blind Multiple Disabilities Program; personal attendant services in the Consumer Managed Personal Attendant Services Program; supported home living in the Home and Community-based Services Program; and community support in the Texas Home Living Program.

The proposal also removes the requirement for an employer or designated representative (DR) to budget to pay a minimum base wage to an employee providing personal assistance services in the Community Based Alternatives (CBA) Program because, effective September 1, 2014, the CBA Program was terminated.

This rule governs payment to personal attendants on or after the effective date of the amendment. The previous rule governs payment made to personal attendants before the effective date of the amendment and remains in effect for that purpose.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §41.505 requires an employer or DR to budget to pay employees at least $8.00 per hour to provide the services listed in the rule. The proposed amendment updates the rule by deleting the requirement to pay an employee providing personal assistance services in the CBA Program.

FISCAL NOTE

David Cook, DADS Chief Financial Officer, has determined that, for the first five years the proposed amendment is in effect, enforcing or administering the amendment does not have foreseeable implications relating to costs or revenues of state or local governments.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed amendment will not have an adverse economic effect on small businesses and micro-businesses.

PUBLIC BENEFIT AND COSTS

Chris Adams, DADS Deputy Commissioner, has determined that, for each year of the first five years the amendment is in effect, the public benefit expected as a result of enforcing the amendment is higher pay for personal attendants, which will improve the stability and quality of the workforce that provides essential personal care services to individuals using the CDS option.

Mr. Adams anticipates that there will not be an economic cost to persons who are required to comply with the amendment. The amendment 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 Elizabeth Jones at (512) 438-4855 in DADS Center for Policy & Innovation. Written comments on the proposal may be submitted to *Texas Register* Liaison, Legal Services-15R05, 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 15R05" in the subject line.

STATUTORY AUTHORITY

The amendment is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The amendment affects Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021 and §32.021.

§41.505. Payroll Budgeting.

(a) An employer or DR must, when developing a budget that includes payroll expenses for an employee:

(1) budget to pay:

(A) subject to subparagraph (B) of this paragraph, an employee at least the minimum hourly wage required by law before withholdings and garnishments; and

(B) the following employees at least $8.00 [~~$7.50~~] per hour [~~and, effective September 1, 2014, at least $7.86 per hour~~], if the rate required by this subparagraph exceeds the minimum wage required by law:

(i) an employee providing primary home care, family care, or community attendant services;

~~*(ii)* an employee providing personal assistance services in the Community Based Alternatives Program;~~

(ii) [~~(iii)~~] an employee providing flexible family support and respite services in the Medically Dependent Children Program;

(iii) [~~(iv)~~] an employee providing habilitation in the Community Living Assistance and Support Services Program;

(iv) [~~(v)~~] an employee providing residential habilitation in the Deaf Blind Multiple Disabilities Program;

(v) [~~(vi)~~] an employee providing personal attendant services in the Consumer Managed Personal Attendant Services Program;

(vi) [~~(vii)~~] an employee providing supported home living in the Home and Community-based Services Program; and

(vii) [~~(viii)~~] an employee providing community support in the Texas Home Living Program;

(2) budget employee benefits, if chosen by the employer or DR:

(A) as provided in:

(i) this chapter;

(ii) Section 1000, Wages and Benefits Plan, of the Consumer Directed Services Handbook available at http://www.dads.state.tx.us/handbooks/CDS/1000/index.htm; or

(iii) Appendix XI, Allowable and Non-Allowable Expenditures, in the Consumer Directed Services Handbook available at http://www.dads.state.tx.us/handbooks/CDS/appendix/XI/index.htm;

(B) that are in accordance with requirements of the individual's program:

(i) an allowable cost, as defined in §41.103 of this chapter (relating to Definitions);

(ii) reasonable, with regard to the cost of the service, good, or item; and

(iii) necessary to meet employer responsibilities;

(C) that are within the approved rate and spending limits established for the service;

(D) that are accrued and paid based on actual hours worked; and

(E) that may include any of the following:

(i) increased wages;

(ii) paid vacation;

(iii) paid holiday;

(iv) paid sick leave;

(v) medical insurance;

(vi) taxable work-related expenses;

(vii) coverage of work-related injuries or illnesses for employees, including workers' compensation or options listed in "Liability Notice to Applicants for Employment," Section II, of Form 1728, Liability Acknowledgment;

(viii) a hire-on bonus, paid when an employee is hired, and the amount budgeted for the bonus must be accrued from hours worked by the person within the first three months of employment;

(ix) a bonus, based on the employee's job performance, that is budgeted and accrued from hours worked as a portion of the budget unit rate from hours worked by the employee, not to extend beyond the end date of the individual's service plan;

(x) a bonus, based on the employee's length of employment, with the employer, if budgeted and accrued as a portion of the budget unit rate from hours worked by the employee, not to extend beyond the end date of the individual's service plan; and

(xi) employer contributions for employee benefits; and

(3) make budget revisions if necessary to compensate for payment of overtime pay that must be calculated and paid in accordance with current state and federal labor laws and regulations.

(b) An employer or DR must:

(1) complete, but not sign, Form 1730, Employee Wage and Benefits Plan, for each employee at the time of hire and when an employee's wages or benefits are being changed;

(2) submit the form to the FMSA for approval;

(3) obtain written approval from the FMSA; and

(4) after FMSA approval, sign the form and obtain the employee's signature on Form 1730 on or before the employee's first day of work or the effective date of the change.

(c) A FMSA must:

(1) review the employer's budgeted payroll spending decisions;

(2) review Form 1730 for each employee at time of hire and as revised by the employer or DR;

(3) verify that each applicable budget workbook and Form 1730 is within the approved budget; and

(4) notify the employer in writing of the approval or disapproval of Form 1730 and work with the employer or DR to resolve those issues that prevent the approval of the Form 1730.

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 June 12, 2015.

TRD-201502232
Lawrence Hornsby
General Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: July 26, 2015
For further information, please call: (512) 438-4855

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CHAPTER 49. CONTRACTING FOR COMMUNITY SERVICES
SUBCHAPTER C. REQUIREMENTS OF A CONTRACTOR

40 TAC §49.312

The Texas Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), an amendment to §49.312, concerning personal attendants, in Chapter 49, Contracting for Community Services.

BACKGROUND AND PURPOSE

The proposal implements the 2016-17 General Appropriations Act (Article II, Special Provisions, House Bill 1, 84th Legislature, Regular Session, 2015), which requires certain community services contractors and financial management service agencies to pay a minimum base wage to an employee or subcontractor of a contractor or an employee of a consumer directed services (CDS) employer providing certain attendant services. Specifically, the amendment changes from $7.86/hour to $8.00/hour the minimum base wage a contractor or FMSA must pay a personal attendant. A "personal attendant" is defined in §49.102, Definitions, as an employee or subcontractor of a contractor or an employee of a consumer directed services employer who provides primary home care, family care, community attendant services; day activity and health services; residential care; flexible family support and respite services in the Medically Dependent Children Program; personal attendant services in the Consumer Managed Personal Attendant Services Program; habilitation in the Community Living Assistance and Support Services Program; residential habilitation, day habilitation, and chore services in the Deaf Blind Multiple Disabilities Program; supported home living in the Home and Community-based Services Program; and community support in the Texas Home Living Program.

The proposed amendment also requires an FMSA to ensure that an employer or designated representative (DR) pays a personal attendant in accordance with a budget that meets the requirement in Texas Administrative Code, Title 40, §41.505(a)(1), Payroll Budgeting, which is also being amended in this proposal to change, from $7.86/hour to $8.00/hour, the minimum amount an employer or DR must budget to pay a personal attendant.

This rule governs payment to personal attendants on or after the effective date of the amendment. The previous rule governs payment made to personal attendants before the effective date of the amendment and remains in effect for that purpose.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §49.312 changes the minimum base wage a contractor, employer, or DR must pay a personal attendant from $7.86 per hour to $8.00 per hour.

FISCAL NOTE

David Cook, DADS Chief Financial Officer, has determined that, for each year of the first five years the proposed amendment is in effect, there are foreseeable implications relating to costs or revenues of state government. The effect on state government for each year of the first five years the proposed amendment is in effect is an estimated additional cost of $10,074,989 in fiscal year (FY) 2016; $10,544,600 in FY 2017; $10,544,600 in FY 2018; $10,544,600 in FY 2019; and $10,544,600 in FY 2020.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed amendment will not have an adverse economic effect on small businesses and micro-businesses. There will be a rate increase for those providers whose current rates assume a personal attendant is paid less than $8.00 per hour to offset the cost of increasing the base wage to $8.00 per hour. The current rates for services for which there will not be a rate increase currently assume attendant pay is at or above $8.00 per hour.

PUBLIC BENEFIT AND COSTS

Elisa J. Garza, Assistant Commissioner, Access and Intake Division, has determined that, for each year of the first five years the amendment is in effect, the public benefit expected as a result of enforcing the amendment is an improvement in the stability and quality of the workforce that provides services to the individuals receiving the services affected by the higher wages.

Ms. Garza anticipates that there may be an economic cost to persons who are required to comply with the amendment. The proposed amendment to increase the base wage from $7.86 per hour to $8.00 per hour may result in additional costs to providers who currently pay less than $8.00 per hour for services for which

the current rates assume an attendant wage at or above $8.00 per hour. The amendment 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 Bill Campbell at (512) 438-5175 in DADS Community Services Contracts. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-15R05, 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 15R05" in the subject line.

STATUTORY AUTHORITY

The amendment is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The rule affects Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021 and §32.021.

§49.312. Personal Attendants.

(a) A contractor, other than a contractor that has an FMSA contract listed in §49.101(a)(5) of this chapter (relating to Application), must:

(1) pay a personal attendant a base wage of at least $8.00 [~~$7.86~~] per hour; and

(2) notify a person who becomes employed or contracts as a personal attendant within three days after the person accepts the offer of employment or enters into the contract that the contractor is required to pay the wage described in paragraph (1) of this subsection.

(b) A contractor that has an FMSA contract listed in §49.101(a)(5) of this chapter must ensure that an employer or designated representative pays a personal attendant in accordance with a budget that meets the requirements of §41.505(a)(1) of this title (relating to Payroll Budgeting).

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 June 12, 2015.

TRD-201502233
Lawrence Hornsby
General Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: July 26, 2015
For further information, please call: (512) 438-4855

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CHAPTER 97. LICENSING STANDARDS FOR HOME AND COMMUNITY SUPPORT SERVICES AGENCIES

SUBCHAPTER E. LICENSURE SURVEYS

DIVISION 1. GENERAL

The Texas Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), an amendment to §97.501, concerning Survey Frequency, and the repeal of §97.502, concerning State Agency Investigations of Complaints and Self-Reported Incidents, in Chapter 97, Licensing Standards for Home and Community Support Services Agencies.

BACKGROUND AND PURPOSE

The proposed amendment to §97.501 and the proposed repeal of §97.502 are in response to Senate Bill (SB) 760 and SB 1880, 84th Legislature, Regular Session, 2015, which amend Texas Health and Safety Code, §142.009(c) to transfer, from DADS to the Department of Family and Protective Services (DFPS), the authority to investigate an allegation of abuse, neglect, or exploitation (ANE) of a child under the age of 18 who is receiving services from a home and community support services agency (HCSSA) licensed under Chapter 142. SB 760 and SB 1880 also amend Texas Family Code, §261.404 to give DFPS the authority to investigate an allegation of ANE of a child receiving services from a HCSSA if the person who is alleged to have committed the ANE is an officer, employee, agent, contractor, or subcontractor of the HCSSA.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §97.501 conforms the section to the authority given to DFPS through SB 760 and SB 1880 to investigate ANE committed against a child under 18 years of age receiving services from a HCSSA. The amendment deletes references to §97.502, which is proposed for repeal, and makes changes to more accurately describe DADS survey and investigation processes.

The proposed repeal of §97.502 conforms to the transfer of authority from DADS to DFPS to investigate ANE of a child under 18 years of age. The section currently describes which investigations of ANE are conducted by DFPS and which ones are conducted by DADS. With the implementation of SB 760 and SB 1880, allegations of ANE of a person receiving services from a HCSSA will be investigated by DFPS and those investigations

will be governed by DFPS rules. Therefore, §97.502 is no longer necessary.

FISCAL NOTE

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

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed amendment and repeal will not have an adverse economic effect on small businesses or micro-businesses.

PUBLIC BENEFIT AND COSTS

Mary T. Henderson, Assistant Commissioner, has determined that, for each year of the first five years the amendment and repeal are in effect, the public will benefit by DFPS investigating allegations of ANE committed against a child to align with investigations DFPS already performs related to allegations of ANE committed against adults.

Ms. Henderson anticipates that there will not be an economic cost to persons who are required to comply with the amendment and repeal. The amendment and repeal 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 Christy Parks at (512) 438-3791 in DADS Regulatory Services Division. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-15R07, 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 15R07" in the subject line.

40 TAC §97.501

STATUTORY AUTHORITY

The amendment is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code, §142.0011, which requires the adoption of rules related to the regulation of home and community support services agencies.

The amendment implements Texas Government Code, §531.0055, and Texas Human Resources Code, §161.021, and Texas Health and Safety Code, Chapter 142.

§97.501. Survey and Investigation Frequency.

(a) At a minimum, DADS conducts a survey:

(1) [~~conducts an initial survey~~] after an agency submits a written request for an initial survey in accordance with [~~has notified DADS of its readiness. See~~] §97.521 of this subchapter (relating to Requirements for an Initial Survey); and

(2) [~~conducts a survey of the agency~~] within 18 months after conducting an initial survey and [~~conducts subsequent surveys~~] at least every 36 months thereafter.[~~; and~~]

(b)DADS may conduct a survey or investigation to determine an agency's compliance with:

[~~(3) conducts a survey to investigate a complaint alleging:~~]

[~~(A) abuse, neglect, or exploitation of a client as described in §97.502 of this subchapter (relating to State Agency Investigations of Complaints and Self-Reported Incidents;~~]

(1) [~~(B)~~] [~~a violation of~~] this chapter or the statute in the provision of licensed home health services, licensed and certified home health services, hospice services, or personal assistance services; and

(2) [~~(C)~~] [~~a violation of~~] federal requirements in the provision of licensed and certified home health services or licensed and certified hospice services.

[~~(4) investigates a self-reported incident that includes allegations of abuse, neglect, or exploitation of a client as described in §97.502 of this subchapter.~~]

(c) [~~(b)~~] DADS may conduct a survey for the renewal of a license or the issuance of a branch office or alternate delivery site license.

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 June 12, 2015.

TRD-201502234
Lawrence Hornsby
General Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: July 26, 2015
For further information, please call: (512) 438-3791

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40 TAC §97.502

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

STATUTORY AUTHORITY

The repeal is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of

services by the health and human services agencies, including DADS; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code, §142.0011, which requires the adoption of rules related to the regulation of home and community support services agencies.

The repeal implements Texas Government Code, §531.0055, and Texas Human Resources Code, §161.021, and Texas Health and Safety Code, Chapter 142.

§97.502. State Agency Investigations of Complaints and Self-Reported Incidents.

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-201502235
Lawrence Hornsby
General Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: July 26, 2015
For further information, please call: (512) 438-3791

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PART 19. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

CHAPTER 705. ADULT PROTECTIVE SERVICES

SUBCHAPTER O. PILOT PROGRAM

40 TAC §705.9001

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), new §705.9001, in Chapter 705, Adult Protective Services. The purpose of the new Subchapter O, "Pilot Program", is to allow Adult Protective Services (APS) to provide protective services to individuals determined to be at risk of future harm but who are not currently in a state of abuse, neglect or financial exploitation (ANE). This is a proactive and preventive approach to meeting client needs that may reduce recidivism and save costs. APS will conduct the pilot within current resources and submit a report to the legislature on outcomes and cost implications resulting from the pilot program. The pilot program is required by §48.212 of the Human Resources Code, as added by House Bill 3092 of the 84th Texas Legislature.

Human Resources Code Chapter 48 requires that APS validate ANE before providing protective services. In September 2014, APS implemented a new casework practice model based on structured decision making tools. This model assumes that decisions regarding whether to provide services can be based on risk of future harm instead of validation of ANE.

One of the assessment tools--the Risk of Recidivism Assessment--uses research-based criteria to determine the likelihood of future harm. APS staff will use the Risk of Recidivism Assessment to help determine if a client needs protective services. New §705.9001 implements this pilot program to provide protective services to an alleged victim who has been determined to be at risk of future harm, but who is not currently in a state of ANE.

Tracy Henderson, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed new rule will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Henderson also has determined that for each year of the first five years the new rule is in effect the public benefit anticipated as a result of enforcing the section will allow APS staff to provide services to individuals determined to be at risk of future harm but who are not currently in a state of ANE. In addition, the rule will add clarity to the public, by updating APS rules prior to the start of the pilot program in order to reconcile any differences between the approach taken in the pilot program and the requirement of APS' current rules. There will be no effect on large, small, or micro-businesses because the proposed new rule does not impose new requirements on any business and does not require the purchase of any new equipment or any increased staff time in order to comply. There is no anticipated economic cost to persons who are required to comply with the proposed new rule.

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

Questions about the content of the proposal may be directed to Lauren Villa at (512) 438-3803, in DFPS's Legal Services Division. Electronic comments may be submitted to *Marianne.McDonald@dfps.state.tx.us.* Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-526, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register.*

The new rule is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531,0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new rule implements HRC §48.212.

§705.9001. What is the purpose of the pilot program?

(a) In accordance with Human Resources Code (HRC) §48.212, the Department of Family and Protective Services shall establish a pilot program to provide protective services to alleged victims determined to be at risk of future harm from of abuse, neglect, or financial exploitation but who are not in a state of abuse, neglect, or financial exploitation.

(b) In the pilot program, Adult Protective Services may provide "protective services", as defined in HRC §48.002 and §705.1001(21) of this title (relating to How are the terms in this chapter defined?) if, based on the risk of recidivism assessment required in §705.6101(2) of this title (relating to What assessments does APS use in an in-home case?), the alleged victim is determined to be at risk of future harm from abuse, neglect, or financial exploitation.

(c) A validated finding of abuse, neglect, or financial exploitation is not required to provide protective services, conduct a risk of recidivism assessment, or conduct a strengths and needs assessment required in §705.6101(3) of this title.

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 June 9, 2015.

TRD-201502172
Trevor Woodruff
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: July 26, 2015
For further information, please call: (512) 438-3803

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CHAPTER 711. INVESTIGATIONS IN DADS AND DSHS FACILITIES AND RELATED PROGRAMS

SUBCHAPTER A. INTRODUCTION

40 TAC §711.25

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), new §711.25 in Chapter 711, concerning Investigations in DADS and DSHS Facilities and Related Programs. The purpose of the new rule is to implement Senate Bills 760 and 1880 (84th Legislature), define APS's expanded jurisdiction, and apply the current DFPS rules, as applicable, to the expanded jurisdiction. This transitional rule will function until further rules can be proposed and adopted, no later than September 1, 2016. SB 760 and SB 1880 ensure continued State of Texas compliance with the Center for Medicaid and Medicare Services (CMS) requirements for the health and welfare of recipients of home and community-based services (HCBS). The bill expands the authority for Adult Protective Services (APS) to investigate, inter alia, all home and community-based service providers whether providing services in a traditional or managed care delivery model. SB 760 and SB 1880 also clarify and address the gaps and inconsistencies that have resulted from the evolving service delivery changes and changes in contracting arrangements. These bills also update statutory language and requirements related to provider and agency responsibilities.

New §711.25 will implement statutory changes as required by SB 760 and SB 1880.

Tracy Henderson, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed section will be in effect there will be fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Henderson also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that the expanded authority of DFPS to investigate abuse, neglect, and exploitation of individuals receiving services from certain providers. Due to needed additional staffing and technology, the impact on state government will be $1,603,723 for Fiscal Year (FY) 2016; $1,712,345, FY 2017; $1,712,345, FY 2018; $1,712,345, FY 2019; and $1,712,345, FY 2020. The impact on federal government will be $333,585, FY 2016; $370,716, FY 2017; $370,716, FY 2018; $370,716, FY 2019; and $370,716, FY 2020. There will be no effect on large, small, or micro-businesses because the proposed change does not impose new requirements on any business and does not require the purchase of any new equipment or any increased staff time in order to comply. There is no anticipated economic cost to persons who are required to comply with the proposed section.

HHSC has determined that the proposed new section 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, do not constitute a taking under §2007.043, Government Code.

Questions about the content of the proposal may be directed to Susie Weirether at (817) 255-2335 in DFPS's Adult Protective Division. Electronic comments may be submitted to *Marianne.Mcdonald@dfps.state.tx.us.* Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-527, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register.*

The new section is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The new section implements HRC §§48.002, 48.003, 48.051, 48.103, 48.151, 48.201, 48.251 - 48.258, 48.301, 48.401, and Texas Family Code §261.404.

§711.25. What effect do Senate Bill (SB) 1880 and SB 760 (84th Texas Legislature, Regular Session) have on the jurisdiction of Adult Protective Services (APS) to investigate allegations of abuse, neglect, or exploitation of individuals receiving services from certain providers?

(a) SB 1880 and SB 760 expanded the authority of APS to investigate allegations of abuse, neglect, or exploitation of individuals receiving services from certain providers. Until further rules can be proposed and adopted relating to SB 1880 and SB 760, the purpose of this transitional rule is to define the new APS jurisdiction and clarify how to apply current APS rules to the new jurisdiction.

(b) For purposes of this rule, "provider", as further defined in Human Resources Code §48.251, includes the following:

(1) a facility;

(2) a community center, local mental health authority, and local intellectual and developmental disability authority;

(3) a person who contracts with a health and human services agency or managed care organization to provide home and community-based services;

(4) a person who contracts with a Medicaid managed care organization to provide behavioral health services;

(5) a managed care organization;

(6) an officer, employee, agent, contractor, or subcontractor of a person or entity listed in paragraphs (1) - (5) of this subsection; and

(7) an employee, fiscal agent, case manager, or service coordinator of an individual employer participating in the consumer-directed service option, as defined by §531.051, Government Code.

(c) APS may investigate allegations of abuse, neglect, or exploitation involving:

(1) adults or children receiving services from a provider, if the person alleged or suspected to have committed the abuse, neglect, or exploitation is a provider;

(2) adults or children who live in a residence that is owned, operated, or controlled by a provider of home and community-based services under the home and community-based services waiver program described by §534.001(11)(B), Government Code, regardless of whether the individual is receiving services under the waiver program from the provider; and

(3) children receiving services from a home and community support services agency licensed under Chapter 142, Health and Safety Code, if the person alleged or suspected to have committed the abuse, neglect, or exploitation is an officer, employee, agent, contractor, or subcontractor of the home and community support services agency.

(d) APS shall not investigate allegations if the provider alleged or suspected to have committed the abuse, neglect, or exploitation is operated, licensed, certified, or registered by a state agency that has the authority to investigate a report of abuse, neglect, or exploitation of an individual by the provider.

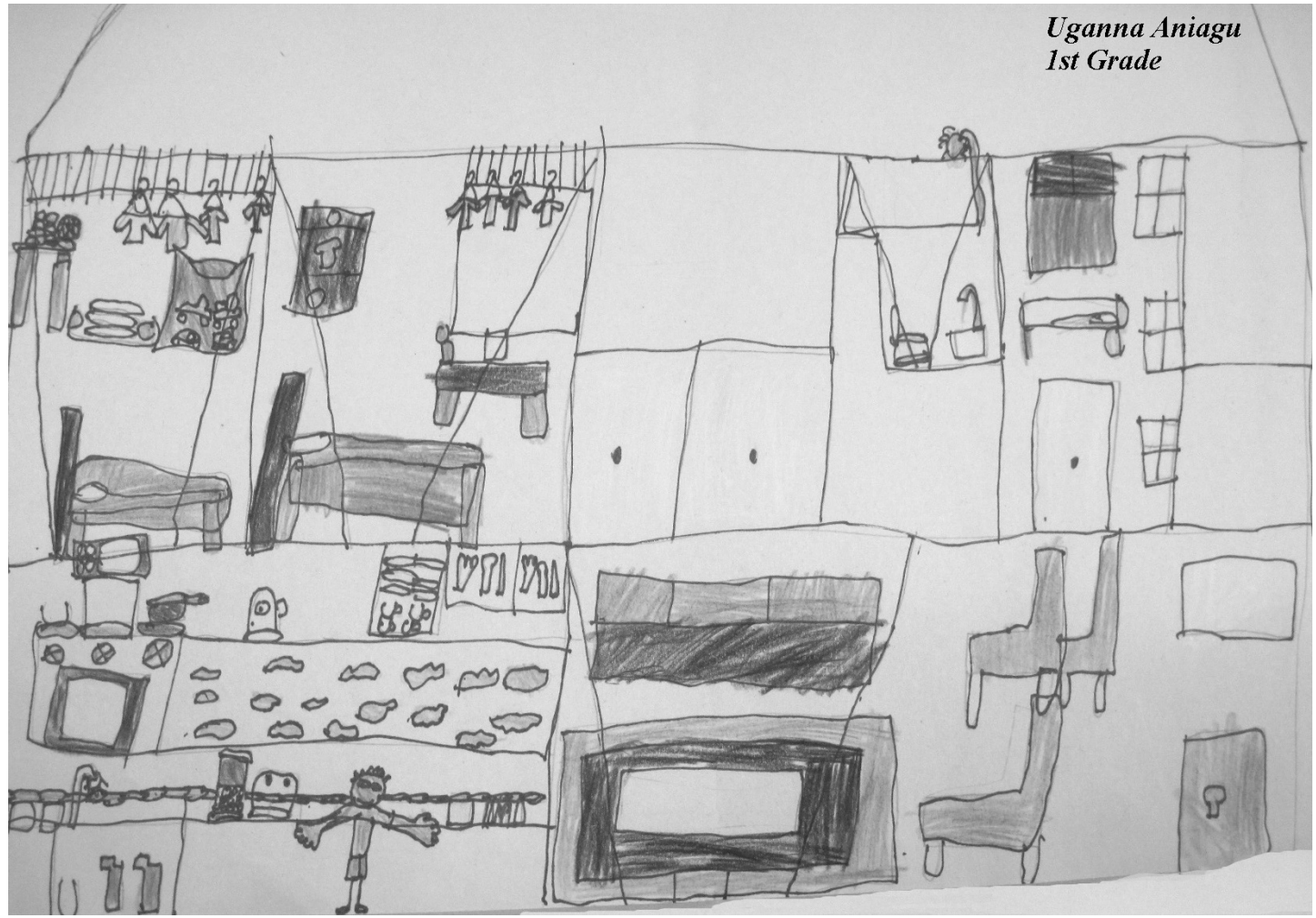
(e) Unless otherwise clarified in this section or unless the context clearly indicates otherwise, all rules in this chapter apply, as appropriate, to investigations described by this section.

(f) This rule expires on September 1, 2016, unless repealed sooner.

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 June 10, 2015.

TRD-201502187
Trevor Woodruff
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: July 26, 2015
For further information, please call: (817) 255-2335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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 2. TEXAS ETHICS COMMISSION

CHAPTER 20. REPORTING POLITICAL CONTRIBUTIONS AND EXPENDITURES

SUBCHAPTER B. GENERAL REPORTING RULES

1 TAC §20.59

The Texas Ethics Commission (the commission) adopts an amendment to Texas Ethics Commission rule §20.59, relating to reporting expenditures by credit card. The amendment is adopted without changes to the proposed text as published in the May 8, 2015, issue of the *Texas Register* (40 TexReg 2460) and will not be republished.

Section 20.59 currently is not clear on how to report political expenditures made by credit card. The amendment to §20.59 clarifies how such expenditures should be disclosed by creating a new schedule for reporting expenditures made by credit card. Additionally, it provides that a payment made to a credit card is reported on the appropriate disbursement schedule.

The public benefit will be consistent reporting of political expenditures made by credit card. There will not be an effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amended rule.

No written comments were received regarding the adoption of the amended section.

The amendment to §20.59 is adopted under Texas Government Code §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

The amendment to §20.59 affects Title 15 of the Election Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 15, 2015.

TRD-201502255
Natalia Luna Ashley
Executive Director
Texas Ethics Commission
Effective date: July 5, 2015
Proposal publication date: May 8, 2015
For further information, please call: (512) 463-5800

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TITLE 4. AGRICULTURE

PART 2. TEXAS ANIMAL HEALTH COMMISSION

CHAPTER 47. AUTHORIZED PERSONNEL

SUBCHAPTER C. CHRONIC WASTING DISEASE

4 TAC §§47.21 - 47.24

The Texas Animal Health Commission (commission) adopts new §47.21, concerning Definitions, §47.22, concerning General Requirements and Application Procedures, §47.23, concerning Duration and Additional Training Requirements, and §47.24, concerning Grounds for Suspension or Revocation, without changes to the proposed text as published in the February 20, 2015, issue of the *Texas Register* (40 TexReg 763). The text of the rules will not be republished.

The purpose of the new rules is to create requirements for persons authorized to perform certain activities related to Chronic Wasting Disease (CWD).

Section 161.047 of the Texas Agriculture Code requires a person, including a veterinarian, to be authorized by the commission in order to engage in an activity that is part of a state or federal disease control or eradication program for animals. In addition to the brucellosis program, existing disease control or eradication programs include, but are not limited to, tuberculosis, trichomoniasis, piroplasmosis, equine infectious anemia, chronic wasting disease, pseudorabies, and scrapie.

New Subchapter C, which is entitled "Chronic Wasting Disease" includes standards and requirements for persons authorized by the commission to perform work as a Certified CWD Sample Collector. The provisions also establish application, training and recordkeeping requirements. A Certified CWD Sample Collector is an individual who has completed commission provided or approved training on the collection and preservation of samples for CWD testing and on proper recordkeeping, and who has been authorized to perform these activities by the commission.

The Code of Federal Regulations (CFR) Title 9, Part 55, established the national CWD herd certification program. The commission has met the requirements of 9 CFR 55.23(a) and operates an Approved State CWD Herd Certification Program. Pursuant to 9 CFR 55.21, deer, elk and moose owners are encouraged to certify their herds as low risk for CWD by being in continuous compliance with the CWD Herd Certification Program standards. Herd status is the status of a herd assigned under the CWD Herd Certification Program in accordance with 9 CFR 55.24, indicating a herd's relative risk for CWD. Herd status is

based on the number of years of monitoring without evidence of the disease.

The CWD Herd Certification Program standards dated May 2014, Appendix III, provide recommended standards for Certified CWD Sample Collectors to monitor for CWD. To assist producers in meeting these CWD Herd Certification Program standards, Subchapter C provides a certification program for and allows Certified CWD Sample Collectors to collect and submit CWD test samples for diagnostic testing at an approved laboratory if commission protocols are followed. The May 2014 standards also provide that samples may not be collected by herd owners unless they are approved by their State authority as a certified or designated CWD sample collector. The standards provide that samples may only be collected by State officials, APHIS employees, accredited veterinarians, or State-certified or State-designated CWD sample collectors.

One comment was received from Mr. Mike Bodenchuk, Texas State Director, USDA-APHIS-Wildlife Services (WS), on the proposed rule regarding "authorized personnel" for the collection of CWD samples. He indicated that in reviewing the rule, it appears that the rule is amending a section of regulations related to captive cervid herds. He indicated that the language in the description is broad enough to infer than anyone collecting CWD samples must be trained and approved by the commission. The USDA-APHIS-WS program has assisted in CWD sampling in the past from wild deer and they may be requested to do so again in the future. He indicated that WS trains employees, but has not submitted that training to the commission for review and certification. If the regulations being considered now are intended to address CWD sampling from wild deer as well as domestic herds, he urges the commission to establish a more formal process for WS employees to receive commission certification. The rule will apply to anyone who is submitting samples of any susceptible species for an official CWD test. The purpose of the requirement is to ensure that sample collection and submission met the appropriate standards to be official. The Executive Director can approve other trainings that meet those standards and will address with WS.

STATUTORY AUTHORITY

The new sections are adopted under the following statutory authority as found in Chapter 161 of the Texas Agriculture Code. The commission is vested by statute, §161.041(a), with the requirement to protect all livestock, domestic animals, and domestic fowl from disease. The commission is authorized through §161.041(b), to act to eradicate or control any disease or agent of transmission for any disease that affects livestock.

Pursuant to §161.0417, entitled "Authorized Personnel for Disease Control", a person, including a veterinarian, must be authorized by the commission in order to engage in an activity that is part of a state or federal disease control or eradication program for animals. Section 161.0417 requires the commission to adopt necessary rules for the authorization of such persons and, after reasonable notice, to suspend or revoke a person's authorization if the commission determines that the person has substantially failed to comply with Chapter 161 or rules adopted under that chapter. Section 161.0417 entitles a person to a hearing before the commission or a hearing examiner appointed by the commission before the commission may revoke the person's authorization and provides the commission shall make all final decisions to suspend or revoke an authorization.

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

Pursuant to §161.048, entitled "Inspection of Shipment of Animals or Animal Products", the commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved. An agent of the commission is entitled to stop and inspect a shipment of animals or animal products being transported in this state in order to determine if the shipment originated from a quarantined area or herd; or determine if the shipment presents a danger to the public health or livestock industry through insect infestation or through a communicable or noncommunicable disease.

Pursuant to §161.054, entitled "Regulation of Movement of Animals", the commission by rule may regulate the movement of animals. The commission may restrict the intrastate movement of animals even though the movement of the animals is unrestricted in interstate or international commerce.

Pursuant to §161.081, entitled "Importation of Animals", the commission by rule may regulate the movement of livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl into this state from another state, territory, or country. Also, under that section the commission by rule may provide the method for inspecting and testing animals before and after entry into this state. The commission by rule may provide for the issuance and form of health certificates and entry permits. The rules may include standards for determining which veterinarians of this state, other states, and departments of the federal government are authorized to issue the certificates or permits.

Pursuant to §161.101, entitled "Duty to Report", a veterinarian, a veterinary diagnostic laboratory, or a person having care, custody, or control of an animal shall report the existence of certain diseases among livestock, exotic livestock, bison, domestic fowl, or exotic fowl to the commission within 24 hours after diagnosis of the disease.

Pursuant to §161.112, entitled "Rules", the commission shall adopt rules relating to the movement of livestock, exotic livestock, and exotic fowl from livestock markets and shall require tests, immunization, and dipping of those livestock as necessary to protect against the spread of communicable diseases.

Pursuant to §161.113, entitled "Testing or Treatment of Livestock", if the commission requires testing or vaccination, the testing or vaccination must be performed by an accredited veterinarian or qualified person authorized by the commission.

Pursuant to §163.064, entitled "Testing and Vaccination", only a person approved by the commission may perform testing and vaccinating for brucellosis, regardless of whether the person is a veterinarian.

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 June 10, 2015.

TRD-201502188

Gene Snelson
General Counsel
Texas Animal Health Commission
Effective date: June 30, 2015
Proposal publication date: February 20, 2015
For further information, please call: (512) 719-0722

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CHAPTER 51. ENTRY REQUIREMENTS

4 TAC §51.1, §51.2

The Texas Animal Health Commission (commission) adopts amendments to §51.1, concerning Definitions, and §51.2, concerning General Requirements, without changes to the proposed text as published in the March 6, 2015, issue of the *Texas Register* (40 TexReg 999). The text of the rules will not be republished.

The purpose of the amendments is to shorten the length of time that Certificates of Veterinary Inspection (CVI) are valid from 45 days to 30 days maximum for equine entering the state and to correct language regarding exceptions to entry permits and CVI requirements.

A CVI is a document signed by an accredited veterinarian that shows the equine were inspected and subjected to tests, immunizations, and treatment as required by the commission. The change of equine CVI length of validity for entry into Texas will accomplish three objectives.

First, the change will bring commission rules into compliance with Title 9, Code of Federal Regulations §161.4(b), which states in part that "certificates, forms, records, and reports shall be valid for 30 days following the date of inspection of the animal identified on the document,...".

Second, the results of a recent 2014 poll of other state animal health agencies showed that no other state has a CVI length of validity for equine greater than 30 days.

Third, a number of emerging diseases have occurred in recent years including Vesicular Stomatitis (VS) and Equine Herpes Encephalomyelopathy (EHM or Equine Herpes Virus-1 (EHV-1)) that threaten the equine industry in Texas and in other states. Both diseases are reportable to the commission.

VS is a viral disease which is endemic in the Southwestern United States. The disease creates vesicular lesions in and around the mouth hampering the ability of an animal to eat or drink and can also cause hoof lesions which may result in lameness. The incubation period for VS is usually between days two through eight. Texas and Colorado experienced the largest VS outbreak in recent history in the summer of 2014. The VS outbreak affected 62 premises and 13 counties in Texas and 370 premises and 17 counties in Colorado.

EHM is a viral disease which can result in symptoms such as respiratory disease, abortions, neurologic manifestations and death. The incubation period for EHM is normally between days two through ten. The EHM virus can be reactivated during times of stress such as strenuous exercise and long distance transport. There have been numerous outbreaks of EHM in recent years at large horse facilities and events in other states that have affected Texas animals either at the event or created tracing of exposed Texas horses.

A shorter validity timeframe for CVIs issued on equine entering Texas will better protect the Texas equine population from the introduction of the above mentioned diseases as well as other traditional and emerging diseases, bring Texas into compliance with the federal regulations regarding the validity of certificates issued by accredited veterinarians, and also make the Texas CVI entry requirements consistent with all other state CVI timeframes.

The commission received one comment which indicated that this proposed change is not needed. The commenter stated that we have not had a case of Equine Infectious Anemia in forever and that it is especially difficult on men and women in the rodeo and show horse world that are traveling weeks and months at a time. The commenter stated that we should leave it up to the owners to decide if their horses are sound or ill and if we wanted to track killer horses that might be a good idea. As far as requiring all horses to be seen by a vet every 30 days, this is over reaching job creation and is not necessary and does not provide any actual benefit to the industry.

There are a couple of points to clarify in responding to this comment. First, the requirement is focused on entry requirements into Texas and conforms to the standards for entry into other states. This requirement is not focused on EIA as much, but on emerging diseases such as VS, EHM or EHV-1, in order to protect the Texas equine industry.

STATUTORY AUTHORITY

The amendments are adopted under the following statutory authority as found in Chapter 161 of the Texas Agriculture Code. The commission is vested by statute, §161.041(a), with the requirement to protect all livestock, domestic animals, and domestic fowl from disease. The commission is authorized, through §161.041(b), to act to eradicate or control any disease or agent of transmission for any disease that affects livestock.

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

Pursuant to §161.006, entitled "Documents to Accompany Shipment", if required that a certificate or permit accompany animals or commodities moved in this state, the document must be in the possession of the person in charge of the animals or commodities, if the movement is made by any other means.

Pursuant to §161.044, entitled "Regulation of Livestock Movement from Stockyards or Railway Shipping Pens", the commission may regulate the movement of livestock out of stockyards or railway shipping pens and require treatment or certification of those animals as reasonably necessary to protect against communicable diseases.

Pursuant to §161.046, entitled "Rules", the commission may adopt rules as necessary for the administration and enforcement of this chapter.

Pursuant to §161.048, entitled "Inspection of Shipment of Animals or Animal Products", the commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved. An agent of the commission is entitled to stop and inspect a shipment of animals or animal products being transported in this state in order to determine if the shipment originated from a quarantined area or herd; or determine if the shipment presents a danger to the public health

or livestock industry through insect infestation or through a communicable or noncommunicable disease.

Pursuant to §161.049, entitled "Dealer Records", the commission may require a livestock, exotic livestock, domestic fowl, or exotic fowl dealer to maintain records of all livestock, exotic livestock, domestic fowl, or exotic fowl bought and sold by the dealer.

Pursuant to §161.054, entitled "Regulation of Movement of Animals", the commission, by rule, may regulate the movement of animals. The commission may restrict the intrastate movement of animals even though the movement of the animals is unrestricted in interstate or international commerce.

Pursuant to §161.081, entitled "Importation of Animals", the commission by rule may regulate the movement, including movement by a railroad company or other common carrier, of livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl into this state from another state, territory, or country.

Pursuant to §161.112, entitled "Rules", the commission shall adopt rules relating to the movement of livestock, exotic livestock, and exotic fowl from livestock markets and shall require tests, immunization, and dipping of those livestock as necessary to protect against the spread of communicable diseases.

Pursuant to §161.114, entitled "Inspection of Livestock", an authorized inspector may examine livestock consigned to and delivered on the premises of a livestock market before the livestock are offered for sale. If the inspector considers it necessary, the inspector may have an animal tested or vaccinated. Any testing or vaccination must occur before the animal is removed from the livestock market.

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 June 10, 2015.

TRD-201502190
Gene Snelson
General Counsel
Texas Animal Health Commission
Effective date: June 30, 2015
Proposal publication date: March 6, 2015
For further information, please call: (512) 719-0722

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CHAPTER 55. SWINE

4 TAC §55.9

The Texas Animal Health Commission (commission) adopts amendments to §55.9, concerning Feral Swine, in Chapter 55, with changes to the proposed text as published in the February 20, 2015, issue of the *Texas Register* (40 TexReg 765). The text of the rule will be republished.

The purpose of the amendments is to change the fence and movement requirements for feral swine authorized holding facilities.

An authorized feral swine holding facility has historically required two fences with four feet of separation. The primary purpose was to prevent contact with other livestock and wildlife species. With the overall prevalence of feral swine and limited contact opportunities for domestic swine in this situation, the requirement is no longer pragmatic. A proper holding facility for feral swine capable of preventing any feral swine from escaping can be constructed using one fence. This standard allows for facilities to be authorized with the purpose of trying to control the feral swine population in the state. Also, the commission is adding an additional authorized movement of feral swine as being from an approved holding facility to another approved holding facility. This is to recognize movements that may commonly take place between authorized holding facilities before feral swine are shipped to slaughter.

Mr. LeRoy Moczygembe submitted one comment regarding the change or clarification of definitions in (a)(8) for escape proof fencing carrying through to (d)(2)(E) in hunting preserves. He indicated that there is no provision for one-way gates on hunting preserves to allow feral hogs on land adjacent to the hunting preserve to enter (ingress only) without damaging the fence and coming into the hunting preserve. He noted that one-way gates can assist the hunting preserve to maintain their fencing because if feral hogs want to go through a fence they will apply pressure on the fence. The regulations, as proposed, had made changes to both the holding facility and the game preserve fencing to address the fence being able to prevent the ingress and egress of feral swine. In review of the original rules, the Feral Swine Task Force that assisted in drafting the rules had discussed that situation with game preserves and allowed feral swine ingress into a preserve, but would prevent the egress of such animals. The commission agrees with the comment and removes the addition of ingress as applied to hunting preserves.

STATUTORY AUTHORITY

The amendments are adopted under the following statutory authority as found in Chapter 161 of the Texas Agriculture Code. The commission is vested by statute, §161.041(a), with the requirement to protect all livestock, domestic animals, and domestic fowl from disease. The commission is authorized, through §161.041(b), to act to eradicate or control any disease or agent of transmission for any disease that affects livestock.

Pursuant to §161.054, entitled "Regulation of Movement of Animals", the commission, by rule, may regulate the movement of animals. The commission may restrict the intrastate movement of animals even though the movement of the animals is unrestricted in interstate or international commerce.

Pursuant to §161.048, entitled "Inspection of Shipment of Animals or Animal Products", the commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved. An agent of the commission is entitled to stop and inspect a shipment of animals or animal products being transported in this state in order to determine if the shipment originated from a quarantined area or herd; or determine if the shipment presents a danger to the public health or livestock industry through insect infestation or through a communicable or noncommunicable disease.

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

Pursuant to §161.0412, entitled "Regulation and Registration of Feral Swine Holding Facility", the commission may, for disease control purposes, require the registration of feral swine holding facilities.

Pursuant to §161.049, entitled "Dealer Records", the commission may require a livestock, exotic livestock, domestic fowl, or exotic fowl dealer to maintain records of all livestock, exotic livestock, domestic fowl, or exotic fowl bought and sold by the dealer.

§55.9. Feral Swine.

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

(1) Approved holding facility--A pen or pens approved by the commission to temporarily hold feral swine pending movement to a recognized slaughter facility, an authorized hunting preserve, or another approved holding facility.

(2) Authorization--The written and signed commission documents required of this chapter to show compliance with the requirements of the chapter.

(3) Authorized Hunting Preserve--Land where feral swine are authorized to be released for the purpose of hunting.

(4) Domestic Swine--Swine *(Sus scrofa)* other than feral swine.

(5) Feral swine--Swine that have lived all (wild) or any part (feral) of their lives free-roaming.

(6) Free-Roaming--Not confined by man to pens, houses or other facilities designed to hold swine and prevent their escape.

(7) Recognized slaughter facility--A slaughter facility operated under the state or federal meat inspection laws and regulations.

(8) Swine-Proof Fence--A fence constructed to sufficient construction standards with materials of hog-proof net, woven or welded wire and wood, metal or other approved posts and maintained to prevent the ingress or egress of feral swine.

(b) Required Authorization for Movement of Feral Swine. These requirements apply to any person who traps feral swine and moves live feral swine from the premises or location where the feral swine were trapped or otherwise captured. Movement of live feral swine is prohibited unless authorized by paragraphs (1) - (7) of this subsection:

(1) The feral swine are moved directly from the premises where the feral swine were trapped to a recognized slaughter facility;

(2) The feral swine are moved directly from the premises where the feral swine were trapped to an approved holding facility;

(3) The feral swine are moved directly from the premises where the feral swine were trapped to an authorized hunting preserve;

(4) The feral swine are moved from an approved holding facility to a recognized slaughter facility;

(5) The feral swine are moved from an approved holding facility to an authorized hunting preserve;

(6) The feral swine are moved from an approved holding facility to another approved holding facility;

(7) Feral swine that have been trapped and are being held for transportation to an authorized location, as provided by this subsection, may be held in an escape-proof cage on the vehicle or trailer that transported them from their original premise, or held within the transport trailer itself for up to seven days.

(c) Approved Holding Facility.

(1) To hold live feral swine at a location other than the premises where the feral swine were trapped or otherwise captured, a person must apply and receive commission authorization for an approved holding facility. Authorization is required for each holding facility.

(2) Written approval for a feral swine holding facility may be given after an initial inspection by commission personnel determines that the facility meets the following criteria:

(A) The facility has a swine-proof fence constructed to prevent any feral swine from escaping and continually maintained by the owner and/or operator to prevent the ingress or egress of feral swine;

(B) The facility shall not be located within two hundred yards of any domestic swine pens;

(C) Only feral swine may be placed in the facility;

(D) Records shall be maintained by the registrant as provided in paragraph (4) of this subsection and the facility must provide records when requested or inspected;

(E) Feral swine shall not be intentionally commingled with domestic or exotic swine;

(F) Feral swine shall not be fed any garbage or waste as it is defined in Chapter 165 of the Texas Agriculture Code;

(G) Dead animals shall be removed from the approved holding facility premises promptly and disposed of in accordance with any applicable requirement or applicable ordinances or at the direction of commission personnel; and

(H) Feral swine shall only be moved from the facility directly to an approved slaughter facility, an authorized hunting preserve, or another approved holding facility.

(3) Application for Approved Holding Facility. Application and renewal for an approved holding facility shall be on a form prescribed by the commission and include at least the following information:

(A) Name, address and telephone number of applicant;

(B) Facility name, physical location, county, directions to facility and telephone number;

(C) Diagram of the surrounding areas and the pens;

(D) Pictures of the pens;

(E) Signature of the owner/manager;

(F) The authorization is valid for two years from the date of issuance and shall expire on the two year anniversary date of the date of issuance unless re-authorized; and

(G) Re-authorization of the approved holding facility shall be completed within 30 to 60 days prior to the expiration date.

(4) Record Keeping.

(A) Records to be generated and maintained by owners and/or operators of approved holding facilities and authorized hunting preserves shall include the following:

(i) The number of swine placed in and removed from the facility and/or preserve;

(ii) The approximate weight, size, color, sex and any applied identification for each feral swine;

(iii) Dates feral swine were placed and/or removed from the facility;

(iv) The physical location where feral swine were trapped;

(v) The physical location that feral swine were moved to, including any unique identification number; and

(B) The records shall be provided to an authorized agent of the commission upon request. Records shall be kept and maintained for not less than five years from the date the record was generated.

(5) Suspension/Revocation. The commission may suspend the authorization for an approved holding facility if the owner or operator fails to generate, maintain or provide records on feral swine as provided in paragraph (4) of this subsection, fails to maintain swine-proof fences to prevent the ingress or egress of feral swine, or violates any of the provisions of this chapter or the provisions of Chapter 161 of the Agriculture Code. The suspension will remain in effect until the deficiencies that were the cause of the suspension are corrected and any penalties assessed as result of the suspension are satisfied and a written suspension release is provided by the agency. The authorization for a holding facility may be revoked for blatant or repetitive violation(s) of the feral swine law or rules or for repeated failure to meet the requirements contained in this chapter.

(d) Authorized Hunting Preserve.

(1) To trap, move, and release live feral swine, a person must apply and receive commission authorization for a hunting preserve. Authorization is required for each hunting preserve.

(2) If feral swine are to be trapped and moved for release to a hunting preserve, the hunting preserve shall meet the following requirements:

(A) Only male feral swine (i.e. boars and/or barrows) may be trapped, moved and released to a hunting preserve;

(B) Any feral swine released must be individually identified with a commission approved form of identification prior to release;

(C) Records shall be generated and maintained as provided in subsection (c)(4) of this section;

(D) Have a Hunting Lease License with the Texas Parks and Wildlife Department and the license must be current and in good standing with that agency, as provided for in Chapter 43 of the Texas Parks and Wildlife Code;

(E) Be enclosed by a swine-proof fence and the fence shall be maintained continually to prevent the egress of feral swine;

(F) Feral swine shall not be fed any garbage or waste as defined in Chapter 165 of the Texas Agriculture Code; and

(G) The authorization for a hunting preserve may be suspended or rescinded if owner and/or the operator fails to generate, maintain or provide records on feral swine as provided in subsection (c)(4) of this section, sufficient fences are not maintained, or violates any of the provisions of this chapter or the provisions of Chapter 161 of the Agriculture Code. The suspension will remain in effect until the deficiencies that were the cause of the suspension are corrected and any penalties assessed as result of the suspension are satisfied. The preserve will be notified in writing when the suspension has been lifted. The authorization for a hunting preserve may be rescinded for blatant or repetitive violation(s) of the feral swine law or rules or for repeated failure to meet the requirements contained in this chapter.

(3) Application for Authorized Hunting Preserve.

(A) Applications shall be completed on a form prescribed by the commission, which includes the following information:

(i) Name, address and telephone number of applicant;

(ii) Physical location and county, directions to facility and telephone number;

(iii) A current copy of the Hunting Lease License issued by Texas Parks and Wildlife Department; and

(iv) Signature of the owner/manager that states that facility fences meet the requirements for swine-proof fences as contained in subsection (a) of this section.

(B) The authorization is valid for two years from the date of issuance. The authorization shall expire on the two year anniversary date of the date of issuance unless re-authorized. Re-authorization of the hunting preserve shall be completed within 30 to 60 days prior to the expiration date.

(C) The facility may be inspected periodically by agency personnel and must continually meet the requirements of this chapter.

(e) Change in Classification of Feral Swine. Free-roaming swine may be qualified for reclassification as domestic swine upon completion of the following test protocol:

(1) Three consecutive tests for brucellosis and pseudorabies, with negative results, shall be conducted on all swine in the herd unit in order to qualify for reclassification. The first test must be at least 30 days after any reactors have been removed and slaughtered and the second test must be 60 to 90 days after the first test. A third test is required 60 to 90 days following the second negative results; and

(2) In addition to the requirements in paragraph (1) of this subsection, any sexually intact female swine must also undergo a brucellosis and pseudorabies test, with negative results, not less than 30 days after their initial farrowing.

(f) Testing. Feral swine which are positive for brucellosis and/or pseudorabies shall be handled in accordance with the requirements for brucellosis, as contained in Chapter 35, Subchapter B of this title (relating to Eradication of Brucellosis in Swine) and for pseudorabies as contained in Chapter 55 of this title (relating to Swine).

(g) Inspection Authority.

(1) A person employed by the commission may enter public or private property for the exercise of an authority or performance of a duty under this chapter.

(2) A commission representative shall perform periodic inspections of authorized facilities and locations, and records related thereto, to ensure compliance with the requirements of the act or this chapter.

(h) Violations and Penalties. In addition to any other violations that may arise under the act or this chapter:

(1) It is a violation for any person to falsify an application.

(2) Any violation of these rules is subject to the appropriate administrative, civil or criminal penalties. In addition, the agency may revoke or deny renewal of a permit and/or assess administrative penalties against any person for a violation of these rules.

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 June 10, 2015.

TRD-201502189
Gene Snelson
General Counsel
Texas Animal Health Commission
Effective date: June 30, 2015
Proposal publication date: February 20, 2015
For further information, please call: (512) 719-0722

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 37. MATERNAL AND INFANT HEALTH SERVICES

SUBCHAPTER K. EPILEPSY PROGRAM

25 TAC §§37.211 - 37.216, 37.218

The Executive Commissioner of the Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department), adopts amendments to §§37.211 - 37.216 and 37.218, concerning the provisions of the Epilepsy Program without changes to the proposed text as published in the February 20, 2015, issue of the *Texas Register* (40 TexReg 770) and, therefore, the sections will not be republished.

Section 37.217 was published as a proposed amendment in the February 20, 2015, issue of the *Texas Register.* During this rulemaking process, §37.217 was designated as part of the contract and procurement rules to be moved to the commission's rule database. The department withdrew §37.217 from this rulemaking on April 20, 2015, and the withdrawal was published in the May 1, 2015, issue of the *Texas Register* (40 TexReg 2407). Section 37.217 was then published as a proposed repeal in the May 1, 2015, issue of the *Texas Register* (40 TexReg 2373), and filed with the Texas Register Division on June 1, 2015, as an adoption repeal in order to consolidate the contract and procurement requirements in the commission's rules in 1 TAC Chapter 391.

BACKGROUND AND PURPOSE

The amendments to 25 TAC §§37.211 - 37.216 and 37.218 comply with Health and Safety Code, Chapter 40, which authorizes the department to establish a program to provide epilepsy diagnostic, treatment, and support services to eligible individuals who have been diagnosed with epilepsy and/or seizure-like symptoms. Services may include diagnosis and treatment of epilepsy; continuity of care management; assistance obtaining personal, social, and vocational support services; and community education activities. The Epilepsy Program provides access to seizure-related services for individuals residing in Texas whose incomes do not exceed 200% of the federal poverty level and who cannot obtain the same care through other funding sources or programs.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 37.211 - 37.216 and 37.218 have been reviewed and the department has determined that reasons for adopting the sections continue to exist because rules on this subject are needed.

SECTION-BY-SECTION SUMMARY

Amendments to the title of Subchapter K and the rule text in §§37.211 - 37.214, 37.216, and 37.218, "Epilepsy Services" is revised to the "Epilepsy Program" to be consistent with Health and Safety Code, Chapter 40.

Amendment to §37.213(c) clarifies language by replacing the words "their" with the words "his/her" and the word "child" with the word "applicant."

An amendment to §37.214(2) revises the phrase "Verification of Information" with the phrase "Verification of Income" because the contractor's eligibility staff is verifying the person's "income" based on the "information" that he/she submits with his/her application for program services.

An amendment to §37.215 replaces the phrase "the person(s) who have" with the phrase "person who has" for clarification.

Amendment to §37.218 clarifies responsible parties concerning contracted providers.

COMMENTS

The department, on behalf of the commission, did not receive any comments regarding the proposed rules during the comment period.

LEGAL CERTIFICATION

The Department of State Health Services, General Counsel, Lisa Hernandez, certifies that the rules, as adopted, have been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

STATUTORY AUTHORITY

The amendments are authorized by Health and Safety Code, Chapter 40, which authorizes the department to establish a program to provide epilepsy diagnostic, treatment, and support services to eligible individuals; 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. Review of the sections implements Government Code, §2001.039.

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 June 12, 2015.

TRD-201502220
Lisa Hernandez
General Counsel
Department of State Health Services
Effective date: July 2, 2015
Proposal publication date: February 20, 2015
For further information, please call: (512) 776-6972

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 7. CORPORATE AND FINANCIAL REGULATION

SUBCHAPTER D. RISK-BASED CAPITAL AND SURPLUS AND OTHER REQUIREMENTS

28 TAC §7.402

The Texas Department of Insurance adopts amendments to 28 Texas Administrative Code §7.402, concerning risk-based capital (RBC) and surplus requirements for insurers and health maintenance organizations (HMOs). The amendments to §7.402 establish the sources of information insurers and HMOs will use in determining RBC requirements, including requiring use of the most current version of RBC formulas and RBC instructions adopted by the National Association of Insurance Commissioners (NAIC) except as provided by statute or TDI rule. Section 7.402 is adopted with changes to the proposed text published in the January 2, 2015, issue of the *Texas Register* (40 TexReg 7).

REASONED JUSTIFICATION. The RBC requirement is a method of ensuring that an insurer or HMO (collectively referred to as *carriers)* has an appropriate level of policyholder surplus after taking into account the underwriting, financial, and investment risks of a carrier. The NAIC RBC formulas and RBC instructions provide TDI with a widely used regulatory tool to identify the minimum amount of capital and surplus appropriate for a carrier to support its overall business operations considering its size and risk exposure.

Amended §7.402(d) lists the sources of information that insurers and HMOs must use to determine a carrier's RBC requirement. The sources of information are, in order of priority: Texas statutes, TDI rules and commissioner orders, and the NAIC RBC formulas and RBC instructions for carriers. The amendments do not change the current priority of the sources of information in existing §7.402(f) concerning the procedure for resolving conflicts between the sources. Making these sources continuous provides carriers greater certainty of information for planning their RBC needs, and enables them to timely complete and file their reports with TDI.

In establishing these sources and requirements, the commissioner has not delegated authority to others. The commissioner may by rule amend the NAIC RBC formulas and instructions for filings with TDI. The commissioner may also issue orders specifically affecting an individual carrier that could impact RBC formulas. The commissioner also retains exclusive authority to enforce the requirements in these rules.

The procedure for amending a source will depend on the circumstance and provision involved. The commissioner may propose rules or issue orders. Under existing law, interested persons may petition the commissioner for rules or otherwise bring to the commissioner's attention the need for action to address a problem.

The NAIC's RBC formulas and RBC instructions provide a uniform national standard for evaluating a carrier's capital needs. The NAIC RBC formulas and RBC instructions are adopted by regulators through a deliberative process, which includes a series of open meetings that offer the insurance industry and public the opportunity to comment on the proposed NAIC RBC formulas and RBC instructions. The NAIC RBC formulas and RBC instructions are published annually by the NAIC to reflect any changes to the prior year's NAIC RBC formulas and RBC instructions made through this process.

TDI uses the NAIC RBC formulas and RBC instructions as a source for evaluating a Texas carrier's capital needs, unless a TDI rule or other state law provides otherwise or a carrier is subject to a commissioner order concerning its capital requirements. TDI maintains a current copy of the NAIC RBC formulas and RBC instructions available for public inspection in the Financial Analysis Section, Financial Regulation Division, Texas Department of Insurance, William P. Hobby Jr. State Office Building, Tower Number III, Third Floor, Mail Code 303-1A, 333 Guadalupe, Austin, Texas 78701. TDI will continue to maintain a copy of subsequent versions of the NAIC RBC formulas and RBC instructions available for inspection at that location. Amendments to §7.402 are discussed in the following paragraphs.

The designation of §7.402(b)(3) has been amended to reflect that the existing paragraph includes carriers that file the NAIC Health Annual Statement in addition to HMOs.

TDI adds the definition of "carrier" in §7.402(c), because the existing requirements of §7.402 apply to a variety of regulated entities. This amendment has been applied in conforming changes throughout §7.402. The conforming change to the term "carrier" is not a substantive change in requirements because it does not affect the current application of §7.402.

In this adoption, TDI has determined that, in addition to the changes marked in the proposal for the term "carrier," two additional changes are required. The two additional changes are nonsubstantive and do not change any of the existing requirements under this section, affect persons not already subject to the requirement, or create new costs. The first change substitutes the term "carrier" for "insurer" in the first sentence of §7.402(g)(1). The change must be made in this adoption to make the three references in that sentence consistent.

The second change is in §7.402(g)(7). TDI has replaced the term "insurer" in the last sentence of this provision with "health maintenance organization or certain health carrier." The change is necessary to be consistent with the first sentence in this provision, which establishes a requirement for HMOs or health carriers described in subsection (b)(3). In addition, because the initial reference is to both an HMO and a health carrier, TDI believes that use of the entire initial reference is necessary to avoid possible confusion with only using the term carrier.

Other definitions have been amended to conform to other proposed changes in §7.402 and to better identify references, including §7.68 of this title. TDI has removed references to an annual statement "blank" to be consistent with §7.68.

For reasons previously discussed in this adoption, TDI has amended §7.402(d) to list in order of priority the sources of information that carriers must use when determining RBC. In response to comments, TDI removed the provision for directives and instructions from §7.402(d)(3). Allowing for "directives" and "instructions" was considered as a means of allowing carriers to request a permitted practice that might affect an RBC calculation under this section in manner that would be similar to a requested practice under §7.18(f). The process was not intended as a means for TDI to create requirements.

The adopted amendments to §7.402(g)(5), (6), (7), and (8) directly link the requirements with the entities listed in §7.402(b). These changes to §7.402(g)(5), (6), (7), and (8) are not substantive and do not change requirements or affect the current application of §7.402.

TDI has made additional amendments to §7.402(g)(5), (6), (7), and (8) in response to a comment. The commenter requested that §7.402(g)(6) be revised to include the combined ratio language stated in the NAIC Property and Casualty RBC instructions and suggested that similar changes might be made to §7.402(g)(5), (7), and (8).

TDI declines to make the change to §7.402(g)(6) proposed by the commenter, because the combined ratio is stated in the RBC instructions, which is a source document under §7.402(d). However, in response to the comment, TDI has made a clarifying change to the second sentence in §7.402(g)(6) to refer to the "RBC formula and RBC instructions." The amendment is consistent with the existing requirement in §7.402(d) and (e) to use the RBC formula and RBC instructions.

TDI has also made similar changes to §7.402(g)(5), (7), and (8) in response to the comment. TDI amended the first sentence of §7.402(g)(5) and (8) and the second sentence of §7.402(g)(7) to include a reference to the "RBC formula and RBC instructions" as the source of the calculations. The amendments clarify the procedure under §7.402(g)(5), (7), and (8) and are consistent with the existing requirement in §7.402(d) and (e) to use the RBC formula and RBC instructions.

The trend test and formula used to calculate in §7.402(g)(5), (6), (7), and (8) were not marked for change in the proposal. However, each provision was published in the proposal and each affected stakeholder had notice that the proposal affected them and the opportunity to comment. I response to a comment, TDI elected to make changes to §7.402(g)(5), (6), (7), and (8) clarifying that under the existing requirements in §7.402(d) and (e), the RBC formula and RBC instructions must be used for the trend test. The amendments to §7.402(g)(5), (6), (7), and (8) in this adoption do not change any of the existing requirements under this section, affect persons not already subject to the requirement, or create new costs.

TDI has also made a nonsubstantive amendment to the first sentence of §7.402(g)(1) to replace the word "institutes" with the word "triggers." The change referring to triggering a company action level is now consistent with similar references in §7.402(g)(1) - (8). TDI has made additional nonsubstantive amendments to §7.402 to reflect updated TDI style guidelines. The nonsubstantive amendments do not change any of the existing requirements under this section, affect persons not already subject to the requirement, or create new costs.

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

Comment: A commenter requests that §7.402(d)(3) be revised to clarify what constitutes a "directive" or "instruction" and requests that §7.402(d)(3) be revised so that it states more clearly who is authorized to issue the directives and instructions that factor into the determination of a carrier's RBC.

Agency Response: TDI has decided to remove the provision for directives and instructions from §7.402(d)(3). Allowing for "directives" and "instructions" was considered as a means of allowing carriers to request a permitted practice that might affect an RBC calculation under this section in manner similar to those practices under §7.18(f). The process was not intended as a means for TDI to create requirements.

Comment: A commenter requests that the guidance on the trend test in §7.402(g)(6) be revised to include the combined ratio language in the NAIC Property and Casualty RBC instructions. The commenter asserts that the change is necessary to ensure that the NAIC RBC requirements are applied consistently in all states. The commenter suggests adding "and the combined ratio is greater than 120 percent" to the end of the first sentence in §7.402(g)(6) will make the clarification. The commenter suggested that similar changes might be relevant for §7.402(g)(5), (7), and (8).

Agency Response: TDI agrees with the commenter that changes should be made to clarify §7.402(g)(5), (6), (7), and (8). TDI declines to make the change to §7.402(g)(6) proposed by the commenter because the combined ratio is stated in the RBC instructions, which is a source document under §7.402(d). However, in response to the comment, TDI has made a clarifying change to the second sentence in §7.402(g)(6) to refer to the "RBC formula and RBC instructions." The amendment is consistent with the existing requirement in §7.402(d) and (e) to use the RBC formula and RBC instructions.

TDI has also made similar changes to §7.402(g)(5), (7), and (8) in response to the comment. TDI amended the first sentence of §7.402(g)(5) and (8) and the second sentence of §7.402(g)(7) to include a reference to the "RBC formula and RBC instructions" as the source of the calculations. The amendments clarify the procedure under §7.402(g)(5), (7), and (8) and are consistent with the existing requirement in §7.402(d) and (e) to use the RBC formula and RBC instructions.

The trend test and formula used to calculate in §7.402(g)(5), (6), (7), and (8) were not marked for change in the proposal. However, each provision was published in the proposal and each affected stakeholder had notice that the proposal affected them and the opportunity to comment. As a result of a comment, TDI elected to make changes to §7.402(g)(5), (6), (7), and (8) clarifying that under the existing requirements in §7.402(d) and (e), the RBC formula and RBC instructions must be used for the trend test. The amendments to §7.402(g)(5), (6), (7), and (8) in this adoption do not change any of the existing requirements under this section, affect persons not already subject to the requirement, or create new costs.

NAMES OF THOSE COMMENTING ON THE PROPOSAL.

For with changes: National Association of Mutual Insurance Companies; and Superior HealthPlan, Inc., a Centene company.

STATUTORY AUTHORITY. The amendments are adopted under Insurance Code §§404.004, 404.005, 441.005, 441.051, 822.210, 822.211, 841.205, 841.206, 841.410, 841.414, 843.404, 884.054, 884.206, 885.401, 982.105, 982.106, and 36.001. Section 404.004 provides that the commissioner's authority to increase any capital and surplus requirements prevails over the general provisions of the Insurance Code relating to specific companies, and §404.005 authorizes the commissioner to set standards for evaluating the financial condition of an insurer. Under §441.005, the commissioner may adopt reasonable rules as necessary to implement and supplement the purposes of Chapter 441.

Section 441.051 specifies the circumstances in which an insurer is considered insolvent, delinquent, or threatened with delinquency and includes certain statutorily specified conditions,

including if an insurer's required surplus, capital, or capital stock is impaired to an extent prohibited by law. Section 822.210 authorizes the commissioner to adopt rules or guidelines to require an insurer to maintain capital and surplus levels in excess of statutory minimum levels to ensure financial solvency of insurers for the protection of policyholders and insurers. Section 822.211 specifies the actions the commissioner may take if an insurance company does not comply with the capital and surplus requirements of Chapter 822.

Section 841.205 authorizes the commissioner to adopt rules or guidelines to require an insurer that writes life or annuity contracts or assumes liability on or indemnifies one person for any risk under an accident and health insurance policy, or a combination of these policies, in an amount that exceeds $10,000, to maintain capital and surplus levels in excess of statutory minimum levels to assure financial solvency of insurers for the protection of policyholders and insurers. Section 841.206 authorizes the commissioner to take regulatory action if the commissioner determines that a life, accident, or health insurance company's capital or surplus is impaired in violation of §841.206.

Section 841.410(b) and (c) require a limited-purpose subsidiary life insurance company to comply with the RBC requirements, and maintain RBC in an amount that is at least equal to 300 percent of the authorized control level of RBC adopted by the commissioner. Section 841.414(c) requires a limited-purpose subsidiary life insurance company to file annually with the commissioner a report of the limited-purpose subsidiary life insurance company's RBC level as of the end of the preceding calendar year containing the information required by the RBC instructions adopted by the commissioner.

Section 843.404 authorizes the commissioner to adopt rules to require an HMO to maintain capital and surplus levels in excess of statutory minimum levels to ensure financial solvency of HMOs for the protection of enrollees. Section 884.054 specifies the capital stock and surplus requirements for stipulated premium insurance companies. Section 884.206 authorizes the commissioner to adopt rules to require an insurer that writes or assumes life insurance, annuity contracts, or accident and health insurance for a risk to one person in an amount that exceeds $10,000 to maintain capital and surplus levels in excess of statutory minimum levels to ensure financial solvency of an insurer for the protection of policyholders and other insurers.

Section 885.401 requires each fraternal benefit society to file an annual report on the society's financial condition, including any information the commissioner considers necessary to demonstrate the society's business and method of operation, and authorizes TDI to use the annual report in determining a society's financial solvency.

Section 982.105 specifies the capital, stock, and surplus requirements for foreign or alien life, health, or accident insurance companies. Section 982.106 specifies the capital, stock, and surplus requirements for foreign or alien insurance companies other than life, health, or accident insurance companies. Section 36.001 authorizes the commissioner to adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS REFERENCE TO STATUTE. The proposed amendments to §7.402 affect the following statutes: Insurance Code §§404.004, 404.005, 441.005, 441.051, 822.210, 822.211, 841.205, 841.206, 841.410, 841.414, 843.404, 884.054, 884.206, 885.401, 982.105, and 982.106

§7.402. Risk-Based Capital and Surplus Requirements for Insurers and HMOs.

(a) Purpose. The purpose of implementing a risk-based capital and surplus provision is to require a minimum level of capital and surplus to absorb the financial, underwriting, and investment risks assumed by a carrier.

(b) Scope.

(1) Life companies. This section applies to any carrier authorized to do business in Texas as an insurance company that writes or assumes a life insurance or annuity contract or assumes liability on or indemnifies one person for any risk under an accident and health insurance policy, or any combination of these policies, in an amount that exceeds $10,000 including: capital stock companies, mutual life companies, limited purpose subsidiary life insurance companies, and stipulated premium insurance companies.

(2) Property and casualty companies. This section applies to all domestic, foreign, and alien property and casualty companies subject to the provisions of Insurance Code §822.210 and §982.106, including county mutual insurance companies that do not meet the express criteria contained in Insurance Code §912.056(f), but excluding monoline financial guaranty insurers, monoline mortgage guaranty insurers, title insurers, and those insurers subject to Insurance Code §822.205.

(3) Health maintenance organizations and certain health carriers. This section applies to all domestic and foreign health maintenance organizations subject to the provisions of Insurance Code Chapter 843 and carriers that file the NAIC Health Annual Statement with TDI under TDI filing requirements.

(4) Fraternal benefit societies. This section applies to all domestic and foreign fraternal benefit societies.

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

(1) Annual financial statement--The annual statement to be used by carriers under §7.68 of this title.

(2) Authorized control level--The result determined using the sources of information under subsection (d) of this section, including the RBC formula in accord with the RBC instructions.

(3) Carrier--An insurer, health maintenance organization, or fraternal benefit society included within the scope of subsection (b) of this section.

(4) NAIC--National Association of Insurance Commissioners.

(5) RBC--Risk-based capital.

(6) RBC formula--NAIC risk-based capital formula.

(7) RBC instructions--NAIC Risk-Based Capital Report Including Overview and Instructions for Companies.

(8) Total adjusted capital--A carrier's adjusted statutory capital and surplus as determined using the sources of information under subsection (d) of this section, including the RBC formula in accord with the RBC instructions.

(d) Sources of information for determining RBC. The commissioner reserves all authority and discretion to resolve any issues in Texas concerning RBC. The commissioner and carriers will refer to the sources in paragraphs (1) - (4) of this subsection in the respective order of priority listed to determine RBC:

(1) Texas statutes;

(2) TDI rules;

(3) commissioner orders; and

(4) except as provided in this section, as applicable to the carrier:

(A) the NAIC Life Risk-Based Capital Report Including Overview and Instructions for Companies, which includes the RBC formula, for the period being reported.

(B) the NAIC Fraternal Risk-Based Capital Report Including Overview and Instructions for Companies, which includes the RBC formula, for the period being reported.

(C) the NAIC Property and Casualty Risk-Based Capital Report Including Overview and Instructions for Companies, which includes the RBC formula, for the period being reported.

(D) the NAIC Health Risk-Based Capital Report Including Overview and Instructions for Companies, which includes the RBC formula, for the period being reported.

(e) Filing requirements. All carriers must file electronic versions of the RBC reports and any supplemental RBC forms and reports with the NAIC in accord with and by the due dates specified in sources of information for determining RBC listed in subsection (d) of this section, including the RBC instructions.

(f) Conflicts. In the event of a conflict between the Insurance Code, any TDI rule, any specific requirement of this section, and the RBC formula or the RBC instructions, the Insurance Code, rule, or specific requirement of this section takes precedence and in all respects controls. The requirements of this section do not repeal, modify, or amend any TDI rule or any Insurance Code provision.

(g) Actions of commissioner. The level of risk-based capital is calculated and reported annually. Depending on the results computed by the risk-based capital formula, the commissioner of insurance may take a number of remedial actions, as considered necessary. The ratio result of the total adjusted capital-to-authorized control level risk-based capital requires the following actions related to a carrier within the specified ranges:

(1) A carrier reporting total adjusted capital of 150 percent to 200 percent of authorized control level risk-based capital triggers a company action level under which the carrier must prepare a comprehensive financial plan that identifies the conditions that contribute to the carrier's financial condition. The plan must contain proposals to correct areas of substantial regulatory concern and projections of the carrier's financial condition, both with and without the proposed corrections. The plan must list the key assumptions underlying the projections and identify the concerns associated with the carrier's business. The RBC plan must be submitted within 45 days of filing the RBC report with the NAIC. After review, the commissioner will notify the carrier if the plan is satisfactory or not satisfactory. If the commissioner notifies the carrier that the plan is not satisfactory, the carrier must prepare a revised plan and submit it to the commissioner. Failure to file this comprehensive financial plan triggers the regulatory action level described in this subsection.

(2) A carrier reporting total adjusted capital of 100 percent to 150 percent of authorized control level risk-based capital triggers a regulatory action level initiative. At this action level, a carrier must file an RBC plan or revised RBC plan within 45 days of filing the RBC report with the NAIC, and the commissioner must perform any examinations or analyses to the carrier's business and operations that are deemed necessary. The commissioner may issue orders specifying corrective actions to be taken or may require other appropriate action.

(3) A carrier reporting total adjusted capital of 70 percent to 100 percent of authorized control level risk-based capital triggers an authorized control level. In addition to the remedies available at the carrier and regulatory action levels described in this subsection, the commissioner may take other action deemed necessary, including initiating a regulatory intervention to place a carrier under regulatory control.

(4) A carrier reporting total adjusted capital of less than 70 percent of authorized control level triggers a mandatory control level that subjects the carrier to one of the following actions:

(A) being placed in supervision or conservation;

(B) being determined to be in hazardous financial condition as provided by Insurance Code Chapter 404 and §8.3 of this title regardless of percentage of assets in excess of liabilities;

(C) being determined to be impaired as provided by Insurance Code §§404.051 and 404.052 or 841.206; or

(D) any other applicable sanctions under the Insurance Code.

(5) A life company described in subsection (b)(1) of this section is subject to a trend test described in the RBC formula and RBC instructions, if its total adjusted capital-to-authorized control level risk-based capital is between 200 percent and 300 percent. Any life insurer that trends below 190 percent of total adjusted capital-to-authorized control level risk-based capital triggers the company action level.

(6) A property and casualty company described in subsection (b)(2) of this section is subject to a trend test if its total adjusted capital-to-authorized control level risk-based capital is between 200 percent and 300 percent. If the result of the trend test as determined by the RBC formula and RBC instructions is "YES," the insurer triggers regulatory attention at the company action level.

(7) A health maintenance organization or health carrier described in subsection (b)(3) of this section is subject to a trend test if its total adjusted capital-to-authorized control level risk-based capital is between 200 percent and 300 percent and triggers the trend test determined in accord with the trend test calculation included in the Health RBC instructions. If the result of the trend test as determined by the RBC formula and RBC instructions is "YES," the health maintenance organization or certain health carrier triggers regulatory attention at the company action level.

(8) A fraternal benefit society described in subsection (b)(4) of this section is subject to a trend test described in the RBC formula and RBC instructions, if its total adjusted capital-to-authorized control level risk-based capital is between 200 percent and 300 percent. Any fraternal benefit society that trends below 190 percent of total adjusted capital-to-authorized control level risk-based capital triggers the company action level.

(h) Prohibition on announcements. Except as required under this section, a carrier, agent, or other person engaged in the business of insurance under the Insurance Code is prohibited from making, publishing, disseminating, circulating, or placing before the public, or causing, directly or indirectly to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, poster, over any radio or television station, or in any other way, an advertisement, announcement, or statement containing an assertion, representation, or statement with regard to any component derived in the calculation. Any violation of this subsection may be considered a

violation of Insurance Code Chapter 541, regulating unfair methods of competition and unfair or deceptive acts or practices.

(i) Prohibition on use in ratemaking. The RBC instructions and any related filings are intended solely for use by the commissioner in monitoring the solvency of carriers and in taking corrective action with respect to carriers. The RBC instructions and any related filings may not be:

(1) used by the commissioner for ratemaking;

(2) considered or introduced as evidence in any rate proceeding; or

(3) used by the commissioner to calculate or derive any elements of an appropriate premium level or rate of return for any line of insurance that a carrier or any affiliate is authorized to write.

(j) Limitations. The requirements of this section do not reduce the amount of capital and surplus otherwise required by the Insurance Code, TDI rules, or by authority of the commissioner as provided by law.

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 June 11, 2015.

TRD-201502194
Sara Waitt
General Counsel
Texas Department of Insurance
Effective date: July 1, 2015
Proposal publication date: January 2, 2015
For further information, please call: (512) 676-6584

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 19. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

CHAPTER 700. CHILD PROTECTIVE SERVICES

SUBCHAPTER Q. PURCHASED PROTECTIVE SERVICES

The Health and Human Services Commission (HHSC) adopts, on behalf of the Department of Family and Protective Services (DFPS), the repeal of §§700.1701 - 700.1707, 700.1711 - 700.1718, 700.1727 - 700.1730, 700.1732, 700.1734 - 700.1736, and 700.1761 - 700.1763; amendments to §§700.1726, 700.1731, and 700.1733; and new §700.1728 and §700.1735, in its Child Protective Services chapter. The amendments to §700.1726 and §700.1733 are adopted with changes to the proposed text published in the April 17, 2015, issued of the *Texas Register* (40 TexReg 2183). The repeal of §§700.1701 - 700.1707, 700.1711 - 700.1718, 700.1727 - 700.1730, 700.1732, 700.1734 - 700.1736, and 700.1761 - 700.1763; the amendment to §700.1731; and new §700.1728 and §700.1735 are adopted without changes to the proposed text and will not be republished.

The justification of the repeals, amendments, and new sections is to modernize and clarify DFPS regulatory guidance related to contracting. DFPS has general statutory authority to enter into appropriate contracts to fulfill its powers and duties in Texas Human Resources Code §40.058(a). Pursuant to Government Code §531.0055(f)(4), HHSC exercises this general authority on behalf of DFPS and its sister health and human agencies. DFPS has determined that the bulk of the prescriptive and outdated rules in Subchapter Q, Purchased Protective Services, serve no continuing purpose and are currently achieved through agency contracts, to the extent that the provisions still represent current agency practice. There are, however, five rules related to postadoption services purchased by DFPS that also contain provisions regarding client eligibility that the agency continues to rely on for applicants who wish to receive such services. Accordingly, DFPS has updated those rules for greater clarity to the public. A summary of the changes follows:

The amendment to §700.1726 is to utilize plain-language and to incorporate current policy regarding the purposes for which postadoption services are used. Also the amendment deletes language that is currently addressed by contract.

The repeal of and new §700.1728 specifies the eligibility criteria for receipt of postadoption services and reiterates that the provision of services is subject to the availability of appropriated funds. Also the language that is currently addressed by contract is not included in the new rule.

The amendment to §700.1731 specifies which clients may be eligible for counseling as a postadoption service, updates terminology, and deletes language that is currently addressed by contract.

The amendment to §700.1733 clarifies which clients may be eligible for residential treatment services provided as a postadoption service, updates terminology and deletes language that is currently addressed by contract.

The repeal and new §700.1735 details the length of time for which a person can be eligible for postadoption residential care, as well as the circumstances under which the duration may be extended.

No comments were received regarding adoption of the repeals, amendments, and new sections. DFPS is making two minor, nonsubstantive corrections to the text of the rules as proposed.

40 TAC §§700.1701 - 700.1707, 700.1711 - 700.1718, 700.1727 - 700.1730, 700.1732, 700.1734 - 700.1736, 700.1761 - 700.1763

The repeals are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.0528, which provides general contracting authority for department functions.

The repeals implement HRC §40.0528.

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 June 11, 2015.

TRD-201502195

Trevor Woodruff
General Counsel
Department of Family and Protective Services
Effective date: July 1, 2015
Proposal publication date: April 17, 2015
For further information, please call: (512) 438-4978

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40 TAC §§700.1726, 700.1728, 700.1731, 700.1733, 700.1735

The amendments and new sections are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.0528, which provides general contracting authority for department functions.

The amendments and new sections implement HRC §40.0528.

§700.1726. What are postadoption services?

Postadoption services are purchased client services that consist of counseling, educational, and supportive services provided to an adoptive family to help the adopted child and the family:

(1) adjust to the adoption;

(2) cope with any history of abuse in the child's background;

(3) cope with mental health issues the child may have; and

(4) avoid permanent or long-term removal of children from the family.

§700.1733. Who is Eligible for Residential Treatment Services?

(a) Client eligibility. Only adopted children are eligible for residential treatment services through the postadoption-services program. To qualify, a child:

(1) must be expected to return home and function in the adoptive family within 12 months;

(2) must not be eligible for treatment in a state hospital or state school; and

(3) must have an initial service level determination of Specialized or Intense.

(b) Family treatment and progress towards reunification.

(1) The child's adoptive family must participate in family treatment over the course of the child's stay in residential treatment.

(2) Every three-month review of the child's service plan must address the progress made towards reunifying the child with the adoptive family.

(3) The contractor must begin planning for a child's discharge from residential treatment services, and must carry out the discharge within 60 days, if either of the following conditions arises:

(A) the adoptive parents do not:

(i) maintain regular contact with the child;

(ii) participate in treatment; or

(iii) intend to let the child return home; or

(B) the child's functioning does not improve.

(c) Minimum service level.

(1) If the service level of an adopted child in residential treatment services is reduced below the Specialized Service Level at the end of a service level review, the contractor must immediately begin planning to:

(A) support the child's return to the adoptive home;

(B) refer the child and family to another facility that can meet the child's needs; or

(C) help the family find other ways to pay for the contractor's continuing care.

(2) The child's eligibility for DFPS-paid residential treatment services ends 60 days after the effective date of the reduced service level.

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 June 11, 2015.

TRD-201502196
Trevor Woodruff
General Counsel
Department of Family and Protective Services
Effective date: July 1, 2015
Proposal publication date: April 17, 2015
For further information, please call: (512) 438-4978

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CHAPTER 730. LEGAL SERVICES
SUBCHAPTER S. CONTRACTING ETHICS

40 TAC §§730.1801 - 730.1807

The Health and Human Services Commission adopts, on behalf of the Department of Family and Protective Services (DFPS), the repeal of §§730.1801 - 730.1807, concerning contracting ethics, in Chapter 730, Legal Services, without changes to the proposed text as published in the April 17, 2015, issue of the *Texas Register* (40 TexReg 2187).

The justification of the repeal of Chapter 730, Subchapter S is to facilitate the consolidation of all procurement and contracting rules within the HHS Enterprise within Title 1, Texas Administrative Code, Chapters 391 and 392. DFPS has general statutory authority to enter into appropriate contracts to fulfill its powers and duties in Texas Human Resources Code §40.058(a). Pursuant to Government Code §531.0055(f)(4) and §2155.144(H), HHSC exercises this general authority on behalf of DFPS and its sister health and human agencies. Substantively, the rules pertaining to contracting and procurement ethics will not change. They will, however, be consolidated into unified regulatory provisions in Title 1.

No comments were received regarding adoption of these repeals.

The repeals are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.0528, which provides general contracting authority for department functions.

The repeals implement HRC §40.0528.

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 June 11, 2015.

TRD-201502197
Trevor Woodruff
General Counsel
Department of Family and Protective Services
Effective date: July 1, 2015
Proposal publication date: April 17, 2015
For further information, please call: (512) 438-5647

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CHAPTER 732. CONTRACTED SERVICES

The Health and Human Services Commission (HHSC) adopts, on behalf of the Department of Family and Protective Services (DFPS), the repeal of Chapter 732, Contracted Services, consisting of §§732.101, 732.103, 732.105, 732.109, 732.111, 732.201, 732.202, 732.237 - 732.242, 732.257 - 732.259, 732.261, 732.262, 732.265, 732.267, 732.269 - 732.273, 732.280, 732.282, 732.284, 732.286, 732.288, 732.290, 732.301 - 732.305, 732.401, 732.403, 732.405, 732.407, 732.409, 732.411, 732.413, 732.415, 732.417, 732.419, 732.421, 732.423, 732.425, 732.427, 732.429, and 732.431, without changes to the proposed text as published in the April 17, 2015, issue of the *Texas Register* (40 TexReg 2188).

The justification of the repeal of Chapter 732 is to facilitate the consolidation of all procurement and contracting rules within the HHS Enterprise within Title 1, Texas Administrative Code, Chapters 391 and 392. DFPS has general statutory authority to enter into appropriate contracts to fulfill its powers and duties in Texas Human Resources Code §40.058(a). Pursuant to Government Code §531.0055(f)(4) and §2155.144(H), HHSC exercises this general authority on behalf of DFPS and its sister health and human agencies.

No comments were received regarding adoption of the repeals.

SUBCHAPTER A. GENERAL PROCEDURES

40 TAC §§732.101, 732.103, 732.105, 732.109, 732.111

The repeals are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.0528, which provides general contracting authority for department functions.

The repeals implement HRC §40.0528.

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 June 11, 2015.

TRD-201502198
Trevor Woodruff
General Counsel
Department of Family and Protective Services
Effective date: July 1, 2015
Proposal publication date: April 17, 2015
For further information, please call: (512) 438-5647

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SUBCHAPTER L. CONTRACT ADMINISTRATION

40 TAC §§732.201, 732.202, 732.237 - 732.242, 732.257 - 732.259, 732.261, 732.262, 732.265, 732.267, 732.269 - 732.273, 732.280, 732.282, 732.284, 732.286, 732.288, 732.290

The repeals are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.0528, which provides general contracting authority for department functions.

The repeals implement HRC §40.0528.

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 June 11, 2015.

TRD-201502199
Trevor Woodruff
General Counsel
Department of Family and Protective Services
Effective date: July 1, 2015
Proposal publication date: April 17, 2015
For further information, please call: (512) 438-5647

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SUBCHAPTER M. AUDITING

40 TAC §§732.301 - 732.305

The repeals are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.0528, which provides general contracting authority for department functions.

The repeals implement HRC §40.0528.

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 June 11, 2015.

TRD-201502200

Trevor Woodruff
General Counsel
Department of Family and Protective Services
Effective date: July 1, 2015
Proposal publication date: April 17, 2015
For further information, please call: (512) 438-5647

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SUBCHAPTER N. DISPUTE RESOLUTION

40 TAC §§732.401, 732.403, 732.405, 732.407, 732.409, 732.411, 732.413, 732.415, 732.417, 732.419, 732.421, 732.423, 732.425, 732.427, 732.429, 732.431

The repeals are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.0528, which provides general contracting authority for department functions.

The repeals implement HRC §40.0528.

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 June 11, 2015.

TRD-201502201
Trevor Woodruff
General Counsel
Department of Family and Protective Services
Effective date: July 1, 2015
Proposal publication date: April 17, 2015
For further information, please call: (512) 438-5647

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Alisa Sexton
3rd 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 Department of Criminal Justice

Title 37, Part 6

The Texas Board of Criminal Justice files this notice of intent to review §151.25, concerning the Texas Department of Criminal Justice Tobacco Policy. This review is conducted pursuant to Texas Government Code §2001.039, which requires rule review every four years.

In an upcoming issue of the *Texas Register,* the Texas Board of Criminal Justice will propose amendments to §151.25.

Comments should be directed to Sharon Felfe Howell, General Counsel, Texas Department of Criminal Justice, P.O. Box 4004, Huntsville, Texas 77342, *Sharon.Howell@tdcj.texas.gov.* Written comments from the general public must be received within 30 days of the publication of this notice in the *Texas Register.*

TRD-201502266
Sharon Howell
General Counsel
Texas Department of Criminal Justice
Filed: June 15, 2015

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The Texas Board of Criminal Justice files this notice of intent to review §151.75, concerning Standards of Conduct for Financial Advisors. This review is conducted pursuant to Texas Government Code §2001.039, which requires rule review every four years.

In an upcoming issue of the *Texas Register,* the Texas Board of Criminal Justice will propose amendments to §151.75.

Comments should be directed to Sharon Felfe Howell, General Counsel, Texas Department of Criminal Justice, P.O. Box 4004, Huntsville, Texas 77342, *Sharon.Howell@tdcj.texas.gov.* Written comments from the general public must be received within 30 days of the publication of this notice in the *Texas Register.*

TRD-201502268
Sharon Felfe Howell
General Counsel
Texas Department of Criminal Justice
Filed: June 15, 2015

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The Texas Board of Criminal Justice files this notice of intent to review Chapter 154, concerning the Private Sector Prison Industries Programs. This review is conducted pursuant to Texas Government Code §2001.039, which requires rule review every four years.

In an upcoming issue of the *Texas Register,* the Texas Board of Criminal Justice will propose amendments to Chapter 154.

Comments should be directed to Sharon Felfe Howell, General Counsel, Texas Department of Criminal Justice, P.O. Box 4004, Huntsville, Texas 77342, *Sharon.Howell@tdcj.texas.gov.* Written comments from the general public must be received within 30 days of the publication of this notice in the *Texas Register.*

TRD-201502270
Sharon Felfe Howell
General Counsel
Texas Department of Criminal Justice
Filed: June 15, 2015

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Texas State Board of Pharmacy

Title 22, Part 15

The Texas State Board of Pharmacy files this notice of intent to review Chapter 291 (§§291.101 - 291.105), concerning Pharmacies (Non-Resident Pharmacy (Class E)), pursuant to the Texas Government Code §2001.039, regarding Agency Review of Existing Rules.

Comments regarding whether the reason for adopting the rule continues to exist may be submitted to Allison Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Austin, Texas 78701, FAX (512) 305-8082. Comments must be received by 5:00 p.m., July 31, 2015.

TRD-201502230
Gay Dodson
Executive Director
Texas State Board of Pharmacy
Filed: June 12, 2015

♦ ♦ ♦

The Texas State Board of Pharmacy files this notice of intent to review Chapter 295 (§§295.1 - 295.9, 295.11 - 295.13, 295.15), concerning Pharmacists, pursuant to the Texas Government Code §2001.039, regarding Agency Review of Existing Rules.

Comments regarding whether the reason for adopting the rule continues to exist may be submitted to Allison Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Austin, Texas 78701, FAX (512) 305-8082. Comments must be received by 5:00 p.m., July 31, 2015.

TRD-201502231

Gay Dodson
Executive Director
Texas State Board of Pharmacy
Filed: June 12, 2015

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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: 22 TAC §203.43(c)(4)

Class A:
1st Violation: $250
2nd Violation: $750
3rd Violation: $1,000 and/or sanction
4+ Violation: Up to $5,000 and/or sanction

1. §651.157 - Failure to have premises open at all times to inspection
2. §651.261 - Failure to conspicuously display holder's license in each location
3. §651.304(a) Failure by Provisional Licensee to timely notify Commission of employment
4. §651.304(d) - Failure by FD/Embalmer to prepare affidavit of completed cases if provisional leaves employment
5. §651.351(d)(1) - Funeral Establishment must meet building, health and safety codes
6. §651.351(d)(3) - Failure by Funeral Establishment to include facilities in which funeral services may be conducted
7. §651.351(d)(4) - Failure by Funeral Establishment to have access to rolling stock
8. §651.351(d)(5) - Failure to maintain preparation room (i.e. have necessary equipment/supplies)
9. §651.351(d)(6) - Failure by Funeral Establishment to include facilities to comply with sanitary codes
10. §651.351(d)(7)/§651.351(f) - Failure by Funeral Establishment to include required casket display
11. §651.403 - Failure to promptly notify Commission of FDIC change
12. §651.404/§651.454(a)(1) - Failure to provide Consumer brochure to customer
13. §651.407 - Failure to retain written consent for 2 years
14. §651.454(a)(4) - Failure to provide general price information by telephone within reasonable time
15. §651.454(b)(1) - Restricted, hindered, or attempted to restrict or hinder advertising or disclosure of prices and other information regarding the availability of funeral services and funeral merchandise that is not unfair or deceptive to consumers
16. §651.457(a)(3) - Allowed the presence/ participation of a student for credit or satisfaction of academic requirements during the embalming of a dead human body without complying with §651.407

Class B Offenses
1st Violation: $500
2nd Violation: $1,000
3rd Violation: Up to $3,500 and/or sanction
4+ Violation: Up to $5,000 and/or sanction

1. §651.405 - Failure of Funeral Establishment to include all provisions/notifications on GPL
2. §651.4055 - Failure of Cemetery/Crematory to include all provisions/notifications on GPL
3. §651.406 - Failure of Funeral Establishment to include all provisions/notifications on Purchase Agreement

4. §651.4065 - Failure of Cemetery/Crematory to include all provisions/notifications on Purchase Agreement
5. §651.4085 - Failure of FD or agent to be present when casket is interred or entombed unless out of state
6. §651.454(a)(3) - Failure to explain to a prospective customer that a contractual agreement for funeral services or merchandise may not be entered into before a retail price list is provided to the prospective customer
7. §651.454(c) - Solicited business or offered an inducement to secure or attempt to secure business for the funeral establishment unless the solicitation was made under a permit issued under Chapter 154, Finance Code
8. §651.454(a)(2) - Failure to provide to a prospective customer inquiring in person about any funeral service or merchandise a retail price list for the prospective customer to keep
9. §651.454(b)(2) - Restricted, hindered, or attempted to restrict or hinder: an agreement for funeral services between a consumer and a funeral director or embalmer
10. §651.455(a)(1) - Used false statement to mislead or deceive the public regarding a legal, religious, or cemetery requirement for funeral merchandise or funeral, cemetery, or crematory services
11. §651.455(a)(2) - Used false statement to mislead or deceive the public regarding the preservative qualities of funeral merchandise or funeral, cemetery, or crematory services in preventing or substantially delaying natural decomposition of human remains --
12. §651.455(a)(3) - Used false statement to mislead or deceive the public regarding the airtight or watertight properties of a casket or outer enclosure
13. §651.455(a)(4) - Used false statement to mislead or deceive the public regarding the licenses held by the personnel in the operation of the cemetery, crematory, or funeral establishment
14. §651.455(a)(5) - Used false statement to mislead or deceive the public regarding an activity regulated under this chapter, including the sale of funeral-related goods or services
15. §651.456(3) - Violated state law regarding transportation, storage, refrigeration, inurnment, interment, or disinterment of dead human body
16. §651.459(a)(3) - Engaged in negligence in the practice of embalming or funeral directing that is likely to or does deceive, defraud, or otherwise injure the public
17. §651.459(a)(5) - Directly or indirectly employed a person to solicit individuals or institutions by whose influence dead human bodies are turned over to a particular funeral director, embalmer, or funeral establishment
18. §651.459(b) - Stated or implied that a customer's concern with the cost of any funeral service or funeral merchandise was improper or indicated a lack of respect for the deceased
19. §651.460(a)(1) - Failed to provide a customer with a purchase agreement as required by §651.406
20. §651.460(a)(2) - Failed to retain and make available to the Commission copies of all price lists, written notices, embalming documents, and memoranda of agreement required for two years after the date of distribution or signing
21. §651.460(a)(5) - Associated with a funeral establishment, whether licensed or not, and failed to comply with Chapter 651 or Commission rule
22. §651.460(a)(6) – Knowingly violates §711.002(l), Health and Safety Code

23. §651.460(b)(1) - Failure by a funeral establishment to substantially comply with requirements of §651.351 (i.e., have a preparation room at all)

Class C Offenses:
1st Violation: $1,000
2nd Violation: $1,500
3rd Violation: Up to $4,000 and/or sanction
4+ Violation: Up to $5,000 and/or sanction

1. §651.306 - FD/Embalmer is not physically present when supervising provisional licensee
2. §651.401(c) - Unlicensed person commits first call violations
3. §651.407 - Use of dead human body by mortuary school without written consent
4. §651.451(7) - Permitted another to use the person's license or registration to perform an activity regulated under Chapter 651
5. §651.453 - Advertised in misleading or deceptive way or used the name of person who is falsely represented to be the license holder
6. §651.456(1) - Took custody of body without permission
7. §651.456(2) - Refused to promptly surrender a body to authorized agent (or representative)
8. §651.457(a)(1) - Embalmed a body without receiving the express written or oral permission of a person authorized to make funeral arrangements for the deceased; or making a documented reasonable effort over a period of at least three hours to obtain the permission
9. §651.457(a)(4) - Placed a chemical or substance on or in a dead human body to disinfect or preserve the body or to restore body tissues and structures without holding an embalmer 's license or provisional embalmer's license
10. §651.458 - Made a distinction in providing funeral information to a customer
11. §651.459(a)(1) - Willfully made a false statement on a death certificate, including forgery of a physician's signature; or a document required by this law/rule
12. §651.459(a)(2) - Engaged in fraudulent, unprofessional, or deceptive conduct in providing funeral services or merchandise to a customer
13. §651.459(a)(3) - Engaged in dishonest conduct, willful conduct, in the practice of embalming or funeral directing that is likely to or does deceive, defraud, or otherwise injure the public
14. §651.459(a)(4) - Caused the execution of a document by the use of fraud, deceit, or misrepresentation
15. §651.459(a)(6) - Misappropriated funds held by a license holder, a funeral establishment, an employee or agent of the funeral establishment, or another depository, that created an obligation to provide a funeral service or merchandise, including retaining for an unreasonable time excess funds paid by or on behalf of the customer for which the customer is entitled to a refund
16. §651.459(c) - FDIC fails to provide a funeral director or an embalmer for direction or personal supervision for a first call
17. §651.460(a)(4) - Allowed the use of a dead human body by an embalming establishment for research or educational purposes without complying with §651.407

18. §651.460(b)(3) - A funeral establishment, a person acting on behalf of the funeral establishment, or a person directly or indirectly connected with the funeral establishment violated Chapter 154, Finance Code, or a rule adopted under that chapter

Class D:
1st Violation: Up to $5,000 and/or sanction
2nd Violation: Up to $5,000 and sanction
3rd Violation: Up to $5,000 and sanction
4+ Violation: $5,000 and Revocation

1. §651.452(1) - Conviction of misdemeanor related to the practice of funeral directing or embalming or of a felony
2. §651.452(2-3) – Ongoing/current substance abuse or determined by court to be of unsound mind
3. §651.460(a)(3) - Fails to comply with Order of Commission or pay administrative penalty
4. §651.251 - Engaged or professed to be engaged in business of funeral directing/embalming unless licensed by Commission
5. §651.351(a) - Funeral Establishment may not conduct business unless licensed
6. §651.352 - Commercial embalming facility may not conduct business unless licensed
7. §651.353 - Cemetery may not conduct business unless licensed and not exempt under (d)
8. §651.656 - Crematory may not conduct business unless licensed
9. §651.451(1) - Presented to Commission license, certificate, registration, or diploma that was illegally or fraudulently obtained
10. §651.451(2) - Used fraud or deception in passing the examination, including impersonating or acting as a proxy for another person in the examination
11. §651.451(3) - Purchased, sold, bartered, or used, or offered to purchase, sell, barter, or use, a license, registration, certificate, or transcript of a license, registration, or certificate in or incident to an application to the Commission for a license or registration issued under this chapter
12. §651.451(4) - Altered, with fraudulent intent, a license, registration, or certificate issued under Chapter 651 or a transcript of a license, registration, or certificate
13. §651.451(5) - Used a license, registration, certificate, or diploma issued or a transcript of a license, registration, certificate, or diploma that was fraudulently purchased, issued, counterfeited, or materially altered
14. §651.451(6) - Impersonated a funeral director, embalmer, or other person regulated under Chapter 651
15. §651.451(8) - Presented false certification of work done as a provisional license holder
16. §651.459(a)(7) - Performed acts of funeral directing or embalming that are outside the licensed scope and authority of the license holder, or performed acts of funeral directing or embalming in a capacity other than that of an employee, agent, subcontractor, or assignee of a licensed funeral establishment that has contracted to perform those acts
17. §651.460(b)(2) - A funeral establishment or a person acting on behalf of the funeral establishment violated Chapter 193 or 361, Health and Safety Code


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Broday Snopel
1st Grade

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.

Brazos Valley Council of Governments

Notice of Release of Addendum to Request for Proposal for Certified Skills Training for Computer User Support Specialist Surgical Technologist

On May 22, 2015 the Workforce Solutions Brazos Valley Board (WSBVB) will release a Request for Proposal (RFP) for certified skills training for computer user support specialist and for surgical technologist. The skills training must result in an industry-recognized certification for these occupations. At least ten WIA/WIOA participants will be trained in each occupation. The selected training contractor will work with the WSBVB workforce center system operator, GLI, to provide training opportunities for eligible participants of the Workforce Investment Act program in the Brazos Valley Region. GLI will handle program intake, eligibility determination, case management and assist with job placement. The selected training contractor will be responsible for pre-training testing/assessment, training, tracking progress and attendance, and awarding of industry-recognized certifications. Eligible participants may be from any of the regions' seven counties: Brazos, Washington, Robertson, Burleson, Madison, Leon, and Grimes counties. Brazos Valley Workforce Development Board (BVWDB) will receive proposals from private and public organizations to provide occupational skills training resulting in an industry-recognized certification until 4:00 p.m. July 16, 2015.

Addendum of June 10, 2015 - page 3 and page 10 of the RFP have been changed to reflect Texas Law regarding Surgical Technology Programs accreditation by the Commission on Accreditation of Allied Health Education Programs (CAAHEP) or the Accrediting Bureau of Health Education Schools (ABHES). The Texas Health and Safety Code Title 4. Health Facilities Subtitle B. Licensing of Health Facilities Chapter 259. Surgical Technologists at Health Care Facilities, requires this certification for employment of surgical technologists in Texas.

The contact person for this procurement is Board Consultant Richard Rogers, (512) 963-4895, or email richard@swtexas.net. Difficulties downloading the RFP document should be referred to Shawna Chambers at (979) 595-2800.

Proposals in response to this RFP are due no later than 4:00 p.m. Thursday July 16, 2015 to Workforce Solutions Brazos Valley at 3991 East 29th Street, Bryan, Texas 77802. Mailed proposals should be addressed to: WSBVB, P.O. Box 4128, Bryan, Texas 77805. Proposals arriving after the due date and time will not be accepted, regardless of post marked date.

Equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. Relay Texas (800) 735-2989, TDD (800) 735-2988 Voice, TTY (979) 595-2819

TRD-201502193
Tom Wilkinson
Executive Director
Brazos Valley Council of Governments
Filed: June 10, 2015

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Comptroller of Public Accounts

Certification of the Average Closing Price of Gas and Oil - May 2015

The Comptroller of Public Accounts, administering agency for the collection of the Crude Oil Production Tax, has determined, as required by Tax Code, §202.058, that the average taxable price of crude oil for reporting period May 2015 is $37.91 per barrel for the three-month period beginning on February 1, 2015, and ending April 30, 2015. Therefore, pursuant to Tax Code, §202.058, crude oil produced during the month of May 2015 from a qualified low-producing oil lease is not eligible for a credit on the crude oil production tax imposed by Tax Code, Chapter 202.

The Comptroller of Public Accounts, administering agency for the collection of the Natural Gas Production Tax, has determined, as required by Tax Code, §201.059, that the average taxable price of gas for reporting period May 2015 is $1.91 per mcf for the three-month period beginning on February 1, 2015, and ending April 30, 2015. Therefore, pursuant to Tax Code, §201.059, gas produced during the month of May 2015 from a qualified low-producing well is eligible for a 100% credit on the natural gas production tax imposed by Tax Code, Chapter 201.

The Comptroller of Public Accounts, administering agency for the collection of the Franchise Tax, has determined, as required by Tax Code, §171.1011(s), that the average closing price of West Texas Intermediate crude oil for the month of May 2015 is $59.37 per barrel. Therefore, pursuant to Tax Code, §171.1011(r), a taxable entity shall not exclude total revenue received from oil produced during the month of May 2015 from a qualified low-producing oil well.

The Comptroller of Public Accounts, administering agency for the collection of the Franchise Tax, has determined, as required by Tax Code, §171.1011(s), that the average closing price of gas for the month of May 2015 is $2.86 per MMBtu. Therefore, pursuant to Tax Code, §171.1011(r), a taxable entity shall exclude total revenue received from gas produced during the month of May 2015 from a qualified low-producing gas well.

Inquiries should be submitted to Teresa G. Bostick, Director, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528.

TRD-201502263
Lita Gonzalez
General Counsel
Comptroller of Public Accounts
Filed: June 15, 2015

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Notice of Contract Amendments

The Texas Comptroller of Public Accounts ("Comptroller") entered into amendments with several independent contractors to their respective original Professional Services Agreements for Independent Examining Services ("Contracts") resulting from Comptroller's Request for Qualifications 206d ("RFQ 206d"). The Contracts were awarded as

authorized by Chapter 111, Subchapter A, §111.0045 of the Texas Tax Code.

Notice of RFQ 206d was published in the April 12, 2013, issue of *Texas Register* (38 TexReg 2393). Notice of Awards was published in the September 6, 2013, issue of *Texas Register* (38 TexReg 5919).

The Amendments to the respective Contracts have been entered into with the following persons or firms:

Brenda Maldonado, 2095 Savannah Trace, Beaumont, Texas 77706, is extended by Amendment No. 2.

Dan Northern, 2201 Woodland Hills Lane, Weatherford, Texas 76087, is extended by Amendment No. 2.

Cherise D. Collins, 17011 Driver Lane, Sugar Land, Texas 77498, is extended by Amendment No. 2.

D Smith Consulting, 418 Sonora Drive, Garland, Texas 75043, is extended by Amendment No. 2.

Dibrell P. Dobbs dba State Tax Consulting Group, 2906 Timber Gardens Court, Arlington, Texas 76016, is extended by Amendment No. 2.

Fabian Avina, 11114 Elk Park, San Antonio, Texas 78249, is extended by Amendment No. 2.

Jean Chan, 6119 Jereme Trail, Dallas, Texas 75252, is extended by Amendment No. 2.

Homer Max Wiesen, CPA, 1009 Panhandle Street, Denton, Texas 76201-2841, is extended by Amendment No. 2.

Judy Shinn dba Shinn Tax Services, P. O. Box 452123, Garland, Texas 75045, is extended by Amendment No. 3.

Paul D. Underwood, 6130 Coralridge Drive, Corpus Christi, Texas 78413-3136, is extended by Amendment No. 2.

Ramiro J. Garza, 913 Rio Grande Drive, Mission, Texas 78572, is extended by Amendment No. 2.

Ruzicka-Reed Partnership, 1555 Glenhill Lane, Lewisville, Texas 75077, is extended by Amendment No. 2.

Stephanie (Clark) Jackson dba The Ann Group, 2700 Blanchette Street, Beaumont, Texas 77701, is extended by Amendment No. 2.

Stites Pybus, LLC, 2925 Cuero Cove, Round Rock, Texas 78681, is extended by Amendment No. 2.

State Tax Group, LLC, 5050 Quorum Drive, Suite 225, Dallas, Texas 75254, is extended by Amendment No. 2.

Art Koenings, Jr. & Nancy Wilkins, 15712 Spillman Ranch Loop, Austin, Texas 78738, is extended by Amendment No. 2.

Garrett State Tax Service, Inc., 1911 Broadway Blvd., Kilgore, Texas 75662, is extended by Amendment No. 2.

Terra Hillman, 1121 Hodges Street, Lake Charles, Louisiana 70601, is extended by Amendment No. 2.

Vernice Seriale, Jr., 11612 Cross Spring Drive, Pearland, Texas 77584, is extended by Amendment No. 2.

Marina Roy Buenaventura, 4042 Cheena Drive, Houston, Texas 77025-4702, is extended by Amendment No. 2.

Treva M. Sullivan, 4530 Brookren Court, Pearland, Texas 77584, is extended by Amendment No. 2.

Paul Hernandez, 1938 Crisfield Drive, Sugar Land, Texas 77479, is extended by Amendment No. 2.

Stephen T. Broad, 1012 West 6th Street, Brady, Texas 76825, is extended by Amendment No. 2.

The original term of the Contracts is September 1, 2014, through August 31, 2015. The Amendments, the subjects of this notice, extend the term of the Contracts through August 31, 2016, with no option to renew.

The total amount of each Contract is based on the size of contract tax examination packages awarded by the Comptroller's Project Manager during the term of each Contract.

TRD-201502325
Laurie Velasco
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Filed: June 17, 2015

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Notice of Contract Amendments

The Texas Comptroller of Public Accounts ("Comptroller") entered into amendments with several independent contractors to their respective original Professional Services Agreements for Independent Examining Services ("Contracts") resulting from Comptroller's Request for Qualifications 207L ("RFQ 207L"). The Contracts were awarded as authorized by Chapter 111, Subchapter A, §111.0045 of the Texas Tax Code.

Notice of RFQ 207L was published in the April 11, 2014, issue of *Texas Register* (39 TexReg 2975). Notice of Awards was published in the August 22, 2014, issue of *Texas Register* (39 TexReg 6737).

The Amendments to the respective Contracts have been entered into with the following persons or firms:

Wayne A. Powe, 5501 Independence Parkway, Suite 107, Plano, Texas 75023, is extended by Amendment No. 1.

Willie L. Sullivan, Jr., 4530 Brookren Court, Pearland, Texas 77584, is extended by Amendment No. 1.

Frederick Drew Nixon, 1333 Sunny Glen Drive, Dallas, Texas 75232, is extended by Amendment No. 1.

State and Local Tax Group, LLC, 308 Cooper Drive, Hurst, Texas 76053, is extended by Amendment No. 1.

The original term of the Contracts is September 1, 2014 through August 31, 2015. The Amendments, the subjects of this notice, extend the term of the Contracts through August 31, 2016, with one (1) additional one (1) year option to renew.

The total amount of each Contract is based on the size of contract tax examination packages awarded by the Comptroller's Project Manager during the term of each Contract.

TRD-201502327
Laurie Velasco
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Filed: June 17, 2015

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.009 and 304.003, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 06/22/15-06/28/15 is 18% for Consumer[1]/Agricultural/Commercial[2] credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 06/22/15-06/28/15 is 18% for Commercial over $250,000.

The judgment ceiling as prescribed by §304.003 for the period of 07/01/15-07/31/15 is 5.00% for Consumer/Agricultural/Commercial credit through $250,000.

The judgment ceiling as prescribed §304.003 for the period of 07/01/15-07/31/15 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-201502297
Leslie Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: June 16, 2015

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Credit Union Department

Notice of Final Action Taken

In accordance with the provisions of 7 TAC §91.103, the Credit Union Department provides notice of the final action taken on the following applications:

Application to Expand Field of Membership - Approved

Texas Dow Employees Credit Union, Lake Jackson, Texas - See *Texas Register* issue dated March 27, 2015.

Application to Expand Field of Membership - Withdrawn

Community Resource Credit Union (#3), Baytown, Texas - See *Texas Register* issue dated May 29, 2015.

Articles of Incorporation - 50 Years to Perpetuity - Approved

Metro Medical Credit Union, Dallas, Texas.

TRD-201502306
Harold E. Feeney
Commissioner
Credit Union Department
Filed: June 17, 2015

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Texas Council for Developmental Disabilities

Request for Proposal

The Texas Council for Developmental Disabilities (TCDD) announces the availability of funds for up to two organizations to hire and support TCDD Policy Fellows to develop a deep understanding of policy affecting people with developmental disabilities and skills to promote self-determination and self-advocacy.

The purpose of offering funding for projects described in this Request for Proposals (RFP) is to increase the number of policy professionals in Texas who have the requisite skills, knowledge and experience to engage in policy activities so that people with developmental disabilities have greater control over their own lives.

TCDD has approved funding up to $67,500 per organization, per year, for up to two 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 RFP may be obtained at *www.DDSuite.org*. More information about TCDD may be obtained through TCDD's website at *www.tcdd.texas.gov/*. All questions pertaining to this RFP should be directed in writing to Joanna Cordry, Planning Coordinator, via email at Joanna.Cordry@tcdd.texas.gov or telephone at (512) 437-5410.

Deadline: Proposals must be submitted through *www.DDSuite.org* by July 20, 2015. Proposals will not be accepted after the due date.

TRD-201502236
Roger Webb
Executive Director
Texas Council for Developmental Disabilities
Filed: June 12, 2015

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Request for Proposal

The Texas Council for Developmental Disabilities (TCDD) announces the availability of funds for one organization to make training and information available to people who have developmental disabilities and their families so they can continue receiving SSI/SSDI and health benefits while increasing their income and assets through gainful employment.

The goal of offering funding for this project is to increase the number of Texans with developmental disabilities who retain necessary benefits from SSI/SSDI programs, waiver programs, and other formal and informal supports while working in competitive positions in the community.

TCDD has approved a maximum funding amount of $150,000 per year for up to two 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 RFP may be obtained at *www.DDSuite.org*. More information about TCDD may be obtained through TCDD's website at *www.tcdd.texas.gov/*. All questions pertaining to this RFP should be directed in writing to Joanna Cordry, Planning Coordinator, via email at Joanna.Cordry@tcdd.texas.gov or telephone at (512) 437-5410.

Deadline: Proposals must be submitted through *www.DDSuite.org* by August 26, 2015. Proposals will not be accepted after the due date.

TRD-201502237
Roger Webb
Executive Director
Texas Council for Developmental Disabilities
Filed: June 12, 2015

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Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ, agency or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is July 27, 2015. 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 July 27, 2015. 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: Addie Marlin dba Marlin Marina Water System; DOCKET NUMBER: 2015-0213-PWS-E; IDENTIFIER: RN101196079; LOCATION: Freeport, Brazoria County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.117(c)(2)(B) and (i)(1), by failing to collect lead and copper tap samples at the required five sample sites, have the samples analyzed at an approved laboratory, and submit the results to the executive director; 30 TAC §290.117(c)(2)(C) and (i)(1), by failing to collect lead and copper samples at the required five sample sites, have the samples analyzed at an approved laboratory and provide the results to the executive director; 30 TAC §290.110(e)(4)(A) and (f)(3), by failing to submit a Disinfectant Level Quarterly Operating Report (DLQOR) to the executive director each quarter by the tenth day of the month following the end of each quarter; 30 TAC §290.122(c)(2)(A) and (f), by failing to provide public notification and submit a copy of the public notification to the executive director regarding the failure to submit DLQORs from the third quarter of 2013 through the first quarter of 2014, regarding the failure to collect a raw groundwater source *Escherichia coli* sample from each active source within 24 hours of being notified of a distribution total coliform-positive result for the month of November 2013, and regarding the failure to collect repeat distribution samples within 24 hours of being notified of a total coliform-positive sample for November 2013 and August 2014; 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 1st of each year and failing to submit to the executive director by July 1st 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 the compliance monitoring data for the year 2013; and 30 TAC §290.51(a)(6) and TWC, §5.702, by failing to pay public health service fees, including late fees, for TCEQ Financial Administration Account Number 90200461 for Fiscal Years 2014 and 2015; PENALTY: $2,016; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 825-3425; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(2) COMPANY: Aqua Utilities, Incorporated; DOCKET NUMBER: 2015-0427-PWS-E; IDENTIFIER: RN101234946; LOCATION: Alvin, Brazoria County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.45(b)(1)(C)(i) and Texas Health and Safety Code, §341.0315(c), by failing to provide a minimum well capacity of 0.6 gallons per minute per connection; PENALTY: $71; ENFORCEMENT COORDINATOR: Ryan Byer, (512) 239-2571; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(3) COMPANY: BlackBrush O and G, LLC; DOCKET NUMBER: 2015-0074-AIR-E; IDENTIFIER: RN106889348; LOCATION: Carrizo Springs, Dimmit County; TYPE OF FACILITY: oil and gas production plant; RULES VIOLATED: 30 TAC §106.4(c) and Texas Health and Safety Code, §382.085(b), by failing to maintain all emissions control equipment in good condition and operating properly; PENALTY: $2,813; ENFORCEMENT COORDINATOR: Raime Hayes-Falero, (713) 767-3567; REGIONAL OFFICE: 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(4) COMPANY: Break it Down, L.L.C.; DOCKET NUMBER: 2015-0360-MSW-E; IDENTIFIER: RN107573529; LOCATION: Austin, Travis County; TYPE OF FACILITY: municipal solid waste (MSW) recycling facility; RULES VIOLATED: 30 TAC §328.5(h), by failing to make available a fire prevention and suppression plan to the local fire prevention authority having jurisdiction over the facility for review and coordination; and 30 TAC §330.15(c) and TWC, §26.121(a)(1), by failing to not cause, suffer, allow, or permit the unauthorized disposal of MSW; PENALTY: $2,188; ENFORCEMENT COORDINATOR: Holly Kneisley, (817) 588-5856; REGIONAL OFFICE: 12100 Park 35 Circle, Building A, Austin, Texas 78753, (512) 339-2929.

(5) COMPANY: City of Cisco; DOCKET NUMBER: 2015-0534-PWS-E; IDENTIFIER: RN101389104; LOCATION: Cisco, Eastland County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.080 milligrams per liter for total trihalomethanes, based on the locational running annual average; and 30 TAC §290.117(i)(6) and (j), by failing to timely mail consumer notification of lead tap water monitoring results to persons served at the locations that were sampled and failing to timely submit to the TCEQ a copy of the consumer notification and certification that the consumer notification has been distributed to the persons served at the locations in a manner consistent with TCEQ requirements for the January 1 - December 31, 2014 monitoring period; PENALTY: $980; ENFORCEMENT COORDINATOR: David Carney, (512) 239-2583; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(6) COMPANY: City of Ladonia; DOCKET NUMBER: 2014-1768-PWS-E; IDENTIFIER: RN101413136; LOCATION: Ladonia, Fannin County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.106(c) and (e), by failing to collect the annual nitrate sample and provide the results to the executive director for the 2013 monitoring period; 30 TAC §§290.272, 290.273, and 290.274(a) and (c), by failing to meet the adequacy, availability, and/or content requirements for the consumer confidence report for the year

of 2013; 30 TAC §290.122(c)(2)(A) and (f), by failing to provide public notification and submit a copy of the public notification to the executive director regarding the failure to submit the Disinfectant Level Quarterly Operating Report for the second quarter of 2013; 30 TAC §290.117(c)(2)(B) and (i)(1), by failing to collect lead and copper samples at the required ten sample sites, have the samples analyzed at an approved laboratory, and submit the results to the executive director by the tenth day of the month following the end of the monitoring period; and 30 TAC §290.107(c)(1) and (e), by failing to collect triennial samples for synthetic organic contaminants (Group SOC5) and provide the results to the executive director for the January 1, 2008 - December 31, 2010 monitoring period; PENALTY: $1,130; ENFORCEMENT COORDINATOR: Gregory Zychowski, (512) 239-3158; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(7) COMPANY: City of Lone Star; DOCKET NUMBER: 2015-0348-MWD-E; IDENTIFIER: RN101920056; LOCATION: Lone Star, Morris County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0014365001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limits; PENALTY: $3,625; ENFORCEMENT COORDINATOR: Gregory Zychowski, (512) 239-3158; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(8) COMPANY: City of Merkel; DOCKET NUMBER: 2015-0377-MWD-E; IDENTIFIER: RN103184800; LOCATION: Merkel, Taylor County; TYPE OF FACILITY: wastewater treatment plant; RULES VIOLATED: 30 TAC §305.125(1) and (9), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010786002, Monitoring and Reporting Requirements Number 7.c, by failing to submit noncompliance notification for effluent violations that deviated from the permitted effluent limits by more than 40% within five days of becoming aware of the noncompliance; and 30 TAC §305.125(1) and (5), and TPDES Permit Number WQ0010786002, Operational Requirements Number 1, by failing to ensure that the facility and all of its systems of collection, treatment, and disposal are properly operated and maintained; PENALTY: $2,885; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5886; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 655-9479.

(9) COMPANY: D and D TOOLING AND MANUFACTURING, INCORPORATED; DOCKET NUMBER: 2015-0265-MSW-E; IDENTIFIER: RN105919278; LOCATION: El Paso, El Paso County; TYPE OF FACILITY: metal stamping manufacturing; RULES VIOLATED: 30 TAC §324.15 and 40 Code of Federal Regulations §279.22(d), by failing to perform response actions upon detection of a release of used oil; PENALTY: $250; ENFORCEMENT COORDINATOR: Abigail Lindsey, (512) 239-2576; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(10) COMPANY: Flint Hills Resources Houston Chemical, LLC f/k/a PL Propylene LLC; DOCKET NUMBER: 2014-1746-AIR-E; IDENTIFIER: RN102576063; LOCATION: Houston, Harris County; TYPE OF FACILITY: petrochemical plant; RULES VIOLATED: 30 TAC §§101.20(3), 115.722(c)(1), 116.115(c), and 122.143(4), Texas Health and Safety Code, §382.085(b), Federal Operating Permit Number O1251, Special Terms and Conditions Number 11, and New Source Review Permit Numbers 18999 and PSDTX755, Special Conditions Number 1, by failing to prevent unauthorized emissions; PENALTY: $393,900; Supplemental Environmental Project offset amount of $196,950; ENFORCEMENT COORDINATOR: Jessica Schildwachter, (512) 239-2617; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(11) COMPANY: HIDDEN DIAMOND, INCORPORATED dba One Stop Food Store; DOCKET NUMBER: 2015-0382-PST-E; IDENTIFIER: RN101631117; LOCATION: Mesquite, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month; PENALTY: $3,000; ENFORCEMENT COORDINATOR: Margarita Dennis, (817) 588-5892; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(12) COMPANY: INSPIRED ENTERPRISE GROUP INCORPORATED dba Kiest Shell; DOCKET NUMBER: 2015-0513-PST-E; IDENTIFIER: RN102645058; LOCATION: Dallas, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month; PENALTY: $9,000; ENFORCEMENT COORDINATOR: Keith Frank, (512) 239-1203; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(13) COMPANY: Irion County; DOCKET NUMBER: 2015-0502-MSW-E; IDENTIFIER: RN102707288; LOCATION: Barnhart, Irion County; TYPE OF FACILITY: used oil collection center; RULES VIOLATED: 30 TAC §324.7(3)(B), Texas Health and Safety Code, §371.024(b)(1) and 40 Code of Federal Regulations §279.31(b)(2), by failing to register as a used oil collection center; 30 TAC §324.7(3)(A), by failing to post and maintain a durable and legible sign identifying the facility as a household used oil collection center; and 30 TAC §324.4(1), by failing to collect, store, discharge or dispose of used oil in any manner that endangers the public health or welfare of the environment; PENALTY: $788; ENFORCEMENT COORDINATOR: Mike Pace, (817) 588-5933; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(14) COMPANY: Lilly Grove Special Utility District; DOCKET NUMBER: 2015-0148-PWS-E; IDENTIFIER: RN101189439; LOCATION: Nacogdoches, Nacogdoches County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.46(m)(6), by failing to maintain all pumps, motors, valves and other mechanical devices in good working condition; 30 TAC §290.45(b)(1)(D)(iii) and Texas Health and Safety Code, §341.0315(c), by failing to provide two or more service pumps that have a total capacity of at least 2.0 gallons per minute per connection at each pump station or pressure plane; 30 TAC §290.121(a) and (b), by failing to develop and maintain an up-to-date chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency and specifies the analytical procedures and laboratories that the facility will use to comply with the monitoring requirements; 30 TAC §290.46(m)(4), by failing to maintain all distribution system lines, storage and pressure maintenance facilities, water treatment units and related appurtenances in a water tight condition; and 30 TAC §290.42(e)(4)(A), by failing to provide a small bottle of fresh ammonia solution for testing chlorine leakage that is readily accessible outside the chlorinator room and immediately available to the operator in the event of an emergency; PENALTY: $695; ENFORCEMENT COORDINATOR: Katy Montgomery, (210) 403-4016; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(15) COMPANY: Martin Operating Partnership L.P.; DOCKET NUMBER: 2015-0211-AIR-E; IDENTIFIER: RN101609436; LOCATION: Beaumont, Jefferson County; TYPE OF FACILITY: ammonia storage site; RULES VIOLATED: 30 TAC §116.115(b)(2)(F) and (c), New Source Review Permit Number 28899, Special Conditions Number 1

and 24, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions and by failing to comply with permit conditions; PENALTY: $1,398; ENFORCEMENT COORDINATOR: David Carney, (512) 239-2583; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(16) COMPANY: Martin Operating Partnership L.P.; DOCKET NUMBER: 2015-0090-IWD-E; IDENTIFIER: RN102605136; LOCATION: Beaumont, Jefferson County; TYPE OF FACILITY: storage and distribution facility; RULES VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0004074000, Effluent Limitations and Monitoring Requirements Numbers 1 and 2, by failing to comply with permitted effluent limits; PENALTY: $10,500; Supplemental Environmental Project offset amount of $4,200; ENFORCEMENT COORDINATOR: Katelyn Samples, (512) 239-4728; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(17) COMPANY: Natural Petroleum LLC dba Race Runner 4; DOCKET NUMBER: 2015-0142-PST-E; IDENTIFIER: RN102246394; LOCATION: Seagoville, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month; PENALTY: $3,563; ENFORCEMENT COORDINATOR: Mike Pace, (817) 588-5933; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(18) COMPANY: New Siara Properties, LP dba Noor Pantry Texaco; DOCKET NUMBER: 2015-0330-PST-E; IDENTIFIER: RN102274263; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide corrosion protection for the underground storage tank (UST) system; and 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: $8,568; ENFORCEMENT COORDINATOR: John Fennell, (512) 239-2616; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(19) COMPANY: Petroleum Wholesale, L.P. dba Sunmart 168; DOCKET NUMBER: 2015-0520-PST-E; IDENTIFIER: RN102009602; LOCATION: Georgetown, Williamson County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month; PENALTY: $5,625; ENFORCEMENT COORDINATOR: John Fennell, (512) 239-2616; REGIONAL OFFICE: 12100 Park 35 Circle, Building A, Austin, Texas 78753, (512) 339-2929.

(20) COMPANY: QRO MEX CONSTRUCTION COMPANY, INCORPORATED; DOCKET NUMBER: 2015-0479-WQ-E; IDENTIFIER: RN107339335; LOCATION: Ingram, Kerr County; TYPE OF FACILITY: wastewater line construction; RULES VIOLATED: 30 TAC §281.25(a)(4), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System General Permit Number TXR150000, Part III, Section G.1, by failing to install and implement erosion and sediment controls resulting in the unauthorized discharge of waste into or adjacent to water in the state; PENALTY: $1,000; ENFORCEMENT COORDINATOR: Jennifer Graves, (956) 430-6023; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(21) COMPANY: Samuel Coronado dba Citrus Trailer Park; DOCKET NUMBER: 2015-0237-PWS-E; IDENTIFIER: RN102319720; LOCATION: La Feria, Cameron County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.39(e)(1) and (h)(1) and Texas Health and Safety Code, §341.035(a), by failing to submit plans and specifications to the executive director for review and approval prior to the establishment of a new public water supply; and 30 TAC §290.51(a)(3) and TWC, §5.702, by failing to pay annual public health service fees and/or any associated late fees for TCEQ Financial Administration Account Number 90310017 for Fiscal Years 1997 - 2006, 2014, and 2015; PENALTY: $53; ENFORCEMENT COORDINATOR: Jessica Schildwachter, (512) 239-2617; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(22) COMPANY: Smith County Municipal Utility District Number 1; DOCKET NUMBER: 2015-0530-MWD-E; IDENTIFIER: RN102335874; LOCATION: Tyler, Smith County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0010285001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limits; PENALTY: $3,500; ENFORCEMENT COORDINATOR: Had Darling, (512) 239-2520; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(23) COMPANY: Targa Midstream Services LLC; DOCKET NUMBER: 2014-1518-AIR-E; IDENTIFIER: RN100222900; LOCATION: Mont Belvieu, Chambers County; TYPE OF FACILITY: natural gas processing facility; RULES VIOLATED: 30 TAC §116.115(c) and §122.143(4), Texas Health and Safety Code (THSC), §382.085(b), Federal Operating Permit (FOP) Number O612, General Terms and Conditions (GTC) and Special Terms and Conditions (STC) Number 17, New Source Review (NSR) Permit Number 5452 and 56431, Special Conditions (SC) Number 1, by failing to prevent unauthorized emissions; 30 TAC §116.115(b)(2)(F) and (c) and §122.143(4), THSC, §382.085(b), FOP Number O612, STC Number 17, and NSR Permit Number 56431, SC Number 1, by failing to comply with maximum allowable hourly emissions rates; 30 TAC §§116.115(c), 116.615(2), and 122.143(4), THSC, §382.085(b), FOP Number O612, STC Number 17, NSR Permit Number 56431, SC Number 6, and Standard Permit Registration Number 94872, by failing to meet the minimum required destruction efficiency of 99.5% for EPN (Emission Point Number) RTO (Regenerative Thermal Oxidizer)-1 and 98% for EPN RTO-2; 30 TAC §116.116(a)(1) and THSC, §382.085(b), by failing to comply with the representations with regard to construction plans in a permit application; 30 TAC §116.115(b)(2)(F) and (c) and §122.143(4), THSC, §382.085(b), FOP Number O612, STC Number 17, and NSR Permit Number 56431, SC Number 1, by failing to comply with annual emissions rates; and 30 TAC §116.115(c) and §122.143(4), THSC, §382.085(b), FOP Number O612, STC Number 17, and NSR Permit Number 56431, SC Number 6, by failing to conduct stack testing within 60 days of achieving the maximum operating rate; PENALTY: $289,108; Supplemental Environmental Project offset amount of $115,643; ENFORCEMENT COORDINATOR: Amancio R. Gutierrez, (512) 239-3921; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(24) COMPANY: Therm-O-Link of Texas, Incorporated; DOCKET NUMBER: 2015-0415-WQ-E; IDENTIFIER: RN100623826; LOCATION: El Paso, El Paso County; TYPE OF FACILITY: metal finishing; RULES VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations §122.26(c), by failing to obtain authorization to discharge stormwater associated with industrial activities under the Texas Pollutant Discharge Elimination System Multi-Sector General Permit Number TXR050000; PENALTY: $938; ENFORCEMENT COORDINA-

TOR: Cheryl Thompson, (817) 588-5886; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(25) COMPANY: Treasure Island Municipal Utility District; DOCKET NUMBER: 2015-0439-PWS-E; IDENTIFIER: RN101450252; LOCATION: Freeport, Brazoria County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.080 milligrams per liter for total trihalomethanes, based on the locational running annual average; PENALTY: $411; ENFORCEMENT COORDINATOR: Katelyn Samples, (512) 239-4728; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(26) COMPANY: VELVIN OIL COMPANY, INCORPORATED; DOCKET NUMBER: 2015-0294-IWD-E; IDENTIFIER: RN100530559; LOCATION: Henderson, Rusk County; TYPE OF FACILITY: wholesale petroleum distribution; RULES VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System General Permit Number TXG830468, Part III, Permit Requirements, Section A. Effluent Limitations Number 1, by failing to comply with permitted effluent limitations; PENALTY: $1,375; ENFORCEMENT COORDINATOR: Katelyn Samples, (512) 239-4728; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(27) COMPANY: WTG Jameson, LP; DOCKET NUMBER: 2015-0287-AIR-E; IDENTIFIER: RN101246478; LOCATION: Silver, Coke County; TYPE OF FACILITY: natural gas processing; RULES VIOLATED: 30 TAC §§116.115(b)(2)(F), 116.615(2), and 122.143(4), Texas Health and Safety Code (THSC), §382.085(b), Federal Operating Permit (FOP) Number O865, Special Terms and Conditions (STC) Number 9, and Standard Permit Registration Number 53757, by failing to prevent unauthorized emissions; and 30 TAC §101.201(a)(1)(B) and §122.143(4), THSC, §382.085(b), and FOP Number O865, STC Number 2F, by failing to submit an initial notification for Incident Number 203160 and 203265 within 24 hours of the discovery of the emissions event; PENALTY: $10,720; ENFORCEMENT COORDINATOR: Farhaud Abbaszadeh, (512) 239-0779; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

TRD-201502280
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: June 16, 2015

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Enforcement Orders

An agreed order was entered regarding Sur Valley Transport Company, Docket No. 2010-0089-PST-E on June 4, 2015, assessing $8,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jacquelyn Boutwell, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding LIVE OAK RESORT, INC., Docket No. 2013-0866-WQ-E on June 4, 2015, assessing $45,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jim Sallans, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Krum, Docket No. 2013-1358-MWD-E on June 4, 2015, assessing $74,375 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (817) 588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Charles Green dba GTS Green's Tire Service, Docket No. 2014-0521-MSW-E on June 4, 2015, assessing $1,375 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting David A. Terry, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding GOOD TIME STORES, INC. dba Good Time Store 61, Docket No. 2014-0750-PST-E on June 4, 2015, assessing $1,860 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting J. Amber Ahmed, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Kyle Freeman, Docket No. 2014-1008-PWS-E on June 4, 2015, assessing $4,101 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jacquelyn Boutwell, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CRYSTAL CLEAR WATER SUPPLY CORPORATION, Docket No. 2014-1175-PWS-E on June 4, 2015, assessing $8,100 in administrative penalties with $1,620 deferred.

Information concerning any aspect of this order may be obtained by contacting Michaelle Garza, Enforcement Coordinator at (210) 403-4076, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Fritch, Docket No. 2014-1227-PWS-E on June 4, 2015, assessing $3,220 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Katy Montgomery, Enforcement Coordinator at (210) 403-4016, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Harker Heights, Docket No. 2014-1276-MWD-E on June 4, 2015, assessing $7,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Alejandro Laje, Enforcement Coordinator at (512) 239-2547, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding NORTH CHEROKEE WATER SUPPLY CORPORATION, Docket No. 2014-1290-PWS-E on June 4, 2015, assessing $2,574 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jim Fisher, Enforcement Coordinator at (512) 239-2537, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Huntsman Petrochemical LLC, Docket No. 2014-1428-AIR-E on June 4, 2015, assessing $19,689 in administrative penalties with $3,937 deferred.

Information concerning any aspect of this order may be obtained by contacting Jessica Schildwachter, Enforcement Coordinator at (512) 239-2617, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding The Lubrizol Corporation, Docket No. 2014-1437-AIR-E on June 4, 2015, assessing $12,688 in administrative penalties with $2,537 deferred.

Information concerning any aspect of this order may be obtained by contacting David Carney, Enforcement Coordinator at (512) 239-2583, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TXI Operations, LP, Docket No. 2014-1441-AIR-E on June 4, 2015, assessing $59,326 in administrative penalties with $11,865 deferred.

Information concerning any aspect of this order may be obtained by contacting Jennifer Nguyen, Enforcement Coordinator at (512) 239-6160, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Sid Richardson Carbon, Ltd., Docket No. 2014-1460-AIR-E on June 4, 2015, assessing $8,175 in administrative penalties with $1,635 deferred.

Information concerning any aspect of this order may be obtained by contacting Eduardo Heras, Enforcement Coordinator at (512) 239-2422, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding The Goodyear Tire & Rubber Company, Docket No. 2014-1484-AIR-E on June 4, 2015, assessing $117,600 in administrative penalties with $23,520 deferred.

Information concerning any aspect of this order may be obtained by contacting Rachel Bekowies, Enforcement Coordinator at (512) 239-2608, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Methodist Healthcare System of San Antonio, Ltd., L.L.P., Docket No. 2014-1495-PST-E on June 4, 2015, assessing $7,517 in administrative penalties with $1,503 deferred.

Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (713) 767-3682, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Traversari USA LLC dba Texaco 155, Docket No. 2014-1546-PST-E on June 4, 2015, assessing $34,292 in administrative penalties with $6,858 deferred.

Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (713) 767-3682, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Total Petrochemicals & Refining USA, Inc., Docket No. 2014-1550-AIR-E on June 4, 2015, assessing $15,000 in administrative penalties with $3,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Rachel Bekowies, Enforcement Coordinator at (512) 239-2608, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Stephenville, Docket No. 2014-1571-MWD-E on June 4, 2015, assessing $17,250 in administrative penalties with $3,450 deferred.

Information concerning any aspect of this order may be obtained by contacting Alejandro Laje, Enforcement Coordinator at (512) 239-2547, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Shawn M. Horvath dba Aero Valley Water Service, Docket No. 2014-1598-PWS-E on June 4, 2015, assessing $95 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Elizabeth Harkrider, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Irion County, Docket No. 2014-1653-MSW-E on June 4, 2015, assessing $13,200 in administrative penalties with $2,640 deferred.

Information concerning any aspect of this order may be obtained by contacting Margarita Dennis, Enforcement Coordinator at (817) 588-5892, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Fry Road Municipal Utility District, Docket No. 2014-1687-PWS-E on June 4, 2015, assessing $315 in administrative penalties with $315 deferred.

Information concerning any aspect of this order may be obtained by contacting Farhaud Abbaszadeh, Enforcement Coordinator at (512) 239-0779, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding PORT ALTO HOMEOWNERS' ASSOCIATION DISTRICT #1, Inc., Docket No. 2014-1776-PWS-E on June 4, 2015, assessing $650 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Katy Montgomery, Enforcement Coordinator at (210) 403-4016, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding North Orange Water & Sewer, LLC, Docket No. 2014-1857-MWD-E on June 4, 2015, assessing $27,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Larry Butler, Enforcement Coordinator at (512) 239-2543, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201502305
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: June 17, 2015

♦ ♦ ♦

Notice of Availability and Request for Comments

AGENCIES: The Texas Commission on Environmental Quality (TCEQ); Texas Parks and Wildlife Department (TPWD); Texas General Land Office (GLO); United States Department of the In-

terior (DOI); as represented by the United States Fish and Wildlife Service and the National Park Service; and the National Oceanic and Atmospheric Administration (NOAA) on behalf of the United States Department of Commerce (collectively, the Trustees).

ACTION: Notice of availability of a proposed Draft Damage Assessment and Restoration Plan/Environmental Assessment for ecological injuries and service losses associated with the Malone Services Superfund Site (the Site) in Galveston County, Texas, and of a 30-day period for public comment on the Draft Damage Assessment and Restoration Plan/Environmental Assessment beginning June 26, 2015.

SUMMARY: Notice is hereby given that the "Draft Damage Assessment and Restoration Plan/Environmental Assessment for Malone Service Company Superfund Site, Galveston County, Texas City, Texas" (Draft DARP/EA), is available for public review and comment.

These documents have been prepared by the state and federal Natural Resource Trustees to address natural resource injuries and ecological service losses attributable to releases of hazardous substances from the Site located in Texas City, Galveston County, Texas. The Draft DARP/EA presents the Trustees' assessment of the natural resource injuries and service losses attributable to the Site and their proposed plan to compensate for those losses by restoring ecological resources and services. The Trustees will consider input received during the public comment period before finalizing the DARP/EA.

To receive a copy of the Draft DARP/EA, 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) 239-4814 (fax).

DATES: Comments must be submitted in writing on or before July 27, 2015, to Richard Seiler of the TCEQ at the address listed in the previous paragraph. The Trustees will consider all written comments prior to finalizing the DARP/EA.

SUPPLEMENTARY INFORMATION: The Site encompasses approximately 150 acres at 5300 Campbell Bayou Road, Texas City, Galveston County, Texas, 1.6 miles southeast of the intersection of Loop 197 and State Highway 3. The Site is bordered by the closed Solutia South 20 site to the southwest, by the Gulf Coast Waste Disposal Authority Campbell Bayou facility to the west, by a closed Texas City landfill to the northwest, and by undeveloped marsh and wetlands owned by Scenic Galveston to the south.

The Malone Service Company (MSC) began operating the Site in 1964 as a reclamation plant for waste oils and chemicals. The facility was permitted to dispose liquid hazardous and non-hazardous waste by means of deep well injection beginning in 1970. In 1984, the MSC facility was permitted as a commercial storage, processing, and disposal facility authorized to store and process Class 1 and Class 2 industrial solid waste, with the exception of waste containing polychlorinated biphenyls (PCB), explosives, and radioactive or nuclear waste material. The MSC Site received a variety of waste products from surrounding industries, including acids and caustics; contaminated residues and solvents; gasoline and crude oil tank bottoms; contaminated earth and water from chemical spill cleanups; general industrial plant waste; phenolic tar; and waste oil. All waste shipments to the Site ceased in 1996. The facility's permits were revoked by the Texas Natural Resource Conservation Commission (a TCEQ predecessor agency) on May 6, 1997 due to improper waste disposal and waste permit violations.

The Site was proposed to the National Priorities List (NPL) on August 24, 2000, and placed on the NPL on June 14, 2001. The Final Remedial Investigation document, which included the identification of chemicals of concern, the delineation of contamination (nature and extent), as well as human health and ecological risk assessments, was approved by the United States Environmental Protection Agency (EPA) on June 14, 2006. The Final Screening Level Ecological Risk Assessment (SLERA)/Baseline Ecological Risk Assessment (BERA) Work Plan document was approved by the EPA in 2007. The Final Feasibility Study document, which evaluated several remedial alternatives to address the contamination at the Site, was approved by the EPA on December 22, 2008. On September 30, 2009, the EPA Superfund Division Director signed the Record of Decision, which presents the selected remedy for sludge waste, contaminated soil, and groundwater at the Site. Remedial Action/cleanup activities began on April 7, 2014.

The Trustees are designated natural resource trustees under Section 107(f) of Comprehensive Environmental Response Compensation and Liability Act, Section 311 of the Federal Water Pollution and Control Act, 33 United States Code §1321, and other applicable federal or state laws, including Subpart G of the National Oil and Hazardous Substances Pollution Contingency Plan, 40 Code of Federal Regulations §§300.600 - 300.615. 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.

To evaluate injury to resources for the Site, the Trustees reviewed existing information, including remedial investigation data, ecological risk assessments (SLERA and BERA), and open scientific literature, and applied their collective knowledge and understanding of the function of the terrestrial and aquatic ecosystems at and near the Site. Metals (including arsenic, cadmium, chromium, copper, lead, nickel, mercury, silver and zinc), polycyclic aromatic hydrocarbons (PAHs), PCBs, and the organochlorine insecticide DDT (and its metabolites) were identified as the primary contaminants of concern. The Trustees determined that three categories of injury resulted at the Site: benthic invertebrate injury in the estuarine Marsh sediments; injury to wildlife due to oil in the terrestrial portion of the Laydown Area; and injury to the benthic community and wildlife utilizing freshwater sediments on the Site. The Draft DARP/EA identifies the information and methods used to define the natural resource injuries and ecological losses, including the scale of restoration actions, and identifies the restoration actions which are preferred to restore, replace, or acquire resources or services equivalent to those lost.

For further information, contact Richard Seiler at (512) 239-2523, email: *richard.seiler@tceq.texas.gov.*

TRD-201502281
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: June 16, 2015

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Texas Facilities Commission

Request for Proposals #303-6-20489-B

The Texas Facilities Commission (TFC), on behalf of the Comptroller of Public Accounts (CPA), announces the issuance of Request for Proposals (RFP) #303-6-20489-B. TFC seeks a five (5) or ten (10) year lease of approximately 2,889 square feet of office space in Allen, McKinney, Prosper or Lewisville, Texas.

The deadline for questions is July 6, 2015, and the deadline for proposals is July 13, 2015, at 3:00 p.m. The award date is August 19, 2015. 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=117996.*

TRD-201502203
Kay Molina
General Counsel
Texas Facilities Commission
Filed: June 11, 2015

♦ ♦ ♦

Request for Proposals #303-6-20503

The Texas Facilities Commission (TFC), on behalf of the Texas Department of Criminal Justice (TDCJ), announces the issuance of Request for Proposals (RFP) #303-6-20503. TFC seeks a five (5) or ten (10) year lease of approximately 4,600 square feet of office space in Laredo, Webb County, Texas.

The deadline for questions is July 6, 2015, and the deadline for proposals is July 14, 2015, at 3:00 p.m. The award date is August 19, 2015. 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=117990.*

TRD-201502202
Kay Molina
General Counsel
Texas Facilities Commission
Filed: June 11, 2015

♦ ♦ ♦

Request for Proposals #303-7-20504

The Texas Facilities Commission (TFC), on behalf of the Health and Human Services Commission (HHSC), the Department of State Health Services (DSHS), and the Department of Aging and Disability Services (DADS) announces the issuance of Request for Proposals (RFP) #303-7-20504. TFC seeks a five (5) or ten (10) year lease of approximately 2,267 square feet of office space in New Boston, Bowie County, Texas.

The deadline for questions is July 7, 2015, and the deadline for proposals is July 21, 2015, at 3:00 p.m. The award date is August 19, 2015. 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=118031.*

TRD-201502204
Kay Molina
General Counsel
Texas Facilities Commission
Filed: June 11, 2015

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General Land Office

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439 - 1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of April 6, 2015, through June 15, 2015. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period extends 30 days from the date published on the Texas General Land Office web site. The notice was published on the web site on Friday, June 19, 2015. The public comment period for this project will close at 5:00 p.m. on Monday, July 20, 2015.

FEDERAL AGENCY ACTIONS:

Applicant: Space Exploration Technologies (SpaceX)

Location: The project site is located in tidal wetlands along the Gulf of Mexico. The vertical Launch Facility is located at the terminus of State Highway 4 in Cameron County and the Launch Control Center is located approximately 2 miles west of the Vertical Launch Facility on Eichorn Boulevard in the Boca Chica Community, Cameron County, Texas. The project can be located on the United States Geological Survey (U.S.G.S.) quadrangle map entitled: MOUTH OF RIO GRANDE, Texas.

LATITUDE & LONGITUDE (NAD 83):

Latitude: 25.996° North; Longitude: 97.154° West

Project Description: Department of the Army Permit SWG-2012-00381 was issued on 9 September 2014, authorizing the placement of fill material in 3.3 acres of waters of the United States (U.S.) for the purpose of constructing a commercial space launch facility. However, during final project design, SpaceX determined that an additional 2.13 acres of waters of the U.S. that were previously avoided will need to be filled to reach the projects purpose and need. If authorized, this will bring the total direct impacts from 3.9 acres to 5.43 acres.

CMP Project No: 15-1441-F1

Type of Application: United States Army Corps of Engineers (USACE) permit application #SWG-2012-00381. This application will be reviewed pursuant to §10 of the Rivers and Harbors Act of 1899 and §404 of the Clean Water Act.

Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Applicant: Spoonbill Holdings, LP

Location: The project site is located in West Galveston Bay, and adjacent wetlands, adjacent to Farm-to-Market (FM) Road 3005, in Galve-

ston, Galveston County, Texas. The project can be located on the U.S.G.S. quadrangle maps entitled: San Luis Pass and Sea Isle, Texas.

LATITUDE & LONGITUDE (NAD 83):

Latitude: 29.119120° North; Longitude: -95.083301° West

Project Description: The applicant proposes to construct a mixed-use marina development on a 115-acre tract. The proposed development will consist of a single marina, water-front residential homes, access roads, and two circulation channels. Approximately 10.76 acres of jurisdictional waters would be impacted; specifically 6.08 acres of non-tidal wetlands, 1.53 acres of tidal wetlands, and 0.40 acre of sandflats. The applicant proposes to construct approximately 10,240 linear feet of bulkheading within the proposed canals. Approximately 2.75 acres of navigable waters will be dredged to depth ranging from -10 feet to -8 feet below mean sea level. The 44,333 cubic yards of dredged material from jurisdictional areas will be used to build up the site. The applicant proposes to mitigate by creating 6.52 acres of non-tidal wetlands, 0.83 acre of living shoreline and 2.23 acres of tidal wetlands on-site.

CMP Project No: 15-1458-F1

Type of Application: USACE permit application #SWG-2007-01475. This application will be reviewed pursuant to §10 of the Rivers and Harbors Act of 1899 and §404 of the Clean Water Act.

Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Applicant: Harris County Flood Control District (HCFCD)

Location: The project is located on 5,700 linear feet (LF) of Buffalo Bayou (W100-00-00) and 560 linear feet of Hogg Bird Tributary of Buffalo Bayou, in the vicinity of the southeastern boundary of Memorial Park, Harris County, Houston, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Houston Heights, Texas.

LATITUDE & LONGITUDE (NAD 83):

Begin: 29.7577° N, 95.4337° W, End 29.7580° N, 95.4229° W

Project Description: HCFCD is proposing to restore approximately 5,700 LF of HCFCD Unit W100-00-00 (Buffalo Bayou) and 560 LF of an unnamed tributary of Buffalo Bayou, referred to in the project plans as Hogg Bird Tributary, in Houston, Harris County, Texas. The proposed project area on Buffalo Bayou flows adjacent to Memorial Park (north side of the stream) and the River Oaks Country Club (ROCC) (south side of the stream). It will also include areas immediately adjacent to the stream and a proposed construction access area point south of the City of Houston's Parks and Recreation Department maintenance facility, located within Memorial Park. The project area is in a non-tidal stream segment, since the upstream project limit is 1,450 LF east of the end of Pinehill Lane (2.36 river miles upstream of the Shepherd Drive crossing), and the downstream project limit is 350 LF south-southwest of the southern end of Westcott Street (1.15 river miles upstream of Shepherd Drive). The proposed stream restoration project will restore a portion of Buffalo Bayou by utilizing Natural Channel Design techniques to create a stable stream reach with a profile (thalweg) that will neither aggrade nor degrade and will minimize shear stresses on the banks that are causing extensive areas of active erosion within the proposed project area. Aquatic resource functions will be improved by establishing a riffle and pool system, installing instream structures to protect the banks from erosive flows and to provide aquatic habitat, modifying the stream bed and banks to restore stream meanders, re-establishing native vegetation, and stabilizing banks that have eroded and are threatening the integrity of adjacent properties.

CMP Project No: 15-1428-F1

Type of Application: USACE permit application #SWG-2012-01007. This application will be reviewed pursuant to §10 of the Rivers and Harbors Act of 1899 and §404 of the Clean Water Act.

Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Applicant: Mr. Jesse Hunt

Location: The project site is located in the Gulf Intracoastal Waterway (GIWW), at 2441 West Maple Street, in Port O'Connor, Calhoun County, Texas. The site can be located on the U.S.G.S. quadrangle map titled: PORT O'CONNOR, Texas.

LATITUDE & LONGITUDE (NAD 83):

Latitude: 28.43332° North; Longitude: 96.43034° West

Project Description: The applicant proposes to install approximately 100 linear feet of bulk-heading and backfill the bulkhead with dredged material. Approximately 635 cubic yards of GIWW bottom will be mechanically dredged to a depth of -5 feet below mean high water. Material not placed behind the bulkhead will be placed upon the adjacent property to raise the elevation. Additionally, the applicant proposes to install 50 9-inch-diameter wooden pilings for pier support. The applicant proposes a wrap-around C-shaped marina basin with a wrap-around, 4-foot-wide by 252-foot-long pier. Five 12-foot-long by 4-foot-wide finger piers will be constructed adjacent to the area of the pier abutting the shoreline. The finger piers will have two pilings spaced midway between them to create a double slip. The piers will not extend into the GIWW beyond the existing boathouse.

CMP Project No: 15-1465-F1

Type of Application: USACE permit application #SWG-2015-00267. This application will be reviewed pursuant to §10 of the Rivers and Harbors Act of 1899 and §404 of the Clean Water Act.

Applicant: Texas Fuel and Asphalt Company

Location: The project is located on the south side of the Tule Lake Channel, approximately 0.83 miles WNW of the former Tule Lift Bridge site, in Corpus Christi, Nueces County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: CORPUS CHRISTI, Texas.

LATITUDE & LONGITUDE (NAD 83):

Latitude: 27.81592° North; Longitude: 97.46663° West

Project Description: The applicant proposes to construct four breasting dolphins and two shore anchors with a connecting walkway/pipeway for the onloading and offloading of petroleum products from ships and barges.

The applicant proposes to increase the amount of material to be hydraulically and mechanically dredged an additional 160,000 cubic yards from the previously authorized 181,000 cubic yards for a total of approximately 341,000 cubic yards of material from a 7.66-acre area adjacent to the Tule Lake Channel to be placed into one of the following Dredge Material Placement Areas (DMPAs): (1) Tule Lake DMPA - Cells A, B & C; (2) Suntide DMPA; (3) South Shore DMPA - Cells A & B; (4) DMPA No. 1; and/or (5) Herbie Mauer DMPA.

CMP Project No: 15-1461-F1

Type of Application: USACE permit application #SWG-2014-00559. This application will be reviewed pursuant to §10 of the Rivers and Harbors Act of 1899.

Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451 - 1464), as amended, interested parties are invited to submit comments on whether a proposed action or activity is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Land Commissioner for review.

Further information on the applications listed above, including a copy of the consistency certifications or consistency determinations for inspection, may be obtained from Mr. Ray Newby, P.O. Box 12873, Austin, Texas 78711-2873 or via email at *federal.consistency@glo.texas.gov.* Comments should be sent to Mr. Newby at the above address or by email.

TRD-201502307
Anne L. Idsal
Chief Clerk
General Land Office
Filed: June 17, 2015

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Notice of Approval of Coastal Boundary Survey

Pursuant to §33.136 of the Texas Natural Resources Code, notice is hereby given that George P. Bush, Commissioner of the General Land Office, approved a coastal boundary survey described as follows:

A Coastal Boundary Survey, dated January 31, 2015, by Stephen C. Blaskey, Licensed State Land Surveyor, delineating the littoral boundary line of the Gulf of Mexico and the Edward Hall and Levi Jones Survey, A-121, same line being the western boundary of Submerged Land Tracts 230, 231/North 310 and 241. The survey is required under §33.136 Texas Natural Resources Code for a proposed beach nourishment project to be completed under authority of Texas General Land Office Lease No SL20150012 and Coastal Erosion Planning and Response Act (CEPRA) Project No. 1609. The surveyed line is situated along the seaward edge of the granite riprap in front of the Galveston Seawall [N29.254251°, W94.847593° (29°15'15.31" 94°50'51.34"), WGS84], extending from 61st Street westward to the end of said seawall.

This survey is intended to provide pre-project baseline information related to an erosion response activity on coastal public lands. An owner of uplands adjoining the project area is entitled to continue to exercise littoral rights possessed prior to the commencement of the erosion response activity, but may not claim any additional land as a result of accretion, reliction, or avulsion resulting from the erosion response activity.

For a copy of this survey or more information on this matter, contact Bill O'Hara, Director of the Survey Division, Texas General Land Office by phone at (512) 463-5212, email *bill.o'hara@glo.texas.gov,* or fax (512) 463-5223.

TRD-201502294
Anne L. Idsal
Chief Clerk
General Land Office
Filed: June 16, 2015

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Texas Health and Human Services Commission

Public Notice

SPA 15-005 VDP Reimbursement

The Texas Health and Human Services Commission announces its intent to submit transmittal number 15-005 to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act.

The purpose of this amendment is to modify the reimbursement methodology for the pharmacy dispensing fee. The methodology is being revised to comply with federal guidance; the new methodology will be based on the National Average Drug Acquisition Cost (NADAC) pricing benchmark and will include a new dispensing fee that is based on a study completed by the State's contractor that analyzed pharmacies' cost of dispensing. The proposed amendment is effective February 1, 2016.

The proposed amendment is estimated to result in a cost savings of $11,519,470 for the remainder of federal fiscal year (FFY) 2016, consisting of $6,577,488 in federal funds and $4,941,982 in state general revenue. For FFY 2017, the estimated savings is $10,302,139, consisting of $5,841,978 in federal funds and $4,460,161 in state general revenue. For FFY 2018 the estimated savings is $11,019,179, consisting of $6,244,569 in federal funds and $4,774,610 in state general revenue.

To obtain copies of the proposed amendment, interested parties may contact J.R. Top, State Plan Coordinator, by mail at the Health and Human Services Commission, P.O. Box 13247, Mail Code H-600, Austin, Texas 78711; by telephone at (512) 462-6397; by facsimile at (512) 730-7472; or by e-mail at *jr.top@hhsc.state.tx.us.* Copies of the proposal will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-201502313
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: June 17, 2015

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Public Notice - Amendment to the Texas State Plan for Medical Assistance Effective July 1, 2015

The Texas Health and Human Services Commission (HHSC) announces its intent to submit an amendment to the Texas State Plan for Medical Assistance under Title XIX of the Social Security Act. The proposed amendment is effective July 1, 2015.

The purpose of this amendment is to update the fee schedules in the current state plan by adjusting or implementing fees for:

Early and Periodic Screening, Diagnosis, and Treatment Services (EPSDT);

Licensed Clinical Social Worker Services;

Licensed Professional Counselor Services;

Licensed Marriage and Family Therapist Services;

Physicians and Other Practitioners;

Vision Care Services; and

Clinical Laboratory Services

The purpose of these rate actions is to comply with federal common procedural mandates and to adjust reimbursements to comply with the State's methodology. These rate actions comply with applicable adjustments in response to direction from the Texas Legislature as set out in the 2012-2013 General Appropriations Act, effective September 1, 2011, and the 2014-2015 General Appropriations Act, effective

September 1, 2013. All of the proposed adjustments are being made in accordance with 1 TAC §355.201.

The proposed amendment is estimated to result in an annual cost of $2,987,621 for federal fiscal year (FFY) 2015, consisting of $1,734,314 in federal funds and $1,253,307 in state general revenue. For FFY 2016, the estimated annual expenditure is $14,815,902, consisting of $8,464,325 in federal funds and $6,351,577 in state general revenue. For FFY 2017, the estimated annual expenditure is $15,486,718 consisting of $8,776,323 in federal funds and $6,710,395 in state general revenue.

To obtain copies of the proposed amendment or to submit written comments, interested parties may contact Dan Huggins, Director of Rate Analysis for Acute Care Services, by mail at the Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 149030, H-400, Austin, Texas 78714-9030; by telephone at (512) 707-6071; by facsimile at (512) 730-7475; or by e-mail at *dan.huggins@hhsc.state.tx.us*. Copies of the proposal will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-201502311
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: June 17, 2015

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Department of State Health Services

Correction of Error

The Department of State Health Services (department) adopted the repeal of 25 TAC §§146.1 - 146.12 and new §§146.1 - 146.8, concerning the regulation of training and certification of promotores or community health workers (CHWs), in the June 19, 2015, issue of the *Texas Register* (40 TexReg 3828). The new rules were adopted with changes and republished. The following punctuation errors appeared in the rule text and should be corrected as follows.

On page 3834, §146.4(h)(2)(F), the closing punctuation should be a semicolon.

On page 3835, §146.5(a)(1), the closing punctuation should be a semicolon.

On page 3835, §146.5(f)(1)(B), the closing punctuation should be a semicolon.

On page 3836, §146.5(f)(2), the closing punctuation should be a period.

On page 3837, §146.6(f)(1)(B), the closing punctuation should be a semicolon.

On page 3837, §146.6(f)(2), the closing punctuation should be a period.

TRD-201502302

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Licensing Actions for Radioactive Materials

During the second half of May, 2015, the Department of State Health Services (Department) has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables (in alphabetical order by location). The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout TX [Texas]" indicates that the radioactive material may be used on a temporary basis at locations throughout the state.

In issuing new licenses and amending and renewing existing licenses, the Department's Radiation Safety Licensing Branch has determined that the applicant has complied with the licensing requirements in Title 25 Texas Administrative Code (TAC), Chapter 289, for the noted action. In granting termination of licenses, the Department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC, Chapter 289.

This notice affords the opportunity for a hearing on written request, within 30 days of the date of publication of this notice, of a person affected by the Department's action. 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. 25 TAC §289.205(b)(15); Health and Safety Code §401.003(15). A person affected may request a hearing as prescribed in 25 TAC § 289.205(c) by writing Richard A. Ratliff, Radiation Program Officer, Department of State Health Services, Radiation Material Licensing – MC 2835, PO Box 149347, Austin, Texas 78714-9347. For information call (512) 834-6688.

NEW LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amend-ment Number	Date of Action
Baytown	JSW Steel USA Inc.	L06717	Baytown	00	05/19/15
Borger	Solvay Specialty Polymers USA, L.L.C.	L06719	Borger	00	05/29/15
Throughout TX	Oilpatch NDT L.L.C.	L06718	Seabrook	00	05/26/15

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amend-ment Number	Date of Action
Abilene	Desert NDT L.L.C. dba Midwest Inspection Services	L06462	Abilene	25	05/28/15
Austin	Texas Department of Transportation	L00197	Austin	176	05/20/15
Austin	Seton Family of Hospitals	L00268	Austin	137	05/27/15
Austin	St. Davids Healthcare Partnership L.P., L.L.P. dba St. Davids Medical Center	L00740	Austin	123	05/21/15
Baytown	Exxon Mobil Corporation dba Exxonmobil Refining and Supply Company	L01134	Baytown	72	05/18/15
Baytown	Exxon Mobil Corporation dba Exxonmobil Chemical Company	L01135	Baytown	78	05/18/15
Bonham	Fannin County Hospital Authority dba TMC Bonham Hospital	L06548	Bonham	01	05/26/15
College Station	Texas A&M University	L06561	College Station	03	05/18/15
Deer Park	Shell Oil Products US dba Deer Park Refining Limited Partnership	L04554	Deer Park	35	05/21/15
Deer Park	Shell Chemical L.P.	L04933	Deer Park	27	05/29/15
El Paso	The University of Texas at El Paso	L00159	El Paso	73	05/29/15
Flower Mound	Flower Mound Hospital Partners L.L.C. dba Texas Health Presbyterian Hospital Flower Mound	L06310	Flower Mound	07	05/28/15
Houston	Greater Houston Heart Specialists P.A.	L05666	Houston	10	05/20/15
Houston	Baker Hughes Oilfield Operations Inc.	L06453	Houston	17	05/28/15
Irving	Abbott Laboratories	L04841	Irving	13	05/20/15
La Porte	Ineos USA L.L.C.	L00088	La Porte	61	05/20/15

Longview	Eastman Chemicals Company	L00301	Longview	121	05/21/15
Lubbock	Covenant Medical Center	L00483	Lubbock	155	05/20/15
Lubbock	Radiation Oncology of the South Plains P.A. dba Lubbock Imaging Center	L05418	Lubbock	23	05/18/15
Mansfield	FTI Industries L.P.	L06714	Mansfield	01	05/19/15
New Braunfels	TXI Operations L.P.	L01421	New Braunfels	53	05/20/15
Odessa	Texas Oncology P.A. dba Texas Oncology	L05140	Odessa	17	05/19/15
Orange	E I DuPont De Nemours & Co	L00005	Orange	77	06/01/15
Pasadena	Marathon Pipe Line L.L.C.	L05303	Pasadena	12	05/29/15
Plano	Truradiation Partners Plano L.L.C.	L06617	Plano	02	05/19/15
Point Comfort	Alcoa World Alumina Atlantic	L05186	Point Comfort	12	05/20/15
San Antonio	South Texas Radiology Imaging Centers	L00325	San Antonio	225	05/27/15
San Antonio	VHS San Antonio Partners L.L.C. dba Baptist Health System	L00455	San Antonio	233	05/21/15
San Antonio	Christus Santa Rosa Health Care	L02237	San Antonio	150	05/29/15
San Antonio	M M Ontiveros M.D., P.A.	L05675	San Antonio	13	05/19/15
Temple	Scott and White Memorial Hospital and Scott Sherwood and Brindley Foundation dba Scott and White Memorial Hospital	L00331	Temple	101	05/28/15
Texarkana	Red River Pharmacy Services	L05077	Texarkana	23	05/19/15
Throughout TX	Amarillo Testing & Engineering Inc.	L02658	Amarillo	21	05/28/15
Throughout TX	Weatherford International L.L.C.	L04286	Benbrook	111	05/20/15
Throughout TX	Nondestructive & Visual Inspection L.L.C.	L06162	Carthage	16	05/22/15
Throughout TX	Gorrondona & Associates Inc.	L06359	Fort Worth	07	05/27/15
Throughout TX	Mandes Inspection & Testing Services Inc.	L05220	Houston	75	05/19/15
Throughout TX	Arends Inspection L.L.C.	L06333	Houston	07	05/21/15
Throughout TX	Texcom Environmental Services L.L.C.	L06596	Houston	03	05/20/15
Throughout TX	Versa Integrity Group Inc.	L06669	Houston	03	05/20/15
Throughout TX	ECS Texas L.L.P.	L06693	Houston	01	05/26/15
Throughout TX	UT Quality Inc.	L06698	Houston	02	05/21/15
Throughout TX	C & J Spec-Rent Services Inc.	L06712	Houston	01	05/22/15
Throughout TX	Southern Services Inc. dba Southern Technical Services dba Bix Testing Laboratories	L05270	Lake Jackson	60	05/22/15
Throughout TX	Hi-Tech Testing Services Inc.	L05021	Longview	109	05/19/15
Throughout TX	Chief Inspection Service L.L.C.	L06541	Longview	05	05/28/15
Throughout TX	Rising Star Services L.P.	L06393	Midland	06	05/29/15
Throughout TX	Eagle X-Ray Inc.	L03246	Mont Belvieu	107	05/27/15
Throughout TX	RK Hall L.L.C.	L04886	Paris	13	05/19/15
Throughout TX	NE Time L.L.C.	L06590	Rockport	03	05/27/15
Throughout TX	Schlumberger Technology Corporation	L00764	Sugar Land	144	05/20/15
Throughout TX	Ecoserv Environmental Services L.L.C.	L04999	Winnie	16	05/28/15
Tyler	The University of Texas Health Science Center at Tyler	L04117	Tyler	57	05/29/15
Waxahachie	Baylor Medical Center at Waxahachie	L04536	Waxahachie	44	05/19/15
Weatherford	Weatherford Texas Hospital Company L.L.C. dba Weatherford Regional Medical Center	L02973	Weatherford	33	05/22/15

RENEWAL OF LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amend-ment Number	Date of Action
Arlington	Imaging and Med. Diagnostic Specialists P.A. dba Central Imaging of Arlington	L04876	Arlington	11	05/26/15
Bay City	Matagorda County Hospital District dba Matagorda Regional Medical Center	L02701	Bay City	21	05/29/15
Dallas	Heartmasters P.A.	L05760	Dallas	09	05/28/15
Denton	University of North Texas	L00101	Denton	101	05/27/`4

Denton	Columbia Medical Center of Denton Subsidiary L.P. dba Denton Regional Medical Center	L02764	Denton	73	05/28/15
El Paso	Tenet Hospitals Limited dba Sierra Medical Center	L04758	El Paso	34	05/26/15
Houston	Memorial Hermann Health System dba Memorial Hermann Memorial City Medical Center	L01168	Houston	159	05/18/15
Houston	Spectracell Laboratories Inc.	L04617	Houston	16	05/27/15
Mexia	Mexia Principal Healthcare Ltd. Partnership dba Parkview Regional Hospital	L05144	Mexia	29	05/18/15
New Braunfels	Christus Santa Rosa Health Care Corporation dba Christus Santa Rosa Hospital – New Braunfels	L02429	New Braunfels	48	05/28/15
San Antonio	South Texas Radiology Imaging Centers	L00325	San Antonio	224	05/26/15
Throughout TX	GCT Inspection Inc.	L02378	Pasadena	110	05/27/15
Throughout TX	Siemens Medical Solutions USA, Inc.	L05884	Plano	09	05/27/15
Throughout TX	Hunter Industries Ltd.	L04175	San Marcos	10	05/20/15

TERMINATIONS OF LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amend-ment Number	Date of Action
Cleveland	Cleveland Regional Medical Center L.P.	L02055	Cleveland	46	05/27/15
Frisco	Forest Park Medical Center at Frisco L.L.C. dba Forest Park Medical Center Frisco	L06534	Frisco	03	05/29/15
Sugar Land	Sugar Land Heart Center Inc.	L05921	Sugar Land	04	05/27/15

TRD-201502326
Lisa Hernandez
General Counsel
Department of State Health Services
Filed: June 17, 2015

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Texas Higher Education Coordinating Board

Notice of Intent to Engage in Negotiated Rulemaking - Apply Texas

The Texas Higher Education Coordinating Board ("THECB" or "Board") intends to engage in negotiated rulemaking to develop a policy, procedure, or rule relating to an admission policy regarding the common admission application under §51.762 of the Texas Education Code. This is in accordance with the provisions of Senate Bill 215 passed by the 83rd Texas Legislature, Regular Session.

In identifying persons likely affected by the proposed rules, the Convener of Negotiated Rulemaking sent a memo via email to all presidents and chancellors of public universities, community, technical, and state colleges, and private/independent, non-profit institutions of higher education, via Independent Colleges and Universities of Texas (ICUT), soliciting their interest and willingness to participate in the negotiated rulemaking process, or to nominate a representative from their campus.

From this effort, 31 individuals responded (out of approximately 171 affected entities) and expressed an interest to participate or nominated someone from their institution to participate on the negotiated rulemaking committee for ApplyTexas. The positions held by the volunteers and nominees include enrollment and admissions Vice Presidents, Deans, and Directors, Chief of Staff, and a Counselor. This indicates a probable willingness and authority of the affected interests to negotiate in good faith and a reasonable probability that a negotiated rulemaking process can result in a unanimous or, if the committee so chooses, a suitable general consensus on the proposed rule.

The following is a list of the stakeholders who are significantly affected by this rule and will be represented on the negotiated rulemaking committee for ApplyTexas:

1) Public Universities;

2) Public Community Colleges;

3) Public State Colleges;

4) Public Technical Colleges;

5) Private/Independent, Non-Profit Institutions of Higher Education; and

6) Texas Higher Education Coordinating Board.

The THECB proposes to appoint the following 24 individuals to the negotiating rulemaking committee for ApplyTexas to represent affected parties and the agency:

Public Community Colleges

Linda Kluck, Executive Director of Admissions and Records, Austin Community College

Vincent Solis, Vice President for Instruction and Student Services, Laredo Community College

Sheila Reece, Associate Vice President of Student Access and Success, Paris Junior College

Kevin McKisson, Dean of Enrollment Services, San Jacinto College

Matthew S. Hebbard, Dean of Enrollment Services and Registrar, South Texas College

Nichole Mancone, District Director of Admissions and Records, Tarrant County College

Public State Colleges

Jason Smith, Dean of Students, Lamar Institute of Technology

Public Technical Colleges

Janyth Ussery, Admissions Statewide Director, Texas State Technical College-Sweetwater

Public Universities

Lisa Hernandez, Assistant Director of Admissions, Angelo State University

Christine Gann, Undergraduate Admission, Sam Houston State University

Mary Nelle Brunson, Associate Provost and Dean of Graduate School, Stephen F. Austin State University

Scott McDonald, Assistant Vice President and Director of Admissions, Texas A&M University

Clifton Jones, Interim Executive Director of Enrollment Management/Director of Student Financial Assistance, Texas A&M University-Central Texas

Margaret Dechant, Associate Vice President for Enrollment Management, Texas A&M University-Corpus Christi

Jasan Jamil, Vice President for Enrollment Management, Texas Southern University

Stephanie Anderson, Assistant Vice President for Enrollment Management/Director of Undergraduate Admissions, Texas State University

Jamie Hansard, Managing Director in Undergraduate Admissions, Texas Tech University

Dara Newton, Executive Director of University Recruiting, The University of Texas at Arlington

Susan Kearns, Interim Director of Admissions, The University of Texas at Austin

Janna Arney, Chief of Staff and Vice President for Operations, The University of Texas Rio Grande Valley

Billy Lagal, Director of Admissions and Recruitment, University of Houston Victoria

Private/Independent, Non-Profit Institutions

Chadd Bridwell, Assistant Vice President of Enrollment, Texas Wesleyan University

Texas Counseling Association

Stephen Samet, Counselor, Alamo Colleges-San Antonio College

Texas Higher Education Coordinating Board

Jerel Booker, Deputy Assistant Commissioner, College Readiness and Success

Meetings will be open to the public. If there are persons who are significantly affected by these proposed rules and are not represented by the persons named above, those persons may apply to the agency for membership on the negotiated rulemaking committee or nominate another person to represent their interests. Application for membership must be made in writing and include the following information:

• Name and contact information of the person submitting the application;

• Description of how the persons are significantly affected by the rule and how their interests are different than those represented by the persons named above;

• Name and contact information of the person being nominated for membership; and

• Description of the qualifications of the nominee to represent the person's interests.

The THECB requests comments on the Notice of Intent to engage in negotiated rulemaking and on the membership of the negotiated rulemaking committee for ApplyTexas. Comments and applications for membership of the committee must be submitted by July 6 to:

Mary E. Smith, Ph.D.

Alternative Dispute Resolution Coordinator

Texas Higher Education Coordinating Board

P.O. Box 12788

Austin, Texas 78711

Fax: (512) 427-6127

Email: *mary.smith@thecb.state.tx.us*

TRD-201502300
William Franz
General Counsel
Texas Higher Education Coordinating Board
Filed: June 16, 2015

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Texas Department of Insurance

Company Licensing

Application to change the name of SAFEWAY COUNTY MUTUAL INSURANCE COMPANY to REDPOINT COUNTY MUTUAL INSURANCE COMPANY, a domestic fire and/or casualty company. The home office is in Dallas, Texas.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, MC 305-2C, Austin, Texas 78701.

TRD-201502301
Sara Waitt
General Counsel
Texas Department of Insurance
Filed: June 16, 2015

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Texas Lottery Commission

Instant Game Number 1712 "Scoop the Cash Blackjack™"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1712 is "SCOOP THE CASH BLACKJACK™". The play style is "cards - Blackjack".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1712 shall be $1.00 per Ticket.

1.2 Definitions in Instant Game No. 1712.

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: 4 CARD SYMBOL, 5 CARD SYMBOL, 6 CARD SYMBOL, 7 CARD SYMBOL, 8 CARD SYMBOL, 9 CARD SYMBOL, 10 CARD SYMBOL, J CARD SYMBOL, Q CARD SYMBOL, K CARD SYMBOL, A CARD SYMBOL, 16, 17, 18, 19, 20, $1.00, $2.00, $5.00, $10.00, $20.00, $50.00, $100 and $2,100.

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. 1712 - 1.2D

PLAY SYMBOL	CAPTION
4 CARD SYMBOL	FOR
5 CARD SYMBOL	FIV
6 CARD SYMBOL	SIX
7 CARD SYMBOL	SVN
8 CARD SYMBOL	EGT
9 CARD SYMBOL	NIN
10 CARD SYMBOL	TEN
J CARD SYMBOL	JCK
Q CARD SYMBOL	QUN
K CARD SYMBOL	KNG
A CARD SYMBOL	ACE
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
$1.00	ONE$
$2.00	TWO$
$5.00	FIVE$
$10.00	TEN$
$20.00	TWENTY
$50.00	FIFTY
$100	ONE HUND
$2,100	21 HUND

E. Serial Number- A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Low-Tier Prize - A prize of $1.00, $2.00, $5.00, $10.00 or $20.00.

G. Mid-Tier Prize - A prize of $50.00 or $100.

H. High-Tier Prize - A prize of $2,100.

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 (1712), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 150 within each Pack. The format will be: 1712-0000001-001.

K. Pack - A Pack of "SCOOP THE CASH BLACKJACK™" Instant Game Tickets contains 150 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of five (5). Tickets 001 to 005 will be on the top page; Tickets 006 to 010 on the next page; etc.; and Tickets 146 to 150 will be on the last page with backs exposed. Ticket 001 will be folded over so the front of Ticket 001 and 010 will be exposed.

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 "SCOOP THE CASH BLACKJACK™" Instant Game No. 1712 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 "SCOOP THE CASH BLACKJACK™" Instant Game is determined once the latex on the Ticket is scratched off to expose up to 13 (thirteen) Play Symbols. If the total of the 2 cards Play Symbols in any HAND beats the DEALER'S TOTAL Play Symbol, the player wins the PRIZE for that HAND. If the total in any HAND is 21, the player wins DOUBLE the PRIZE for that HAND. A =11. K, Q, J = 10. 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 13 (thirteen) 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 13 (thirteen) 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 13 (thirteen) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 13 (thirteen) 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. Consecutive Non-Winning Tickets in a Pack will not have matching play data, spot for spot.

B. The top Prize Symbol will appear on every Ticket unless restricted by other parameters, play action or prize structure.

C. No matching non-winning Prize Symbols unless restricted by other parameters, play action or prize structure.

D. A non-winning Prize Symbol will never be the same as a winning Prize Symbol.

E. No HAND will contain two aces.

F. No HAND will total less than 14.

G. No ties between a HAND total and the DEALER'S TOTAL.

H. No duplicate non-winning HANDS on a Ticket in any order.

I. A HAND totaling 21 (doubler) will only appear as dictated by the prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim a "SCOOP THE CASH BLACKJACK™" Instant Game prize of $1.00, $2.00, $5.00, $10.00, $20.00, $50.00 or $100, a claimant shall sign the back of the Ticket in the space designated on the Ticket and present the winning Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $50.00 or $100 Ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant

shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "SCOOP THE CASH BLACKJACK™" Instant Game prize of $2,100, 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 "SCOOP THE CASH BLACKJACK™" Instant Game prize, the claimant must sign the winning Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. a sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "SCOOP THE CASH BLACKJACK™" 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 "SCOOP THE CASH BLACKJACK™" 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 10,080,000 Tickets in the Instant Game No. 1712. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1712 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$1	1,075,200	9.38
$2	672,000	15.00
$5	235,200	42.86
$10	117,600	85.71
$20	33,600	300.00
$50	8,400	1,200.00
$100	1,260	8,000.00
$2,100	30	336,000.00

*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 4.70. 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. 1712 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. 1712, 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-201502295

Bob Biard
General Counsel
Texas Lottery Commission
Filed: June 16, 2015

♦ ♦ ♦

Texas Department of Motor Vehicles

Correction of Error

The Texas Department of Motor Vehicles proposed amendments to 43 TAC Chapter 215 in the June 19, 2015, issue of the *Texas Register* (40 TexReg 3754). Amended §215.139 was published on page 3777; however, graphics associated with proposed §215.139(c), (e), and (f)(1) were inadvertently omitted from the Tables & Graphics section. Those tables follow:

Figure: 43 TAC §215.139(c)

If a new license applicant is:	Maximum number of metal dealer's license plates issued during the first license term is:
1. a franchised motor vehicle dealer	1
2. a franchised motorcycle dealer	5
3. an independent motor vehicle dealer	2
4. an independent motorcycle dealer	2
5. a franchised or independent travel trailer dealer	2
6. a trailer or semi-trailer dealer	2
7. an independent mobility motor vehicle dealer	2
8. a wholesale motor vehicle dealer	1

Figure: 43 TAC §215.139(e)

If a vehicle dealer is:	Maximum number of metal dealer's license plates issued per license term is:
1. a franchised motor vehicle dealer	30
2. a franchised motorcycle dealer	10
3. an independent motor vehicle dealer	3
4. an independent motorcycle dealer	3
5. a franchised or independent travel trailer dealer	3
6. a trailer or semi-trailer dealer	3
7. an independent mobility motor vehicle dealer	3
8. a wholesale motor vehicle dealer	1

Figure: 43 TAC §215.139(f)(1)

If a vehicle dealer is:	Number of additional metal dealer's license plates issued to a dealer that demonstrates a need through proof of sales is:
1. a wholesale motor vehicle dealer	1
2. a dealer selling fewer than 50 vehicles during the previous 12-month period	1
3. a dealer selling 50 to 99 vehicles during the previous 12-month period	5
4. a dealer selling more than 200 vehicles during the previous 12-month period	any number of metal dealer's license plates the dealer requests.

TRD-201502278

♦ ♦ ♦

Correction of Error

The Texas Department of Motor Vehicles adopted amendments to 43 TAC §217.27 in the June 19, 2015, issue of the *Texas Register* (40 TexReg 4003). The effective date of the rule adoption was published incorrectly as June 25, 2015. The correct effective date is June 22, 2015.

TRD-201502329

♦ ♦ ♦

Texas Parks and Wildlife Department

Notice of Hearing and Opportunity for Public Comment

This is a notice of an opportunity for public comment and a public hearing on a City of San Marcos application for a Texas Parks and Wildlife Department (TPWD) permit to remove or disturb approximately 9,000 cubic yards of sand and gravel from and within the San Marcos River in San Marcos, Hays County from approximately the Aquarena Springs Drive crossing to the Interstate Highway 35 crossing. The purpose is to remove fine sediment as called for in the Edwards Aquifer Habitat Conservation Plan.

The hearing will be held at 10:00 a.m. on Monday, July 20, 2015 at TPWD headquarters, located at 4200 Smith School Road, Austin, Texas 78744. The hearing is not a contested case hearing under the Administrative Procedure Act.

Written comments must be submitted within 30 days of the publication of this notice in the *Texas Register* or the newspaper, whichever is later, or at the public hearing. Submit written comments, questions, or requests to review the application to: Tom Heger, TPWD, by mail: 4200 Smith School Road, Austin, Texas 78744; fax (512) 389-4405; e-mail tom.heger@tpwd.texas.gov; or phone (512) 389-4583.

TRD-201502253

Ann Bright
General Counsel
Texas Parks and Wildlife Department
Filed: June 25, 2015

♦ ♦ ♦

Public Utility Commission of Texas

Application for Reasonableness and Public Interest Findings on the Disposition of Coal-Fired Generating Facilities in New Mexico and Mine Closing Costs Adjustments

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application filed on June 10, 2015, for reasonableness, public interest, and rate- and accounting-related findings regarding El Paso Electric's (EPE's) decision not to extend its participation in the coal-fired Units 4 and 5 of the Four Corners power plant beyond July 2016.

Docket Style and Number: Application of El Paso Electric Company for Reasonableness and Public Interest Findings on the Disposition of Coal-Fired Generating Facilities in New Mexico and Mine Closing Costs Adjustments, Docket No. 44805.

The Application: EPE filed this proceeding pursuant to the stipulation and order entered in Docket No. 41852, *Application of El Paso Electric Company to Reconcile Fuel Costs,* Order (Jul. 11, 2014).

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 (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket No. 44805.

TRD-201502212
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 12, 2015

♦ ♦ ♦

Notice of Application for a Water Certificate of Convenience and Necessity

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application for water Certificate of Convenience and Necessity (CCN) in Grayson County, Texas.

The Application: Double Diamond Properties Constructions Co. dba Rock Creek Resort filed an application to obtain a water CCN in Docket No. 44822 in Grayson County, Texas.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. A deadline for intervention in this proceeding will be established. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 44822.

TRD-201502215
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 12, 2015

♦ ♦ ♦

Notice of Application for Purchase and Acquisition

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on June 11, 2015, pursuant to the Texas Water Code.

Docket Style and Number: Application of Ed Wallace and Ni America Texas, LLC to Acquire a Controlling Interest in Ni America Texas Development, LLC; Docket Number 44830.

The Application: Ed Wallace and Ni America Texas, LLC (Ni America) filed an application to acquire a controlling interest in Ni America Texas Development, LLC (NAT Development), a Texas Limited Liability Company pursuant to Tex. Water Code Ann. §13.302 (West 2008 and Supp. 2014) and 16 Tex. Admin. Code §24.111. Ed Wallace seeks to purchase and acquire 100% of Ni America Texas, LLC's membership interest in NAT Development. NAT Development currently possesses retail water Certificate of Convenience and Necessity (CCN) No. 13177 and retail wastewater CCN No. 21040. Ni America determined that NAT Development's CCNs are not material to its operations or the operation of its facilities and desires to sell its membership interest to Ed Wallace.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the commission as soon as possible as an intervention deadline will be imposed. A comment or request to intervene should be mailed to Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326. Further information may also be obtained by calling the commission's Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All correspondence should refer to Docket Number 44830.

TRD-201502296
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 16, 2015

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Notice of Application for Retail Electric Provider Certification

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on June 9, 2015, for retail electric provider (REP) certification, pursuant to Public Utility Regulatory Act (PURA) §39.352.

Docket Title and Number: Application of Golden Rule Enterprises, LLC for Retail Electric Provider Certification; Docket Number 44819.

The Application: Golden Rule Enterprises, LLC requests certification as a retail electric provider to serve its customer, Spicewood Energy Management, LLC.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All inquiries should reference Docket Number 44819.

TRD-201502298
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 16, 2016

♦ ♦ ♦

Notice of Application for Retail Electric Provider Certification

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on June 11, 2015, for retail electric provider (REP) certification, pursuant to Public Utility Regulatory Act (PURA) §39.352.

Docket Title and Number: Application of MidAmerican Energy Services, LLC for Retail Electric Provider Certification; Docket Number 44826.

The Application: MidAmerican Energy Services, LLC's requested service area is the geographic area of the Electric Reliability Council of Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All inquiries should reference Docket Number 44826.

TRD-201502299
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 16, 2016

♦ ♦ ♦

Notice of Application to Amend Water Certificate of Convenience and Necessity

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application to amend water certificate of convenience and necessity (CCN) in Upshur and Wood Counties, Texas.

Docket Style and Number: Application of Sharon Water Supply Corporation to Amend its Certificate of Convenience and Necessity in Upshur and Wood Counties, Docket Number 44816.

The Application: Sharon Water Supply Corporation filed an application to amend its water certificate of convenience (CCN) No. 10476 in Upshur and Wood Counties, Texas. The total area requested includes approximately 23.534 acres and 50 current customers.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. A deadline for intervention in this proceeding will be established. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 44816.

TRD-201502213
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 12, 2015

♦ ♦ ♦

Notice of Application to Amend Water Certificate of Convenience and Necessity

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application to amend water certificate of convenience and necessity (CCN) in Harrison County, Texas.

Docket Style and Number: Application of the City of Hallsville to Amend its Certificate of Convenience and Necessity and to Decertify a Portion of West Harrison Water Supply Corporation in Harrison County, Docket Number 44817.

The Application: The City of Hallsville filed an application to amend its water CCN No. 13200 and to decertify a portion of West Harrison Water Supply Corporation to provide water and sewer utility service in Harrison County, Texas. The total area requested includes approximately 42 acres of land. There are zero current customers.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. A deadline for intervention in this proceeding will be established. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 44817.

TRD-201502214
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 12, 2015

♦ ♦ ♦

Supreme Court of Texas

In the Supreme Court of Texas

Misc. Docket No. 15-9090

ORDER ADOPTING RULES GOVERNING ELECTRONIC FILING IN CRIMINAL CASES

ORDERED that:

1. The Rules Governing Electronic Filing in Criminal Cases are adopted for Hidalgo County, effective September 1, 2015. *See* Acts 2013, 83rd Leg., R.S., ch. 855, 2013 Tex. Gen. Laws 2203, 2203-04 (codified at Tex. Gov't Code §§ 24.194(d), 24.195(d), 24.241(d), 24.385(b), 24.452(b), 24.478(b), 24.515(b), 24.534(b), 24.543(b), 24.574(c), 24.593(c)) (effective Sept. 1, 2015).

2. For all other counties, the rules are effective November 1, 2015.

3. These rules may be changed in response to public comments received by August 30, 2015. Any interested party may submit written comments to the Clerk of the Court of Criminal Appeals, Abel Acosta, at P.O. Box 12308, Austin, Texas 78711 or abel.acosta@txcourts.gov.

4. The Clerk is directed to:

a. file a copy of this order with the Secretary of State;

b. cause a copy of this order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal;*

c. send a copy of this order to each elected member of the Legislature; and

d. submit a copy of the order for publication in the *Texas Register.*

Dated: June 9, 2015.

_____
Nathan L. Hecht, Chief Justice

_____
Paul W. Green, Justice

_____
Phil Johnson, Justice

_____
Don R. Willett, Justice

_____
Eva M. Guzman, Justice

_____
Debra H. Lehrmann, Justice

_____
Jeffrey S. Boyd, Justice

_____
John P. Devine, Justice

_____
Jeffrey V. Brown, Justice

In the Court of Criminal Appeals

Misc. Docket No. 15-002

ORDER ADOPTING PROPOSED STATEWIDE RULES GOVERNING ELECTRONIC FILING IN CRIMINAL CASES

ORDERED that:

1) The Statewide Rules Governing Electronic Filing in Criminal Cases are adopted, effective September 1, 2015, for Hidalgo County, Texas, subject to potential changes made after a comment period. See Tex. Gov't Code §§ 24.194, 24.195, 24.241, 24.385, 24.452, 24.478, 24.515, 24.534, 24.543, 24.574, and 24.593.

2) For all other counties in Texas, the rules are effective November 1, 2015.

3) The Clerk is directed to file a copy of this Order with the Secretary of State and the *Texas Register,* and to cause a copy of this Order to be

mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal.*

4) These rules may be changed in response to public comments received before August 30, 2015. Any interested party may submit written comments directed to Abel Acosta, Clerk of the Court, at P.O. Box 12308, Austin, Texas 78711, or abel.acosta@txcourts.gov.

Dated: June 9, 2015

_____

Sharon Keller, Presiding Judge

_____

Lawrence E. Meyers, Judge

_____

Cheryl Johnson, Judge

_____

Michael Keasler, Judge

_____

Barbara Hervey, Judge

_____

Elsa Alcala, Judge

_____

Bert Richardson, Judge

_____

Kevin Yeary, Judge

_____

David Newell, Judge

PROPOSED STATEWIDE RULES governing ELECTRONIC FILING in CRIMINAL CASES

PART 1. GENERAL PROVISIONS

Rule 1.1 Purpose

These rules govern the electronic filing in criminal cases in Justice of the Peace Courts, County Courts, Statutory County Courts and District Courts.

Rule 1.2 Electronic Filing Permitted

Where criminal case e-filing has been implemented in a county, the electronic filing and serving of court documents is permitted.

PART 2. DEFINITIONS

Rule 2.1 Specific Terms

The following definitions apply to these rules:

(a) "Court" is defined as a Justice of the Peace Court, Constitutional County Court, Statutory County Court and District Court.

(b) "Clerk" is defined as justice court clerks, county clerks and district clerks.

(c) "Digital Media" is defined as any files stored in an electronic format. This can include (but is not limited to) text, audio and video files.

(d) "Electronic signature" is defined as an electronic identifier intended by the person using it to have the same force and effect as a manual signature (see Texas Code of Criminal Procedure § 2.26).

(e) "Document" is defined as a pleading, plea, motion, application, request, exhibit, brief, memorandum of law, or other instrument in electronic form.

(f) "Electronic filing" is defined as uploading a document in PDF format using the electronic filing manager via a certified EFSP to file that document. Sending a document to the Clerk via fax or electronic mail (e-mail) as an attachment does *not* constitute "electronic filing."

(g) "Electronic Filing Manager" is the electronic filing portal contracted by the Office of Court Administration.

(h) "Electronic Filing Service Provider (EFSP)" is a business entity that provides electronic filing services and support to its customers (filers). An attorney, law firm, or governmental entity may act as an EFSP once certified by OCA.

(i) "Electronic order" is defined as a digital, non-paper court order that a judge signs by applying his/her Electronic signature on the order.

(j) "Electronic service" is a method of serving a document upon a party in a case by electronically transmitting the document through the electronic filing manager to the party to be served using the email address on file with the electronic filing manager.

(k) "Filer" is defined as a person or entity who files a document, including an attorney.

(l) "Office of Court Administration (OCA)" is the entity approved by the Supreme Court of Texas to certify EFSP's.

(m) "Party" is defined as a person appearing in any case or proceeding, whether represented or appearing pro se, or an attorney of record for a party in any case or proceeding.

(n) "Portable Document Format (PDF)" for the purpose of these standards is the same as defined in the Judicial Committee on Information Technology's Technology Standards.

PART 3. APPLICABILITY

Rule 3.1 Scope

These rules apply to the electronic filing of documents in all criminal cases, including cases that are appeals from lower courts, before all justice of the peace, constitutional county, statutory county and district courts. Notwithstanding anything else contained in these rules, these rules do not apply to the filing of charging instruments.

Rule 3.2 Clerks

These rules apply to the filing of documents with justice, county and district clerks. These rules do not apply to the filing of documents directly with a judge. Attorneys representing the State of Texas or governmental entities may file documents directly with the Clerk via the county's internal system or portal.

Rule 3.3 Documents That May Be Electronically Filed

Any document that can be filed with the Court in paper form may be electronically filed with the following exceptions:

(1) Documents filed under seal or presented to the Court in camera; and

(2) Documents to which access is otherwise restricted by these rules, law, or court order.

Rule 3.4 Documents Containing Signatures

(a) A document that is electronically served, filed, or issued by a Court or clerk is considered signed if the document includes:

(1) a "/s/" and name typed in the space where the signature would otherwise appear, unless the document is notarized or sworn; or

(2) an electronic image or scanned image of the signature.

(b) If a paper document must be notarized, sworn to, or made under oath, the filer may e-file the paper document as a scanned image containing the necessary signature(s).

(c) If a paper document requires the signature of an opposing party, the filer may e-file the paper document as a scanned image containing the opposing party's signature.

(d) When a filer e-files a scanned image of a paper document pursuant to paragraph (b) or (c) of this rule, the filer must retain the original paper document from which the scanned image was made until the statute of limitations for the underlying charge has run or the defendant discharges his sentence in the case, whichever is later. If the original paper document is in another party's possession, that party must retain the original paper document until the statute of limitations for the underlying charge has run or the defendant discharges his sentence in the case, whichever is later.

PART 4. FILING MECHANISM

Rule 4.1 Office of Court Administration established Electronic Filing Manager

Electronic filing must be done through the electronic filing manager established by the Office of Court Administration and an electronic filing service provider certified by the Office of Court Administration.

Rule 4.2 Format

An electronically filed document must:

(a) be in text-searchable portable document format (PDF);

(b) be directly converted to PDF rather than scanned, if possible;

(c) not be locked; and

(d) otherwise comply with the Technology Standards set by the Judicial Committee on Information Technology and approved by the Supreme Court and the Court of Criminal Appeals.

Rule 4.3 Timely Filing

(a) Unless a document must be filed by a certain time of day, a document is considered timely filed if it is electronically filed at any time before midnight (in the court's time zone) on the filing deadline. An electronically filed document is deemed filed when transmitted to the filing party's electronic filing service provider, except:

(1) if a document is transmitted on a Saturday, Sunday, or legal holiday, it is deemed filed on the next day that is not a Saturday, Sunday, or legal holiday; and

(2) if a document requires a motion and an order allowing its filing, the document is deemed filed on the date the motion is granted.

(b) If a document is untimely filed due to a technical failure or a system outage, the filing party may seek appropriate relief from the court. If the missed deadline is one imposed by these rules, the filing party must be given a reasonable extension of time to complete the filing.

Rule 4.4 Official Record

The clerk may designate an electronically filed document or a scanned paper document as the official court record. The clerk is not required to keep both paper and electronic versions of the same document.

Rule 4.5 E-Mail Address Required

The email address of any person who electronically files a document must be included on the document.

Rule 4.6 Paper Copies

Unless required by local rule, a party need not file a paper copy of an electronically filed document.

Rule 4.7 Electronic Notices from the Court

The clerk may send notices, orders, or other communications about the case to the party electronically. A court seal may be electronic.

Rule 4.8 Non-Conforming Documents

The clerk may not refuse a document that fails to conform to this rule. But the clerk may identify the error to be corrected and state a deadline for the party to resubmit the document in a conforming format.

PART 5. SERVICE OF DOCUMENTS

Rule 5.1 Electronic Service of Documents Permissible

Every notice required by these rules, and every pleading, plea, motion, or other form of request required to be served, except as otherwise expressly provided in these rules, may be served by delivering a copy to the party to be served, or the party's duly authorized agent or attorney of record.

Documents Filed Electronically. A document filed electronically under these rules must be served electronically through the electronic filing manager if the email address of the party or attorney to be served is on file with the electronic filing manager. If the email address of the party or attorney to be served is not on file with the electronic filing manager, the document may be served on that party or attorney as permitted by law.

Rule 5.2 Electronic Service Complete

Electronic service is complete on transmission of the document to the serving party's electronic filing service provider. The electronic filing manager will send confirmation of service to the serving party.

Rule 5.3 Proof of Service

The party or attorney of record shall certify to the court compliance with this rule in writing over signature and on the filed instrument. A certificate by a party or an attorney of record, or the return of the officer, or the affidavit of any other person showing service of a notice shall be prima facie evidence of the fact of service. Nothing herein shall preclude any party from offering proof that the document notice or instrument was not received and upon so finding, the court may extend the time for taking the action required of such party or grant such other relief as it deems just.

PART 6. ELECTRONIC ORDERS AND VIEWING OF ELECTRONICALLY-FILED DOCUMENTS

Rule 6.1 Courts Authorized to Make Electronic Orders

A Judge may electronically sign an order by applying his/her electronic signature to the order. Judges are not required to electronically sign orders.

PART 7. PRIVACY PROTECTION FOR FILED DOCUMENTS

Rule 7.1 Sensitive Data Defined

Sensitive data consists of:

(a) a driver's license number, passport number, social security number, tax identification number, or similar government-issued personal identification number;

(b) a bank account number, credit card number, or other financial account number; and

(c) a birth date, home address, and the name of any person who was a minor when the underlying suit was filed.

Rule 7.2 Filing of Documents Containing Sensitive Data Prohibited

Unless the inclusion of sensitive data is specifically required by a statute, court rule, or administrative regulation, an electronic or paper document containing sensitive data may not be filed with a court unless the sensitive data is redacted.

Rule 7.3 Redaction of Sensitive Data; Retention Requirement

Sensitive data must be redacted by using the letter "X" in place of each omitted digit or character or by removing the sensitive data in a manner indicating that the data has been redacted. The filing party must retain an unredacted version of the filed document during the pendency of the case and any related appellate proceedings filed within six months of the date the judgment is signed.

Rule 7.4 Notice to Clerk

If an electronic or paper document must contain sensitive data, the filing party must state on the upper left-hand side of the first page, "NOTICE: THIS DOCUMENT CONTAINS SENSITIVE DATA."

Rule 7.5 Non-Conforming Documents

The clerk may not refuse a document that contains sensitive data in violation of this rule. But the clerk may identify the error to be corrected and state a deadline for the party to resubmit a redacted, substitute document.

Rule 7.6 Restriction on Remote Access

Documents that contain sensitive data in violation of this rule must not be posted on the Internet.

TRD-201502192
Martha Newton
Rules Attorney
Supreme Court of Texas
Filed: June 10, 2015

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Texas Water Development Board

Request for Applications for Agricultural Water Conservation Grants, Fiscal Year 2015

The Texas Water Development Board (TWDB) solicits a request for applications for the state Fiscal Year 2015 Agricultural Water Conservation Grants. The total amount of the grants to be awarded under this request for applications by the TWDB shall not exceed $379,600 from the Agricultural Water Conservation Fund. The rules governing the Agricultural Water Conservation Fund (31 Texas Administrative Code, Chapter 367) and application instructions are available upon request from TWDB.

Summary of the RFA

Solicitation Date (Opening): Wednesday, April 29, 2015

Due Date (Closing): 12:00 p.m., Tuesday, July 7, 2015

Anticipated Award Date: August 2015

Estimated Total Funding: $379,600

Eligible applicants: Groundwater conservation districts (categories 1 & 2) and other political subdivisions (category 2 only)

Contact: Cameron Turner, Agricultural Water Conservation Division, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, Phone: (512) 936-6090, E-mail: *cameron.turner@twdb.texas.gov.*

Agricultural Water Conservation Grant Categories

Applications must be in response to the following categories. Applications must be consistent with the format provided in the Agricultural Water Conservation Grant Application Instructions document. Please contact TWDB staff if you do not have a copy of this document or if you have any questions about the application process.

Category 1. Agricultural Water Conservation Monitoring - metering rules required

Funding in this category is available *only* to confirmed groundwater conservation districts that have promulgated rules requiring metering of groundwater withdrawals. Funding shall only be used to offset not more than half the cost of each metering device (as set forth in Senate Bill 1 - General Appropriations Act, Rider 25, passed during the regular session of the 83rd Texas Legislature in 2013).

Applications must identify an irrigation conservation strategy from the most recent applicable regional and/or state water plan. Applicants must justify the funding amount requested by providing proof of the need for the number of meters. TWDB may prioritize funding based upon projects with the greatest needs (e.g. districts with the largest number of justifiable meters, recent increases in groundwater well drilling activities) or highest local cost-share match. Eligible expenses include up to 50 percent of the metering equipment costs. Following installation, the applicant must report water use data to TWDB annually for each piece of equipment installed for a minimum of five irrigation seasons. Applicants will be responsible for all other costs including, but not limited to, installation, maintenance, data collection, reporting services, and all other expenses for the duration of the contract. The annual data reports should include irrigated acreage, crop type, irrigation rate (inches per acre), total water use, county name, latitude/longitude coordinates (or state well grid location), and annual or effective rainfall totals (if available). Water savings estimates and an explanation of the water savings calculation methodology resulting from use of the equipment must be reported along with the annual water use data.

All TWDB contracts related to this item will include a provision stating that the district(s) shall maintain rules consistent with the legislative intent of Senate Bill 1, Rider 25 for the duration of the contract.

Category 2. Agricultural Water Conservation Monitoring - all eligible entities

Funding in this category is available to eligible political subdivisions. Funding shall only be used to offset not more than half the cost of each water use measurement device.

Applications must identify an irrigation conservation strategy from the most recent applicable regional and/or state water plan. Applicants must justify the funding amount requested by providing proof of the need for the number of water use measurement devices. TWDB may prioritize funding based upon projects with the greatest needs for the equipment or highest local cost-share match. Eligible expenses include up to 50 percent of eligible equipment costs. Following installation, the applicant must report water use data to TWDB annually for each piece of equipment installed for a minimum of five irrigation seasons. Applicants will be responsible for all other costs including, but not limited to, installation, maintenance, data collection, reporting services, and all other expenses for the duration of the contract. The annual data reports should include irrigated acreage, crop type, irrigation rate (inches per acre), total water use, county name, latitude/longitude coordinates (or state well grid location), and annual or effective rainfall totals (if available). Water savings estimates and an explanation of the water savings calculation methodology resulting from use of the equipment must be reported along with the annual water use data.

Grant Amount

Available funding includes up to $379,600 authorized for Fiscal Year 2015 assistance for agricultural water conservation grants from the Agricultural Water Conservation Fund. TWDB will award funds through a statewide competitive grants process. Overhead is *not* an allowable expense category eligible for reimbursement through TWDB Agricultural Water Conservation Grant funding. TWDB staff evaluates all proposals based upon the specific criteria set forth in this solicitation and application instructions.

Description of Applicant Criteria

The applicable scope of work, schedule, and contract amounts will be negotiated after the TWDB selects the most qualified applicant(s) and/or the desired project(s) 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. The TWDB reserves the right to reject parts of, 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. TWDB must execute contracts for these projects by August 31, 2015. As such, applicants should review the standard metering contracts and include any concerns with the contract language in their application.

Application instructions and standard contract language available upon request from Cameron Turner, (512) 936-6090, *cameron.turner@twdb.texas.gov,* or online at *http://www.twdb.texas.gov.*

Deadline for Submission of Applications

Applicants must submit six double-sided, double-spaced copies on recycled paper and one digital copy of completed applications with the TWDB on or before 12:00 p.m. on Tuesday, July 7, 2015. Applications can be directed either in person to David Carter, Texas Water Development Board, Stephen F. Austin Building, Room 610D, 1700 North Congress Avenue, Austin, Texas, 78701; or by mail to David Carter, Texas Water Development Board, P.O. Box 13231 - Capitol Station, Austin, Texas 78711.

TRD-201502271
Les Trobman
General Counsel
Texas Water Development Board
Filed: June 15, 2015

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Webb County-City of Laredo Regional Mobility Authority

Notice of Availability of Request for Proposals to Provide Financial Advisory Services

The Webb County-City of Laredo Regional Mobility Authority ("WC-CL RMA"), a political subdivision, is soliciting statements of interest and qualifications from financial advisory firms interested in providing financial advisory services to the authority. Firms responding must demonstrate a history of providing expert advice to governmental agencies, including but not limited to, investment of available assets in legally permissible interest-yielding accounts and paper, issuance and servicing of tax-exempt debt, analysis of the financial feasibility of potential transportation projects (as defined in Texas Transportation Code, Chapter 370), and previous involvement in financing of transportation infrastructure.

The request for proposals will be available on or after June 15, 2015. Copies may be obtained electronically from the website of the WC-CL RMA at *www.webbrma.com.* Copies will also be available by contacting Brian O'Reilly at *boreilly@lockelord.com.* Periodic updates, addenda, and clarifications may be posted on the WC-CL RMA website, and interested parties are responsible for monitoring the website accordingly. Final responses must be received by the Webb County-City of Laredo Regional Mobility Authority, c/o Juan Cruz & Associates, LLC, 216 W. Village Blvd., Suite 202, Attn: Juan Cruz, by 3:00 p.m., C.S.T., July 24, 2015, to be eligible for consideration.

Each firm will be evaluated based on the criteria and process set forth in the request for proposals. The final selection of the financial advisory firm, if any, will be made by the WC-CL RMA Board of Directors.

TRD-201502304
Brian O'Reilly
Outside General Counsel
Webb County-City of Laredo Regional Mobility Authority
Filed: June 16, 2015

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Notice of Availability of Request for Qualifications to Provide General Engineering Consulting Services

The Webb County-City of Laredo Regional Mobility Authority ("WC-CL RMA"), a political subdivision, is soliciting statements of interest and qualifications from experienced professional civil engineering firms interested in providing general engineering consulting ("GEC") services to the WC-CL RMA. The selected firm shall operate as an extension of, and in complete coordination with, the WC-CL RMA's Board, staff, and consultants with respect to all current or future projects studied, constructed, or operated by the WC-CL RMA.

The request for qualifications will be available on or after June 15, 2015. Copies may be obtained electronically from the website of the WC-CL RMA at *www.webbrma.com.* Copies will also be available by contacting Brian O'Reilly at *boreilly@lockelord.com.* Periodic updates, addenda, and clarifications may be posted on the WC-CL RMA website, and interested parties are responsible for monitoring the website accordingly. Final responses must be received by the Webb County-City of Laredo Regional Mobility Authority, c/o Juan Cruz & Associates, LLC, 216 W. Village Blvd., Suite 202, Attn: Juan Cruz, by 3:00 p.m., C.S.T., July 24, 2015, to be eligible for consideration.

Each firm will be evaluated based on the criteria and process set forth in the request for qualifications. The final selection of a firm to serve as GEC, if any, will be made by the WC-CL RMA Board of Directors.

TRD-201502303
Brian O'Reilly
Outside General Counsel
Webb County-City of Laredo Regional Mobility Authority
Filed: June 16, 2015

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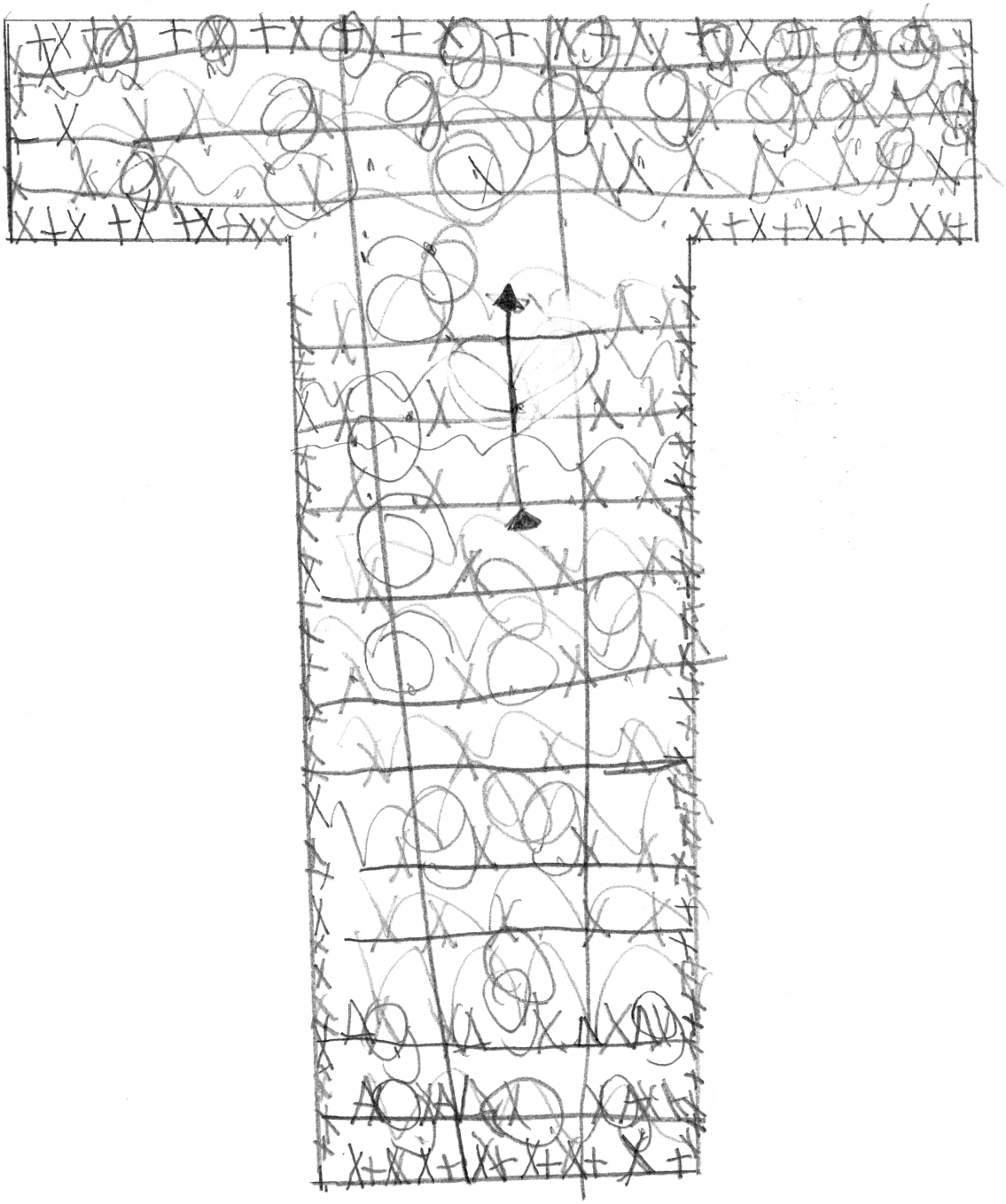

How to Use the Texas Register

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.

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.

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 40 (2015) is cited as follows: 40 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 "40 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 40 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, 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 *Texas Register* is available in an .html version as well as a .pdf 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 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
1 TAC §91.1…….....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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