TEXAS REGISTER

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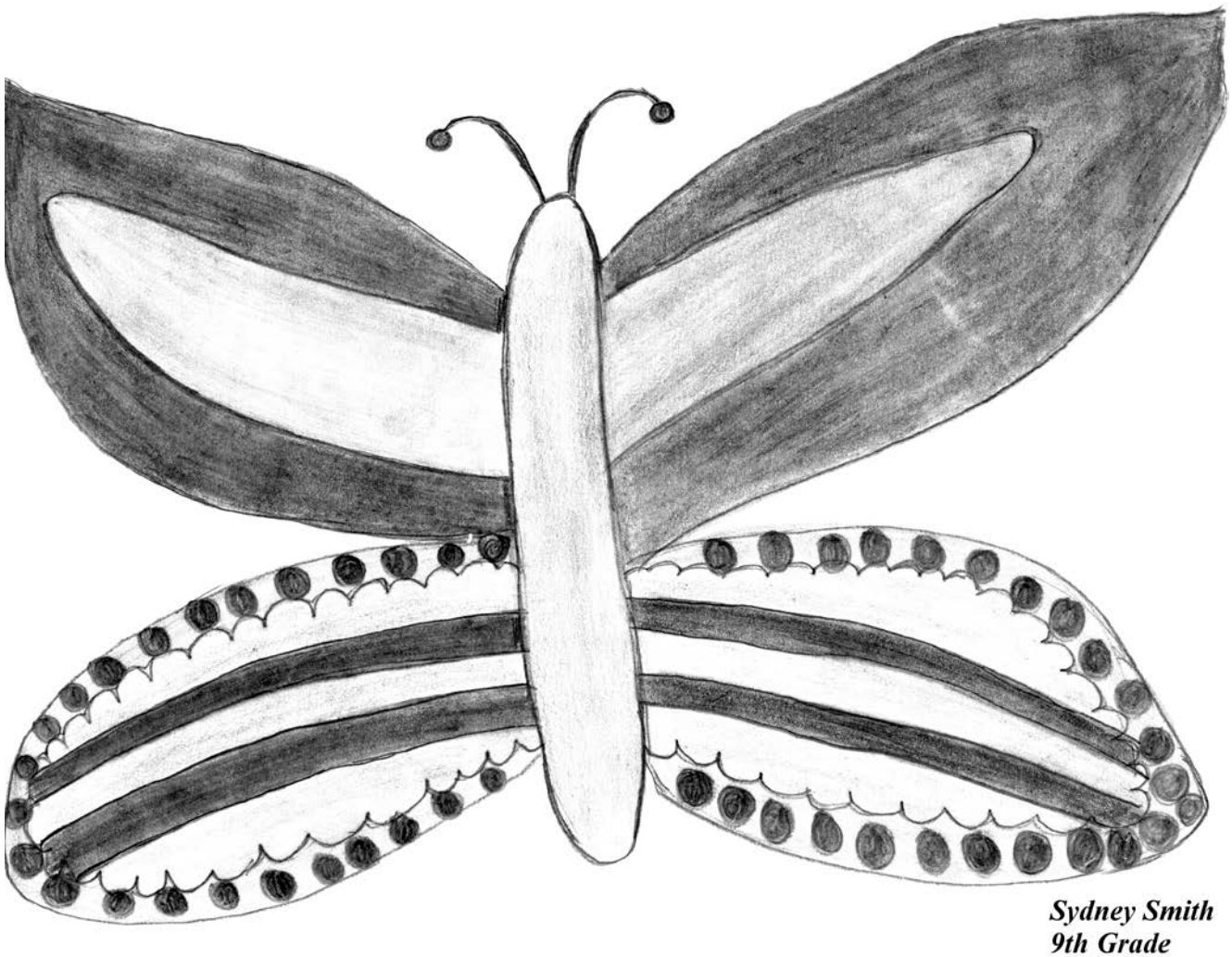

Sydney Smith
9th Grade

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

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-0021-KP

Requestor:

The Honorable René O. Oliveira

Chair, Committee on Business and Industry

Texas House of Representatives

P.O. Box 2910

Austin, Texas 78768-2910

Re: Taxing authority of the Port Isabel-San Benito Navigation District (RQ-0021-KP)

Briefs requested by May 19, 2015

RQ-0022-KP

Requestor:

The Honorable Jim Murphy

Chair, Committee on Corrections

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Whether a community college system may expend funds for attorney's fees incurred by a member of its board of trustees in a challenge to the member's qualification to serve as trustee (RQ-0022-KP)

Briefs requested by May 22, 2015

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

TRD-201501473
Amanda Crawford
General Counsel
Office of the Attorney General
Filed: April 28, 2015

♦ ♦ ♦

Opinions

Opinion No. KP-0014

The Honorable Bob Wortham

Jefferson County Criminal District Attorney

Jefferson County Courthouse

1085 Pearl Street, 3rd Floor

Beaumont, Texas 77701

Re: Whether a school board trustee, whose powers have been suspended by the Texas Education Commissioner under chapter 39 of the Education Code, may run and serve as a city council member for a city located within the school district's boundaries (RQ-0007-KP)

S U M M A R Y

A school board trustee whose powers have been suspended by the Texas Education Commissioner under chapter 39 of the Education Code may run for and serve as a city council member for a city located within the school district's boundaries.

Opinion No. KP-0015

The Honorable Jane Nelson

Chair, Committee on Finance

Texas State Senate

Post Office Box 12068

Austin, Texas 78711-2068

Re: Constitutionality of section 54.341 of the Education Code, the Hazlewood Act (RQ-0009-KP)

S U M M A R Y

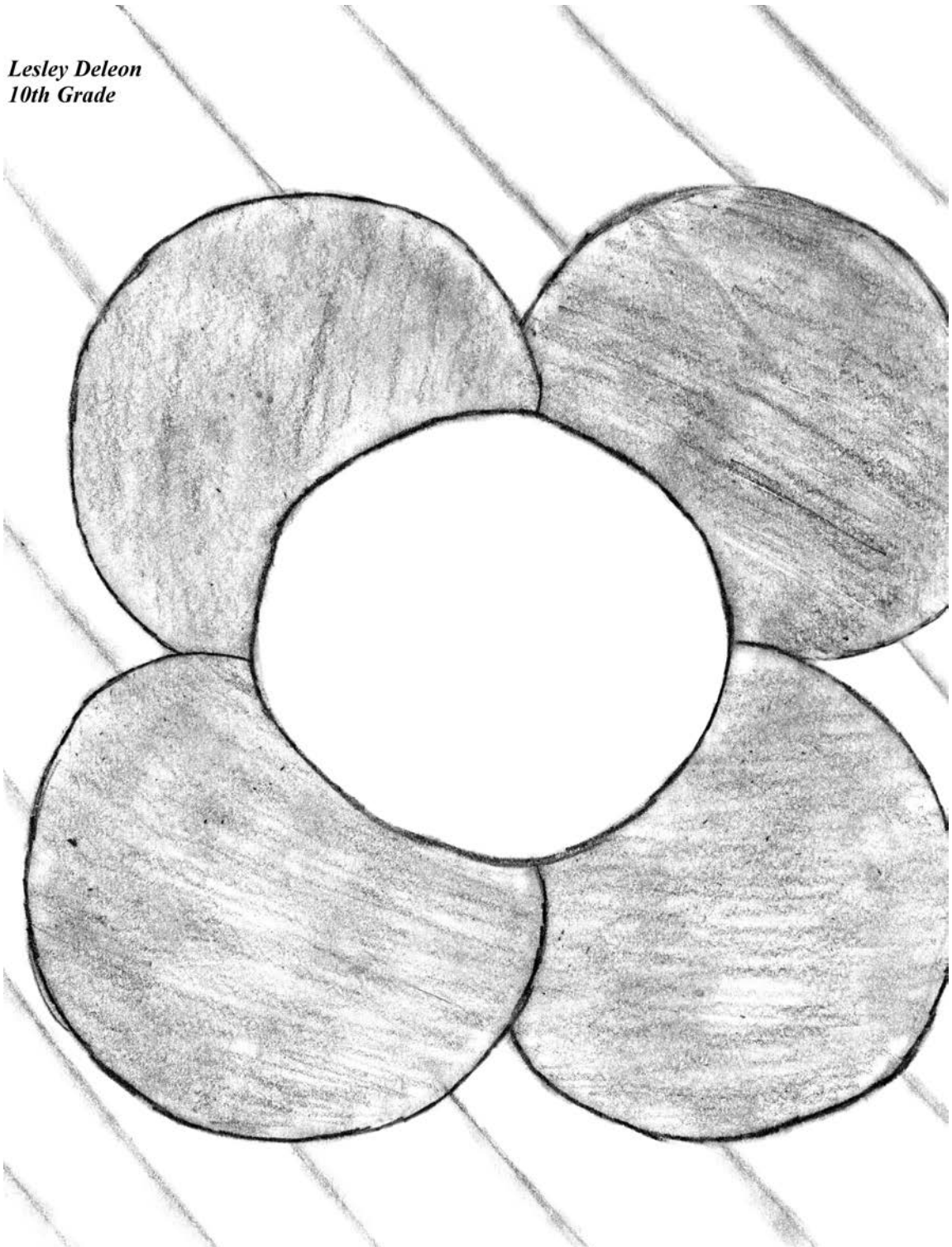
While we cannot predict with certainty how the federal courts will ultimately resolve this issue, we believe that the Hazlewood Act's provision of benefits to only those individuals who resided in Texas at the time they entered the service rationally furthers a legitimate state interest, should withstand rational basis review, and should therefore be held constitutional under the Equal Protection Clause of the United States Constitution.

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

TRD-201501509
Amanda Crawford
General Counsel
Office of the Attorney General
Filed: April 29, 2015

♦ ♦ ♦

Lesley Deleon
10th 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 Opinions

EAO-526. Whether communications relating to a measure election comply with §255.003 of the Election Code. **(AOR-594).**

SUMMARY

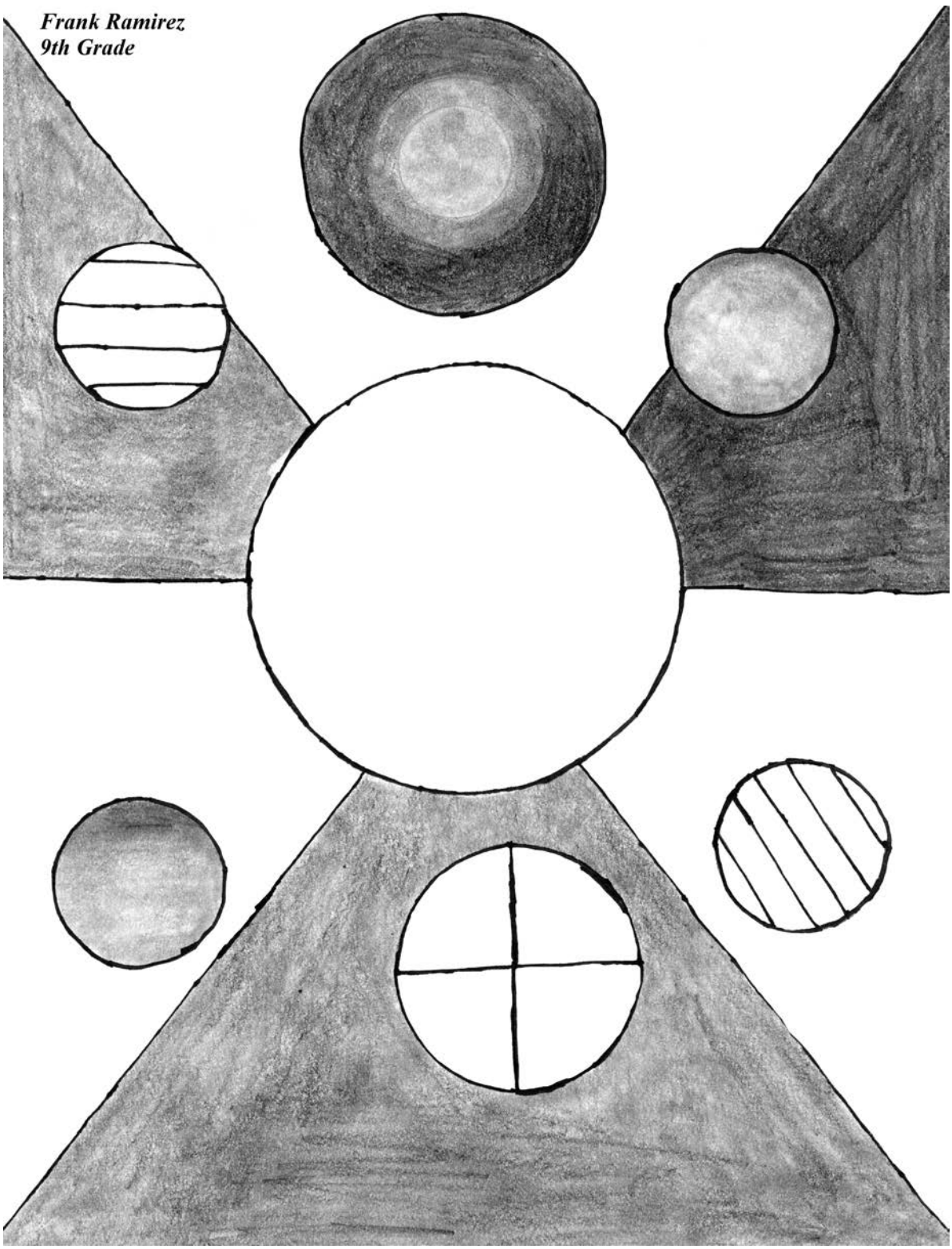
For purposes of §255.003 of the Election Code, the attached communications are not political advertising and, therefore, public funds may be used to distribute the communications unless an officer or employee of the city authorizing such use of public funds knows that the communications contain false information.

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-201501399
Natalia Luna Ashley
Executive Director
Texas Ethics Commission
Filed: April 23, 2015

♦ ♦ ♦


Frank Ramirez
9th Grade

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

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

TITLE 1. ADMINISTRATION

PART 2. TEXAS ETHICS COMMISSION

CHAPTER 20. REPORTING POLITICAL CONTRIBUTIONS AND EXPENDITURES

SUBCHAPTER A. GENERAL RULES

1 TAC §20.1

The Texas Ethics Commission (the commission) proposes an amendment to Texas Ethics Commission Rule, §20.1, relating to the meaning of "in connection with a campaign."

Section 20.1 relates to the Title 15 of the Election Code definitions. Title 15 defines "campaign expenditure" as follows: "An expenditure made by any person in connection with a campaign for an elective office or on a measure. Whether an expenditure is made before, during, or after an election does not affect its status as a campaign expenditure." Section 251.001(7) of the Election Code. The question that often arises is what is meant by the phrase "in connection with a campaign." The proposed amendment defines that phrase.

Natalia Luna Ashley, Executive Director, has determined that for the first five-year period the proposed amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended section.

Ms. Ashley has also determined that for each year of the first five years the proposed amendment is in effect the public benefit will be clarity in the law, by defining "campaign expenditure" for purposes of the Texas campaign finance law (Title 15).

The Texas Ethics Commission invites comments on the proposed amendment from any member of the public. A written statement should be mailed or delivered to Natalia Luna Ashley, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070 or by facsimile (FAX) to (512) 463-5777. A person who wants to offer spoken comments to the commission concerning the proposed rule may do so at any commission meeting during the agenda item relating to the proposed rule. Information concerning the date, time, and location of commission meetings is available by telephoning (512) 463-5800 or on the Texas Ethics Commission's website at *www.ethics.state.tx.us.*

The amendment to §20.1 is proposed under Texas Government Code §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

The proposed amendment to §20.1 affects Texas Election Code §251.001(7).

§20.1. Definitions.

The following words and terms, when used in Title 15 of the Election Code, in this chapter, Chapter 22 of this title (relating to Restrictions on Contributions and Expenditures), and Chapter 24 of this title (relating to Restrictions on Contributions and Expenditures Applicable to Corporations and Labor Organizations), shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (20) (No change.)

(21) In connection with a campaign:

(A) An expenditure is made in connection with a campaign for an elective office if it is:

(i) made for a communication that expressly advocates the election or defeat of a clearly identified candidate by:

(I) using such words as "vote for," "elect," "support," "vote against," "defeat," "reject," "cast your ballot for," or "Smith for city council;" or

(II) using such phrases as "elect the incumbent" or "reject the challenger," or such phrases as "vote pro-life" or "vote pro-choice" accompanied by a listing of candidates described as "pro-life" or "pro-choice;"

(ii) made for a communication broadcast by radio, television, cable, or satellite or distributed by print or electronic media, including any print publication, mailing, Internet website, electronic mail, or automated phone bank, that:

(I) refers to a clearly identified candidate;

(II) is distributed within 60 days before a general, special, or runoff election, or 30 days before a primary election, for the office sought by the candidate;

(III) targets a mass audience or group in the geographical area the candidate seeks to represent; and

(IV) includes slogans or individual words that, without reference to the intent of the person making the communication and with limited reference to external events, such as the proximity of an election, are susceptible of no other reasonable interpretation than to urge the election or defeat of the candidate;

(iii) made by a candidate or political committee to support or oppose a candidate; or

(iv) a campaign contribution to:

(I) a candidate; or

(II) a political committee for the purpose of supporting or opposing a candidate.

(B) An expenditure is made in connection with a campaign on a measure if it is:

(i) made for a communication that expressly advocates the passage or defeat of a clearly identified measure by using such words as "vote for," "support," "vote against," "defeat," "reject," or "cast your ballot for;"

(ii) made for a communication broadcast by radio, television, cable, or satellite or distributed by print or electronic media, including any print publication, mailing, Internet website, electronic mail, or automated phone bank, that:

(I) refers to a clearly identified measure;

(II) is distributed within 60 days before the election in which the measure is to appear on the ballot;

(III) targets a mass audience or group in the geographical area in which the measure is to appear on the ballot; and

(IV) includes slogans or individual words that, without reference to the intent of the person making the communication and with limited reference to external events, such as the proximity of an election, are susceptible of no other reasonable interpretation than to urge the passage or defeat of the measure;

(iii) made by a political committee to support or oppose a measure; or

(iv) a campaign contribution to a political committee for the purpose of supporting or opposing a measure.

(C) Any cost incurred in covering or carrying a news story, commentary, or editorial by any broadcasting station (including a cable television operator, programmer or producer), Internet website, newspaper, magazine, or other periodical publication, including any Internet or electronic publication, is not a campaign expenditure.

(D) For purposes of this section:

(i) a candidate is clearly identified by a communication that includes the candidate's name, office sought, office held, likeness, photograph, or other apparent and unambiguous reference; and

(ii) a measure is clearly identified by a communication that includes the measure's name or ballot designation (such as "Proposition 1"), purposes, election date, or other apparent and unambiguous reference.

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 April 21, 2015.

TRD-201501380
Natalia Luna Ashley
Executive Director
Texas Ethics Commission
Earliest possible date of adoption: June 7, 2015
For further information, please call: (512) 463-5800

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SUBCHAPTER B. GENERAL REPORTING RULES

1 TAC §20.59

The Texas Ethics Commission (the commission) proposes an amendment to Texas Ethics Commission Rule, §20.59, relating to reporting expenditures by credit card.

In light of a recent commission rule relating to the reporting of obligations incurred but not yet paid and a new schedule to go along with the rule, there have been questions as to how expenditures made by credit card should be disclosed. The proposed 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.

Natalia Luna Ashley, Executive Director, has determined that for the first five-year period the proposed amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended section.

Ms. Ashley has also determined that for each year of the first five years the proposed amendment is in effect the public benefit will be clarity in the commission's rules for how filers report expenditures made by credit card.

The Texas Ethics Commission invites comments on the proposed amendment from any member of the public. A written statement should be mailed or delivered to Natalia Luna Ashley, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070 or by facsimile (FAX) to (512) 463-5777. A person who wants to offer spoken comments to the commission concerning the proposed rule may do so at any commission meeting during the agenda item relating to the proposed rule. Information concerning the date, time, and location of commission meetings is available by telephoning (512) 463-5800 or on the Texas Ethics Commission's website at *www.ethics.state.tx.us.*

The amendment to §20.59 is proposed under Texas Government Code §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

The proposed amendment to §20.59 affects Title 15 of the Texas Election Code.

§20.59. Reporting Expenditure by Credit Card.

(a) A report of an [~~a political~~] expenditure charged to a [~~by~~] credit card must be disclosed on the Expenditures Made to Credit Card Schedule and identify the vendor who receives payment from the credit card company.

(b) A report of a payment to a credit card company must be disclosed on the appropriate disbursements schedule and identify the credit card company receiving the payment.

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 April 21, 2015.

TRD-201501381
Natalia Luna Ashley
Executive Director
Texas Ethics Commission
Earliest possible date of adoption: June 7, 2015
For further information, please call: (512) 463-5800

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TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 70. INDUSTRIALIZED HOUSING AND BUILDINGS

16 TAC §§70.10, 70.50, 70.60, 70.70, 70.73

The Texas Department of Licensing and Regulation (Department) proposes amendments to existing rules at 16 Texas Administrative Code (TAC) Chapter 70, §§70.10, 70.50, 70.60, 70.70, and 70.73, regarding the Industrialized Housing and Buildings program.

The proposed amendments are necessary primarily to provide for the Executive Director's authorization in certain specified limited circumstances, of a process for "100% inspections", as defined in proposed §70.10(a) in lieu of manufacturing plant certification and a compliance control program usually required by §70.70(c). The proposed amendments also specify the circumstances under which the 100% inspection might be authorized and approved and provide a process by which Department staff or approved third-party inspectors will conduct a one-time, thorough on-site inspection of each module and component that a manufacturing plant produces, in lieu of a compliance control program, in certain limited circumstances. Such circumstances might include a time when a disaster has been declared, thus needing more units, or if the modular house or building is a one-time project to be delivered to Texas. Editorial changes are also made.

The proposed amendment to §70.10 defines the term "100% inspection." Editorial changes are also made to renumber the section.

The proposed amendment to §70.50 makes an editorial change.

The proposed amendments to §70.60 reorganize subsection (a) and add specific criteria under which a 100% inspection may be authorized by the Executive Director instead of solely by the Council.

The proposed amendments to §70.70 add the authorization of a 100% inspection process in lieu of requesting a waiver of the compliance control program from the Council and refers to §70.60 for circumstances which would justify its approval.

The proposed amendment to §70.73 is an editorial correction to add paragraph (3) under subsection (e); which was proposed in the October 25, 2013, issue on the *Texas Register* (38 TexReg 7404), but was not included in the adopted submission published in the April 25, 2014, issue of the *Texas Register* (39 TexReg 3412).

William H. Kuntz, Jr., Executive Director, has determined that for the first five-year period the proposed amendments are in effect there will be no direct cost to state or local government as a result of enforcing or administering the proposed amendments. There is no estimated loss in revenue to the state as a result of enforcing or administering the proposed amendments.

Mr. Kuntz also has determined that for each year of the first five-year period the proposed amendments are in effect, the public benefit will be the ability of the Department to provide faster response times for 100% inspections than originally allowed under the rules.

There is no anticipated adverse economic effect on small or micro business or to persons who are required to comply with the rules as proposed.

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

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

The amendments are proposed under Texas Occupations Code, Chapters 51 and 1202, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51 and 1202. No other statutes, articles, or codes are affected by the proposed amendments.

§70.10. Definitions.

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

(1) 100% inspection--Inspection of each module or modular component at each and every stage of construction including, but not limited to, framing, mechanical, plumbing, electrical, energy compliance systems, and system testing.

(2) [~~(1)~~] Alteration--Any construction, other than ordinary repairs of the house or building, to an existing industrialized house or building after affixing of the decal by the manufacturer or REF builder. Industrialized housing or buildings that have not been maintained shall be considered altered.

(3) [~~(2)~~] Alteration decal--The approved form of certification issued by the department to an industrialized builder to be permanently affixed to an industrialized building module indicating that alterations have been constructed to meet or exceed the code requirements and in compliance with this chapter.

(4) [~~(3)~~] Building site--A lot, the entire tract, subdivision, or parcel of land on which industrialized housing or buildings are sited.

(5) [~~(4)~~] Building system--The design and/or method of assembly of modules or modular components represented in the plans, specifications, and other documentation which may include structural, electrical, mechanical, plumbing, fire protection, and other systems affecting health and safety.

(6) [~~(5)~~] Chapter 1202--Texas Occupations Code, Chapter 1202, Industrialized Housing and Buildings.

(7) [~~(6)~~] Closed construction--That condition where any industrialized housing or building, modular component, or portion thereof is manufactured in such a manner that all portions cannot be readily inspected at the site without disassembly or destruction thereof.

(8) [~~(7)~~] Commercial structure--An industrialized building classified by the mandatory building codes for occupancy and use groups other than residential for one or more families.

(9) [~~(8)~~] Compliance Control Program--The manufacturer's system, documentation, and methods of assuring that industrialized housing, buildings, and modular components, including their manufacture, storage, handling, and transportation conform with Chapter 1202 and this chapter.

(10) [~~(9)~~] Construction Documents--The aggregate of all plans, specifications, calculations, and other documentation required to be submitted to the design review agency for compliance review to the mandatory building code.

(11) [~~(10)~~] Component--A sub-assembly, subsystem, or combination of elements for use as a part of a building system or part of a modular component that is not structurally independent, but may be part of structural, plumbing, mechanical, electrical, fire protection, or other systems affecting life safety.

(12) [~~(11)~~] Decal--The approved form of certification issued by the department to the manufacturer or REF builder to be permanently affixed to the module or to a site-built REF indicating that it has been constructed to meet or exceed the code requirements and in compliance with this chapter.

(13) [~~(12)~~] Design package--The aggregate of all plans, designs, specifications, and documentation required by these sections to be submitted by the manufacturer to the design review agency, or required by the design review agency for compliance review, including the compliance control manual and the on-site construction documentation. Unique or site specific foundation drawings and special on-site construction details prepared for specific projects are not a part of the design package.

(14) [~~(13)~~] Design review agency--An approved organization, private or public, determined by the council to be qualified by reason of facilities, personnel, experience, demonstrated reliability to review designs, plans, specifications, and building systems documentation, and to certify compliance to these sections evidenced by affixing the council's stamp.

(15) [~~(14)~~] Final on-site inspection report--A report issued by a council-approved inspector, or a record of final inspection issued by a municipal building inspection department, indicating that the inspection of the on-site construction was successful in accordance with §70.73.

(16) [~~(15)~~] IAS--International Accreditation Service.

(17) [~~(16)~~] ICC--International Code Council, Inc.

(18) [~~(17)~~] ICC ES--International Code Council Evaluation Services.

(19) [~~(18)~~] Industrialized builder--A person who is engaged in the assembly, connection, and on-site construction and erection of modules or modular components at the building site or who is engaged in the purchase of industrialized housing or buildings modules or modular components for sale or lease to the public. An industrialized builder also includes a person who assembles and installs site-built REFs that are moved from the initial construction site.

(20) [~~(19)~~] Insignia--The approved form of certification issued by the department to the manufacturer to be permanently affixed to the modular component indicating that it has been constructed to meet or exceed the code requirements and in compliance with the sections in this chapter.

(21) [~~(20)~~] Installation--On-site construction of industrialized housing or buildings. (see definition of on-site construction).

(22) [~~(21)~~] Lease, or offer to lease--A contract or other instrument by which a person grants to another the right to possess and use industrialized housing or buildings for a specified period of time in exchange for payment of a stipulated price.

(23) [~~(22)~~] Local building official--The agency or department of a municipality or other local political subdivision with authority to make inspections and to enforce the laws, ordinances, and regulations applicable to the construction, alteration, or repair of residential and commercial structures.

(24) [~~(23)~~] Manufacturer--A person who constructs or assembles modules or modular components at a manufacturing facility which are offered for sale or lease, sold or leased, or otherwise used.

(25) [~~(24)~~] Manufacturing facility--The place other than the building site, at which machinery, equipment, and other capital goods are assembled and operated for the purpose of making, fabricating, constructing, forming, or assembly of industrialized housing, buildings, modules, or modular components.

(26) [~~(25)~~] Model--A specific design of an industrialized house, building, or modular component which is based on size, room arrangement, method of construction, location, arrangement, or size of plumbing, mechanical, or electrical equipment and systems therein in accordance with an approved design package.

(27) [~~(26)~~] Module--A three dimensional section of industrialized housing or buildings, designed and approved to be transported as a single section independent of other sections, to a site for on-site construction with or without other modules or modular components.

(28) [~~(27)~~] Modular building--Industrialized housing and buildings as defined in Texas Occupations Code §1202.002 and §1202.003, and any relocatable, educational facility as defined in §1202.004, regardless of the location of construction of the facility.

(29) [~~(28)~~] NFPA--National Fire Protection Association.

(30) [~~(29)~~] Non site-specific building--An industrialized house or building for which the permanent site location is unknown at the time of construction.

(31) [~~(30)~~] On-site construction--Preparation of the site, foundation construction, assembly and connection of the modules or modular components, affixing the structure to the permanent foundation, connecting the structures together, completing all site-related construction in accordance with designs, plans, specifications, and on-site construction documentation.

(32) [~~(31)~~] Open construction--That condition where any house, building, or portion thereof is constructed in such a manner that all parts or processes of manufacture can be readily inspected at the building site without disassembly, damage to, or destruction thereof.

(33) [~~(32)~~] Permanent foundation system--A foundation system for industrialized housing or buildings designed to meet the applicable building code as set forth in §§70.100, 70.101, and 70.102.

(34) [~~(33)~~] Permanent industrialized building--An industrialized building that is not designed to be transported from one commercial site to another commercial site.

(35) [~~(34)~~] Permit, Alteration--A registration issued by the department to a person who is responsible for the alteration construction of industrialized housing, buildings or site-built REFs and who is not also registered as an industrialized builder.

(36) [~~(35)~~] Permit, Commercial Installation--A registration issued by the department to a person who purchases an industrialized building for the person's own use and who assumes responsibility for the installation of the industrialized building.

(37) [~~(36)~~] Permit, Residential Installation--A registration issued by the department to a person who purchases an industrialized house for the person's own use and who assumes responsibility for all or part of the construction relating to the installation of the industrialized house.

(38) [~~(37)~~] Person--An individual, partnership, company, corporation, association, or any other legal entity, however organized.

(39) [~~(38)~~] Public--The people of the state as a whole to include individuals, companies, corporations, associations or other groups, however organized, and governmental agencies.

(40) [~~(39)~~] REF, Site-built--A relocatable educational facility (REF) as defined by Texas Occupations Code §1202.004 that is constructed at the first installation site by an REF builder.

(41) [~~(40)~~] REF Builder--A person who constructs REFs at the first installation site. A person who assembles REFs constructed in a manufacturing facility is not an REF builder.

(42) [~~(41)~~] Registrant--A person who, or which, is registered with the department pursuant to the rules of this chapter as a manufacturer, a REF builder, an industrialized builder, a design review agency, a third party inspection agency, a third party inspector, a third party site inspector, or a permit holder.

(43) [~~(42)~~] Residential structure--Industrialized housing designed for occupancy and use as a residence by one or more families.

(44) [~~(43)~~] Sale, sell, offer to sell, or offer for sale--Includes any contract of sale or other instrument of transfer of ownership of property, or solicitation to offer to sell or otherwise transfer ownership of property.

(45) [~~(44)~~] Site or building site--A lot, the entire tract, subdivision, or parcel of land on which industrialized housing or buildings are sited.

(46) [~~(45)~~] Special conditions and/or limitations--On-site construction documentation which alerts the local building official of items, such as placement of the building on the property or the requirements for roof ventilation, which may need to be verified by the local building official for conformance to the mandatory building codes.

(47) [~~(46)~~] Structure--An industrialized house or building that results from the complete assemblage of the modules or modular components designed to be used together to form a completed unit.

(48) [~~(47)~~] Third party inspection agency (TPIA)--An approved person or entity determined by the council to be qualified by reason of facilities, personnel, experience, demonstrated reliability, and independence of judgment to inspect industrialized housing, building, site-built REFs, and portions thereof for compliance with the approved plans, documentation, compliance control program, and applicable codes.

(49) [~~(48)~~] Third party inspector (TPI)--An approved person determined by the council to be qualified by reason of experience, demonstrated reliability, and independence of judgment to inspect industrialized housing, buildings, site-built REFs, and portions thereof for compliance with the approved plans, documentation, compliance control program, and applicable code. A third party inspector works under the direction of a third party inspection agency or TPIA.

(50) [~~(49)~~] Third party site inspector (TPSI)--An approved person determined by the council to be qualified by reason of experience, demonstrated reliability, and independence of judgment to inspect construction of REFs or the foundation and installation of industrialized housing, buildings, and portions thereof for compliance with the approved plans or engineered plans and the applicable code.

(51) [~~(50)~~] Unique on-site construction details--Construction details that are not part of, or that differ from, the manufacturer's approved on-site construction details or REF builder's approved construction plans. Unique on-site construction details include additions that may affect the code compliance of the house or building such as car ports, garages, porches, decks, and stairs.

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

§70.50. Reporting Requirements for IHB Registrants.

(a) (No change.)

(b) Each industrialized builder responsible for any portion of the on-site construction in accordance with §70.73 shall keep records of all industrialized housing, buildings, modules, and modular components that were sold, leased, or installed. The records shall be kept for a minimum of 10 years from the date of the final on-site inspection report and made available to the department upon request. These records shall include the following:

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

(7) A copy of any unique on-site construction detail drawings; [~~and~~]

(8) - (12) (No change.)

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

§70.60. Responsibilities of the Department--Plant Certification.

(a) Each separate manufacturing facility will go through a certification inspection before decals or insignia will be released to the manufacturer. [~~A change in address of a certified manufacturer will require review and possible recertification or partial certification inspection of the plant at the new location.~~]

(b) A change in address of a certified manufacturer will require review and possible recertification or partial certification inspection of the plant at the new location.

(c) The executive director may authorize 100% inspection of industrialized housing or buildings constructed by an uncertified manufacturer in lieu of certification and a compliance control program as required by §70.70(c) in accordance with the following.

(1) The 100% inspection may be approved only in the following circumstances:

(A) the house or building is required to aid in a disaster that has been officially declared by the United States government, a state government, or a political subdivision of either;

(B) the US State Department has issued travel warnings for travel outside of the United States relating to or affecting the location of the plant to be certified;

(C) the industrialized house or building is a one-time project and the manufacturer certifies to the department that it will not construct additional industrialized housing or buildings for placement in this state without going through the certification inspection process; and

(D) other extenuating circumstances if approved by the executive director. If the executive director does not approve a request under this subsection, the manufacturer may ask the council to approve the 100% inspection.

(2) The manufacturer must still register as a manufacturer in accordance with §70.20.

(3) Plan review and approval will still be required in accordance with §70.70.

(4) The manufacturer will purchase decals for the unit or units in accordance with §70.77 with the following exceptions:

(A) the decals will not be released until the manufacturer has provided the industrialized builder registration number or installation permit number of the person who purchased the unit and who will be responsible for the on-site construction;

(B) the decal will not be released until all inspection fees have been paid; and

(C) the decals will be released only to the inspector for attachment to the units upon completion of a successful final inspection.

(5) The 100% inspection will be conducted by inspectors designated by the department and may include department personnel or approved third-party inspectors. Inspections will be completed in accordance with procedures approved by the council.

(6) Inspections performed by third party inspectors shall be audited by department staff.

(d) [~~(b)~~] The plant certification inspection will be conducted by a certification team designated by the department. The team shall consist of:

(1) a team leader, who is either a department employee, an engineer, or other qualified person as determined by procedures established by the council; and

(2) one or more department inspectors or third party inspectors.

(e) [~~(c)~~] The team leader may not be an employee of the third party inspection agency (TPIA) responsible for regular in-plant inspections of the manufacturer or the design review agency (DRA) responsible for review of the manufacturer's design package. The following persons may not solicit, offer, or agree to provide future design review or in-plant inspection services for the manufacturer prior to the manufacturer completing all certification requirements:

(1) an agency other than the manufacturer's current TPIA or DRA that provides a certification team member; and

(2) any team member that is not employed by the manufacturer's current TPIA or DRA.

(f) [~~(d)~~] The inspection shall be conducted in accordance with the procedures established by the council. A certification inspection has two primary purposes:

(1) to verify that the manufacturer is capable of producing modules or modular components that comply with the law and the rules, mandatory building codes, and approved design package; and

(2) to verify that the manufacturer's approved compliance control program will ensure compliance now and in the future.

(g) [~~(e)~~] The team will become familiar with all aspects of the manufacturer's approved design package. Structures on the production line will be checked to assure that failures to conform located by the certification team are being located by the plant compliance control program and are being corrected by the plant personnel. The certification team will work closely with the plant compliance control personnel to assure that the approved design package and compliance control manuals for the facility are clearly understood and followed. If deemed necessary by the certification team, a representative of the design review agency must be present during the inspection. At least one module or modular component containing all systems, or a combination of modules or modular components containing all systems, shall be observed during all phases of construction. The team must inspect all modules or modular components in the production line for Texas during the certification. The plant certification inspection will terminate when the certification team has fully evaluated all aspects of the manufacturing facility.

(h) [~~(f)~~] The certification team will issue a plant certification, or facility evaluation, report to the manufacturer when the department has determined that the manufacturer has met the requirements for certification. A copy of the plant certification report will also be forwarded to the third party inspection agency responsible for in-plant inspections. The manufacturer and third party inspection agency will be responsible for ensuring that all conditions of certification as outlined in the certification report are met. The manufacturer must keep a copy of this report in their permanent records. The report will contain, at a minimum, the following information:

(1) the name and address of the manufacturer;

(2) the names and titles of personnel performing the certification inspection;

(3) the serial or identification numbers of the modules or modular components inspected;

(4) a list of nonconformances observed on the modules or modular components inspected (with appropriate design package references) and corrective action taken in each case;

(5) a list of deviations from the approved compliance control procedures (with section or manual references) observed during the certification inspection with the corrective action taken in each case;

(6) a list of conditions of certification with which the manufacturer must comply to maintain the certification;

(7) the date of certification;

(8) the following statement: "This report concludes that (name of agency), after evaluating the facility, certifies that (name of factory) of (city) is capable of producing (industrialized housing and buildings or modular components) in accordance with the approved building system and compliance control manuals on file in the manufacturing facility and in compliance with the requirements of the Texas Industrialized Building Code Council"; and

(9) the signature of an authorized department employee.

(i) [~~(g)~~] If the department determines that the manufacturer is not capable of meeting the certification requirements or that the manufacturer is unable to complete the certification inspection requirements, then the certification team will issue a non-compliance report. The non-compliance report will detail the specific areas in which the manufacturer was found to be deficient and may make recommendations for improvement.

(j) [~~(h)~~] If any personnel of a design review agency or third party inspection agency participate as members of a certification team, the agency is considered a participant in the certification team and is responsible for compliance with Texas Occupations Code, Chapter 1202, rules adopted by the commission, and decision, actions, and interpretations of the council in performing the certification, inspection and related activities.

§70.70. Responsibilities of the Registrants--Manufacturer's Design Package and REF Builder's Construction Documents.

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

(c) Compliance control program for manufacturers. The utilization of mass production techniques and assembly line methods in the construction of industrialized housing, buildings, modules, and modular components along with the fact that a large part of such

construction cannot be inspected at the ultimate building site, requires manufacturers to develop an adequate compliance control program to assure that these structures meet or exceed mandatory code requirements and are in compliance with the rules and regulations of this chapter. The compliance control program shall be documented in the form of a manual that must be approved by the design review agency. A 100% inspection of the construction of industrialized housing or buildings may be authorized in lieu of a compliance control program and certification of the manufacturer in accordance with §70.60. [~~The council may waive the compliance control program as set forth in the rules upon written request from the manufacturer. Waiver of the compliance control program shall require that each module or modular component be individually inspected at each and every stage of the manufacturing process.~~] The manufacturer shall provide the design review agency a compliance control manual that must, at the minimum, contain the following:

(1) a table of contents;

(2) a chart indicating the manufacturer's organizational structure to assure compliance and to assure that the compliance control staff shall maintain independence from the production personnel;

(3) a statement that defines the obligation, responsibility, and authority for the manufacturer's compliance control program;

(4) identification of compliance control personnel, their accountability by position, responsibility for inspections, method of marking nonconformances observed, and system for assuring corrections are made;

(5) materials handling methods, including inspection checklists, for receiving materials and methods for marking and removing rejected materials both upon receipt and from the production line. The area for rejected materials must be clearly indicated to assure that such material is not used;

(6) a description of an identification system to mark each individual module, or modular component, at the first stage of production to assure appropriate inspection and rechecking of any deviation corrections;

(7) a diagram of the manufacturing sequence with the plant layout, including a description of the activities to be performed along with a listing of those that may be performed at one or more stations;

(8) an inspection checklist including:

(A) a list of inspections to be made at each production station; and

(B) accept/reject criteria (each significant dimension and component should be given tolerances);

(C) an energy compliance checklist that enumerates the energy code-compliance features of the module or modules and includes a signature space for the compliance control inspector or manager. A copy of this checklist shall be shipped with the module or modules.

(9) step-by-step test procedures, a description of the station at which each production test is performed, a description of required testing equipment, and procedures for periodic checking, recalibration, and readjustment of test equipment. Procedures shall be included for, but not limited to, electrical tests as specified in the National Electrical Code, Article 550-17, gas supply pressure tests, water supply pressure tests, drain-waste-vent system tests, concrete slump tests, and concrete strength tests;

(10) storage procedures for completed structures at the plant and for any other locations prior to installation;

(11) a statement indicating the person who is responsible for compliance control at each manufacturing facility and who will assume responsibility for decals and insignia, application of the decals and insignia, and the reporting procedure;

(12) a procedure for maintaining reliable, retrievable records of the inspections performed, decal and insignia numbers assigned, the deficiencies and how they were corrected, and the site to which the modules or modular components were transported;

(13) procedures and information to demonstrate how the modules and modular components are to be transported to the building site so that damage will not occur or that compliance deviations will not result (actual transportation without damage or deviation is evidence sufficient to justify the method); and

(14) procedures that assure that the compliance control procedures are complied with on all regulated structures. As a minimum, regulated structures must be identified prior to commencing construction.

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

§70.73. Responsibilities of the Registrants--Building Site Construction and Inspections.

(a) - (d) (No change.)

(e) Responsibility for inspections within jurisdiction of a municipality. When the building site is within a municipality that has a building inspection agency or department, the local building official will inspect all on-site construction done at the site and the attachment of the structure to the foundation to assure completion and attachment in accordance with the documents approved in accordance with §70.70, the foundation system drawings, any unique on-site construction detail drawings, and the mandatory building codes.

(1) A municipality that regulates the on-site construction or installation of industrialized housing or buildings may require and review, for compliance with the mandatory building codes, a complete set of plans and specifications, including the foundation system design and any unique on-site construction details.

(2) The industrialized builder or installation permit holder shall not permit occupation of, or release for occupation, the industrialized house or building unless approved by the municipality.

(3) The industrialized builder or installation permit holder is responsible for ensuring that all inspections are completed in accordance with procedures established by the municipality's building inspection department.

(f) - (j) (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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William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
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For further information, please call: (512) 463-8179

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TITLE 22. EXAMINING BOARDS

PART 9. TEXAS MEDICAL BOARD

CHAPTER 163. LICENSURE

22 TAC §163.6

The Texas Medical Board (Board) proposes amendments to §163.6, concerning Examinations Accepted Licensure.

The amendment revises the language in subsection (b)(3)(A) - (D) to clarify exemptions relating to Examination Attempt Limit as it relates to licenses held in other states.

Scott Freshour, General Counsel for the Board, has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the proposal will be to have clear and more precise rules for applicants.

Mr. Freshour has also determined that for the first five-year period the section is in effect there will be no fiscal implication to state or local government as a result of enforcing the section as proposed. There will be no effect to individuals required to comply with the rule as proposed. There will be no effect on small or micro businesses.

Comments on the proposal may be submitted to Rita Chapin, P.O. Box 2018, Austin, Texas 78768-2018 or e-mail comments to: rules.development@tmb.state.tx.us. A public hearing will be held at a later date.

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

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

§163.6. Examinations Accepted for Licensure.

(a) (No change.)

(b) Examination Attempt Limit.

(1) An applicant must pass each part of an examination listed in subsection (a) of this section within three attempts. An applicant who attempts more than one type of examination must pass each part of at least one examination and shall not be allowed to combine parts of different types of examination.

(2) Notwithstanding paragraph (1) of this subsection, an applicant who, on September 1, 2005, held a Texas physician-in-training permit issued under §155.105 of the Act or had an application for that permit pending before the board must pass each part of the examination within three attempts, except that, if the applicant has passed all but one part of the examination within three attempts, the applicant may take the remaining part of the examination one additional time. However, an applicant is considered to have satisfied the requirements of this subsection if the applicant:

(A) passed all but one part of the examination approved by the board within three attempts and passed the remaining part of the examination within six attempts;

(B) is specialty board certified by a specialty board that:

(i) is a member of the American Board of Medical Specialties; or

(ii) is approved by the American Osteopathic Association; and

(iii) has completed in this state an additional two years of postgraduate medical training approved by the board.

(3) The limitation on examination attempts by an applicant under paragraph (1) of this subsection does not apply to an applicant who meets the following criteria:

(A) holds a license to practice medicine in another state(s) [~~state~~];

(B) is in good standing in the other state(s) [~~such state~~];

(C) has been licensed in another state(s) [~~such state~~] for at least five years;

(D) such license has not been restricted, cancelled, suspended, revoked, or subject to other discipline in the other state(s) [~~that state~~];

(E) has never held a medical license that has been restricted for cause, canceled for cause, suspended for cause, revoked or subject to another form of discipline in a state or territory of the United States, a province of Canada, or a uniformed service of the United States; and

(F) has passed all but one part of the examination approved by the board within three attempts and:

(i) passed the remaining part of the examination within one additional attempt; or

(ii) passed the remaining part of the examination within six attempts if the applicant:

(I) is specialty board certified by a specialty board that:

(-a-) is a member of the American Board of Medical Specialties; or

(-b-) is approved by the American Osteopathic Association; and

(II) has completed in this state an additional two years of postgraduate medical training approved by the board.

(4) Attempts at a comparable part of a different type of examination shall be counted against the three attempt limit.

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

(f) The time frame described by subsections (c) and (d) of this section does not apply to an applicant who meets the following criteria:

(1) holds a license to practice medicine in another state(s) [~~state~~];

(2) is in good standing in the other state(s) [~~such state~~];

(3) has been licensed in another state(s) [~~such state~~] for at least five years;

(4) such license has not been restricted, cancelled, suspended, revoked, or subject to other discipline in the other state(s) [~~that state~~];

(5) will practice exclusively in a medically underserved area or a health manpower shortage area, as those terms are defined in Chapter 157 of the Texas Occupations Code; and

(6) has never held a medical license that has been restricted for cause, canceled for cause, suspended for cause, revoked or subject to another form of discipline in a state or territory of the United States, a province of Canada, or a uniformed service of the United States.

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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Mari Robinson, J.D.
Executive Director
Texas Medical Board
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CHAPTER 166. PHYSICIAN REGISTRATION

22 TAC §166.2

The Texas Medical Board (Board) proposes amendments to §166.2, concerning Continuing Medical Education.

The amendments add the word "physician" to subsection (e)(1) - (4) in order to clarify that the exemption reasons must be those of the "physician" and not anyone else, such as a family member. The rule is further amended in that all references to "licensee" are changed to "physician" in order to be consistent throughout the rule.

Scott Freshour, General Counsel for the Board, has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing this proposal will be to have clear rules that are consistent and unambiguous.

Mr. Freshour has also determined that for the first five-year period the section is in effect there will be no fiscal implication to state or local government as a result of enforcing the section as proposed. There will be no effect to individuals required to comply with the rule as proposed. There will be no effect on small or micro businesses.

Comments on the proposal may be submitted to Rita Chapin, P.O. Box 2018, Austin, Texas 78768-2018 or e-mail comments to: rules.development@tmb.state.tx.us. A public hearing will be held at a later date.

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

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

§166.2. Continuing Medical Education.

(a) (No change.)

(b) A physician must report on the registration permit application if she or he has completed the required CME during the previous 2 years.

(1) A physician [~~licensee~~] may carry forward CME credits earned prior to a registration report which are in excess of the 48-credit biennial requirement and such excess credits may be applied to the following years' requirements.

(2) A maximum of 48 total excess credits may be carried forward and shall be reported according to the categories set out in subsection (a) of this section.

(3) Excess CME credits of any type may not be carried forward or applied to a report of CME more than two years beyond the date of the registration following the period during which the credits were earned.

(c) A physician [~~licensee~~] shall be presumed to have complied with this section if in the preceding 36 months the physician [~~licensee~~] becomes board certified or recertified by a specialty board approved by the American Board of Medical Specialties (ABMS) or the American Osteopathic Association Bureau of Osteopathic Specialists. This provision exempts the physician from all CME requirements, including the requirement for two credits involving the study of medical ethics and/or professional responsibility, as outlined in subsection (a)(2) of this section. This exemption is valid for one registration period only.

(d) A physician [~~licensee~~] shall be presumed to have complied with subsection (a)(1) and (3) of this section if the physician [~~licensee~~] is meeting the Maintenance of Certification (MOC) program requirements set forth by a specialty or subspecialty member board of the ABMS, and the member board's MOC program mandates completion of CME credits that meet the minimum criteria set forth under subsection (a)(1) of this section. This provision does not exempt the physician [~~licensee~~] from the requirement for two credits involving the study of medical ethics and/or professional responsibility, as outlined in subsection (a)(2) of this section.

(e) A physician may request in writing an exemption for the following reasons:

(1) the physician's catastrophic illness;

(2) the physician's military service of longer than one year's duration outside the state;

(3) the physician's medical practice and residence of longer than one year's duration outside the United States; or

(4) good cause shown submitted in writing by the physician, which provides [~~licensee, that gives~~] satisfactory evidence to the board that the physician [~~licensee~~] is unable to comply with the requirement for CME.

(f) Exemptions are subject to the approval of the executive director or medical director and must be requested in writing at least 30 days prior to the expiration date of the permit.

(g) A temporary exemption under subsection (d) of this section may not exceed one year but may be renewed, subject to the approval of the board.

(h) Subsection (a) of this section does not apply to a physician [~~licensee~~] who is retired and has been exempted from paying the registration fee under §166.3 of this title (relating to Retired Physician Exception).

(i) This section does not prevent the board from taking board action with respect to a physician [~~licensee~~] or an applicant for a license by requiring additional credits of CME or of specific course subjects.

(j) The board may require written verification of both formal and informal credits from any physician [~~licensee~~] within 30 days of request. Failure to provide such verification may result in disciplinary action by the board.

(k) Physicians in residency/fellowship training or who have completed such training within six months prior to the registration expiration date[~~,~~] will satisfy the requirements of subsection (a)(1) and (2) of this section by their residency or fellowship program.

(l) CME credits which are obtained during the 30 day grace period after the expiration of the physician's [~~licensee's~~] permit to comply

with the CME requirements for the preceding two years, shall first be credited to meet the CME requirements for the previous registration period and then any additional credits obtained shall be credited to meet the CME requirements for the current registration period.

(m) A false report or false statement to the board by a physician [~~licensee~~] regarding CME credits reportedly obtained shall be a basis for disciplinary action by the board pursuant to the Medical Practice Act (the "Act"), Tex. Occ. Code Ann. §§164.051 - 164.053. A physician [~~licensee~~] who is disciplined by the board for such a violation may be subject to the full range of actions authorized by the Act including suspension or revocation of the physician's medical license, but in no event shall such action be less than an administrative penalty of $500.

(n) Administrative penalties for failure to timely obtain and report required CME credits may be assessed in accordance with §§187.75 - 187.82 of this title (relating to Imposition of Administrative Penalty) and §190.14 of this title (relating to Disciplinary Sanction Guidelines).

(o) Unless exempted under the terms of this section, failure to obtain and timely report the CME credits on a registration permit application shall subject the physician [~~licensee~~] to a monetary penalty for late registration in the amount set forth in §175.3 of this title (relating to Penalties). Any administrative penalty imposed for failure to obtain and timely report the 48 credits of CME required for a registration permit application shall be in addition to the applicable penalties for late registration as set forth in §175.3 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.

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CHAPTER 170. PAIN MANAGEMENT

22 TAC §§170.1 - 170.3

The Texas Medical Board (Board) proposes amendments to §§170.1 - 170.3, concerning Purpose, Definitions and Guidelines, under Chapter 170, Pain Management.

The amendments to §170.1 clarify the requirements related to a physician's treatment of pain. Throughout the section, amendments modify language so that the provisions are more clearly delineated as minimum requirements that a physician must do in every case when treating pain. Terms such as "policy" and "guideline(s)" have been changed to read as "rule(s)" and "minimum requirements", and the term "should" has been changed in certain cases to "must."

Language under paragraphs (5) and (6) is deleted to clarify that the quantity or duration of drug therapy may be a primary factor in determining whether treatment meets the standard of care and therefore represents sound clinical judgment and to clarify that, by itself, documentation of a physician's rationale and maintenance of medical records that are legible, complete, and accurate may not necessarily demonstrate sound clinical judgment. Other language in paragraph (5) is moved to the beginning of the section.

Language in paragraph (7) providing that a "treatment plan for acute, episodic pain may note only the dosage and frequency of drugs prescribed and that no further treatment is planned" is deleted, as treatment plans for acute pain may require more information even in the event that no further treatment is planned, depending on the circumstances of each case.

Language in paragraph (8) stating that an "explanation of the physician's rationale is especially required for cases in which treatment with scheduled drugs is difficult to relate to the patient's objective physical, radiographic, or laboratory findings" is deleted, as the statement is redundant and encompassed in the first sentences of the section.

Definitions of the terms "shall" and "should" as applied to physician responsibility discussed in paragraph (9) are deleted, as other amendments clarifying minimum requirements for a physician's treatment of pain make such distinctions no longer necessary.

Other amendments reflect general cleanup and reorganization of the section.

The amendments to §170.2 delete definitions for "improper pain treatment" and "non-therapeutic" found in paragraphs (8) and (9) respectively, as such terms are encompassed in the concept of the standard of care that will be determined and applied by the board in reviewing a physician's treatment of pain. Other amendments reflect renumbering to account for the deleted provisions.

The amendments to §170.3 change the title of the section to "Minimum Requirements for the Treatment of Pain." The amendments further clarify the requirements related to a physician's treatment of pain. Throughout the section, amendments modify language so that the provisions are more clearly delineated as minimum requirements that a physician must do in every case when treating pain. Terms such as "policy" and "guideline(s)" have been changed to read as "rule(s)" and "minimum requirements", and the term "should" has been changed to "must."

Language is added to subsection (a) providing that a physician's treatment of a patient's pain will be evaluated by considering whether it meets the generally accepted standard of care and "whether the following minimum requirements have been met" to clarify that the subsequent subsections in §170.3 outline minimum requirements in the treatment of pain.

Subsection (a)(1)(A)(v), relating to the evaluation of the patient, is amended to require that a physician review a patient's history and potential for substance diversion in addition to substance abuse. New subparagraph (C) is added to subsection (a)(1) providing that prior to prescribing dangerous drugs or controlled substances, a physician must consider reviewing prescription data and history related to the patient, if any, contained in the Prescription Access in Texas (PAT) system maintained by the Texas Department of Public Safety and must consider obtaining a baseline toxicology drug screen to determine the patient's drug levels, if any. The new subparagraph further provides that if a physician determines that such steps are not necessary prior to prescribing dangerous drugs or controlled substances to the patient, the physician must document in the medical record his or her rationale for not completing such steps.

Language is added to subsection (a)(2)(C), relating to the treatment plan for chronic pain, to clarify that further testing and diagnostic evaluations may not be medically indicated and there-

fore may not always be required in the course of implementing a treatment plan for chronic pain.

Subsection (a)(4), relating to the agreement for treatment of chronic pain, amends language so that such agreements must be in place if the treatment plan includes extended drug therapy and adds language to subsection (a)(4)(D) clarifying that only one pharmacy may be used for chronic pain prescriptions, clarifying that the patient may choose the designated pharmacy and providing an exception to the one-pharmacy requirement for those situations in which the pharmacy is out of stock of the drug prescribed at the time that the prescription is communicated by the physician to the pharmacy or the patient presents to have the drug dispensed.

New clause (v) is added to subsection (a)(5)(E), relating to the periodic review of the treatment of chronic pain. The new clause provides that physicians must periodically review patients' compliance with the prescribed treatment plan and reevaluate for any potential for substance abuse or diversion and, in such a review, must consider reviewing prescription data and history related to the patient, if any, contained in the Prescription Access in Texas (PAT) system maintained by the Texas Department of Public Safety and obtaining a baseline toxicology drug screen to determine the patient's drug levels, if any. The new clause further provides that if a physician determines that such steps are not necessary, the physician must document in the medical record his or her rationale for not completing such steps.

Subsection (b) is deleted, to further clarify that the provisions under Chapter 170 set forth minimum requirements that must be followed in each case of the treatment of pain, and because certain language is redundant and stated in other portions of the rules under Chapter 170.

Scott Freshour, General Counsel for the Board, has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing this proposal will be to clarify the minimum requirements for the treatment of pain and to clarify the relationship between the concepts of "sound clinical judgment" and the standard of care, which will allow the public to receive better care in the treatment of pain.

Mr. Freshour has also determined that for the first five-year period the sections are in effect there will be no fiscal implication to state or local government as a result of enforcing the sections as proposed. There will be no effect to individuals required to comply with the rules as proposed. There will be no effect on small or micro businesses.

Comments on the proposal may be submitted to Rita Chapin, P.O. Box 2018, Austin, Texas 78768-2018 or e-mail comments to: rules.development@tmb.state.tx.us. A public hearing will be held at a later date.

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

The amendments are also authorized by Chapter 107, Texas Occupations Code.

§170.1. Purpose.

The treatment of pain is a vital part of the practice of medicine. Patients look to physicians not only to cure disease, but also to try to relieve their pain. Physicians should be able to treat their patients' pain using sound clinical judgment without fear that the board will pursue disciplinary action. Physicians should not fear board action if they provide proper pain treatment utilizing sound clinical judgment. Sound clinical judgment results from evidence-based medicine that meets the generally accepted standard of care. This Rule sets forth minimum requirements related to the [board's ~~policy for the~~] proper treatment of pain. The board's intent is to protect the public and give guidance to physicians. The principles underlying this rule [~~policy~~] include:

(1) Pain is a medical condition that every physician sees regularly. It is an integral part of the practice of medicine. Patients deserve to have medical treatment for their pain, whether the pain is acute or chronic, mild or severe. The goal of pain management is to treat the patient's pain in relation to overall health, including physical function, psychological, social, and work-related factors.

(2) The regulatory atmosphere must support a physician's ability to treat pain, no matter how difficult the case, using whatever tools are most appropriate. Drugs, including opiates, are essential tools for the treatment of pain.

(3) The board is charged by the Legislature with the responsibility to assure that drugs are used in a therapeutic manner. A license to practice medicine gives a physician legal authority to prescribe drugs for pain. The physician has a duty to use that authority to help, and not to harm patients and the public.

(4) Harm can result when a physician does not use sound clinical judgment in using drug therapy. If the physician fails to apply sufficient drug therapy, the patient will likely suffer continued pain and may demonstrate relief-seeking behavior, known as pseudoaddiction. On the other hand, non-therapeutic drug therapy may lead to or contribute to abuse, addiction, and/or diversion of drugs. As with everything in the practice of medicine, physicians must be well informed of and carefully assess the risks and the benefits as they apply to each case.

[~~(5) Physicians should not fear board action if they provide proper pain treatment. The board will not look solely at the quantity or duration of drug therapy. Proper pain treatment is not a matter of how much drug therapy is used, as long as that therapy is based on sound clinical judgment. Sound clinical judgment results from evidence-based medicine and/or the use of generally accepted standards.~~]

[~~(6) A physician can demonstrate sound clinical judgment by recording the physician's rationale for the treatment plan and maintaining medical records that are legible, complete, accurate and current for each patient.~~]

(5) [~~(7)~~] The extent of medical records must be legible, complete, accurate and current for each patient. [~~should be reasonable for each case. A treatment plan for acute, episodic pain may note only the dosage and frequency of drugs prescribed and that no further treatment is planned.~~]

(6) [~~(8)~~] Treatment of chronic pain requires a reasonably detailed and documented plan to assure that the treatment is monitored and evaluated on an ongoing basis. [~~An explanation of the physician's rationale is especially required for cases in which treatment with scheduled drugs is difficult to relate to the patient's objective physical, radiographic, or laboratory findings.~~]

(7) [~~(9)~~] The intent of the board [~~these guidelines~~] is not to impose regulatory burdens on the practice of medicine. Rather, these rules [~~guidelines are intended to~~] set forth those items expected to be done by any reasonable physician involved in the treatment of pain. [~~The use of the word "shall" in these guidelines is used to identify those items a physician is required to perform in all such cases. The word~~

~~"should" and the phrase "it is the responsibility of the physician" in these guidelines are used to identify those actions that a prudent physician will either do and document in the treatment of pain or be able to provide a thoughtful explanation as to why the physician did not do so.~~]

§170.2. Definitions.

In this Chapter:

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

~~[(8) "Improper pain treatment"--includes over treatment, under treatment, no treatment, and the prescription of drugs for purposes other than the proper treatment of pain.]~~

~~[(9) "Non-therapeutic"--is defined in §164.053(a)(5), Texas Occupations Code and includes improper pain treatment.]~~

(8) [~~(10)~~] "Pain"--An unpleasant sensory and emotional experience associated with actual or potential tissue damage or described in terms of such damage.

(9) [~~(11)~~] "Physical dependence"--A state of adaptation that is manifested by drug class-specific signs and symptoms that can be produced by abrupt cessation, rapid dose reduction, decreasing blood level of the drug, and/or administration of an antagonist. Physical dependence, alone, does not indicate addiction.

(10) [~~(12)~~] "Pseudoaddiction"--the iatrogenic syndrome resulting from the misinterpretation of relief seeking behaviors as though they are drug-seeking behaviors that are commonly seen with addiction. The relief seeking behaviors resolve upon institution of effective analgesic therapy.

(11) [~~(13)~~] "Scheduled drugs" (sometimes referred to as "Controlled Substances")--medications defined by the Texas Controlled Substances Act, Chapter 481, Texas Health and Safety Code. This Act establishes five categories, or schedules of drugs, based on risk of abuse and addiction. (Schedule I includes drugs that carry an extremely high risk of abuse and addiction and have no legitimate medical use. Schedule V includes drugs that have the lowest abuse/addiction risk).

(12) [~~(14)~~] "Tolerance" (tachyphylaxis)--a physiological state resulting from regular use of a drug in which an increased dosage is needed to produce a specific effect, or a reduced effect is observed with a constant dose over time. Tolerance does not necessarily occur during opioid treatment and does not, alone, indicate addiction.

(13) [~~(15)~~] "Withdrawal"--the physiological and mental readjustment that accompanies discontinuation of a drug for which a person has established a physical dependence.

§170.3. Minimum Requirements for the Treatment of Pain [~~Guidelines~~].

[~~(a)~~] A physician's treatment of a patient's pain will be evaluated by considering whether it meets the generally accepted standard of care and whether the following minimum requirements have been met: [~~The Texas Medical Board will use these guidelines to assess a physician's treatment of pain.~~]

(1) Evaluation of the patient.

(A) A physician is responsible for obtaining a medical history and a physical examination that includes a problem-focused exam specific to the chief presenting complaint of the patient.

(B) The medical record shall document the medical history and physical examination. In the case of chronic pain, the medical record must [~~should~~] document:

(i) the nature and intensity of the pain;[~~,~~]

(ii) current and past treatments for pain;[~~,~~]

(iii) underlying or coexisting diseases and conditions;[~~,~~]

(iv) the effect of the pain on physical and psychological function;[~~,~~]

(v) any history and potential for substance abuse or diversion;[~~,~~] and

(vi) the presence of one or more recognized medical indications for the use of a dangerous or scheduled drug.

(C) Prior to prescribing dangerous drugs or controlled substances, a physician must consider reviewing prescription data and history related to the patient, if any, contained in the Prescription Access in Texas (PAT) system maintained by the Texas Department of Public Safety and obtaining a baseline toxicology drug screen to determine the patient's drug levels, if any. If a physician determines that such steps are not necessary prior to prescribing dangerous drugs or controlled substances to the patient, the physician must document in the medical record his or her rationale for not completing such steps.

(2) Treatment plan for chronic pain. The physician is responsible for a written treatment plan that is documented in the medical records. The medical record must [~~should~~] include:

(A) How the medication relates to the chief presenting complaint of chronic pain;

(B) dosage and frequency of any drugs prescribed;[~~,~~]

(C) further testing and diagnostic evaluations to be ordered, if medically indicated;[~~,~~]

(D) other treatments that are planned or considered;[~~,~~]

(E) periodic reviews planned;[~~,~~] and

(F) objectives that will be used to determine treatment success, such as pain relief and improved physical and psychosocial function.

(3) Informed consent. It is the physician's responsibility to discuss the risks and benefits of the use of controlled substances for the treatment of chronic pain with the patient, persons designated by the patient, or with the patient's surrogate or guardian if the patient is without medical decision-making capacity. This discussion must [~~should~~] be documented by either a written signed document maintained in the records or a contemporaneous notation included in the medical records. Discussion of risks and benefits must [~~should~~] include an explanation of the:

(A) diagnosis;

(B) treatment plan;

(C) anticipated therapeutic results, including the realistic expectations for sustained pain relief and improved functioning and possibilities for lack of pain relief;

(D) therapies in addition to or instead of drug therapy, including physical therapy or psychological techniques;

(E) potential side effects and how to manage them;

(F) adverse effects, including the potential for dependence, addiction, tolerance, and withdrawal; and

(G) potential for impairment of judgment and motor skills.

(4) Agreement for treatment of chronic pain. A proper patient-physician relationship for treatment of chronic pain requires the

physician to establish and inform the patient of the physician's expectations that are necessary for patient compliance. If the treatment plan includes extended drug therapy, the physician must [~~should consider the~~] use [~~of~~] a written pain management agreement between the physician and the patient outlining patient responsibilities, including the following provisions:

(A) the physician may require laboratory tests for drug levels upon request;

(B) the physician may limit the number and frequency of prescription refills;

(C) only one physician will prescribe dangerous and scheduled drugs;

(D) only one pharmacy designated by the patient will be used for prescriptions for the treatment of chronic pain, unless the designated pharmacy under the agreement is out of stock of the drug prescribed at the time that the prescription is communicated by the physician to the pharmacy or patient presents to have the drug dispensed;[~~,~~] and

(E) reasons for which drug therapy may be discontinued (e.g. violation of agreement).

(5) Periodic review of the treatment of chronic pain.

(A) The physician must [~~should~~] see the patient for periodic review at reasonable intervals in view of the individual circumstances of the patient.

(B) Periodic review must [~~should~~] assess progress toward reaching treatment objectives, taking into consideration the history of medication usage, as well as any new information about the etiology of the pain.

(C) Each periodic visit shall be documented in the medical records.

(D) Contemporaneous to the periodic reviews, the physician must [~~should~~] note in the medical records any adjustment in the treatment plan based on the individual medical needs of the patient.

(E) A physician must base any continuation or modification of [~~should continue or modify~~] the use of dangerous and scheduled drugs for pain management [~~based~~] on an evaluation of progress toward treatment objectives.

(i) Progress or the lack of progress in relieving pain must [~~should~~] be documented in the patient's record.

(ii) Satisfactory response to treatment may be indicated by the patient's decreased pain, increased level of function, and/or improved quality of life.

(iii) Objective evidence of improved or diminished function must [~~should~~] be monitored. Information from family members or other caregivers, if offered or provided, must [~~should~~] be considered in determining the patient's response to treatment.

(iv) If the patient's progress is unsatisfactory, the physician must [~~should~~] reassess the current treatment plan and consider the use of other therapeutic modalities.

(v) The physician must periodically review the patient's compliance with the prescribed treatment plan and reevaluate for any potential for substance abuse or diversion. In such a review, the physician must consider reviewing prescription data and history related to the patient, if any, contained in the Prescription Access in Texas (PAT) system maintained by the Texas Department of Public Safety and obtaining a baseline toxicology drug screen to determine the patient's drug levels, if any. If a physician determines that such steps are not necessary, the physician must document in the medical record his or her rationale for not completing such steps.

(6) Consultation and Referral. The physician must [~~should~~] refer a patient with chronic pain for further evaluation and treatment as necessary. Patients who are at-risk for abuse or addiction require special attention. Patients with chronic pain and histories of substance abuse or with co-morbid psychiatric disorders require even more care. A consult with or referral to an expert in the management of such patients must [~~should~~] be considered in their treatment.

(7) Medical records. The medical records shall document the physician's rationale for the treatment plan and the prescription of drugs for the chief complaint of chronic pain and show that the physician has followed these rules [~~guidelines~~]. Specifically the records must [~~should~~] include:

(A) the medical history and the physical examination;

(B) diagnostic, therapeutic and laboratory results;

(C) evaluations and consultations;

(D) treatment objectives;

(E) discussion of risks and benefits;

(F) informed consent;

(G) treatments;

(H) medications (including date, type, dosage and quantity prescribed);

(I) instructions and agreements; and

(J) periodic reviews.

[~~(b) It is not the board's policy to take disciplinary action against a physician solely for not adhering strictly to these guidelines if the physician's rationale for the treatment indicates sound clinical judgment documented in the medical records. Each case of prescribing for pain will be evaluated on an individual basis. A physician's conduct will be evaluated by considering:~~]

[~~(1) the treatment objectives, including any improvement in functioning,~~]

[~~(2) whether the drug used is pharmacologically recognized to be appropriate for the diagnosis as determined by a consensus of medical practitioners in the State or by recognized experts in the field for which the drug is being used,~~]

[~~(3) the patient's individual needs, and~~]

[~~(4) that some types of pain cannot be completely relieved.~~]

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 180. TEXAS PHYSICIAN HEALTH PROGRAM AND REHABILITATION ORDERS

22 TAC §180.4

The Texas Medical Board (Board) proposes amendments to §180.4, concerning Operation of Program.

The amendments eliminate the prohibitions on eligibility for referrals made regarding individuals that have violated the standard of care as a result of the use or abuse of drugs or alcohol, committed a boundary violation with a patient or patient's family member(s), or been convicted of, or placed on deferred adjudication community supervision or deferred disposition for a felony. Further amendments add language providing that the Medical Board may refer such individuals publicly through the entry of an order that addresses the standard of care, boundary, and/or criminal law related violations. In the event of such a referral, the Medical Board retains the authority to discipline the individuals for the standard of care, boundary, and criminal law related violations.

Scott Freshour, General Counsel for the Board, has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing this proposal will be to provide an option for certain individuals to have impairment issues monitored through the Physician Health Program, while ensuring that the Medical Board retains the authority to impose disciplinary action against the individuals for the non-impairment related issues and the public is informed as to the referrals made.

Mr. Freshour has also determined that for the first five-year period the section is in effect there will be no fiscal implication to state or local government as a result of enforcing the section as proposed. There will be no effect to individuals required to comply with the rule as proposed. There will be no effect on small or micro businesses.

Comments on the proposal may be submitted to Rita Chapin, P.O. Box 2018, Austin, Texas 78768-2018 or e-mail comments to: rules.development@tmb.state.tx.us. A public hearing will be held at a later date.

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

The amendment is also authorized by Chapter 167, Texas Occupations Code.

§180.4. Operation of Program.

(a) Referrals.

(1) The program shall accept a self-referral from a licensure applicant or licensee, or a referral from an individual, a physician health and rehabilitation committee, a physician assistant organization, a state physician health program, a state acupuncture program, a hospital or hospital system licensed in this state, a residency program, the medical board, physician assistant board, or the acupuncture board.

(2) In addition to confidential referrals to the program, the medical board, physician assistant board, and acupuncture board may publicly refer an applicant or licensee to the program after a contested case hearing or through an agreed order. Unless good cause is found, an applicant or licensee that has been subject to disciplinary action in another state based on alcohol or substance abuse related violations shall be referred to the program through a public referral.

(b) Eligible Program Participants. An individual who has or may have mental or physical impairment or an alcohol/substance use disorder is eligible to participate in the program. For individuals who have violated the standard of care as a result of the use or abuse of drugs or alcohol, committed a boundary violation with a patient or patient's family member(s), or been convicted of, or placed on deferred adjudication community supervision or deferred disposition for a felony, the medical board may publicly refer such individuals through the entry of a disciplinary order that addresses the standard of care, boundary, and/or criminal law related violations. [~~unless the person:~~]

[~~(1) has violated the standard of care as a result of drugs or alcohol;~~]

[~~(2) committed a boundary violation with a patient or a patient's family; or~~]

[~~(3) has been convicted of, placed on deferred adjudication community supervision or deferred disposition for a felony.~~]

(c) Drug Testing.

(1) The program's drug testing shall be provided under contract for services with the vendor approved by the Texas Medical Board.

(2) The program shall adopt policies and protocols for drug-testing that are consistent with those of the agency in effect on December 31, 2009, or as approved by the Texas Medical Board.

(3) The agency may monitor the test results for all program participants, provided that the identities of the program participants are not disclosed to the agency.

(d) Reports to the Agency.

(1) If an individual who has been referred by the agency or a third party to the program and does not enter into an agreement for services or is found to have committed a substantive violation of an agreement, the governing board shall report that individual to the agency for possible disciplinary action.

(2) A positive drug screen that is not attributed to a prescription by a physician, shall be determined to be substantive violation of an agreement by the program participant.

(3) A committee of the Board shall review the report and may direct that an ISC be scheduled to review of the individual's interactions with the program. After consideration of any evidence presented at the ISC, the agency has the option of referring the individual back to the program. The referral of the individual back to the program shall be a public referral through the entry of an agreed order. The agency may pursue other disciplinary action through the agency's disciplinary process in lieu of or in addition to referral back to the program.

(e) Fees.

(1) Program participants shall pay an annual fee of $1,200. This fee is in addition to costs owed by program participants for medical care, primary treatment, continuing care, and required evaluations to include costs for drug testing associated with a program participant's Physician Health Program agreement.

(2) The governing board may waive all or part of the annual fee for a program participant upon a showing of good cause.

(f) Process.

(1) Interview by Medical Director.

(A) Upon receipt of a referral as described in subsection (a) of this section, the applicant or licensee shall be invited to meet in person with the TXPHP medical director or a member of the advisory committee designated by the medical director for an interview to determine eligibility for the PHP.

(B) The interview may be conducted by telephone if the individual is out of state or not physically able to meet in person.

(C) An interview may be waived if the medical director determines that good cause exists. Advisory committee members are to be given records only in relation to those individuals that they have been assigned to review.

(2) Review by Case Advisory Panel.

(A) A case advisory panel shall include three members. These members shall be the Presiding Officer of the Governing Board, the Secretary of the Governing Board, and another member of the Governing Board who shall serve for a four-month term on a rotating basis with the other members. In the event that the Presiding Officer and/or the Secretary is unavailable or must recuse themselves, one or two additional members of the Governing Board shall be asked to serve on the panel.

(B) After an interview by the medical director has occurred, a case advisory panel may be convened at the discretion of the Medical Director, for the purpose of seeking advice and direction from the case advisory panel to advise in cases relating to applicants or program participants.

(C) All cases reviewed by a case advisory panel shall be reported on at the next scheduled meeting of the Governing Board.

(3) After the requirements in paragraph (1) of this subsection have been completed, the applicant or licensee shall be offered an agreement, be determined ineligible for the program, or be found to not need the services of the PHP.

(4) Agreements are effective upon signature by the program participant.

(5) All agreements are subject to review by the Governing Board.

(g) Evaluations. The PHP may request that an applicant or licensee undergo a clinically appropriate evaluation after the person has been interviewed. The evaluation shall be considered a term of an agreement and the person will be considered a program participant at that time. If an individual refuses to undergo an evaluation, he or she may be referred to the agency as described in subsection (d) of this section.

(h) Agreements. Agreements between program participants and the PHP may include but are not limited to the following terms and conditions:

(1) abstinence from prohibited substances and drug testing;

(2) agreement to not treat one's own family, except under emergency situations;

(3) agreement not to manage one's own medical care;

(4) participation in self-help groups such as Alcoholics Anonymous;

(5) participation in support groups for recovering professionals;

(6) worksite monitor;

(7) worksite restrictions; and

(8) treatment by an appropriate health care provider.

(i) Interventions. Upon receipt of credible information, the medical director may investigate and, if indicated, initiate, or otherwise facilitate, an intervention for the purpose of assisting an individual in obtaining treatment for a mental or physical condition or substance use problem. All information obtained as a part of the intervention process shall be considered confidential.

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 184. SURGICAL ASSISTANTS

22 TAC §184.4

The Texas Medical Board (Board) proposes amendments to §184.4, concerning Qualifications for Licensure.

The amendments to §184.4 amend subsection (a)(13)(A) and (B)(iii) by adding language that clarifies the surgical assistant program or substantially equivalent program must be accredited for the entire duration of applicant's attendance.

Scott Freshour, General Counsel for the Board, has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing this proposal will be to have clear requirements relating to acceptable education programs for those applying for surgical assistant licensure.

Mr. Freshour has also determined that for the first five-year period the section is in effect there will be no fiscal implication to state or local government as a result of enforcing the section as proposed. There will be no effect to individuals required to comply with the rule as proposed. There will be no effect on small or micro businesses.

Comments on the proposal may be submitted to Rita Chapin, P.O. Box 2018, Austin, Texas 78768-2018 or e-mail comments to: rules.development@tmb.state.tx.us. A public hearing will be held at a later date.

The amendment is proposed under the authority of the Texas Occupations Code Annotated, §153.001 and §206.101, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure; and establish minimum education and training requirements necessary for a license to practice as a surgical assistant.

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

§184.4. Qualifications for Licensure.

(a) Except as otherwise provided in this section, an individual applying for licensure must:

(1) submit an application on forms approved by the board;

(2) pay the appropriate application fee;

(3) certify that the applicant is mentally and physically able to function safely as a surgical assistant;

(4) not have a license, certification, or registration in this state or from any other licensing authority or certifying professional organization that is currently revoked, suspended, or subject to probation or other disciplinary action for cause;

(5) have no proceedings that have been instituted against the applicant for the restriction, cancellation, suspension, or revocation of certificate, license, or authority to practice surgical assisting in the state, Canadian province, or uniformed service of the United States in which it was issued;

(6) have no prosecution pending against the applicant in any state, federal, or Canadian court for any offense that under the laws of this state is a felony;

(7) be of good moral character;

(8) not have been convicted of a felony or a crime involving moral turpitude;

(9) not use drugs or alcohol to an extent that affects the applicant's professional competency;

(10) not have engaged in fraud or deceit in applying for a license;

(11) pass an independently evaluated surgical or first assistant examination approved by the board;

(12) have been awarded at least an associate's degree at a two or four year institution of higher education;

(13) have successfully completed an educational program as set forth in subparagraphs (A) and (B) of this paragraph;

(A) A surgical assistant program accredited, for the entire duration of applicant's attendance, by the Commission on Accreditation of Allied Health Education Programs (CAAHEP); or

(B) a substantially equivalent program that is one of the following:

(i) a medical school whereby the applicant can verify completion of basic and clinical sciences coursework;

(ii) a registered nurse first assistant program that is approved or recognized by an organization recognized by the Texas Board of Nursing for purposes of licensure as a registered nurse first assistant; or

(iii) a post graduate clinical physician assistant program accredited, for the entire duration of applicant's attendance, by the Accreditation Review Commission on Education for the Physician Assistant, Inc. (ARC-PA), or by that committee's predecessor or successor entities designed to prepare the physician assistant for a surgical specialty.

(C) The curriculum of an educational program listed in subparagraphs (A) and (B) of this paragraph must include at a minimum, either as a part of that curriculum or as a required prerequisite, successful completion of college level instruction in the following courses:

(i) anatomy;

(ii) physiology;

(iii) basic pharmacology;

(iv) aseptic techniques;

(v) operative procedures;

(vi) chemistry;

(vii) microbiology; and

(viii) pathophysiology.

(14) demonstrate to the satisfaction of the board the completion of full-time work experience performed in the United States under the direct supervision of a physician licensed in the United States consisting of at least 2,000 hours of performance as an assistant in surgical procedures for the three years preceding the date of the application;

(15) be currently certified by a national certifying board approved by the board; and

(16) submit to the board any other information the board considers necessary to evaluate the applicant's qualifications.

(b) An applicant must provide documentation that the applicant has passed a surgical or first assistant examination required for certification by one of the following certifying boards:

(1) American Board of Surgical Assistants;

(2) National Board of Surgical Technology and Surgical Assisting (NBSTSA) formerly known as Liaison Council on Certification for the Surgical Technologist (LCC-ST); or

(3) the National Surgical Assistant Association provided that the exam was administered on or after March 29, 2003.

(c) Alternative License Procedure for Military Spouse.

(1) An applicant who is the spouse of a member of the armed forces of the United States assigned to a military unit headquartered in Texas may be eligible for alternative demonstrations of competency for certain licensure requirements. Unless specifically allowed in this subsection, an applicant must meet the requirements for licensure as specified in this chapter.

(2) To be eligible, an applicant must be the spouse of a person serving on active duty as a member of the armed forces of the United States and meet one of the following requirements:

(A) holds an active unrestricted surgical assistant license issued by another state that has licensing requirements that are substantially equivalent to the requirements for a Texas surgical assistant license; or

(B) within the five years preceding the application date held a surgical assistant license in this state that expired and was cancelled for nonpayment while the applicant lived in another state for at least six months.

(3) Applications for licensure from applicants qualifying under this section, shall be expedited by the board's licensure division. Such applicants shall be notified, in writing or by electronic means, as soon as practicable, of the requirements and process for renewal of the license.

(4) Alternative Demonstrations of Competency Allowed. Applicants qualifying under this section, notwithstanding:

(A) the one year expiration in §184.5(a)(2) of this title (relating to Procedural Rules for Licensure Applicants), are allowed an additional six months to complete the application prior to it becoming inactive; and

(B) the 20 day deadline in §184.5(a)(6) of this title, may be considered for permanent licensure up to five days prior to the board meeting; and

(C) the requirement to produce a copy of a valid and current certificate from a board approved national certifying organization in §184.6(b)(4) of this title (relating to Licensure Documentation), may substitute certification from a board approved national certifying organization if it is made on a valid examination transcript.

(d) Applicants with Military Experience.

(1) For applications filed on or after March 1, 2014, the Board shall, with respect to an applicant who is a military service member or military veteran as defined in §184.2 of this title (relating to Definitions), credit verified military service, training, or education toward the licensing requirements, other than an examination requirement, for a license issued by the Board.

(2) This section does not apply to an applicant who:

(A) has had a surgical assistant license suspended or revoked by another state or a Canadian province;

(B) holds a surgical assistant license issued by another state or a Canadian province that is subject to a restriction, disciplinary order, or probationary order; or

(C) has an unacceptable criminal history.

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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Executive Director
Texas Medical Board
Earliest possible date of adoption: June 7, 2015
For further information, please call: (512) 305-7016

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CHAPTER 187. PROCEDURAL RULES

The Texas Medical Board (Board) proposes amendments to §187.13, concerning Informal Board Proceedings Relating to Licensure Eligibility, and §187.24, concerning Pleadings.

The amendments to §187.13 amend subsection (c)(1), (c)(4)(A) and (c)(4)(B) by making a case change in the word "Board". The rule is further amended in subsection (c)(3)(B)(ii) by adding a 20 day deadline for accepting offers of the committee and changing the word "determined" to "deemed". The rule is also amended in subsection (c)(4)(A) by adding the words "deemed ineligibility" to further clarify what qualifies as "ineligible" and further describe the possible situations to which the subsection applies. Subsection (c)(4)(B) is further amended to change the word "will" to "shall" in order to be consistent with the remainder of the rules. Subsection (c)(4)(E) is amended by eliminating the words "submitted to the board for ratification" and adding language that the committee's determination of ineligibility shall be deemed accepted by the applicant without the need for resubmitting such deemed acceptance to the full board for ratification.

The amendment to §187.24 amends subsection (b)(1) by making a case change in the word "Board". The rule is further amended in subsection (b)(5) by eliminating the words "submitted to the board for ratification" and adding language that provides that the committee's determination of ineligibility shall be deemed accepted by the applicant without the need for resubmitting such deemed acceptance to the full board for ratification.

Scott Freshour, General Counsel for the Board, has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing this proposal will be to have consistent wording throughout the rules in order to improve the clarity of the rules and ensure that the rules relating to licensure comport with the procedures.

Mr. Freshour has also determined that for the first five-year period the sections are in effect there will be no fiscal implication to state or local government as a result of enforcing the sections as proposed. There will be no effect to individuals required to comply with the rules as proposed. There will be no effect on small or micro businesses.

Comments on the proposal may be submitted to Rita Chapin, P.O. Box 2018, Austin, Texas 78768-2018 or e-mail comments to: rules.development@tmb.state.tx.us. A public hearing will be held at a later date.

SUBCHAPTER B. INFORMAL BOARD PROCEEDINGS

22 TAC §187.13

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

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

§187.13. Informal Board Proceedings Relating to Licensure Eligibility.

(a) An applicant who has either requested to appear before the licensure committee of the board or has elected to be referred to the licensure committee of the board due to a determination of ineligibility by the Executive Director in accordance with §163.4 of this title (relating to Procedural Rules for Licensure Applicants), in lieu of withdrawing the application for licensure, may be subject to a Disciplinary Licensure Investigation.

(b) "Disciplinary Licensure Investigation" means an applicant's licensure file that has been referred to the licensure committee for review.

(c) Determination by a Committee of the Board. Upon review of Disciplinary Licensure Investigation, a committee of the board may determine that the applicant is ineligible for licensure or is eligible for licensure with or without conditions or restrictions, eligible for licensure under a remedial plan, or defer its decision pending further information.

(1) An applicant subject to a Disciplinary Licensure Investigation who withdraws their request to appear before a committee of the board [~~Board,~~] shall have such withdrawal submitted to the full board for ratification.

(2) An applicant, who fails to appear before the committee of the board, shall be deemed a withdrawal, and such withdrawal shall be submitted to the full board for ratification.

(3) Licensure with Terms and Conditions.

(A) If the committee determines that the applicant should be granted a license under certain terms and conditions, based on the applicant's commission of a prohibited act or failure to demonstrate compliance with provisions under the Act or board rules, the committee, as the board's representatives, shall propose an agreed

order or a remedial plan. The terms and conditions of the proposed agreed order or remedial plan shall be submitted to the board for approval.

(B) Upon an affirmative majority vote of members present, the board may approve the agreed order or remedial plan as proposed by the committee or with modifications, and direct staff to present the agreed order or remedial plan to the applicant.

(i) If the applicant agrees to the terms of the proposed agreed order or remedial plan, the applicant may be licensed upon the signing of the order or remedial plan by the applicant and the president of the board or the president's designee, and passage of the medical jurisprudence examination, if applicable.

(ii) If the applicant does not agree to the terms of the proposed agreed order or remedial plan within 20 days of receipt of the offer, the applicant shall be deemed [~~determined~~] ineligible for licensure by the board.

(C) If the board does not approve the proposed agreed order or remedial plan and by majority vote determines the applicant ineligible for licensure, the applicant shall be so informed. The board must specify their rationale for the rejection of the proposed agreed order or remedial plan that shall be referenced in the minutes of the board.

(4) Ineligibility Determination.

(A) If a committee of the board or the full board determines that an applicant is ineligible for licensure, including deemed ineligibility due to the applicant's failure to agree to the terms of the board's [~~Board's~~] proposed agreed order or remedial plan, the applicant shall be notified of the committee's determination and given the option to:

(i) appeal the determination of ineligibility to the State Office of Administrative Hearings (SOAH); or

(ii) accept the determination of ineligibility.

(B) An applicant has 20 days from the date the applicant receives notice of the board's determination of ineligibility to submit a written response to the board [~~Board~~] electing one of the two options listed in subparagraph (A)(i) - (ii) of this paragraph. Applicant's failure to respond to the board's notice of a determination of ineligibility within 20 days shall [~~will~~] be deemed acceptance by applicant of the board's ineligibility determination.

(C) If the applicant timely notifies the board of applicant's intent to appeal the board's ineligibility determination to SOAH, a contested case before SOAH will be initiated only in accordance with §187.24 of this title (relating to Pleadings). Applicant shall comply with all other provisions relating to formal proceedings as set out in Subchapter C of this chapter (relating to Formal Board Proceedings at SOAH).

(D) An application for licensure shall not expire while the application is the subject of a contested case, however, applicants shall be required to update any information that is a part of their applications.

(E) If the applicant does not timely take action as required in subparagraphs (A) and (B) of this paragraph or, prior to the initiation of a contested case at SOAH, withdraws their intent to appeal the board's ineligibility determination to SOAH, the committee's determination of ineligibility shall be deemed acceptance by applicant of the board's ineligibility determination [~~submitted to the full board for ratification~~].

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 C. FORMAL BOARD PROCEEDINGS AT SOAH

22 TAC §187.24

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

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

§187.24. Pleadings.

(a) In disciplinary matters, actions by the board as Petitioner against a licensee, the board's pleadings shall be styled "Complaint" or "Formal Complaint". Except in cases of temporary suspension, a Complaint shall be filed only after notice of the facts or conduct alleged to warrant the intended action has been sent to the licensee's address of record and the licensee has an opportunity to show compliance with the law for the retention of a license as provided in §2001.054 of the Administrative Procedure Act (APA), and §164.004(a) of the Act.

(b) Upon timely receipt, as set forth in §187.13(c)(4)(B) of this title (relating to Informal Board Proceedings Relating to Licensure Eligibility), from a licensure applicant, of a request for an appeal before SOAH of the board's determination of ineligibility, the board shall file a request to docket and a Statement of Issues with SOAH.

(1) Applicant must timely file a petition with SOAH in order to initiate a contested case at SOAH. Such petition shall be filed by applicant no more than 30 days after receipt of the board's [~~Board's~~] Statement of Issues filed with SOAH. Applicant shall comply with all other provisions relating to formal proceedings as set out in this subchapter.

(2) An applicant who notifies the board of their intent to appeal the board's determination of ineligibility to SOAH, as required under paragraph (1) of this subsection, and subsequently fails to timely file a petition with SOAH, shall be deemed to have withdrawn their intent to appeal the board's ineligibility determination to SOAH.

(3) Prior to initiating a contested case at SOAH, an applicant may request to withdraw their intent to appeal the board's ineligibility determination to SOAH by notifying the board in writing prior to filing a petition.

(4) If an applicant fails to timely notify the board of their intent to appeal the board's determination of ineligibility, as described in this subsection, such failure to take timely action shall be deemed a withdrawal.

(5) A withdrawal of intent to appeal the board's determination of ineligibility to SOAH or a deemed withdrawal, due to failure to timely take appropriate action, shall be deemed acceptance by applicant of the board's ineligibility determination [~~submitted to the full board for ratification~~].

(6) An application for licensure shall not expire while the application is the subject of a contested case, however, applicants shall be required to update any information that is a part of their 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.

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CHAPTER 187. PROCEDURAL RULES

The Texas Medical Board (Board) proposes amendments to §§187.43, 187.61, 187.70, and 187.72 and the repeal of §187.73, concerning Procedural Rules.

The amendments to §187.43, concerning Proceedings for the Modification/Termination of Agreed Orders and Disciplinary Orders, clarify the requirements related to a probationer's eligibility for submitting a petition to the board requesting modification or termination of an order. Language under subsection (e) providing that probationers who have been notified in writing regarding an investigation initiated by the board on issues of noncompliance may not have requests for modification or termination of the order considered is deleted and replaced with language providing that if a probationer is not in active practice or is the subject of a board investigation or pending action, he or she may not have requests for modification or termination considered until such issues are resolved, which is moved to new subsection (g). Further, new subsection (f) is added providing the factors that will be reviewed in the determination of whether probationers are in "full compliance" with the terms and conditions of their orders.

Current subsection (f) is re-lettered to subsection (h), and language is added providing that if prior to the date of the meeting scheduled for the purpose of considering the petition, the probationer becomes the subject of a board investigation, the petition will be withdrawn and the meeting will be cancelled, and for such petitions that are withdrawn, the probationer will not be eligible to submit a new petition for modification or termination until the board investigation and board action, if any, is resolved.

Remaining amendments re-letter provisions to account for reorganized and added subsections.

The amendments to §187.61, concerning Ancillary Proceeding, reorganizes language under subsection (b) so that certain language under subsection (b)(2) is moved to new subsection (c) and further modified to clarify that in cases of suspension based upon arrest for certain offenses listed under §164.1595 of the Texas Occupations code and §187.57(d) of this title (relating to Charge of the Disciplinary Panel), final dispositions of criminal cases may include a deferred adjudication, acquittal, dismissal of the criminal case, or plea agreement, in addition to a court order of guilt and sentence.

Existing subsection (c) is re-lettered to subsection (d), with language added clarifying that in the case of a suspension or restriction under new subsection (c), an ISC must be scheduled as soon as practicable after there is a final disposition of the criminal case.

Remaining amendments re-letter provisions to account for reorganized and added subsections.

The amendments to §187.70, concerning Purposes and Construction, add language clarifying that an adjudication of guilt of the offense charged includes but is not limited to a finding of guilt by a judge or jury. For purposes of §187.70, the Board interprets the term initial conviction, under Chapter 167 of the Occupations Code, to mean an adjudication of guilt, and the suspension of the medical license is mandated upon an initial conviction of certain criminal offenses listed in §164.057.

The amendments to §187.72, concerning Decision of the Panel, delete language in subsection (a) providing that an order of suspension by operation of law represents an imminent peril to the public health, safety, or welfare and requires immediate effect and is considered administratively final for purposes of appealing the decision to district court. Further amendments to subsection (a) insert citations to the applicable sections of §164.057, which mandate suspension upon an initial conviction. Remaining amendments to subsections (a) and (b) represent general cleanup and reorganization of language.

Section 187.73, concerning Termination of Suspension, is repealed. The section is redundant, in that termination of the suspension would be governed by the terms of the agreed order probating the suspension. The Board also believes that the rule cited is an incorrect standard for determining if a suspension should be terminated, specifically, physical and mental competence to practice medicine. This standard is not relevant to the underlying basis of the suspension, which is criminal conduct that the legislature determined poses a risk to a physician's patients, requiring suspension of the physician's medical license. Physical and mental competence do not mitigate such a risk.

Scott Freshour, General Counsel for the Board, has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing this proposal will be to correctly reflect the Board's authority and statutory duty to suspend the medical license of a physician initially convicted of certain crimes or incarcerated and to clarify the requirements and process related to a probationer's eligibility to submit and have considered by the Board a petition for modification or termination of an order.

Mr. Freshour has also determined that for the first five-year period the sections are in effect there will be no fiscal implication to state or local government as a result of enforcing these sections as proposed. There will be no effect to individuals required to comply with the rules as proposed. There will be no effect on small or micro businesses.

Comments on the proposal may be submitted to Rita Chapin, P.O. Box 2018, Austin, Texas 78768-2018 or e-mail comments to: rules.development@tmb.state.tx.us. A public hearing will be held at a later date.

SUBCHAPTER E. PROCEEDINGS RELATING TO PROBATIONERS

22 TAC §187.43

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

The amendment is also authorized by Chapter 164, Texas Occupations Code.

§187.43. Proceedings for the Modification/Termination of Agreed Orders and Disciplinary Orders.

(a) Unless the board order specifies that the order shall or will be modified or terminated upon the fulfillment of certain conditions or the occurrence of certain events, the decision to modify or terminate a board order shall be a matter for the exercise of sound discretion by the board. An agreed order entered into by Respondent may not be subsequently converted to a remedial plan. A licensee may not request modification or termination of a remedial plan.

(b) Modification or termination requests shall not be contested matters, but instead shall be matters to be ruled upon through the exercise of sound discretion by the board.

(c) If a board order sets out certain conditions or events for granting modification or termination of an order, the licensee shall have the burden of establishing that such conditions or events have taken place or been met.

(d) If by the terms of the order no specific conditions or events trigger the requirement that the petition be granted, the licensee has the burden of proof of demonstrating that one or more of the following factors should be considered for purposes of analyzing the merits of the petition and exercising sound discretion:

(1) whether there has been a significant change in circumstances which indicates that it is in the best interest of the public and the licensee to modify or terminate the order;

(2) whether there has been an unanticipated, unique or undue hardship on the licensee as a result of the board order which goes beyond the natural adverse ramifications of the disciplinary action (i.e. impossibility of requirement, geographical problems). Economic hardships such as the denial of insurance coverage or an adverse action taken by a medical specialty board are not considered unanticipated, unique or undue hardships;

(3) whether the licensee has engaged in special activities which are particularly commendable or so meritorious as to make modification or termination appropriate; and

(4) whether the licensee has fulfilled the requirements of the licensee's order in a timely manner and cooperated with the board and board staff during the period of probation or restriction.

(e) Probationers must be in full compliance with all the terms and conditions of their orders in order for the board to consider modification or termination of an order unless the modification or termination relates to the factors outlined in subsection (d)(2) of this section. [~~If a probationer has been notified in writing by board staff that staff is investigating issues of noncompliance, the board may not consider the probationer's request for modification or termination until those issues are resolved.~~]

(f) The determination of full compliance for the purpose of establishing eligibility for modification or termination requests will be based upon:

(1) a review of the probationer's entire compliance history, with emphasis on the compliance status since the date of last modification or termination request, if any;

(2) verification that the probationer is currently engaged in active practice;

(3) verification that the probationer has been in compliance with the terms and conditions of the order since the date of last modification or termination request, if any; and

(4) verification that the probationer is not the subject of any board investigation or pending board action of any kind.

(g) If a probationer is not in active practice, or is the subject of a board investigation or pending board action, the board may not consider the probationer's request for modification or termination until those issues are resolved.

(h) [~~(f)~~] Unless the terms of the board order specify otherwise, petitions for modification or termination shall be in writing and filed with the director of compliance for the board. The petition will then be scheduled before an ISC Panel for consideration. If prior to the date of the meeting the probationer becomes the subject of a board investigation, the petition will be withdrawn and the meeting will be cancelled. For such petitions that are withdrawn, the probationer will not be eligible to submit a new petition for modification or termination until the board investigation and board action, if any, is resolved.

(i) If the modification or termination request is recommended by a board panel to be granted, but prior to full board review or approval the probationer becomes the subject of a board investigation, the panel's recommendation will be withdrawn from the board's consideration for approval. For such petitions that are withdrawn, the probationer will not be eligible to submit a new petition for modification or termination until the board's investigation and board action, if any, is resolved.

(j) [~~(g)~~] Modification or termination requests may be made only once a year since the effective date of the original order or since the effective date of any orders subsequently granting or denying modification or termination of the original order unless a board order otherwise specifies, or upon an assertion in writing under oath by a petitioner indicating that a circumstance exists as described in subsection (d)(2) of this section. Upon receipt of the petition, the Director of Compliance shall determine whether such a request is valid and meets the requirements of subsection (d)(2) of this section. A finding by the Director of Compliance does not equate to such a finding by representatives of the board.

(k) [~~(h)~~] For purposes of administrative convenience, modification or termination requests may be heard by the full board or by representatives of the board. If such a request is heard by representatives of the board, the representatives shall consist of at least one board member or one district review committee member. In the event such a request is heard by board representatives, the representatives of the board shall not be authorized to bind the board, but shall only make recommendations to the board regarding an appropriate disposition. The recommendation of such representatives shall be submitted to the full board for adoption or rejection in the form of an order drafted by board staff.

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

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SUBCHAPTER F. TEMPORARY SUSPENSION AND RESTRICTION PROCEEDINGS

22 TAC §187.61

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

The amendment is also authorized by Chapter 164, Texas Occupations Code.

§187.61. Ancillary Proceeding.

(a) A temporary suspension or restriction proceeding is ancillary to a disciplinary proceeding concerning the licensee's alleged violation(s) of the Act.

(b) A temporary suspension or restriction order is effective immediately on the date entered and shall remain in effect until a final or further order of the board is entered in the disciplinary proceeding.[:]

[~~(1) until a final or further order of the board is entered in the disciplinary proceeding; or~~]

[~~(2) if the suspension or restriction is based upon an arrest under §187.57(d) of this title (relating to Charge of Disciplinary Panel), then the suspension or restriction remains in effect until there is a final disposition of the criminal case in which there is an issuance of a court order of guilt and sentence is issued.~~]

(c) A temporary suspension or restriction order based upon an arrest for certain offenses listed under §164.0595 of the Act and §187.57(d) of this title (relating to Charge of the Disciplinary Panel), remains in effect until there is a final disposition of the criminal case, including, but not limited to, conviction, plea agreement and sentence, deferred adjudication, acquittal, or dismissal of the criminal case.

(d) [~~(c)~~] Upon the entry of a temporary suspension or restriction order, an ISC shall be scheduled as soon as practicable in the disciplinary proceeding in accordance with §164.004 of the Act, and §2001.054(c), Texas Government Code, or, in the case of a suspension or restriction under [~~with the exception of~~] subsection (c) [~~(b)(2)~~] of this section, as soon as practicable after there is a final disposition of the criminal case. A second ISC is not required, however, if an ISC has previously been held in the disciplinary proceeding.

(e) [~~(d)~~] If the matter is not resolved by an Agreed Order through the ISC, a formal Complaint shall be filed in the disciplinary proceeding at the State Office of Administrative Hearings in accordance with §164.005 of the Act as soon as practicable after the ISC.

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

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SUBCHAPTER G. SUSPENSION BY OPERATION OF LAW

22 TAC §187.70, §187.72

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

The amendment is also authorized by Chapter 164, Texas Occupations Code.

§187.70. Purposes and Construction.

The purpose of this subchapter is to set forth a procedure for the suspension of a medical license in the case of initial conviction of certain offenses, initial findings by a trier of fact of guilt of certain drug-related felonies, or the incarceration of a physician in a state or federal penitentiary, as provided in §§164.057 - 164.058 of the Act. The board interprets this statute as providing for suspension by operation of law and that an initial conviction occurs when there has been adjudication of guilt of the offense charged, including, but not limited to, a finding of guilt by a jury or judge. Since the board's role in such circumstances is limited to whether the licensee has been initially convicted of certain offenses or is incarcerated, the board has determined that the procedures set forth in this subchapter will provide due process to the licensee and protect the public.

§187.72. Decision of the Panel.

(a) If the panel determines that the licensee has been initially convicted of an offense listed in §164.057(a)(1) of the Act, found guilty by a trier of fact of a drug-related felony listed in §164.057(a)(2) of the Act, or is incarcerated, [~~but does not determine that the suspension should be probated,~~] the panel shall direct the Executive Director to enter an order suspending the medical license of the licensee in accordance with §164.057 or §164.058 of the Act. [~~Because the Act requires suspension, the board has determined that an imminent peril to the public health, safety, or welfare requires immediate effect and the~~] The order of the Executive Director shall be effective immediately upon entry. The [~~and considered administratively final for purposes of appealing decision to district court. In addition, the~~] panel shall either offer an agreed order probating the suspension [~~providing the conditions for the lifting of the suspension~~] or refer the matter to SOAH for revocation of the physicians' license. [~~The agreed order shall supersede the order issued by the Executive Director only after the agreed order has been signed by the licensee and approved by the board.~~]

(b) If the panel determines that the suspension should be probated, the panel may recommend the terms and conditions of an agreed order to be signed by the licensee and presented to the board for approval. The agreed order probating suspension shall supersede the order of suspension issued by the executive director only after the agreed order has been signed by the licensee and approved by the board [~~be effective only after being signed by the licensee and approved by the board~~].

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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22 TAC §187.73

(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 Medical Board or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

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

The repeal is also authorized by Chapter 164, Texas Occupations Code.

§187.73. Termination of Suspension.
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 189. COMPLIANCE PROGRAM

22 TAC §189.7

The Texas Medical Board (Board) proposes amendments to §189.7, concerning Modification/Termination Hearings.

The amendments clarify the requirements related to a probationer's eligibility for submitting a petition to the board requesting modification or termination of an order. Language is added to subsection (a) providing that a probationer must be in full compliance with all the terms and conditions of his or her order to be eligible for the board to consider modification or termination of an order unless the modification or termination relates to the factors outlined in §187.43(d)(2) of this title (relating to Proceedings for the Modification/Termination of Agreed Orders and Disciplinary Orders).

Language is added to subsection (b) providing that if prior to the date of the meeting the probationer becomes the subject of a board investigation, the petition will be withdrawn and the meeting will be cancelled. Language is further added stating that for such petitions that are withdrawn, the probationer will not be eligible to submit a new petition for modification or termination until the board investigation and board action, if any, is resolved. Remaining amendments to subsection (b) represent cleanup of the rule.

Language is amended in subsection (d) referencing parallel proposed amendments under §187.43 of the title to ensure consistency between the board rule sections. Remaining amendment to subsection (d) represent general cleanup and reorganization of language.

Amendments to subsection (e) delete paragraph (2) to correctly reflect that the existence of a pending investigation would prohibit the panel's consideration of a petition for modification, termination, or reinstatement. Remaining amendments represent general cleanup.

New subsection (f) is added providing that if the modification or termination request is recommended by a board panel to be granted, but prior to full board review or approval the probationer becomes the subject of a board investigation, the panel's recommendation will be withdrawn from the board's consideration for approval, and that for such petitions that are withdrawn, the probationer will not be eligible to submit a new petition for modification or termination until the board's investigation and board action, if any, is resolved.

Remaining amendments represent re-lettering of the subsections subsequent to new (f).

Scott Freshour, General Counsel for the Board, has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing this proposal will be to clarify the requirements for a probationer's eligibility to submit and have considered by the Board a petition for modification or termination of an order.

Mr. Freshour has also determined that for the first five-year period the section is in effect there will be no fiscal implication to state or local government as a result of enforcing this section as proposed. There will be no effect to individuals required to comply with the rule as proposed. There will be no effect on small or micro businesses.

Comments on the proposal may be submitted to Rita Chapin, P.O. Box 2018, Austin, Texas 78768-2018 or e-mail comments to: rules.development@tmb.state.tx.us. A public hearing will be held at a later date.

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

The amendment is also authorized by Chapter 164, Texas Occupations Code.

§189.7. Modification/Termination Hearings.

(a) A request for a modification/termination hearing or reinstatement hearing must be submitted in writing by the probationer. The writing must specifically detail the requested desired action. A probationer must be in full compliance with all the terms and conditions of his or her order to be eligible for the board to consider modification or termination of an order unless the modification or termination relates to the factors outlined in §187.43(d)(2) of this title (relating to

Proceedings for the Modification/Termination of Agreed Orders and Disciplinary Orders).

(b) If a probationer is determined to be eligible for a hearing according to the terms of the order, §187.43 of this title [(~~relating to Proceedings for the Modification/Termination of Agreed Orders and Disciplinary Orders~~)], and Chapter 167 of this title (relating to Reinstatement and Reissuance) (as applicable), a date and time for the hearing shall be set and the probationer shall be notified in writing. If prior to the date of the meeting the probationer becomes the subject of a board investigation, the petition will be withdrawn and the meeting will be cancelled. For such petitions that are withdrawn, the probationer will not be eligible to submit a new petition for modification or termination until the board investigation and board action, if any, is resolved.

(c) If the probationer desires to submit evidence for consideration by the board's representatives, the probationer must provide at least three copies of all evidence no less than ten calendar days prior to the hearing. The board's representatives may refuse to consider evidence not timely submitted.

(d) When considering a modification or[,] termination[, ~~or reinstatement~~] request, the board's representatives must make a determination of the probationer's full compliance as defined in §187.43(f) of this title. When considering a reinstatement request, the board's representatives must make a determination of the probationer's eligibility under [~~shall make a determination if the probationer is eligible for the request pursuant to §187.43(d) of this title and/or~~] Chapter 167 of this title.

(e) In addition, when [~~When~~] considering a modification, termination, or reinstatement request, the board's representatives may also consider:

(1) evidence presented by the probationer;

[~~(2) the existence of pending investigations;~~]

[~~(3) past compliance with the order;~~]

(2) [~~(4)~~] the existence of prior orders; and

(3) [~~(5)~~] any information or evidence the board's representatives deem necessary to make an informed decision.

(f) If the modification or termination request is recommended by a board panel to be granted, but prior to full board review or approval the probationer becomes the subject of a board investigation, the panel's recommendation will be withdrawn from the board's consideration for approval. For such petitions that are withdrawn, the probationer will not be eligible to submit a new petition for modification or termination until the board's investigation and board action, if any, is resolved.

(g) [~~(f)~~] If a probationer is requesting a reinstatement hearing, the probationer must submit evidence of completion of any required stipulations prior to the hearing being set.

(h) [~~(g)~~] In addition to requirements, set forth in §167.2 of this title (relating to Procedure for Requests for Reinstatement) a probationer requesting reinstatement of a license must prove that the probationer is mentally, physically, clinically, and otherwise competent to return to the practice of medicine.

(i) [~~(h)~~] The decision to modify or terminate all or any part of an order is at the sole discretion of the board unless otherwise specified in the order.

(j) [~~(i)~~] A probationer under a remedial plan may not request modification or termination of the remedial plan unless the plan specifically grants the probationer the right to request modification of termination of the remedial plan.

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 April 27, 2015.

TRD-201501456
Mari Robinson, J.D.
Executive Director
Texas Medical Board
Earliest possible date of adoption: June 7, 2015
For further information, please call: (512) 305-7016

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PART 36. COUNCIL ON SEX OFFENDER TREATMENT

CHAPTER 810. COUNCIL ON SEX OFFENDER TREATMENT

The Council on Sex Offender Treatment (council) proposes amendments to §§810.1 - 810.5, 810.8, 810.9, 810.31 - 810.34, 810.61 - 810.67, 810.91, 810.92 and 810.301 - 810.308 and the repeal of §810.68, relating to the council, and to the licensing and regulation of sex offender treatment providers.

BACKGROUND AND PURPOSE

The proposed amendments to §810.3 implement Senate Bill 162 of the 83rd Legislature, Regular Session, 2013, which amended the Texas Occupations Code, Chapter 55, requiring the council, by rule, to set licensure requirement procedures for military spouses and the eligibility requirements for certain licenses issued to applicants with military experience.

The proposed amendments also clarify definitions, establish a new licensing structure with two types of licenses instead of three, and update and align the rules for sex offender treatment providers through simplified assessment and treatment standards.

The proposed repeal of §810.68 removes unnecessary language to further align the rules with current sex offender treatment standards.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to Government Code, Chapter 2001 (Administrative Procedure Act). Sections 810.1 - 810.5, 810.8, 810.9, 810.31 - 810.34, 810.61 - 810.67, 810.91, 810.92 and 810.301 - 810.308 have been reviewed and the council has determined that reasons for adopting the sections continue to exist because rules on this subject are needed to administer the program effectively.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §810.1 clarifies the offenses of juveniles being assessed and treated.

The proposed amendment to §810.2 clarifies definitions and adds a new definition for empirically supported approaches while removing definitions relating to the containment model.

The proposed amendment to §810.3 adds licensed psychological associates to the eligible primary mental health licenses for licensed sex offender treatment provider to bring it into compliance with the existing statute, removes the provisional sex offender treatment provider license, and clarifies the requirements for only two licenses, affiliate sex offender treatment provider and licensed sex offender treatment provider. This change will allow all applicants who were formerly eligible for the provisional sex offender treatment provider license to be eligible for the affiliate sex offender treatment provider license. No other licensure requirements are affected by this change. The proposed amendment also sets licensure requirement procedures for military spouses and the eligibility requirements for certain licenses issued to applicants with military experience. Furthermore, it clarifies other minor issues in the rules relating to license requirements and clarifies that online hours are not acceptable for the 40 hours of continuing education training.

The proposed amendment to §810.4 clarifies the rules, changes the maximum length of the initial licensing period from 30 months to 24 months, removes obsolete language regarding license renewal and expiration dates, increases the maximum number of continuing education hours that can be earned through presentations from 4 to 6, and removes the option to carry over 3 victim hours to the next renewal period.

The proposed amendment to §810.5 removes obsolete language including POSTP and clarifies the offenses of juveniles being treated.

The proposed amendment to §810.8 clarifies the types of criminal history that would constitute grounds to deny or revoke a license.

The proposed amendment to §810.9 contains a non-substantive change for clarity.

The proposed amendment to §810.31 contains a non-substantive grammatical correction.

The proposed amendment to §810.32 contains a non-substantive change for clarity.

The proposed amendment to §810.33 adds a reference to the agency's records retention schedule to bring the section into compliance with current practice.

The proposed amendment to §810.34 contains a non-substantive grammatical correction.

The proposed amendment to §810.61 clarifies the offenses of juveniles.

The proposed amendment to §810.62 clarifies assessment standards and removes obsolete language.

The proposed amendment to §810.63 clarifies assessment standards for adult sex offenders and juveniles who commit sexual offenses and specifies that licensees may provide treatment to a client for whom they have conducted an assessment.

The proposed amendment to §810.64 clarifies assessment and treatment standards for adult sex offenders and removes specifics that are already included in a comprehensive assessment.

The proposed amendment to §810.65 clarifies assessment and treatment standards for juveniles who commit sexual offenses, including the elements required for a comprehensive assessment or treatment program.

The proposed amendment to §810.66 removes language that prohibits female offenders from receiving treatment in the same group as male offenders.

The proposed amendment to §810.67 changes language regarding group therapy for developmentally delayed clients so that groups should not be less than 60 minutes in length instead of 30 minutes and changes references from the containment model to empirically supported approaches.

The proposed repeal of §810.68 removes all language detailing unnecessary specifics regarding issues to be addressed in treatment for adult and juvenile offenders.

The proposed amendment to §810.91 removes a reference to "membership" which is inconsistent with licensure.

The proposed amendment to §810.92 removes language relating to professional relationships and research and publications, clarifies language regarding how the licensee shall represent his/her professional background, training, and status, and changes references from the containment model to empirically supported approaches and treatment team.

The proposed amendment to §810.301 contains a non-substantive change for clarity.

The proposed amendment to §810.302 clarifies the definition of "register" relating to the early termination for certain persons' obligation to register.

The proposed amendment to §810.303 contains a non-substantive grammatical correction.

The proposed amendment to §810.304 contains a non-substantive grammatical correction.

The proposed amendment to §810.305 contains a non-substantive change for clarity.

The proposed amendment to §810.306 clarifies definitions relating the evaluation specialists who provide deregistration evaluation services in the early termination for certain persons' obligation to register process.

The proposed amendment to §810.307 contains a non-substantive change for clarity.

The proposed amendment to §810.308 contains a non-substantive change for clarity.

FISCAL NOTE

Celeste Lunceford, Executive Director, has determined that for each of the first five years the proposed sections will be in effect, there will be no fiscal implications to state or local governments as a result of enforcing or administering the sections as proposed.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Lunceford has determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the sections as proposed. This was determined by interpretation of the rules that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the sections, and the proposed sections affect individual licensees and applicants but does not impose any new requirements on businesses.

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 negative impact on local employment.

PUBLIC BENEFIT

Ms. Lunceford has also 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 continue to ensure public health and safety through the effective licensing and regulation of sex offender treatment providers.

REGULATORY ANALYSIS

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

PUBLIC COMMENT

Comments on the proposal may be submitted to Celeste Lunceford, Executive Director, Council on Sex Offender Treatment, Professional Licensing and Certification Unit, Division for Regulatory Services, Department of State Health Services, Mail Code 1982, P.O. Box 149347, Austin, Texas 78714-9347 or by email to csot@dshs.state.tx.us. When submitting comments by email, please include "Comments on Proposed Rules" in the subject line. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

SUBCHAPTER A. LICENSED SEX OFFENDER TREATMENT PROVIDERS

22 TAC §§810.1 - 810.5, 810.8, 810.9

STATUTORY AUTHORITY

The amendments are proposed under Texas Occupations Code, §110.158, which authorizes the council to adopt rules necessary for the performance of its duties. Review of the rules implements Government Code, §2001.039.

The amendments affect Texas Occupations Code, Chapter 110; and Government Code, Chapter 2001.

§810.1. Introduction.

(a) Purpose. The provisions of this chapter govern the procedures relating to the licensing of individuals who assess and treat adult sex offenders and juveniles who commit sexual offenses [~~with sexual behavior problems~~] in the State of Texas.

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

§810.2. Definitions.

(a) General Definitions.

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

(3) Case Management--The coordination and implementation of activities directed toward supervising, treating, and managing the adult sex offender or juvenile who commit sexual offenses [~~with sexual behavior problems~~].

(4) Client(s)--Used interchangeably with adult sex offenders and juveniles who commit sexual offenses [~~with sexual behavioral problems~~].

(5) - (10) (No change.)

(11) Licensee--A treatment provider licensed by the council and who is recognized based on training and experience to provide assessment and treatment to adult sex offenders and/or juveniles who commit sexual offenses [~~with sexual behavioral problems~~] who have been convicted, adjudicated, deferred, or referred by a State agency or court.

(12) Mental Health or Medical License--A person licensed in Texas to practice as a physician, psychiatrist, psychologist, psychological associate, provisionally licensed psychologist, licensed professional counselor, licensed professional counselor intern, licensed marriage and family therapist, licensed marriage and family associate, licensed clinical social worker, licensed master social worker under a TSBSWE's approved clinical supervision plan, or advanced nurse practitioner recognized as a psychiatric clinical nurse specialist or psychiatric mental health nurse practitioner, and who provides the treatment of sex offenders and/or juveniles who commit sexual offenses [~~with sexual behavior problems~~].

(13) - (15) (No change.)

(b) Treatment Definitions.

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

[~~(7) Containment Approach--A method of case management and treatment that seeks to hold adult sex offenders and juveniles with sexual behavioral problems accountable through the combined use of both internal and external control measures. A containment approach requires a philosophy that values public safety, victim protection, and reparation for victims as the paramount objective and the integration of a collection of attitudes, expectations, laws, policies, procedures, and practices.~~]

[~~(8) Containment Model--The communication, cooperation, coordination, and exchange of information between, district attorneys, judges, community supervision officers, parole officers, juvenile probation officers, juvenile detention officers, institutional staff, correctional officers, case managers, child protective service workers, mental health case workers, law enforcement, polygraph examiners, victim's therapist, victim advocates, treatment providers, school officials (if applicable), family members, guardians, or custodians (if applicable), and other support persons to enhance community protection.~~]

(7) [~~(9)~~] Denial--The refusal or inability to acknowledge in whole or in part sexually deviant arousal, sexually deviant intent, and/or sexually deviant behavior.

(8) [~~(10)~~] Deviant Sexual Arousal--A pattern of physiological sexual responses to inappropriate fantasies, thoughts, objects, animals, and/or persons that may or may not precede a sexual act.

(9) [~~(11)~~] Deviant Sexual Behavior--A sexual act that meets one or more of the criteria defined by state law. This includes sexual arousal to or interest in prepubescent children, sexual violence, and hypersexuality.

(10) [~~(12)~~] Developmental Disability--A severe and chronic disability that is attributable to a mental or physical impairment or a combination of physical and mental impairments, is manifested before age 22, is likely to continue indefinitely, and results in substantial functional limitations in three or more of the major life activities (Health and Safety Code, Chapter 614).

(11) [~~(13)~~] Dynamic Risk Factors--Risk factors that can change over time and are important targets for treatment and supervision.

(12) [~~(14)~~] Empathy--The ability to identify and understand another person's feelings, situation, or ideas.

(13) Empirically Supported Approaches--Treatment or therapeutic approaches and techniques that have been derived from and guided by peer-reviewed studies.

(14) [~~(15)~~] Grooming--The process of desensitizing and manipulating the victim(s) and/or others for the purpose of gaining an opportunity to commit a sexually deviant act.

~~[(16) Inappropriate Sexual Behavior--Any sexual behavior outside the age and development for that individual.]~~

(15) [~~(17)~~] Juvenile who commits sexual offenses [~~with Sexual Behavior Problems~~]--A person who at the time of the offense:

(A) is 10 years of age or older and under 17 years of age and who has been adjudicated of committing a sex crime under the laws of a state, the United States, the Uniform Code of Military Justice, or any foreign country laws; or

(B) is 17 years of age or older [~~and under 18 years of age~~] and on probation who has been adjudicated of committing a sex crime under the laws of a state, the United States, the Uniform Code of Military Justice, or any foreign country laws before becoming 17 years of age.

(16) [~~(18)~~] Mental Illness--An illness, disease, or condition, other than epilepsy, senility, alcoholism, or mental deficiency, that substantially impairs a person's thoughts, perception of reality, emotional processes, or judgment, or grossly impairs behavior as demonstrated by recent disturbed behavior (Health and Safety Code, Chapter 571).

(17) [~~(19)~~] Mental Retardation--A significantly sub-average general intellectual functioning that is concurrent with deficits in adaptive behavior and originates during the developmental period (Health and Safety Code, §591.003).

(18) [~~(20)~~] Non-Deceptive Polygraph Examination Result--A non-deceptive polygraph examination result must include no significant criteria normally associated with deception to the relevant questions. The examinee's salience should be focused on the comparison questions. Examiners will utilize an accepted numerical scoring system to ensure a non-deceptive result.

(19) [~~(21)~~] Offense Sequence--The specific sequence(s) of thoughts, feelings, behaviors, and events that may occur before, during, or after a sexual offense is committed.

(20) [~~(22)~~] Penile Plethysmograph (PPG)--A diagnostic method to assess sexual arousal by measuring the blood flow (tumescence) to the penis during the presentation of sexual stimuli in a controlled setting by providing the identification of a clients' physiological arousal in response to sexual stimuli (audio/visual).

(21) [~~(23)~~] Polygraph (Clinical) Examination--The employment of any instrumentation complying with the required minimum standards of the Texas Polygraph Examiner's Act and used for the purpose of measuring the physiological changes associated with deception. The following are descriptions of the four general types of polygraphs utilized:

(A) Instant Sexual Offense Polygraph--addresses the offense of conviction in conjunction or adjudication with the official version;

(B) Sexual History Polygraph--addresses the complete sexual history of the client up to the instant offense;

(C) Maintenance Polygraph--addresses compliance with conditions of supervision and treatment; and

(D) Monitoring Polygraph--addresses whether the client has committed a "new" sexual offense.

(22) [~~(24)~~] Polygraph Examiner--A person with a current license approved by the Texas Department of Licensing and Regulation and who meets minimum criteria to be listed by the Joint Polygraph Committee on Offender Testing (JPCOT) and/or the American Polygraph Association (APA) Post-Conviction Sex Offender Testing (PCSOT) Standards for polygraphing adult sex offenders and juveniles who commit sexual offenses [~~with sexual behavior problems~~].

(23) [~~(25)~~] Reoffense Prevention Plan--A [~~Is a~~] multilevel plan that assists the client in developing strategies to addresses the risk factors or precursors that have typically preceded sexual offenses.

(24) [~~(26)~~] Safety Plan--A written document derived from the process of planning for community safety. The document identifies potential high-risk situation and addresses ways in which situations will be handled without the adult sex offender or juvenile placing others at risk.

(25) [~~(27)~~] Sex Offender--A person who:

(A) is or has been convicted or adjudicated of a sex crime under the laws of the State of Texas, any other state or territory, or under federal law, including a conviction of a sex crime under the Uniform Code of Military Justice;

(B) is or has been awarded deferred adjudication for a sex crime under the laws of the State of Texas, any other state or territory, or under federal law; or

(C) is or has been convicted, adjudicated, or received deferred adjudication for a sexually motivated offense which involved the intent to arouse or gratify the sexual desire of any person immediately before, during, or immediately after the commission of an offense.

(26) [~~(28)~~] Sex Offender Specific Treatment--Treatment modalities that are based on empirical research with regard to favorable treatment outcomes and are professionally accepted in the field of sex offender treatment and the treatment of juveniles who commit sexual offenses [~~with sexual behavior problems~~]. Offense specific treatment means a long-term comprehensive set of planned treatment experiences and interventions that modify sexually deviant thoughts, fantasies, and behaviors and that utilize specific strategies to promote change and to reduce the chance of re-offending. Currently, the primary treatment modality is cognitive behavioral group treatment. Sex offender treatment does not include general rehabilitation or clinical services provided in a criminal justice or juvenile justice institution as a part of the mainstream adjunct treatment programs.

(27) [~~(29)~~] Static Risk Factors--Risk factors that are unlikely to change over time.

(28) [~~(30)~~] Sub-Average General Intellectual Functioning--The measured intelligence on standardized psychometric instruments

of two or more standard deviations below the age-group mean for the tests used (Health and Safety Code, §591.003).

(29) [~~(31)~~] Successful Completion of Sex Offender Specific Treatment--Shall be determined by licensees based upon an analysis of risk, needs and responsivity issues. Factors to be considered shall [~~May~~] include but are [~~is~~] not limited to admitting and accepting responsibility for all criminal behavior [~~crimes~~], demonstrating the ability to control deviant sexual arousal, understanding the sexual offense cycle, increase in pro-social behaviors, increase in appropriate support systems, improved social competency, compliance with supervision, compliance with court conditions, increased understanding of victimization, no deception indicated on exit polygraphs, no deception indicated on the sex history polygraph, [~~the indication of a non-deceptive examination result on the sex history polygraph,~~] approved safety plans, approved reoffense prevention plans, successful completion of adjunct treatments (for example: anger management, substance abuse, etc.), and the demonstrated integration and practical application of the skills presented in treatment. Each of these issues regarding successful completion of treatment shall be addressed unless precluded by §810.65 of this title (relating to the Assessment and Treatment of Juveniles Who Commit Sexual Offenses [~~with Sexual Behavior Problems~~]), §810.67 of this title (relating to the Assessment and Treatment Standards for Developmentally Delayed Clients)[~~, or unless a state agency is exempt from a specific licensing requirement. The Licensed Sex Offender Treatment Provider after collaborating with appropriate criminal/juvenile justice personnel determines the successful completion of treatment~~].

(30) [~~(32)~~] Visual Reaction Time (VRT)--The measurement of sexual interest based on the relative amount of time spent looking at visual stimuli.

§810.3. License Required.

(a) (No change.)

(b) The council shall maintain a list of licensees who meet the council's licensure criteria to assess and treat adult sex offenders and/or juveniles who commit sexual offenses [~~with sexual behavior problems~~]. The council shall recognize the experience and training of treatment providers in the following licensure categories: "Licensed Sex Offender Treatment Provider" and[~~,~~] "Affiliate Sex Offender Treatment Provider."[~~, or "Provisional Sex Offender Treatment Provider".~~]

(c) Sex offender treatment does not include general rehabilitation or clinical services provided in a criminal justice or juvenile justice institution as a part of the mainstream adjunct treatment programs.

(1) Licensed Sex Offender Treatment Provider (LSOTP). To be eligible as a LSOTP, the applicant shall meet all of the following criteria:

(A) hold a mental health or medical license in Texas. [~~licensed in Texas to practice as a physician, psychiatrist, psychologist, licensed professional counselor, licensed marriage and family therapist, licensed clinical social worker, or advanced nurse practitioner recognized as a psychiatric clinical nurse specialist or psychiatric mental health nurse practitioner who provides services for the assessment and treatment of adult sex offenders and/or juveniles with sexual behavior problems.~~] The mental health or medical license status shall be current and active;[~~:~~]

(B) experience and training required as listed in clauses (i) - (ii) of this subparagraph:

(i) possess a minimum of 1000 documented and verified hours of clinical experience while under the supervision of a council approved supervisor in the areas of assessment and treatment of sex offenders, obtained within [~~a within~~] the past 7-year period, and provide 1 reference letter from a licensed sex offender treatment provider [~~or mental health professional~~] who has actual knowledge of the applicant's clinical work in sex offender assessment and treatment; and

(ii) submit proof of completion of [~~possess~~] a minimum of 40 hours of documented continuing education training obtained within 3 years prior to the application date, in the specific area of sex offender assessment and treatment. Online hours are not acceptable. Of the initial 40 hours training required, 30 hours shall be in the specific area of sex offender assessment and treatment. Ten hours shall be in sexual assault victim related training;

(C) (No change.)

(D) persons making initial application or renewing their eligibility for licensure shall adhere to Subchapter C. Standards of Practice and Subchapter D. Code of Professional Ethics [~~to the extent the adherence does not conflict with other laws~~] and shall comply with the following requirements:

(i) - (iv) (No change.)

(E) - (H) (No change.)

(2) Affiliate Sex Offender Treatment Provider (ASOTP). To be eligible as an [~~a licensed~~] ASOTP, the applicant shall meet all of the following criteria:

[~~(A) licensed in Texas to practice as a physician, psychiatrist, psychologist, psychological associate, provisionally licensed psychologist, licensed professional counselor, licensed professional counselor intern, licensed marriage and family therapist, licensed marriage and family associate, licensed clinical social worker, licensed master social worker under a TSBSWE's approved clinical supervision plan, or an advanced nurse practitioner recognized as a psychiatric clinical nurse specialist or psychiatric mental health nurse practitioner who provides services for the assessment and treatment of adult sex offenders and/or juveniles with sexual behavior problems. The mental or medical health license status shall be current and active;~~]

[~~(B) experience and training required as listed in clauses (i) - (iii) of this subparagraph:~~]

~~(i)~~ ~~possess a minimum of 250 documented and verified hours of clinical experience in the areas of assessment and treatment of sex offenders and/or juveniles with sexual behavior problems, obtained within the past 7-year period, and provide 1 reference letter from a licensed sex offender treatment provider or mental health professional who has actual knowledge of the applicant's clinical work in sex offender assessment and treatment;~~]

~~(ii)~~ ~~be supervised by a LSOTP in accordance with paragraph (6)(A) - (D) of this subsection until LSOTP status is obtained and submit a copy of the LSOTP supervisor's license indicating that the applicant is current and in good standing; and~~]

~~(iii)~~ ~~possess a minimum of 40 hours of documented continuing education training obtained within 3 years prior to application date, in the specific area of sex offender assessment and treatment. Of the initial 40 hours training required, 30 hours shall be in sex offender specific training. Ten hours shall be in sexual assault victim related training;~~]

[~~(C) submit a complete and accurate description of the applicant's treatment program on a form provided by the council;~~]

[~~(D) comply with paragraph (1)(D)(i) - (iv) of this subsection;~~]

[~~(E) persons making initial application or renewing their eligibility for licensure shall adhere to Subchapter C. Standards~~

of Practice and Subchapter D. Code of Professional Ethics to the extent the adherence does not conflict with other laws;]

[(F) submit an application fee as defined in §810.5 of this title;]

[(G) submit a copy of the applicant's medical or mental health license as set out in subparagraph (A) of this paragraph, indicating the applicant is current and in good standing;]

[(H) sign the application form(s) and attest to the accuracy of the application information; and]

[(I) complete the process within 90 days of the application's receipt in the council office.]

[(J) After completing the required documented clinical and continuing education hours and depending upon the status of the licensee's mental or medical license, the ASOTP may be upgraded to a LSOTP. The licensee does not need to submit a new application if the ASOTP license is current. Licensees will be notified if there are any deficiencies.]

[(3) Provisional Sex Offender Treatment Provider (PSOTP). To be eligible as a licensed PSOTP, the applicant shall meet all of the following criteria:]

(A) hold a mental health or medical license. [licensed in Texas to practice as a physician, psychiatrist, psychologist, psychological associate, provisionally licensed psychologist, licensed professional counselor, licensed professional counselor intern, licensed marriage and family therapist, licensed marriage and family associate, licensed clinical social worker, licensed master social worker under a TSBSWE's approved clinical supervision plan, or an advanced nurse practitioner recognized as a psychiatric clinical nurse specialist or psychiatric mental health nurse practitioner who provides services for the assessment and treatment of adult sex offenders and/or juveniles with sexual behavior problems.] The mental or medical health license status shall be current and active; and

[(B) experience and training required as listed in clauses (i) - (iii) of this subparagraph:]

[(i) possess 0 to 1000 documented and verified hours of clinical experience in the areas of assessment and treatment of sex offenders, obtained within the past 7-year period, and provide 1 reference letter from a licensed sex offender treatment provider or mental health professional who has actual knowledge of the applicant's clinical work in sex offender assessment and treatment;]

(B) [(ii)] supervised by a LSOTP in accordance with paragraph (8)(A) [(6)(A)] - (D) of this section until LSOTP status is obtained and submit a copy of the LSOTP supervisor's license, and indicated that the applicant is current and in good standing. [A PSOTP applicant is exempt from supervision if the applicant is only lacking the CE requirements necessary to become a LSOTP; and]

[(iii) possess a minimum of 40 hours of documented continuing education training obtained within 24 months of the date of application, in the specific area of sex offender assessment and treatment. Of the initial 40 hours training required, 30 hours shall be in sex offender specific training. Ten hours shall be in sexual assault victim related training;]

(C) submit a complete and accurate description of the applicant's treatment program on a form provided by the council;

(D) comply with paragraph (1)(D)(i) - (iv) of this subsection;

(E) persons making initial application or renewing their eligibility for licensure shall adhere to Subchapter C. Standards of Practice and adhere to Subchapter D. Code of Professional Ethics to the extent the adherence does not conflict with other laws;

(F) submit an application fee defined in §810.5 of this title;

(G) submit a copy of the applicant's medical or mental health license as set out in subparagraph (A) of this paragraph, indicating the applicant is current and in good standing;

(H) sign the application form(s) and attest to the accuracy of the application information; and

(I) complete the process within 90 days of the application's receipt in the council office.

(J) After completing the required documented clinical and continuing education hours, the ASOTP [PSOTP] may be upgraded to the LSOTP [or ASOTP license] based on the number of completed hours and depending upon the status of the licensee's medical or mental health license. [The licensee does not need to submit a new application if the PSOTP license is current. Licensees will be notified if there are any deficiencies.]

(3) [(4)] Licensing Out-of-State Applicants/Reciprocity. The council may waive any prerequisite to licensing for an application after either:

(A) receiving the applicant's credentials and determining that the applicant holds a valid sex offender treatment license from another state that has license requirements substantially equivalent to those of this state; or[.]

(B) determining, on a case by case basis, that the applicant possesses comparable training and experience in the assessment and treatment of sex offenders.

(4) [(5)] Request for Criminal History Evaluation Letter.

(A) In accordance with Occupations Code, §53.102, a person may request the council to issue a criminal history evaluation letter regarding the person's eligibility for a license if the person:

(i) is enrolled or planning to enroll in an educational program that prepares a person for an initial license or is planning to take an examination for an initial license; and

(ii) has reason to believe that the person is ineligible for the license due to a conviction for a felony or misdemeanor offense.

(B) A person making a request for issuance of a criminal history evaluation letter shall submit the request on a form prescribed by the council, accompanied by the criminal history evaluation letter fee and the required supporting documentation, as described on the form. The request shall state the basis for the person's potential ineligibility.

(C) The council has the same authority to investigate a request submitted under this section and the requestor's eligibility that the council has to investigate a person applying for a license.

(D) If the council determines that a ground for ineligibility does not exist, the council shall notify the requestor in writing of the determination. The notice shall be issued not later than the 90th day after the date the council received the request form, the criminal history evaluation letter fee, and any supporting documentation as described in the request form.

(E) If the council determines that the requestor is ineligible for a license, the council shall issue a letter setting out each basis

for potential ineligibility and the council's determination as to eligibility. The letter shall be issued not later than the 90th day after the date the council received the request form, the criminal history evaluation fee, and any supporting documentation as described in the request form. In the absence of new evidence known to but not disclosed by the requestor or not reasonably available to the council at the time the letter is issued, the board's ruling on the request determines the requestor's eligibility with respect to the grounds for potential ineligibility set out in the letter.

(5) [~~(6)~~] Inactive Status.

(A) A licensee may place his or her license on inactive status by submitting a written request prior to the expiration of the license along with the inactive fee to the council. Inactive status periods shall be granted only to persons whose licenses are current or whose licenses have been expired for less than 1 year.

(B) An inactive status period shall begin on the first day of the month following payment of an inactive status fee.

(C) A person may not act as a licensee, represent himself or herself as a licensee, or provide sex offender treatment during the inactive status period, unless exempted by the Act.

(D) A person may remain subject to investigation and action under §810.9 of this title (relating to Complaints, Disciplinary Actions, Administrative Hearings, and Judicial Review) during the period of inactive status.

(E) A person must notify the council in writing to return to active status. Active status shall begin after receipt of proof of successful completion of 24 hours continuing education within the 2 years preceding reinstatement of active status and payment of applicable fees.

(F) The person's next continuing education cycle will begin upon return to active status and end on the day of license expiration.

(G) A person previously approved as a supervisor whose license has been inactive for more than 2 years and who resumes active license status may become a supervisor by again completing the supervision requirements of the council.

(H) A person who is granted an inactive status by the person's mental health or medical license under §810.2(a)(12) of this title (relating to Definitions) shall be required to request an inactive status under this section.

(I) The licensee must renew the inactive status every 2 years.

(6) [~~(7)~~] Licensing of Military Service Members, Military Veterans, and Military Spouses. [~~Active Military.~~]

(A) This paragraph sets out licensing and renewal procedures for military service members, military veterans, and military spouses required under Occupations Code, Chapter 55 (relating to Licensing of Military Service Members, Military Veterans, and Military Spouses). For purposes of this section:

(i) "Military service member" means a person who is currently serving in the armed forces of the United States, in a reserve component of the armed forces of the United States, including the National Guard, or in the state military service of any state.

(ii) "Military spouse" means a person who is married to a military service member who is currently on active duty.

(iii) "Military veteran" means a person who has served in the army, navy, air force, marine corps, or coast guard of the United States, or in an auxiliary service of one of those branches of the armed forces.

(B) An applicant shall provide documentation of the applicant's status as a military service member, military veteran, or military spouse. Acceptable documentation includes, but is not limited to, copies of official documents such as military service orders, marriage licenses, and military discharge records. The application of a person who fails to provide documentation of his or her status shall not be processed under the requirements of this section.

(C) Upon request, an applicant shall provide acceptable proof of current licensure issued by another jurisdiction. Upon request, the applicant shall provide proof that the licensing requirements of that jurisdiction are substantially equivalent to the licensing requirements of this state.

(D) The council's authority to require an applicant to undergo a criminal history background check, and the timeframes associated with that process, are not affected by the requirements of this section.

(E) For an application for a license submitted by a verified military service member or military veteran, the applicant shall receive credit towards any licensing or apprenticeship requirements, except an examination requirement, for verified military service, training, or education that is relevant to the occupation, unless he or she holds a restricted license issued by another jurisdiction or if he or she has an unacceptable criminal history as described by the Act and this chapter.

(F) An applicant who is a military spouse who holds a current license issued by another jurisdiction that has substantially equivalent licensing requirements shall complete and submit an application form and fee. The council shall issue a license to a qualified applicant who holds such a license as soon as practicable and the renewal of the license shall be in accordance with subparagraph (I) of this paragraph.

(G) In accordance with Occupations Code, §55.004(c), the executive director may waive any prerequisite to obtaining a license after reviewing the applicant's credentials and determining that the applicant holds a license issued by another jurisdiction that has licensing requirements substantially equivalent to those of this state.

(H) A military spouse who within the five years preceding the application date held the license in this state that expired while the applicant lived in another state for at least six months is qualified for licensure based on the previously held license, if there are no unresolved complaints against the applicant and if there is no other bar to licensure, such as criminal background or non-compliance with a board order.

(I) If the council issues an initial license to an applicant who is a military spouse in accordance with subparagraph (F) of this paragraph, the council shall assess whether the applicant has met all licensing requirements of this state by virtue of the current license issued by another jurisdiction. The council shall provide this assessment in writing to the applicant at the time the license is issued. If the applicant has not met all licensing requirements of this state, the applicant must provide proof of completion at the time of the first application for license renewal. A license shall not be renewed, shall be allowed to expire, and shall become ineffective if the applicant does not provide proof of completion at the time of the first application for licensure renewal.

[~~(A) For purposes of this section, a "designated representative" is a person authorized in writing by the licensee to act on~~

behalf of the licensee. A copy of the written designation must be provided to the council.]

(J) [(B)] If a licensee fails to renew his or her license because the licensee is called to or is on active duty with the armed forces of the United States serving outside of the State of Texas, the licensee or the licensee's designated representative may request that the license be declared inactive or be renewed. A "designated representative" is a person authorized in writing by the licensee to act on behalf of the licensee. A copy of the written designation must be provided to the council. A request for inactive status shall be made in writing to the council prior to expiration of the license or within one year from the expiration date. A request for renewal may be made before or after the expiration date.

(i) A written request shall include a copy of the official transfer orders of the licensee or other official military documentation showing that the licensee is called to or on active duty serving outside of the State of Texas.

(ii) The payment of the inactive status fee, late renewal fee and licensure renewal penalty fee is waived for a licensee under this section.

(iii) An active duty licensee shall be allowed to renew under this section without submitting proof of continuing education hours.

(iv) The written request shall include a current address and telephone number for the licensee or the licensee's designated representative.

(v) The council may periodically notify the licensee or the licensee's designated representative that the license of the licensee remains in inactive status.

(vi) If a licensee is a civilian impacted or displaced for business purposes outside of the State of Texas due to a national emergency or war, the licensee or the licensee's designated representative may request that the license be declared inactive in the same manner as described in this section for military personnel. The written request shall include an explanation of how the licensee is impacted or displaced, which explanation shall be on the official letterhead of the licensee's business. The requirements of this section relating to renewal by active duty licensees shall not apply to a civilian under this paragraph.

(7) [(8)] Specialized Competencies. Licensed Sex Offender Treatment Providers with specialized competencies in the assessment and treatment of juveniles with sexual behavior problems, female sex offenders, and/or developmentally delayed sex offenders may have those competencies documented by the council, provided the following criteria is met:

(A) possess at least 250 documented and verified hours experience with each population in the assessment and treatment of juveniles who commit sexual offenses [with sexual behavior problems], female sex offenders, and/or developmentally delayed sex offenders; these hours may be part of the original training and experience hours required for the new application and original CE requirements up to 7 years prior;

(B) possess a minimum of 24 hours of documented continuing education training with each population in the assessment and treatment of juveniles who commit sexual offenses [with sexual behavior problems], female sex offenders, developmentally delayed sex offenders; and/or deregistration evaluation specialist these hours may be part of the original training and experience hours required for the original certification;

(C) possess a minimum of 3 hours of documented continuing education training with each population in the assessment and treatment of juveniles who commit sexual offenses [with sexual behavior problems], female sex offenders, and/or developmentally delayed sex offenders for renewal of the specialized competencies; and

(D) pay a biennial fee for each specialty as defined in §810.5(f) [§810.5(e)] of this title.

(8) [(9)] Supervision. All ASOTPs [and PSOTPs] providing sex offender assessment and treatment shall be supervised [unless exempt under paragraph (3)(B)(ii) of this subsection]. Supervision will include the following:

(A) An ASOTP [and PSOTP] providing sex offender assessment and treatment is required to be under the supervision of a LSOTP supervisor approved by the council [unless exempt under paragraph (3)(B)(ii) of this subsection]. The ASOTP [and PSOTP] shall provide a copy of supervision documentation to the council [during the renewal period unless exempt under paragraph (3)(B)(ii) of this subsection].

(B) An LSOTP that has not been a supervisor approved by the council prior to the effective date of this rule shall meet the following criteria:

(i) possess 5 years experience as an LSOTP [a RSOTP, or 5 years documented experience in the field of sex offender assessment and treatment, and/or an approved supervisor with another mental health license who has documented experience in the field of sex offender assessment and treatment];

(ii) sign and acknowledge the LSOTP supervisor's responsibilities form;

(iii) submit a biennial fee as defined in §810.5(f) of this title; and

(iv) obtain 3 hours documented continuing education in the supervision of sex offender treatment providers or in general supervision of other mental health professionals every 4 years.

(C) An ASOTP [and PSOTP] shall receive face-to-face supervision at least 1 hour per 20 hours of assessment and treatment with a minimum of 2 hours per month during any time period in which the supervisee provides sex offender assessment and treatment [unless exempt under subparagraph (B)(ii) of this paragraph]. Exceptions to supervision requirements shall be approved on a case-by-case basis by the council. Face-to-face supervision may be conducted through audio-visual means when distance or other factors preclude in-person meetings.

(D) The supervising LSOTP shall submit the required documentation to the council at the time of the renewal; the documentation shall contain the name(s) of the ASOTP(s) [and PSOTP(s)]and hours that each has been supervised [during the renewal cycle]. The supervising LSOTP shall [be required to] use the form(s) provided by the council.

(9) [(10)] License Certificates. Upon completion of the application or renewal process, licensees shall receive an official certificate and renewal cards from the council. [The certificate shall be displayed at all locations where sex offender assessment and treatment is provided.] As set forth in §810.5(i) [§810.5(g)] of this title, duplicate certificates may be obtained for a nominal fee.

(A) The council shall prepare and provide to each licensee a certificate [and initial] and renewal cards which contain the licensee's name and certificate number.

[(B) A licensee shall not display a license certificate(s) or renewal card(s) which have been reproduced or are expired, suspended, or revoked.]

(B) [(C)] A license certificate(s) or renewal card(s) issued by the council remains the property of the council and shall be surrendered to the council upon demand.

(C) [(D)] The address and telephone number of the council shall be displayed at all locations where sex offender assessment and treatment is conducted and/or the licensee shall provide a copy to the client on initial intake for the purpose of directing complaints against the licensee to the council.

(10) [(11)] Application processing. The council shall comply with the following procedures in processing applications for a license.

(A) The following times shall apply from a completed application receipt and acceptance date for filing, or until the date a written notice is issued stating the application is deficient and additional specific information is required. A written notice of application approval may be sent instead of the notice of acceptance of a complete application. The times are as follows:

(i) letter of acceptance of application for licensure--30 days;

(ii) letter of acceptance of application for renewal--30 days; and

(iii) letter of initial application deficiency--30 days.

(B) The following times shall apply from the receipt of the last item necessary to complete the application until the date of issuance of written notice approving or denying the application. The times for denial include notification of the proposed decision and of the opportunity, if required, to show compliance with the law and of the opportunity for a formal hearing. The times are as follows:

(i) approval of application--42 days; and

(ii) letter of denial of licensure--90 days.

(11) [(12)] Refund processing. The council shall comply with the following procedures in processing refunds of fees paid to the council. In the event an application is not processed in the times stated in paragraph (10)(A) [(11)(A)] - (B) of this subsection.

(A) An applicant has the right to request reimbursement of all fees paid in that particular application process. Application for reimbursement shall be made to the executive director. If the executive director does not agree that the time has been violated or finds that good cause existed for exceeding the time, the request shall be denied.

[(B) Good cause for exceeding the time is considered to exist if the number of applications for a license or renewal exceeds by 15% or more the applications processed in the same calendar quarter of the preceding year, another public or private entity relied upon by the council in the application process caused the delay, or any other condition exists giving the council good cause for exceeding the time.]

(B) [(C)] If the executive director denies a request for reimbursement under subparagraph (A) of this paragraph the applicant may appeal to the council for a timely resolution of any dispute arising from a violation of the processing times. [The applicant shall give written notice to the council at the address of the council that he or she requests full reimbursement of all fees paid because his or her application was not processed within the applicable time. The executive director shall submit a written report of the facts related to the processing of the application and of any good cause for exceeding the applicable time. The council shall provide written notice of the decision to the applicant and the executive director. The council shall decide an appeal in favor of the applicant, if the applicable time was exceeded and good cause was not established. If the council decides the appeal in favor of the applicant, full reimbursement of all fees paid in that particular application process shall be made.]

§810.4. License Issuance and/or Renewal.

All [Beginning September 1, 2006, all] new initial licenses shall expire on the last day of the licensee's birth month. The initial licensing period shall be at least 13 months and no more than 24 [30] months. Subsequent licensing periods will be 24 months. In order to maintain eligibility for the licensure as a sex offender treatment provider, the mental health or medical license of each renewal shall be current and active. All renewal applicants shall comply with the following:

(1) Number of continuing education (CE) hours. All renewal applicants shall acquire by the end of the 2-year cycle, a minimum of 24 hours of documented continuing education. Six hours shall be in ethics, [and] 12 hours shall be in sex offender assessment and treatment, and [of which] 6 hours shall be in [sexual assault] victim-related training[, beginning September 1, 2011]. All accredited mental health continuing education hours are accepted.

(2) - (3) (No change.)

(4) The audit process shall be as follows.

(A) - (B) (No change.)

(C) Failure to furnish this information [within 2 weeks of receipt of the audit forms] or knowingly providing false information during the audit process or the renewal process are grounds for disciplinary action against the licensee.

[(5) Beginning September 1, 2007, licensees may choose to renew biennially by September 30 or on the last day of the licensee's birth month. Fees shall not be prorated if the licensee chooses the birth month option. The first renewal period shall be at least 13 months and no more than 30 months. This option shall not be available to persons whose initial licenses were issued on or after September 1, 2006.]

[(6) Renewal applications for those persons initially licensed on or after September 1, 2006 shall be postmarked by the last day of the licensee's birth month or a late fee shall be assessed. Renewal applications for those initially licensed prior to September 1, 2006 shall be postmarked by September 30 or the last day of the licensee's birth month, depending on the chosen option, or a late fee shall be assessed.]

(5) [(7)] To ensure approval of continuing education hours, licensees should request pre-approval of hours from the council before attending continuing educational training. Instructors or sponsoring bodies may request pre-approval of hours from the council before conducting continuing education trainings. Continuing education activities related to the assessment and treatment of sex offenders or sexual assault victim related training shall be instructor-directed activities such as conferences, symposia, seminars, and workshops.

(6) [(8)] Continuing education hours will be credited for approved, didactic presentations within the context of a professional conference or seminar. On the job training and field trips shall not be credited with continuing education hours.

(7) [(9)] Licensees shall request pre-approval from the council for all online courses and courses taken at an institution of higher learning. All renewal applicants may count a maximum of 6 online hours per biennial renewal period not including ethic hours.

(8) [~~(10)~~] All renewal applicants may count a maximum of 6 [4] hours per biennial renewal period for the presentation of continuing education training, lectures, or courses in the specific area of sex offender assessment and treatment, sexual assault issues and/or victim training.

[~~(11) A maximum of 3 hours may be carried over per renewal period for sexual assault issues or sexual assault victim training hours.~~]

(9) [~~(12)~~] Continuing education extension.

(A) A licensee who has failed to complete the requirements for continuing education may be granted a 90-day extension by the executive director.

(B) The request for an extension of the CE period shall be made in writing and shall be postmarked at least 30 days prior to the expiration date of the license [~~prior to September 30~~].

(C) If an extension is requested, a late fee equal to one-half of the renewal fee stated in §810.5(b)(2)(B) of this title will be assessed.

[~~(D) If an extension is granted, the next CE period shall begin the day after the CE requirement has been satisfied.~~]

(D) [~~(E)~~] Credit earned during the extension period cannot be applied toward the next CE period.

(E) [~~(F)~~] A person who fails to complete the CE requirements during the extension period or who does not request an extension and holds an expired license, shall not use the title of LSOTPV or[~~,~~] ASOTP, [~~and PSOTP,~~] practice as a sex offender treatment provider, or provide sex offender treatment.

(10) [~~(13)~~] A license shall be renewed upon completion of the required CE within the given extension period, submission of the license form, and payment of the applicable late renewal fee.

(11) [~~(14)~~] A person who fails to complete CE requirements for renewal and failed to request an extension to the CE period may not renew the license. The person may obtain a new license by complying with the current requirements and procedures for obtaining a license.

§810.5. Fees.

(a) New Applicant Fees. The council has established the following license fees.

(1) All new LSOTP and[~~,~~] ASOTP[~~, and PSOTP~~] applicants shall submit a non-refundable $375 fee for a biennial application. Additional fees will be charged for Federal Bureau of Investigations and Texas Department of Public Safety criminal background checks unless exempt under §810.34 of this title (Relating to Frequency of Criminal Background Checks). Fees shall be determined by those agencies conducting the investigation.

(2) (No change.)

(b) Renewal Fees. Renewal forms and information shall be mailed to each licensee at the licensee's last known address as reflected in the council's records at least 60 days prior to license expiration [~~and mailed to the licensee's last known address as reflected in the council's records~~].

(1) (No change.)

(2) To renew, a LSOTP[~~,~~] or ASOTP[~~, or PSOTP~~] shall include a non-refundable $275 fee for a biennial renewal. All applicants shall comply with the following requirements.

(A) - (D) (No change.)

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

(f) Specialty Fees. Applicants who [~~that~~] meet the specialized competency criteria involving the treatment of juveniles who commit sexual offenses [~~with sexual behavior problems~~], females, developmentally delayed populations, and/or deregistration assessments shall submit a non-refundable $40 specialty fee for each biennial period.

(g) - (i) (No change.)

§810.8. Revocation, Denial, or Non-Renewal of a License.

(a) The council may revoke a license, deny an application for licensure, and/or refuse to renew a license upon proof that the treatment provider has:

(1) been convicted or received deferred adjudication for [~~adjudicated of~~] any misdemeanor involving a sexual offense or sexually motivated offense; or any felony, sexual or otherwise; [~~has ever received deferred adjudication for a sexual offense, or has been required to register as a sex offender in this state under Texas Code of Criminal Procedure, Chapter 62, or under any other law, or has been convicted or adjudicated of any felony;~~]

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

(b) (No change.)

§810.9. Complaints, Disciplinary Actions, Administrative Hearings, and Judicial Review.

(a) (No change.)

(b) Review of a [~~the~~] complaint.

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

(c) - (m) (No change.)

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

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Liles Arnold
Chair
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SUBCHAPTER B. CRIMINAL BACKGROUND CHECK

22 TAC §§810.31 - 810.34

STATUTORY AUTHORITY

The amendments are proposed under Texas Occupations Code, §110.158, which authorizes the council to adopt rules necessary for the performance of its duties. Review of the rules implements Government Code, §2001.039.

The amendments affect Texas Occupations Code, Chapter 110; and Government Code, Chapter 2001.

§810.31. Access to Criminal History Records.

The council is authorized to obtain information from the Texas Department of Public Safety or the Federal Bureau of Investigation about a conviction or deferred adjudication that relates to an applicant seeking licensure. The council is authorized to obtain a criminal history

record from any law enforcement agency [~~agencies~~]. The criminal history record information received under this section is for the exclusive use of the council and is privileged and confidential. The criminal history record information shall not be released or otherwise disclosed to any person or agency except on court order or with the written consent of the applicant.

§810.32. Records.

All other records of the council that are not made confidential by other law are open to inspection by the public during regular office hours. The content of the criminal background checks on each licensee are not public records and are confidential. Unless expressed in writing by the chairperson of the council, the executive director and the executive director's designee are the only staff authorized to have daily access to the criminal history records. These records shall [~~will~~] be maintained in separate files and not in the licensee files.

§810.33. Destruction of Criminal History Records.

In accordance with approved records retention schedules, the [~~The~~] council shall destroy conviction/adjudication information relating to a person after the council makes a decision on the eligibility of the applicant unless the information was the basis for a proposed denial, revocation, suspension, or refusal to renew a person's license. The council shall destroy the information provided by the Texas Department of Public Safety, the Federal Bureau of Investigation or any other law enforcement agency. In the event that information is collected online, all files created will be destroyed in the aforementioned timeframe.

§810.34. Frequency of Criminal Background Check.

(a) (No change.)

(b) State or Federal Governmental Employees Criminal History. Any employee of a state or federal governmental agency that conducts annual national and Texas criminal history checks on its employees may substitute a certification from that employer for any requirement for a criminal background check. The governmental entity shall provide a certification if the employee's [~~employees~~] criminal history changes. Fees for criminal history records may be waived if the applicant is unable to produce an employer certification.

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

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SUBCHAPTER C. STANDARDS OF PRACTICE

22 TAC §§810.61 - 810.67

STATUTORY AUTHORITY

The amendments are proposed under Texas Occupations Code, §110.158, which authorizes the council to adopt rules necessary for the performance of its duties. Review of the rules implements Government Code, §2001.039.

The amendments affect Texas Occupations Code, Chapter 110; and Government Code, Chapter 2001.

§810.61. Introduction to the State Standards of Practice.

These state standards were developed by the council to delineate appropriate assessment and treatment procedures and policies in Texas. These standards address the professional licensing expectations for the assessment and treatment of adult sex offenders and juveniles who commit sexual offenses [~~with sexual behavior problems~~].

§810.62. State Standards of Practice.

(a) Interventions shall be designed to assist the individual to effectively manage thoughts, feelings, attitudes, and behaviors associated with their risk to reoffend. Structured, cognitive behavioral skills-oriented treatment programs shall target specific criminogenic needs to reduce re-offense rates. Interventions utilized in the assessment and treatment of sex offenders and juveniles who commit sexual offenses [~~with sexual behavior problems~~] shall be empirically supported [~~validated~~] and generally accepted by professionals in this field.

(b) Licensees shall utilize the following principles when providing sex offender assessment and treatment:

(1) (No change.)

(2) not make statements that a client is not a [~~no longer at any~~] risk to reoffend sexually;

(3) (No change.)

(4) utilize empirically supported models for treating sex offenders and juveniles who commit sexual offenses [~~the containment model~~]; and

(5) (No change.)

§810.63. General Assessment Standards for Adult Sex Offenders and Juveniles Who Commit Sexual Offenses [~~(Adults and Juveniles)~~].

(a) The comprehensive assessment shall focus on the strengths, risks, and needs of the client, and identifying factors from social and sexual history, which may contribute to sexual deviance. Assessments shall provide the basis for the development of comprehensive treatment plans and shall provide recommendations regarding the intensity of intervention, specific treatment protocol needed, amenability to treatment, as well as the identified risk the adult sex offender and/or the juvenile who commit sexual offenses [~~with sexual behavior problems~~] presents to the community.

(b) (No change.)

(c) Licensees may provide treatment to a client for whom they have conducted an assessment.

(d) [~~(c)~~] In preparing assessments of adult sex offenders and juveniles who commit sexual offenses [~~with sexual behavior problems~~], licensees shall:

(1) be culturally sensitive, fair and impartial, providing objective and accurate data;

(2) respond only to referral questions that fall within the licensee's expertise and present level of knowledge;

(3) be respectful of the client's right to be informed of the reasons for the assessment, the interpretation of data, the basis for recommendations, and conclusions;

(4) have knowledge of the client's legal status;

(5) understand the limitations of a client's self-report and make all possible efforts to verify the information provided by the client;

(6) use assessment procedures and techniques sufficient to respond to the presenting issues, including risk for future sexual offending, and provide appropriate substantiation for the resulting conclusions and recommendations;

(7) administer, score, interpret and/or utilize assessment techniques, tests or instruments in a manner and for purposes for which there are professional or scientific bases;

(8) administer, score, interpret and/or utilize assessment techniques, tests or instruments in a manner and for purposes for which the assessment technique has been standardized;

[~~(9) not utilize assessment techniques, tests or instruments that are outdated or obsolete as determined by the council;~~]

[~~(10) not base their assessment or intervention decisions or recommendations on data or test results that are outdated, obsolete or not useful for the current purpose as determined by the council;~~]

(9) [~~(11)~~] acknowledge if an assessment consisted of only a clinical review without client contact and shall clarify the impact that limited information has on the reliability and validity of the resulting report;

(10) [~~(12)~~] provide clients in writing informed consent, statement of disclosures, releases and/or exceptions to confidentiality, and employ verbal explanations for clients who do not meet the reading or comprehension level required;

(11) [~~(13)~~] thoroughly review written documentation and collateral interviews. The information from all available and relevant sources, may include but is not limited to:

(A) criminal investigation records;

(B) child protective services investigations;

(C) previous assessments and treatment progress reports;

(D) mental health records and assessments;

(E) medical records;

(F) Texas Department of Criminal Justice and Texas Juvenile Justice Department [~~Youth Commission~~] records;

(G) probation records;

(H) information regarding details of the offense as obtained by law enforcement; and

(I) the official victim statement(s); and[~~;~~]

[~~(14) diligently interpret assessments conducted without collateral information;~~]

(12) [~~(15)~~] ensure written assessments document and acknowledge the procedures employed, summaries, conclusions, recommendations, and all collateral reports and interviews.[~~;~~]

[~~(16) new interviews or repeated interviews of victims should not be required during the client's assessment; these should only be used when there is no discernible risk of harm or discomfort to the victim; and~~]

[~~(17) when the assessment of a client and a victim are concurrent, the licensee shall be vigilant to remain objective in the administration of procedures and the interpretation of the information obtained through the interview or other means.~~]

(e) [~~(d)~~] Licensees shall subscribe and adhere to the following tenets regarding the client assessment.

(1) If a client does not meet the reading or comprehension level required by an assessment instrument, arrangements for using a standardized approved auditory (taped or read) version of the test instrument shall be made to the extent such versions are available.

(2) The clinical interview shall incorporate sufficient discussion necessary to augment, clarify, and explore the information obtained from the review of collateral materials and contacts and other components of the assessment (for example: testing results).

(3) Licensees shall make every effort to obtain the official offense report to compare the degree of similarity or disparity between the client and the victim's statements.

(4) Assessment of treatment needs shall identify strengths and weaknesses in the individual's psycho-sexual functioning for the purpose of directing treatment efforts to the appropriate areas.

(5) Recommendations for treatment should be based on the presence of factors known to be related to sexual offense risk and/or the absence of skills known to impact the reduction and/or management of risk factors related to sexual offense risk.

(6) When formulating recommendations, community safety and the degree to which a client is capable and willing to manage risk shall be considered.

[~~(7) If a significant amount of time has lapsed between the time of the assessment and when the client is accepted into a treatment program, an assessment update shall be required.~~]

[~~(8) An assessment update shall collect current data upon which the original treatment plan can either be confirmed or amended.~~]

(7) [~~(9)~~] Licensees shall make an effort to recommend the most appropriate treatment program available and objectively state the level of risk management regardless of whether existing limited resources preclude adequate or appropriate services.

§810.64. Assessment and Treatment Standards for Adult Sex Offenders.

(a) Comprehensive assessments [~~Assessments~~] shall provide [~~a comprehensive treatment plan and~~] recommendations regarding the intensity of intervention, specific treatment protocol needed, amenability to treatment, and the identified community risk.

(b) A comprehensive assessment as cited in subsections (a) and (b) [~~subsection (a) - (c)~~] of this section shall be completed within 60 days of a client's being accepted into treatment program. The assessment of adult sex offenders shall include:

(1) (No change.)

(2) clinical interview and social/developmental history;

(3) (No change.)

(4) risk for re-offense assessment [~~intellectual assessment~~];

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

[~~(c) Efforts shall be made to acquire the following information gathered in the assessment process:~~]

[~~(1) neurological, and cognitive functioning;~~]

[~~(2) mental status and psychiatric history;~~]

[~~(3) medical history of head injuries, physical abnormalities, enuresis, encopresis, current use of medication, allergies, accidents, operations, and major medical illnesses;~~]

[~~(4) self-destructive behaviors, self-mutilation, and suicide attempts;~~]

[~~(5) psychopathology and personality characteristics;~~]

[~~(6) family history and marital/relationship history;~~]

[(7) history of physical, emotional and/or sexual victimization;]

[(8) education and occupation history;]

[(9) criminal history;]

[(10) history of violence and aggression including use of weapons;]

[(11) history of truancy, fire-setting, and abuse of animals;]

[(12) interpersonal relationships, both past and current;]

[(13) cognitive distortions;]

[(14) social competence;]

[(15) impulse control;]

[(16) substance abuse;]

[(17) official report regarding the instant sexual offense (Occupations Code, Chapter 109, §109.054);]

[(18) denial, minimization and inability to accept responsibility;]

[(19) sexual history including sexual development, adolescent sexuality and experimentation, dating history, intimate sexual contacts, gender identity issues, adult sexual practices, masturbatory practices, sexual dysfunction, fantasy content, and sexual functioning; and]

[(20) sexual offense behavior, including description of offense behaviors, number of victims, gender and age of victims, frequency and duration of abusive sexual contact, victim selection, access, and grooming behaviors, use of threats, coercion or bribes to maintain victim silence, degree of force used before, during and/or after offense, and deviant arousal patterns.]

(c) [(d)] Treatment Standards for Adult Sex Offenders. Licensees shall adhere to the following standards when providing treatment to an adult sex offender:

(1) cognitive-behavioral or other empirically supported approaches shall be utilized in sex offender treatment groups;

(2) treatment groups [for non-developmentally delayed adults] shall not be less than 60 minutes in length with no more than 12 clients per group;

(3) individual therapy, self-help groups, drug intervention, or other therapies to address and treat individual risk factors and problems specific to the individual shall be used [primarily] as adjuncts to sexual offense specific group treatment [more comprehensive sex offender treatment];

(4) a written [initial] individualized treatment plan shall identify the issues, intervention strategies, and goals of treatment and shall be prepared for each client [within 60 days of beginning treatment. Treatment plans should be updated at least annually];

(5) progress, or lack of progress needs to be based on clearly specified objective criteria, refusal or failure to attend or participate in treatment, failing to abide by the client's treatment plans and/or contracts, or any disclosures regarding violations of supervision, shall be clearly documented in treatment records. Licensees shall provide and communicate this information to the appropriate supervising officer in the justice system according to the referring agency policy or pursuant to the court order;

(6) progress in treatment shall be based on specific, measurable objectives, observable changes, and the demonstrated ability to apply changes in relevant situations and comply with supervision requirements. These changes shall be demonstrated by an increased understanding by the client of his/her own deviant behavior, understanding of current and sexual offense sequence, increase in pro-social behaviors, compliance with supervision, increase in support systems, and victim empathy;

(7) [monthly] treatment progress reports shall be distributed to the supervision officer, referring agency, and/or court on a regular basis or as needed by the referring agency. Discharge reports shall be issued according to the referring agency policy or pursuant to the court order;

(8) when a client has attained the goals outlined in the individualized treatment plan, there should be a gradual and commensurate adjustment of interventions;

(9) a licensee may refuse to treat a client because essential ancillary resources do not exist to provide the necessary levels of intervention or safeguards;

(10) the licensee shall modify a client's treatment plan or [have an ethical obligation to] refer the client to a more comprehensive treatment program [and/or to the judicial system] when the licensee determines that a client is not making the necessary progress in treatment in order to reduce the client's risk to the community. The licensee shall notify the referring agency and/or the court if the client's lack of progress places the community at risk;

(11) a licensee may decide to decline further involvement with a client who refuses to address any critical aspect of treatment;

(12) a licensee may terminate services and facilitate a transfer of a client from treatment based on a complaint or lawsuit having been filed against the licensee by the client and/or the client's representative(s);

(13) a licensee shall immediately notify the appropriate authority when a client refuses or fails to comply with court-ordered treatment or Texas Board of Pardons and Paroles ordered treatment;

(14) some degree of denial shall not preclude a client from entering treatment, although the degree of denial shall be a factor in identifying the most appropriate form and location of treatment;

(15) modifications in treatment and in expectations for treatment outcomes may be required in instances of persistent denial or failure to progress in treatment;

(16) a licensee shall not rely exclusively on self report by the client to assess progress or compliance with treatment requirements and/or conditions of probation or parole. Licensees shall rely on multiple sources of information, which should include information from collateral contacts, physiological methods, and other research-based sexual interest assessments;

(17) physiological methods or measures of sexual interest assessment shall not replace other forms of monitoring but may improve accuracy when combined with active surveillance, collateral verifications, and self-report. Penile plethysmograph (PPG) assessments in Texas shall be conducted under the direction of a licensed practitioner defined in Health and Safety Code, Chapter 1, §1.005. Licensees should refer the client for a polygraph exam as soon as possible if the client is suspected of engaging in suppression behaviors on the PPG;

(18) polygraph examinations shall be used as a part of a comprehensive treatment program and shall only be administered by licensed polygraph examiners that meet and adhere to the "Recommended Guidelines for the Clinical Polygraph Examinations of Sex Offenders" as developed by the Joint Polygraph Committee on Offender Testing (JPCOT) and/or the American Polygraph Association (APA)

regarding Post-Conviction Sex Offender Testing (PCSOT) Standards. It is primarily the licensed sex offender treatment provider's responsibility for preparing the client for any polygraph. Sexual history polygraphs shall include all aspects of a client's sexual behaviors and a victim's list that occurred prior to the offense of conviction. Licensed sex offender treatment providers shall obtain the official offense report (Occupations Code, Chapter 109, §109.054) and shall ensure the polygraph examiner has the official offense report in order to administer the instant offense polygraph examination. The sex offender treatment provider shall recognize that the polygraph examiner is the authority in determining if a polygraph is appropriate;

(19) informed consent shall be obtained prior to engaging clients in aversive conditioning;

(20) licensees shall communicate and exchange information with the Department of Family Protective Services-Child Protective Services, Child Care Licensing, and with appropriate agencies regarding the safety of a child or children in the primary residence in which a sex offender resides;

(21) the safety of the children takes precedence and the highest priority shall be given to the rights, well-being, and safety of children when making decisions about contact between the client and children. If the client has a history of deviant sexual arousal and/or deviant sexual interest to or reported fantasies of sexual contact with children, even if the client has not been convicted of a sexual offense, the client should be restricted from having access to children. Supervised visits may be considered if:

(A) it is determined that sufficient safeguards exist to protect the child(ren);

(B) the sex offender has demonstrated control over deviant arousal;

(C) it does not impede the sex offender's progress in treatment; and

(D) if it is compliant with the court mandated or Texas Board of Pardons and Paroles ordered conditions.

(22) treatment referrals should be offered to the non-offending partners and children in cases where a parent or legal guardian has been removed;

(23) family support and participation in the treatment of the adult sex offender should be included when applicable and appropriate. Sexual assault victims or vulnerable children shall be excluded until such time as joint therapy is determined to be appropriate;

(24) the licensee shall make every effort to collaborate with the victim's therapist in making decisions regarding communication, visits and reunification. Contact shall be arranged in a manner that places child/victim safety first. The licensee shall ensure that custodial parents or legal guardians of the children have been consulted prior to authorizing contact and that the contact is in accordance with Court or Texas Board of Pardons and Paroles directives; and

(25) if reunification is deemed appropriate by the victim's therapist, the process shall be closely supervised. There shall be provisions for monitoring behavior and reporting rule violations. A victim's comfort and safety shall be assessed on a continuing basis.

(d) [~~(e)~~] Adult Laws. Licensees shall be familiar with and adhere to the criminal justice system and confidentiality laws concerning adult sex offender and victims of sexual assault. The legal citations include but are not limited to:

(1) Occupations Code, Chapter 110;

(2) Health Insurance Portability and Accountability Act, Title 45, Code of Federal Regulations (CFR), Parts 160 and 164;

(3) Code of Criminal Procedure, Chapter 62, Sex Offender Registration;

(4) Code of Criminal Procedure, Article 42.12;

(5) Occupations Code, Chapter 109 (Specifically §109.051 and §109.052);

(6) Code of Criminal Procedure, Chapter 56; and

(7) Federal Justice for All Act of 2004.

§810.65. Assessment and Treatment Standards for Juveniles Who Commit Sexual Offenses [~~with Sexual Behavior Problems~~].

(a) Licensees shall subscribe and adhere to the following tenets regarding juveniles with sexual behavior problems:

(1) (No change.)

[~~(2) licensees shall recognize that the onset of sexual behavioral problems in juveniles can be linked to numerous issues related to their experiences, exposure, and/or developmental deficits;~~]

(2) [~~(3)~~] licensees shall recognize that juveniles are distinct from their adult counterparts;

(3) [~~(4)~~] licensees shall recognize that sexual arousal patterns of juveniles appear more fluid and less firmly established than those of adult sex offenders and relate less directly to their patterns of offending behavior;

(4) [~~(5)~~] licensees shall recognize that juveniles who display sexually abusive behavior are heterogeneous; juveniles are children first with developmental needs, but also have special needs and present special risks related to their abusive behaviors; and

(5) [~~(6)~~] licensees shall recognize a holistic approach when treating juveniles with sexual behavior problems.

(b) Assessment Standards for Juveniles Who Commit Sexual Offenses [~~with Sexual Behavior Problems~~].

(1) Licensees shall adhere to §810.63 of this title (relating to General Assessment [~~Assessments~~] Standards for Adult Sex Offenders and Juveniles Who Commit Sexual Offenses [~~(Adults and Juveniles)~~].

(2) Comprehensive assessments [~~The assessment shall focus on strengths, risks, and needs of the juvenile with sexual behavior problems, and shall identify factors from social and sexual history which may contribute to sexual deviance and minimize the likelihood that the individual will engage in delinquent or abusive behavior. Assessments~~] shall provide [~~form the basis or foundation of~~] a comprehensive treatment plan and recommendations regarding the intensity of intervention, specific treatment protocol needed, [~~and~~] amenability to treatment, and the identified community risk. [~~as well as the identified risk the juvenile with sexual behavioral problems presents to the community. A comprehensive assessment of juveniles with sexual behavior problems shall be an ongoing and continuing process.~~]

[~~(3) The assessment shall be age appropriate.~~]

[~~(4) The assessment shall be sensitive to any cultural, language, ethnic, developmental, sexual orientation, gender, medical, and/or educational issues that may arise during the assessment.~~]

[~~(5) The assessment shall be developmentally appropriate which includes social, cognitive, and educational levels as well as measures specifically designed for youth.~~]

(3) [~~(6)~~] A comprehensive assessment [~~as cited in subsections (b) - (h) of this section~~] shall be completed within 60 days of a client's being accepted into a treatment program. The assessment shall include:

(A) mental status examination;

(B) clinical interview and social/developmental history;

(C) personality assessment;

(D) risk for re-offense assessment;

(E) recommendations for case management, treatment planning, and further assessments.

[~~(7) A reasonable effort should be made to secure the following information gathered in the assessment process:~~]

[~~(A) intellectual, neurological, and cognitive functioning;~~]

[~~(B) mental status psychiatric history/hospitalization;~~]

[~~(C) medical history and an examination by a medical professional to determine sexual development;~~]

[~~(D) self-destructive behaviors including self-mutilation and suicide attempts;~~]

[~~(E) description of the family origin, family history, and relationship history including exposure to domestic violence;~~]

[~~(F) juvenile history;~~]

[~~(G) sex offender registration status;~~]

[~~(H) history of violence and aggression;~~]

[~~(I) history of school truancy, fire-setting, abuse of animals, and running away;~~]

[~~(J) cognitive distortions;~~]

[~~(K) impulse control;~~]

[~~(L) history of physical, emotional and/or sexual victimization;~~]

[~~(M) social and educational competence;~~]

[~~(N) sexual education/knowledge information;~~]

[~~(O) strengths and assets, family support, and pro-social activities;~~]

[~~(P) substance use or abuse;~~]

[~~(Q) official reports regarding instant sexual offense;~~]

[~~(R) sexual history including sexual development, sexuality and experimentation, gender identity issues, masturbatory practices, and fantasy content; and~~]

[~~(S) sexual offense behavior including a description of the offense behaviors, number of victims, gender and age of victims, frequency and duration of sexual contact, victim selection, access, grooming behaviors, use of threats, coercion or bribes to maintain victim silence, degree of force used before, during and/or after the sexual behavior, and sexually deviant arousal patterns.~~]

(4) [~~(8)~~] If phallometric assessment or aversive treatment techniques are utilized with persons 17 years of age or younger, informed consent for such assessment and treatment shall be obtained from the juvenile who commits sexual offenses [~~with sexual behavior problems~~] and written consent for such assessment and treatment shall be obtained from the juvenile's parents or legal guardians. The procedures shall be reviewed and approved by multi-disciplinary professionals or institutional advisory group. Stimuli shall be specific for use with adolescents.

[~~(9) Individuals that are pre-pubescent or under the age of 13 shall not undergo phallometric assessment or aversive treatment except in rare cases, which shall be reviewed and approved by multi-disciplinary professionals or institutional advisory group.~~]

(5) [~~(10)~~] A signed informed consent of disclosure of information shall be obtained from the parent(s) or legal guardian(s) in order to exchange information. Assent from the individual being evaluated shall be obtained whenever possible.

(c) Collateral Information. The treatment provider shall make a reasonable effort to obtain relevant collateral information. [~~review written documentation and collateral interviews. The review involves collecting information from all available and relevant sources concerning the juvenile and the victim(s), including:~~]

[~~(1) parent(s), guardian(s), or custodian(s);~~]

[~~(2) sibling(s);~~]

[~~(3) victim(s) statement(s);~~]

[~~(4) school records;~~]

[~~(5) child protective services;~~]

[~~(6) previous treatment providers;~~]

[~~(7) mental health professionals;~~]

[~~(8) law enforcement; and~~]

[~~(9) the following information should be provided from the supervision officer:~~]

[~~(A) court order or judgment;~~]

[~~(B) victim(s) information;~~]

[~~(C) juvenile risk assessment;~~]

[~~(D) data collection form; and~~]

[~~(E) official offense report.~~]

[~~(d) Assessment Areas. Assessments shall be individualized and efforts shall be made to acquire the following information:~~]

[~~(1) intellectual, neurological, and cognitive functioning;~~]

[~~(2) personality assessment;~~]

[~~(3) behavioral, social, and sexual functioning;~~]

[~~(4) sexual offense behaviors; and~~]

[~~(5) co-morbidity~~].

[~~(e) Risk Assessments. The estimate of risk shall be a combination of the clinical interview and the assessment instruments. Risk assessment results should be repeated every 6 months due to the fluidity of juveniles. Risk assessments specific to juveniles shall be utilized and are available in the public domain.~~]

[~~(f) Substance Abuse Assessment. Licensees shall use a valid and reliable assessment tool to screen for substance abuse.~~]

(d) [~~(g)~~] Polygraphs. The licensed sex offender treatment provider is primarily responsible for preparing the juvenile for any polygraph. [~~If polygraphs are utilized, the licensed sex offender treatment provider shall:~~]

[(1) obtain the official offense report prior to administering the instant offense polygraph (Occupations Code, Chapter 109, §109.054);]

[(2) include all aspects of a client's sexual behaviors and a victim's list for the sexual history polygraph;]

[(3) ensure that the polygraph is administered on a voluntary basis and with informed consent unless court ordered (Family Code, §54.0405 Juvenile Probation);]

[(4) ensure that the polygraph examiner is listed on the JPCOT roster and/or trained by the American Polygraph Association (APA) in Post-Conviction Sex Offender Testing (PCSOT); and]

[(5) recognize the polygraph examiner is the authority in determining if a polygraph examination is appropriate for a juvenile.]

(e) [(h)] Assessment Recommendations. The following issues shall be addressed when formulating recommendations:

(1) the strengths, risks, needs, and the degree to which a juvenile is capable and willing to manage risk; and

(2) co-morbidity, placement, education/vocational needs, parent or guardian and family issues, substance abuse issues, and supervision.

(f) [(i)] Treatment Standards for Juveniles Who Commit Sexual Offenses [Juvenile with Sexual Behavior Problems].

(1) Treatment shall incorporate both cognitive/behavioral and reoffense prevention plans to reduce recidivism. A multifaceted program shall be age and developmentally appropriate and shall [may] include but is not limited to the following:

(A) group [and individual] cognitive behavioral treatment; [females shall not be treated in the same groups with male juveniles;]

(B) individual therapy, family therapy, drug intervention, or other therapies to address and treat individual risk factors and problems specific to the juvenile [sexual offense sequence];

(C) chaperon training for parents/guardians [reoffense prevention plans];

(D) family reintegration therapy; and [family therapy;]

[(E) victim empathy;]

[(F) adjunct therapy may include substance abuse treatment, anger and stress management, conflict resolution, sex education, social competence/life skills, clarifying, values, trauma resolution, problem solving, impulse control, and interpersonal communication;]

[(G) multi-systemic therapy;]

[(H) psychopharmacological approaches;]

(E) [(I)] polygraphs (Family Code, §54.0405 Juvenile Probation).[; and]

[(J) visual reaction time or plethysmographs.]

(2) the treatment program for juveniles shall include a comprehensive individualized assessment as cited in subsection (b)(1) - (5) [subsections (b) - (i)] of this section, progressive levels of treatment, reoffense prevention plans, and for youth in residential treatment, transition into the community, and aftercare;

(3) treating juveniles shall be part of a multidisciplinary collaborative approach [and containment model] that includes but is not limited to the juvenile, the juvenile's family/guardians, treatment provider, juvenile probation officer, [and if applicable the following: the family, guardian,] custodian, school officials, law enforcement, juvenile detention officers, institutional staff, mental health case workers, polygraph examiners, child protective services, victim advocates, and the victim's therapist;

(4) licensees shall focus on the juvenile's existing strengths and positive support system to promote pro-social behaviors and facilitate change;

[(5) treatment referrals should be offered to the parent(s), guardian(s), or custodian(s) and sibling(s); of the juvenile where a juvenile has been removed;]

(5) [(6)] licensees shall utilize developmentally appropriate treatment strategies for juveniles with intellectual and cognitive impairments;

[(7) risk management strategies may address the needs underlying the juvenile's behavior, and include, but are not limited to safety plans, avoidance of high risk factors, impulse control, polygraphs, and sex education;]

(6) [(8)] the primary goals of treatment shall be to assist juveniles in gaining control over their sexual behavior problems, enhancing the juveniles overall functioning, increasing their pro-social interactions, preventing further victimization, halting development of additional psychosexual problems, and developing age-appropriate relationships;

(7) [(9)] if treatment groups are utilized for non-developmentally delayed juveniles with sexual behavior problems, groups shall not be less than 60 minutes in length with no more than 12 clients per group;

[(10) if treatment groups are utilized for developmentally delayed juveniles, groups shall not be less than 30 minutes in length with no more than 8 clients per group;]

[(11) individual therapy, self-help groups, drug intervention, or other therapies shall be used primarily as adjuncts to a comprehensive sex offender treatment program;]

(8) [(12)] a written initial individualized treatment plan shall identify the issues, intervention strategies, and goals of treatment and shall be prepared for each client within 60 days of beginning treatment. Treatment plans should be updated every 6 months;

(9) [(13)] progress, or lack of progress needs to be based on clearly specified objective criteria, refusal or failure to attend or participate in treatment, failing to abide by the client's treatment plans and/or contracts, or any disclosures regarding violations of supervision shall be clearly documented in treatment records. This information shall be provided and communicated to the appropriate supervising officer in the justice system according to the referring agency's policy or pursuant to the court order;

(10) [(14)] monthly treatment progress reports shall be distributed to the supervision officer, referring agency, and/or the court. Discharge reports shall be issued according to the referring agency policy or pursuant to the court order;

(11) [(15)] when a juvenile has attained the goals outlined in the juvenile's individualized treatment plan, there should be a gradual and commensurate adjustment of interventions;

(12) [(16)] some degree of denial shall not preclude a client from entering treatment, although the degree of denial shall be a factor in identifying the most appropriate form and location of treatment;

(13) [~~(17)~~] modifications in treatment and in expectations for treatment outcomes may be required in instances of persistent denial;

(14) [~~(18)~~] clients who remain in significant denial and/or are extremely resistant to treatment after the finite period of extension determined by the treatment provider and supervision team should be reassessed for appropriate placement in alternative treatment and/or interventions;

(15) [~~(19)~~] licensees shall communicate and exchange information with the Department of Family Protective Services-Child Protective Services, Child Care Licensing, and with appropriate agencies regarding the safety of a child or children in the primary residence in which a juvenile resides;

(16) [~~(20)~~] the safety of children/victims takes precedence and the highest priority shall be given to the rights, well-being, and safety of children when making decisions about contact between the juvenile and children. If the juvenile has a history of sexual arousal to reported fantasies of sexual contact with children of a particular age/gender group, supervised visits may be considered if:

(A) it is compliant with the court mandated conditions;

(B) it is determined that sufficient safeguards exist including but not limited to safety plans approved by the treatment provider and supervision officer;

(C) the juvenile has demonstrated control over sexual impulses and destructive behaviors;

(D) it does not impede the juvenile's progress in treatment;

(E) the parent(s), guardian(s), or custodian(s) have demonstrated the ability and willingness to supervise the juvenile effectively and ensure the safety of other children in the home; and

(F) the victim's therapist or Guardian Ad Litem (if applicable) are involved in the decision making process.

(17) [~~(21)~~] the licensee shall make every effort to collaborate with the victim's therapist in making decisions regarding communication, visits and reunification. Contact shall be arranged in a manner that ensures the child/victim safety first;

(18) [~~(22)~~] if reunification is deemed appropriate by the victim's therapist, the process shall be closely supervised. There shall be provisions for monitoring behavior and reporting rule violations. A victim's comfort and safety shall be assessed on a continuing basis; and

(g) [~~(j)~~] Juvenile Laws. Licensees shall be familiar with and adhere to the juvenile justice system and confidentiality laws concerning juveniles who commit sexual offenses [~~with sexual behavior problems~~] and the victims of sexual assault. The legal citations include but are not limited to:

(1) Occupations Code, Chapter 110;

(2) Health Insurance Portability and Accountability Act, Title 45, Code of Federal Regulations (CFR), Parts 160 and 164;

(3) Texas Family Code, Title 3, Chapter 51 et seq;

(4) Texas Family Code, §153.076, Duty to Provide Information;

(5) Code of Criminal Procedure, Chapter 62, Sex Offender Registration;

(6) Occupations Code, Chapter 109 (Specifically §109.051 and §109.052);

(7) Code of Criminal Procedure, Chapter 56; and

(8) Federal Justice for All Act of 2004.

§810.66. Standards for Adult Female Sex Offenders.

Licensees shall subscribe and adhere to the following tenets regarding female sex offenders:

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

[~~(5) Group treatment of female sex offenders shall not be conducted with male sex offenders due to issues related to past victimization, stereotypical gender roles, experiences with domestic violence, and differential patterns in relating to others within the context of treatment, unless approval is obtained in writing by the council.~~]

(5) [~~(6)~~] Treatment of female sex offenders shall be responsive to any abuse history as with males and responsive to gender issues.

(6) [~~(7)~~] In assessing and treating female sex offenders, licensees shall refer to the appropriate rules in §§810.62, 810.63, and 810.64[~~, and 810.68~~] of this title (relating to Standards of Practice).

§810.67. Assessment and Treatment Standards for Developmentally Delayed Clients.

(a) (No change.)

(b) Assessment Standards for the Developmentally Delayed Client.

(1) licensees shall adhere to the provisions of §810.63 of this title (relating to General Assessment [~~Assessments~~] Standards for Adult Sex Offenders and Juveniles Who Commit Sexual Offenses [~~(Adults and Juveniles)~~];

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

(6) If a plethysmograph is conducted with this population, caution shall be used regarding interpretation and validity. [~~Licensees shall ensure that the stimulus package is appropriate to the client's developmental level.~~]

(7) (No change.)

(8) If polygraphs are utilized, prior to administering polygraph examinations a licensed sex offender treatment provider shall collaborate with the polygraph examiner and the supervision officer to assess the client's ability to understand the concepts of truthfulness, deception, or lying and the capacity to anticipate negative consequences based on deceptive responses. Licensed sex offender treatment providers shall:

(A) recognize that it is [~~the~~] primarily the licensed sex offender treatment provider's [~~providers~~] responsibility to prepare the client for any polygraph;

(B) [~~shall~~] obtain the official offense report prior to administering the instant offense polygraph (Occupations Code, Chapter 109, §109.054);

(C) - (E) (No change.)

(c) Treatment Standards for the Developmentally Delayed Client.

(1) - (8) (No change.)

(9) licensees shall use more individually oriented behavioral interventions coupled with empirically supported approaches [~~external containment strategies~~] for clients whose level of functioning is determined to be inappropriate for group treatment;

(10) (No change.)

(11) if treatment groups are utilized for developmentally delayed clients, groups shall not be less than 60 [~~30~~] minutes in length with no more than 8 clients per group;

(12) treating developmentally delayed clients shall be based on a multidisciplinary approach and empirically supported approaches [~~containment model~~] that includes, but is not limited to, the client, treatment provider, supervision officer, and if applicable the following: the family, guardian, custodian, school officials, law enforcement, child protective services, and the victim's therapist;

(13) - (24) (No change.)

(25) licensees shall be familiar with and adhere to §810.64(d) [~~§810.64(e)~~] of this title (relating to Assessment and Treatment Standards for Adult Sex Offenders) and §810.65(g) [~~§810.65(j)~~] of this title (relating to Assessment and Treatment Standards for Juveniles Who Commit Sexual Offenses [~~with Sexual Behavior Problems~~]).

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 April 27, 2015.

TRD-201501460
Liles Arnold
Chair
Council on Sex Offender Treatment
Earliest possible date of adoption: June 7, 2015
For further information, please call: (512) 776-6972

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22 TAC §810.68

(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 Council on Sex Offender Treatment or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

STATUTORY AUTHORITY

The repeal is proposed under Texas Occupations Code, §110.158, which authorizes the council to adopt rules necessary for the performance of its duties. Review of the rules implements Government Code, §2001.039.

The repeal affects Texas Occupations Code, Chapter 110; and Government Code, Chapter 2001.

§810.68. Issues to Be Addressed in Treatment (Adults and Juveniles).

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 April 27, 2015.

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Liles Arnold
Chair
Council on Sex Offender Treatment
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For further information, please call: (512) 776-6972

♦ ♦ ♦

SUBCHAPTER D. CODE OF PROFESSIONAL ETHICS

22 TAC §810.91, §810.92

STATUTORY AUTHORITY

The amendments are proposed under Texas Occupations Code, §110.158, which authorizes the council to adopt rules necessary for the performance of its duties. Review of the rules implements Government Code, §2001.039.

The amendments affect Texas Occupations Code, Chapter 110; and Government Code, Chapter 2001.

§810.91. General.

Licensees shall constitute a professional discipline [~~which shall have a membership~~] committed to establishing and maintaining the highest level of professional standards related to the assessment and treatment of adult sex offenders and juveniles with sexual behavior problems. In order to maintain the highest ethical standard of service and consumer protection, licensees shall be committed to the following principles designed to ensure the maximum level of public confidence.

§810.92. Code of Ethics.

(a) Professional Conduct. Licensees shall:

(1) not discriminate against clients or withhold professional services from [~~to~~] anyone, regardless of age, race, national origin, religion, sex, disability, political affiliation, social or economic status, sexual orientation, or proscribed by law. A licensee shall not allow personal feelings related to a client's alleged or actual crimes or behavior to interfere with professional judgment and objectivity;

(2) - (10) (No change.)

(b) (No change.)

(c) Confidentiality. Licensees shall:

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

(7) not communicate information to persons outside the treatment team [~~containment model~~] without the written consent of the client unless there exists a clear and immediate danger to a person from the client; and

(8) (No change.)

(d) Assessments. Licensees shall:

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

(5) [~~and~~] respect a client's right to know the results, the interpretations made, and the basis for the conclusions and recommendations drawn from such assessments;

(6) - (7) (No change.)

(8) safeguard sexual arousal assessment testing and treatment materials. Each licensee shall recognize the sensitivity of this material and use it only for the purpose for which it is intended in a controlled phallometric assessment. Licensees shall not release assessment or treatment materials to persons not involved in the management or treatment [~~containment~~] of the client who lack proper training and credentials, or who would misinterpret or improperly use such stimulus materials;

(9) (No change.)

(10) [~~Licensees shall~~] recognize that any decision regarding refusal to release records or information shall be subject to the applicable state law;

(11) - (14) (No change.)

(15) understand if a licensee decides that it is appropriate to offer a prediction of criminal behavior on the basis of a comprehensive assessment in a given case, the licensee shall specify clearly:

(A) - (C) (No change.)

(16) (No change.)

~~[(e) Professional Relationships.]~~

~~[(1) Each licensee shall act with proper regard for the needs, special competencies, and perspectives of colleagues who assess, treat, and manage sex offenders and other mental health professionals.]~~

~~[(2) Each licensee is encouraged to affiliate with professional groups, organizations, or agencies working in the field of sex offender assessment and treatment.]~~

~~[(f) Research and Publications.]~~

~~[(1) Licensees shall be obligated to protect the safety of the licensee's research subjects. Provisions of the human subjects experimental policy shall prevail as specified by the current United States Department of Health and Human Services guidelines.]~~

~~[(2) Licensees shall evaluate the ethical implications of possible research and ensure that ethical practices are enforced in conducting such research.]~~

~~[(3) The practice of informed consent prevails. A research participant shall have the freedom to decline to participate in or withdraw from a research project at any time without any prejudicial consequences.]~~

~~[(4) The research subject shall be protected from physical and mental discomfort, harm, and danger that may result from research procedures.]~~

~~[(5) Publication credit shall be assigned to those who have contributed to a publication in proportion to their contribution, and in accordance with customary publication practices.]~~

(e) [~~(g)~~] Public Information and Advertising. Licensees shall be truthful in the representation of the licensee's professional background, training, and status. All professional presentations, advertisements and public communications shall be formulated to convey accurate information. [~~All professional presentations to the public shall be governed by the following standards on public information and advertising. Licensees shall:~~]

~~[(1) have a responsibility to the public to engage in appropriate informational activities and to avoid misrepresentation or misleading statements. Advertisements and public communications shall be formulated to convey accurate information. Self-praising and testimonials shall be avoided;]~~

~~[(2) not establish licensee-client relationships as the result of pressure, deception, or exploitation of the vulnerability of clients];~~

~~[(3) not make any representations that the licensee is a partner or associate of any agency or firm if the licensee is, in fact, not acting in that capacity (for example: a person engaged in private practice who is also employed at a state hospital should clearly communicate to a prospective client in private practice that he is not acting on behalf of a state hospital);]~~

~~[(4) be truthful in the representation of the licensee's professional background, training, and status. Each licensee shall indicate any limitations in his or her practice;]~~

~~[(5) not represent their affiliation with any organization or agency in a manner, which falsely implies sponsorship or certification by that organization; and]~~

~~[(6) not knowingly make a representation about the licensee's ability, background, or experience, or about that of a partner or associate, or about a fee or any other aspect of a proposed professional engagement that is false, fraudulent, misleading, or deceptive. A false, fraudulent, misleading, or deceptive statement or claim is defined as a statement or claim which:]~~

~~[(A) contains a material misrepresentation of fact;]~~

~~[(B) omits any material or statement of fact which is necessary to make the statement, in light of all circumstances, not misleading; or]~~

~~[(C) is intended or likely to create an unjustified expectation concerning the licensee, or treatment services.]~~

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 April 27, 2015.

TRD-201501462
Liles Arnold
Chair
Council on Sex Offender Treatment
Earliest possible date of adoption: June 7, 2015
For further information, please call: (512) 776-6972

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SUBCHAPTER L. EARLY TERMINATION FOR CERTAIN PERSONS' OBLIGATION TO REGISTER

22 TAC §§810.301 - 810.308

STATUTORY AUTHORITY

The amendments are proposed under Texas Occupations Code, §110.158, which authorizes the council to adopt rules necessary for the performance of its duties. Review of the rules implements Government Code, §2001.039.

The amendments affect Texas Occupations Code, Chapter 110; and Government Code, Chapter 2001.

§810.301. Introduction.

(a) General. The provisions of this subchapter govern the procedures for [~~relating to~~] the deregistration of individuals on the public registry for sex offenders in the State of Texas.

(b) (No change.)

§810.302. Definitions.

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

(1) - (8) (No change.)

(9) Registrant--An individual who is required to register under Code of Criminal Procedure, Chapter 62, in the State of Texas.

§810.303. Administration of the Act.

The council is responsible for providing the appropriate and necessary guidelines for deregistration including identifying who can deregister, the method for evaluating [~~where by~~] registrants [~~are evaluated~~] for

deregistration and the due process that must be followed to attain deregistration.

§810.304. Deregistration Eligibility.
The council shall establish criteria to determine an individual's eligibility for early termination from the obligation to register. The council shall publish the [~~a~~] list of eligibility criteria. Prior to participating in a deregistration evaluation, the registrant must obtain approval from the council that he or she is eligible for deregistration.

§810.305. Deregistration Decision Criteria.
The council shall establish deregistration evaluation criteria to determine the risk level of a [~~the~~] registrant.

§810.306. Evaluation Specialist.
The council shall contract with licensed sex offender treatment providers to provide all deregistration evaluation services.

§810.307. Deregistration Methodology.
The Deregistration Evaluation Specialist shall submit the candidate's deregistration evaluation report to the council. The council shall review the report and determine if the report conforms to council criteria. The council shall certify reports that meet council criteria and send each [~~the~~] certified report back to the attorney.

§810.308. Protocol Compliance.
The council or its designee shall review each candidate's application and deregistration evaluation report in order to insure that these documents comply [~~are in compliance~~] with approved methodology and procedures. The council or its designee shall insure that all established requirements have been met by the candidate prior to approving the candidate to undergo a deregistration evaluation. The council or its designee shall also ensure that established deregistration evaluation criteria have been met prior to providing the candidate with the written evaluation report.

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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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 21. TEXAS LOW-LEVEL RADIOACTIVE WASTE DISPOSAL COMPACT COMMISSION

CHAPTER 675. OPERATIONAL RULES
SUBCHAPTER B. EXPORTATION AND IMPORTATION OF WASTE

31 TAC §§675.20 - 675.23

The Texas Low-Level Radioactive Waste Disposal Compact Commission (TLLRWDCC or Commission) proposes new §675.20 and proposes amendments to §§675.21 - 675.23.

Background and Summary of the Factual Basis for the Proposed Rules

The Commission initiated this rulemaking to review, comprehensively, the preliminary rules under which it had been operating since calendar year 2012. The objectives of this rulemaking is to: a) simplify the processes by which applicants and petitioners would seek Commission action; b) simplify and clarify the language of the rules; c) amend the rule for exportation of waste to a non-party state for disposal now that the Commission has made the determination required by §3.02 of the Compact; and d) in some cases, to correct grammatical errors found in the preliminary rules.

During the time that the Commission has been operating under the preliminary rules, it has evaluated the manner in which the rules operated and has identified aspects in which the rules can be improved, each of which will be more specifically discussed in the Section by Section Discussion in this preamble. The proposed amendments to existing rules, coupled with the promulgation of a new rule collecting all definitions in a single rule that precedes all of the other rules, are designed to improve and streamline the processes by which persons appearing before the Commission seek approval of their actions.

Section by Section Discussion

The Commission proposes to change the title of Chapter 675 from "Preliminary Rules" to "Operational Rules." In addition, the Commission proposes to make various stylistic, non-substantive changes to update rule language to current *Texas Register* style and format requirements. Such changes include appropriate and consistent use of acronyms, section references, rule structure, and certain terminology. These changes are non-substantive and generally are not specifically discussed in this preamble.

§675.20, Definitions

The Commission proposes new §675.20 to collect the definitions of terms used in the Commission's rules into a single rule from sources such as the agreement between the State of Texas and the State of Vermont to which Congress consented in Public Law 105-236, enacted September 20, 1998 (the Compact).

Definitions for the majority of the terms used in the Commission's rules are specifically set out in the Compact. These terms include those defined in paragraphs (3) (as slightly modified), (7), (8), (9) (initial sentence only), (10), (11), (12) (as slightly modified), (13), (15), (16), (18), and (21). Section 675.20(3) and (12) are modified to eliminate references to management of waste. The Commission is currently conducting investigations in preparation of drafting a new rule that would address the importation of waste for the purpose of management. If it adopts such a rule, these paragraphs will likely be amended to insert the references to management of waste.

A number of paragraphs are adapted from Texas Health and Safety Code (THSC), §401.2005. Paragraph (4) is taken from THSC, §401.2005(1-a). Paragraph (14) is taken from THSC, §401.2005(6-a). Paragraph (17) is adapted from THSC, §401.2005(8). Paragraph (22) is taken from THSC, §401.2005(9).

That portion of paragraph (9) that was not taken from the Compact has been adapted from the Commission's draft White Paper of June 4, 2013, entitled "Establishing the Generator of Low-Level Radioactive Waste for the Purposes of Determining Party v. Non-Party Status for the Texas Low-Level Radioactive Waste

Disposal Compact," which draft White Paper has been posted on the Commission's website since 2013.

§675.21, Exportation of Waste to a Non-Party State for Disposal

The Commission proposes to amend §675.21 to specify the procedure that must be used by a party-state generator to petition the Commission for permission to export party-state waste to a non-party state for disposal. This procedure is proposed for use going forward in lieu of the Commission's granting permits pursuant to the resolution it adopted on December 11, 2009.

The proposed rule also eliminates a provision for the payment of a fee for the processing of a petition to export waste from a party state. The Commission does not need to impose a fee for the processing of petitions because the Texas Legislature makes an appropriation to the Commission each biennium for its operations.

The proposed rule also describes generators who seek permission to export compact waste to a non-party state for disposal as "petitioners," rather than applicants. The Commission proposes this change in designation for the purpose of more readily distinguishing between in-compact generators seeking permission to export waste and out-of-compact generators (or brokers) seeking permission to send their waste to Texas for disposal at the Compact Facility.

The Commission proposes to amend subsection (g)(7) (currently subsection (f)(7)) to clarify that, as with applicants seeking to import low-level radioactive waste for disposal in the Compact Facility, the Commission considers only petitioners' unresolved violations of other regulatory entities' regulations "associated with radioactive waste receipt, handling, processing or transportation" when deciding whether they may export waste.

The Commission proposes to amend subsection (j)(1) (currently subsection (i)(1)) to reflect an allotment approach to authorizations to import and export waste. Because the Commission must track the volumes of waste disposed in the Compact Facility and the curies associated with those volumes on an operational year basis, it is transitioning to the issuance of permits to export party-state waste and the execution of agreements to import out-of-compact waste for disposal at the Compact Facility that terminate at the end of the Facility's operational year, i.e., on August 31 of each year. Petitioners and applicants are not prohibited from seeking authority to export party-state waste or import out-of-compact waste for disposal in future operational years.

The Commission proposes to delete §675.21(k) and, instead, refer to the form to be completed by a petitioner seeking authority to export party-state waste in amended subsection (c). Referring to the form in that subsection eliminates the need for subsection (k).

The Commission proposes to delete §675.21(l) because it has now made the determination required by Compact section 3.02. As a result, there is no longer any need for the Commission to consider petitions for permits under the Commission's resolution of December 11, 2009.

Finally, with respect to §675.21, the Commission proposes to delete subsection (m) because all of the defined terms in this chapter are now located in proposed new §675.20.

§675.22, Exportation of Waste to a Non-Party State for Management or Processing and Return to the Party States for Management or for Disposal in the Compact Facility

Generally, the Commission proposes to amend §675.22 to clarify some of its terms and to recognize that some party-state waste shipped out for management or processing is not returned to the generator, but is, instead, shipped directly to the Compact Facility for disposal.

Specifically, the Commission proposes to amend subsection (a) to clarify that the rule addresses the exportation of low-level radioactive waste, as opposed to other types of waste.

The Commission proposes to amend subsection (b) to clarify that, when a party-state generator ships waste out of the Compact for management or processing, it is required to submit a report of that action to the Commission within 10 days of having shipped the waste out of the Compact. The words "must file" more clearly state that the exporting generator's duty accrues on shipment than do the words "shall be required to file." The Commission proposes also to amend subsection (b) to change the manner in which an exporting generator notifies the Commission of its exportation low-level radioactive waste for management or processing before it is returned for disposal in the Compact Facility. Currently, §675.22(b) permits party-state generators to submit reports that they have exported low-level radioactive waste for management or processing by electronic mail and by fax; amended §675.22(b) would permit such reports to be submitted to the Commission by electronic mail or by United Parcel Service (UPS) or FedEx delivery service. This change increases the likelihood that the Commission will receive timely, legible reports from the shipping generators.

The Commission proposes to amend §675.22(c) to account for those situations in which a party-state generator ships low-level radioactive waste out-of-compact for processing and management; and, instead of the waste being returned to that generator after management or processing, the waste is shipped directly from the waste manager or processor to the Compact Facility for disposal. The Commission also proposes to amend subsection (c) to permit party-state generators who have shipped low-level radioactive waste out of the compact for management or processing to rely on information provided by the out-of-compact waste manager or waste processor to make reports to the Commission about the returning waste.

§675.23, Importation of Waste from a Non-Party Generator for Disposal

Generally, the Commission proposes to amend §675.23 to clarify its language; reduce the amount of time needed for the Commission to act on applications for the importation of non-compact waste for disposal at the Compact Facility; eliminate the provision requiring the payment of a fee to the Commission on the filing of an application for an import agreement; change the manner in which applications for the importation of waste may be submitted to the Commission; provide for the delegation of certain decisions regarding amendments to existing agreements for the importation of waste to the Compact Commission Chair or his or her delegate, acting in consultation with the Commission's Technical Committee; and eliminate forms for applications and agreements from the rules.

Specifically, the Commission proposes to amend subsection (a) to more closely track the policies set out in the Compact.

The Commission proposes to amend subsection (b) to eliminate the requirement that the Commission issue a report every five years to establish the disposal capacity of the Compact Facility. The Commission will continue to recognize and protect the

portion of the Compact Facility's disposal capacity reserved for Vermont and not to be used for non-party waste.

The Commission proposes non-substantive amendments to subsection (c) to specifically require any state seeking to join the Compact to comply with the provisions of Compact Article VII.

The Commission proposes to delete subsection (d) because the Commission deems the initial portion of that subsection to be unnecessary based on the volume of waste and number of curies disposed in the Compact Facility during its first two operational years. The Commission closely monitors the volume and activity of waste disposed at the Facility; the Facility Operator provides the Commission monthly reports on the volume and activity of waste disposed at the Facility; and the Texas Commission on Environmental Quality (TCEQ) recently approved a significant expansion of the disposal capacity of the Facility. The Commission also proposes that the content of subsection (d)(2) be moved to the final sentence of the current subsection (e), which the Commission proposes to re-letter as subsection (d).

The Commission proposes to amend subsection (e) (currently subsection (f)) to simplify the proposed form of agreement for the importation of out-of-compact waste.

The Commission proposes delete subsection (g) that provides for the Commission to consider the collection of fees in connection with applications for agreements and agreements for the importation of out-of-compact waste for disposal at the Facility.

The Commission proposes to amend subsection (f) (currently subsection (h)), to alter the manner in which applications are submitted to (rather than filed with) the Commission. Formerly, applicants could submit applications by electronic mail and facsimile. The Commission proposes to allow applicants to submit their applications for import agreements by electronic mail, followed by a hard copy of the application delivered by UPS or FedEx delivery service. The proposed amendments also require the applicant to send a copy of the application to the Compact Facility Operator and to the TCEQ by both electronic mail and UPS or FedEx delivery. Subsection (f) continues to provide that no waste can be shipped by an applicant until the Commission has voted to enter into an agreement for the import of out-of-compact waste for disposal at the Compact Facility and both the Commission and the applicant have executed that agreement. The Commission also proposes that the substance now contained in subsection (f)(3) and (4) be moved to proposed subsections (g) and (h).

The Commission proposes that subsection (g) (currently subsection (f)(3)) be amended to: 1) eliminate any reference to the date on which an application is deemed received; and 2) provide that the Commission give notice of an application for amendment by posting it on the Commission's website within five business days after the Commission receives the application. As to the first change, the Commission proposes to treat documents as having been received on the earlier of: a) the date on which the Commission receives the e-mail transmitting the application; or b) on the date when UPS or FedEx delivery service delivers the hard copy of an application to the Commission. The Commission proposes to eliminate the practice of publishing applications for import agreements in the *Texas Register* because it is not aware of anyone who either: a) relies on publication of the applications for these agreements in the *Texas Register* for notice of possible Commission actions on the applications; or b) cannot access the Commission's website.

The Commission proposes that subsection (h) (currently subsection (f)(4)) be amended to eliminate the 25-day period for comment on submitted applications for amendments in favor of a provision that preserves the right of all persons to comment and be assured that their comments will be considered up to one week before a meeting at which the Commission proposes to act on an application for an import agreement. The Commission also proposes amendments that would: 1) require the Commission to consider comments submitted up to one week before the meeting at which it intends to act on a submitted application; and 2) permit the Commission to consider comments submitted less than one week before a meeting at which it intends to act on an application for an import agreement, without requiring that the Commission consider such comments.

The Commission proposes to delete from subsection (i) the restrictions on the time within which the Commission, its staff or its delegates must review any submitted applications for import agreements based on its feeling that, as long as there is a definite period within which the Commission must *act on* each application for an import agreement, the timing of review of each such application is largely irrelevant. The Commission proposes to amend subsection (i)(1) to clarify the specific information about the waste to be disposed it will consider. The Commission also proposes to amend subsection (i)(1) and (5) to eliminate the requirement that the applicant provide information about certain radionuclide-specific activities subject to subsection (d)(1). TCEQ has amended the Compact Facility's license in a manner that removes those radionuclide-specific limits, so the Commission does not need to assess that activity of the proposed waste to determine whether the waste is consistent with the waste characteristics specified in the Compact Facility's license. The Commission proposes to amend subsection (i)(2) to refer to the Compact, with references to both Texas and Vermont statutes. The Commission proposes to amend subsection (i)(6) to clarify that it considers material only violations of other regulatory bodies' regulations dealing with the receipt, storage, handling, management, processing or transportation of radioactive waste. The Commission proposes to amend subsection (i)(8) to replace the listing of entities in that paragraph with the term, defined in proposed §675.20(18), "Person," which includes all of the listed entities. The Commission proposes to amend subsection (i)(9) to clarify that it will consider the identity of the generator and the need for and receipt of any authorizations needed to export the waste from its location. The Commission proposes to amend subsection (i)(11) to refer to the entirety of THSC, §401.207, rather than only to certain subsections of that section.

The Commission proposes to amend subjection (j) to reduce the span of time within which the Commission will act on submitted applications for importation of waste for disposal. The Commission further proposes to amend the subsection to clarify that, once the Commission has decided whether to grant an import agreement application, it is considered the final action of the Commission; and that the applicant does not need to file a motion for rehearing to exhaust its administrative remedies. Third, the Commission proposes to amend subjection (j)(3) to expand the Commission's basis for denying an importation agreement application related to international waste. The current version of this subsection permits the Commission to deny an application for an import agreement because the waste proposed for disposal *does* include international waste. An applicant wishing to rid itself of waste of international origin might be inclined not to disclose that the waste proposed for importation contains international waste, given Texas' complete ban of such materials from

inclusion in the waste disposed at the Facility. In the absence of any ability to determine for itself whether the proposed waste is of international origin, the Commission proposes to amend its rule to permit it to deny an application for an import agreement if there is the possibility that the waste proposed for disposal contains waste of international origin.

The Commission proposes to amend subsection (k) solely to make the subsection clearer.

The Commission proposes to amend subsection (l)(1) to implement an allotment method of issuing permits and entering into importation agreements. Because the Commission must track the volume and activity of waste disposed in the Facility on an operational year basis, it proposes to issue exportation permits and enter into importation agreements that are for operational-year increments and terminate on August 31 of the operational year they cover. When an import agreement extends beyond the end of an operational year, additional reporting requirements are imposed on both the applicant and the Commission. The Commission's accounting task is also greatly complicated when an importation agreement does not terminate at the end of an operational year. Both of these additional responsibilities could be avoided if brokers and generators begin to apply for and obtain agreements that are tied to the Facility's operating year, rather than to the campaigns that the generator or broker anticipates conducting. The Commission proposes to amend subsection (l)(2) to clarify that, when the Commission has amended an importation agreement, no shipments may be made under the amended agreement until both the Commission and the generator have executed the agreement, and the generator has made any changes necessary to comply with the agreement as amended. The Commission proposes to add subsection (l)(3) to authorize the Chair or his or her delegate, in consultation with the Commission's Technical Committee, to decide whether applications for certain minor amendments should be granted. This is a change that was specifically requested by the Compact Facility Operator so that such decisions could be made more quickly than they are currently being made. The proposed paragraph enumerates the amendments that would be considered minor, and provides that the Commission, and not the applicant, will decide whether a requested amendment is a minor amendment. Provision is made for the return of an improperly designated application for an amendment to the applicant, so that it may refile, starting time running again for that re-application. The Commission proposes to add subsection (l)(4), which expressly provides for the posting of applications for amendments to existing import agreements on the Commission's website within five business days of their receipt. The Commission proposes to move the language of former subsection (l)(3) to be included in proposed subsection (l)(5). The Commission proposes to amend subsection (l)(5) to: a) specify the time within which the Commission (or the Chair or his or her delegate, acting in consultation with the Commission's Technical Committee) will act on applications for amendments to existing importation agreements; b) note that agreements are not assignable or transferable; and c) provide that the Commission's decision on an application is final on the date it is made, and that the applicant does not need to file a motion for rehearing to exhaust its administrative remedies. The Commission proposes to delete subsection (l)(4) regarding that the Commission will continue to consider whether to assess fees for its consideration of applications for agreements to import out-of-compact waste for disposal at the Compact Facility.

The Commission proposes to amend subsection (m) to remove language related to waste imported for management or processing because §675.23 does not relate to such waste.

The Commission proposes to amend subsection (n) to clarify that it relates to Small *Quantity* Generators, not small generators.

Finally, the Commission proposes deleting subsection (o) because all of the defined terms in this chapter are now located in proposed new §675.20.

Fiscal Note

Leigh Ing, the Commission's Executive Director, has determined that, for the first five-year period the proposed rules are in effect, no fiscal implications are anticipated for the Commission or for units of state or local government as a result of the administration or enforcement of the proposed rules.

Public Benefits and Costs

Ms. Ing has also determined that, for each year of the first five years the proposed rules would be in effect if adopted, the public benefit anticipated from the changes seen in the proposed rules will be increased clarity of purpose and greater operational efficiency.

It is anticipated that businesses and individuals will have no additional economic costs as a result of their compliance with the proposed rules.

Local Employment Impact Statement

The Commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules will not adversely affect a local economy for the first five years that the proposed rules will be in effect if adopted.

Regulatory Analysis

The Commission has determined that none of the proposed rules is a "major environmental rule" as defined by Texas Government Code, §2001.0225.

Small Businesses and Microbusinesses

The Commission has determined that the proposed rules will not have an adverse economic impact on either small businesses or microbusinesses.

Takings

The Commission has determined that the proposed rules do not restrict or limit an owner's right to his or her real property that would otherwise exist in the absence of this action.

Certification

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

Submittal of Comments

Written comments may be submitted to Leigh Ing, Executive Director, 333 Guadalupe Street, #3-240, Austin, Texas 78701 or by electronic mail to *administration@tllrwdcc.org.* All comments should reference "Rules." The Comment period closes on June 22, 2015. Copies of the proposed rulemaking can be obtained from the Commission's website at *http://www.tllrwdcc.org/rules/.* For further information, please contact Leigh Ing, Executive Director, (512) 305-8941.

Statutory Authority

The new and amended rules are proposed under the authority granted in Texas Health and Safety Code (THSC), §401.207; and §3.05(4), (6), (7), and (8) of the Compact set out at THSC, §403.006.

No other statute is affected by this proposal.

§675.20. Definitions.

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

(1) The term "Commission," where used in this subchapter, means the Texas Low-Level Radioactive Waste Disposal Compact Commission.

(2) The term "Compact" refers to the agreement between the State of Texas and the State of Vermont to which Congress consented in Public Law 105-236, enacted September 20, 1998. The text of the Compact can be found in Texas Health and Safety Code, §403.006 and Vermont Statutes Annotated Title 10, §7069.

(3) The terms "Compact Facility" and "Facility" mean any site, location, structure, or property located in and provided by the host state for the purpose of disposal of low-level radioactive waste for which the party states are responsible.

(4) "Compact waste" means low-level radioactive waste that:

(A) is originally generated onsite in a host state or a party state; or

(B) is not generated in a host state or a party state but has been approved for importation into this state by the Commission under §3.05 of the Compact.

(5) "Compact waste disposal facility" means the low-level radioactive waste disposal facility licensed by the Texas Commission on Environmental Quality for the disposal of compact waste.

(6) The word "days" shall mean calendar days unless the rule in which it is used specifies otherwise.

(7) "Disposal" means the permanent isolation of low-level radioactive waste pursuant to requirements established by the United States Nuclear Regulatory Commission and the United States Environmental Protection Agency under applicable laws, or by the host state.

(8) The term "generate," when used in relation to low-level radioactive waste, means to produce low-level radioactive waste.

(9) The term "generator" means a person who produces or processes low-level radioactive waste in the course of its activities, excluding persons who arrange for the collection, transportation, management, treatment, storage, or disposal of waste generated outside the party states, unless approved by the Commission. For purposes of this subchapter, the identity of a "generator" shall be determined in accordance with the following:

(A) For low-level radioactive waste acquired on or after April 27, 2012, and that is not of international origin:

(i) if a licensed manufacturer of sealed sources or devices chooses to accept from a customer a sealed source or device that it (or an entity that it acquired) manufactured, the manufacturer may declare that it is the generator when that source or device is disposed;

(ii) if a licensed manufacturer of sealed sources or devices accepts from a customer a sealed source or device manufactured by another entity, the customer will be considered the generator of the source or device when it is disposed;

(iii) if a licensed initial distributor of radioactive sealed sources or devices chooses to accept from a customer a sealed source or device that it distributed, the initial distributor may declare that it is the generator of that source or device when it is disposed;

(iv) if a licensed initial distributor of radioactive sealed sources or devices chooses to accept from a customer a sealed source or device that the distributor did not distribute, the customer will be considered the generator of the source or device when it is disposed;

(v) if a licensed distributor other than the initial distributor of the radioactive sealed sources or devices chooses to accept from a customer a sealed source or device, the customer will be considered the generator of that source or device when it is disposed;

(vi) if a licensed waste broker or waste processor chooses to accept radioactive materials from any customer, the customer will be considered the generator of those materials when they are disposed; and

(vii) when a licensed decontamination service provider provides decontamination services to any customer, the customer will be considered the generator of any waste generated by the provision of the decontamination service.

(B) A waste broker, waste processor, initial distributor, other distributor, decontamination service provider, or licensed manufacturer of sealed sources or devices who received radioactive materials from a customer before April 27, 2012 may complete TCEQ Form 20225 as the generator of that waste if it provides adequate documentation that the waste is not of international origin. Such waste may only be disposed of in the Compact Facility as party-state (in-compact) waste if the entity acting as the generator of the waste provides adequate documentation that the waste is from Texas or Vermont. If the entity acting as the generator of the waste cannot adequately document that the waste is from Texas or Vermont, the waste will be treated as non-party-state (out-of-compact) waste and will require import authorization in accordance with §675.23 of this title (relating to Importation of Waste from a Non-Party Generator for Disposal). To provide the documentation described in this subparagraph, the entity acting as the generator of the waste may rely on various records, including, but not limited to, source/device leak tests, source/device inventories, transfer/receipt records, transportation manifests, purchasing records, or other records determined by the Commission to be suitable as documentation regarding the origin of the waste.

(C) If the customer of a waste broker, waste processor, initial distributor, other distributor, decontamination service provider, or licensed manufacturer of sealed sources or devices is considered the generator of waste under subparagraph (A) of this paragraph, the waste may not be disposed of in the Compact Facility unless the customer is a public, private or governmental entity located in the United States or a territory of the United States. The waste will be considered party-state waste (in-compact) only if the customer is located in Texas or Vermont; if the customer is located in any other state or territory of the United States, the waste will be considered non-party-state waste (out-of-compact).

(D) If a licensed user, initial distributor, or manufacturer of sealed sources or devices is a generator of waste, that waste may be disposed of in the Compact Facility only if the generator is a public, private or governmental entity located in the United States.

(10) "Host county" means a county in the host state in which a disposal facility is located or is being developed.

(11) "Host state" means a party state in which a Compact Facility is located or is being developed. The state of Texas is the host state under the Compact.

(12) "Low-level radioactive waste" has the same meaning as that term is defined in Section 2(9) of the Low-Level Radioactive Waste Policy Act, as amended by the Low-Level Radioactive Waste Policy Amendments Act of 1985 (42 United States Code, §2021b(9)), or in the host state statute so long as the waste is not incompatible with disposal at the Compact Facility.

(13) "Management" means collection, consolidation, storage, packaging, or treatment.

(14) "Non-party compact waste" means low-level radioactive waste imported from a state other than a party state as authorized by §3.05(6) of the Compact.

(15) "Operator" means a person who operates a disposal facility.

(16) "Party state" means any state that has become a party in accordance with Article VII of the Compact. Texas and Vermont are the party states to the Compact.

(17) "Party-state waste" means low-level radioactive waste generated in a party state.

(18) "Person" means an individual, corporation, partnership, or other legal entity, whether public or private.

(19) A "small quantity generator" is a generator of low-level radioactive waste who generates no more than 100 cubic feet of such waste per year, provided that the curie level of such waste is minimal as compared to the curie limit in the Compact Facility's license as determined by the Commission.

(20) The acronym "TCEQ" means the Texas Commission on Environmental Quality and any successor entity.

(21) A "transporter" is a person who transports low-level radioactive waste.

(22) "Waste of international origin" means low-level radioactive waste that originates outside of the United States or a territory of the United States, including waste subsequently stored or processed in the United States.

§675.21. Exportation of Waste to a Non-Party State for Disposal.

(a) Permit Required--No [~~person shall export any~~] low-level radioactive waste generated within a party state shall be exported for disposal in a non-party [~~nonparty~~] state unless the Commission has issued an export permit allowing the exportation of that waste pursuant to this section [~~rule~~].

(b) Petition Required--The term "petitioner" shall include a person who is a [~~A~~] generator, a broker acting on behalf of one or more generators, an authorized representative of the Department of Defense, [~~group of generators,~~] or the host state (when proposing to export low-level radioactive waste to a low-level radioactive waste disposal facility outside the party states). Each petitioner shall submit [~~to the Commission~~] a petition for an export permit to the Commission.

(c) Form of Petition--The petition or a request to amend a permit shall be in writing and on a form promulgated by the Commission and posted on the Commission's website. A petitioner must submit its petition or request to amend a permit to the Commission and to the Compact Facility both by electronic mail and by United Parcel Service (UPS) or FedEx delivery service. [~~web page, or otherwise made readily accessible to generators and to the public.~~]

(d) Petitioners must receive the Commission's permission to export before exporting any waste out of the party states. No petition for the exportation of Class B or Class C waste for disposal in a non-party state will be approved unless the petitioner can show good cause.

(e) Notice of Petition--Export petitions submitted to the Commission will be posted to the Commission's website within five business days of their submission.

(f) Any person may submit comments on an export petition to the Commission by electronic mail or by sending a hard copy of the comments to the Commission using the UPS or FedEx delivery service. The Commission will consider all comments received at least one week before the meeting at which it considers action on the petition. The Commission may, but shall not be bound to, consider comments submitted less than one week before such a meeting.

[~~(d) Petition Fees--~~]

[~~(1) Export Petition Application Fee--A non-refundable, application fee of $500 shall accompany the petition, except that petitioners seeking to export 100 cubic feet or less shall pay an application fee of $50. Payments shall be made by check, money order or electronic transfer, made payable to the Texas Low-Level Radioactive Waste Disposal Compact Commission. No action shall be taken on any petition until the application fee is paid in full.~~]

[~~(2) Export Petition Evaluation Fee. In accordance with a fee schedule adopted by the Commission, an export petition evaluation fee may be assessed based on the estimated time and expenses to be incurred in evaluating and acting on the petition, if the expense exceeds the export petition application fee. This estimated fee will be communicated to the applicant prior to any action by the Commission.~~]

[~~(A) The fee schedule will be based on the estimated cost of evaluating the petition and may include, but not be limited to, these factors:~~]

~~(i)~~ ~~staff expenses;~~]

~~(ii)~~ ~~supplies;~~]

~~(iii)~~ ~~direct and indirect expenses;~~]

~~(iv)~~ ~~purchased services of consultants such as engineers, attorneys or consultants; and~~]

~~(v)~~ ~~other expenses reasonably related to the evaluation.~~]

[~~(B) This fee will be due and payable within 30 days of issuance of fee bill.~~]

[~~(C) A petitioner may appeal the assessment of the fee by requesting a public hearing before the Commission within 30 days of the assessment. Such hearing shall be held as soon as practicable after the request, but no longer than 45 days after the request is received by the Commission. The Commission's order shall be issued within 30 days after the hearing. If required by Commission order, payments are due within 30 days of the final order.~~]

[~~(e) Notice and Timing of Petition--A petitioner shall file an export petition with the Commission and receive approval by the Commission prior to export. The proposed export petition shall be accompanied by a certification by the disposal facility receiving the waste that the waste acceptance criteria have been met for the proposed waste importation. By electronic mail, the petitioner shall deliver to the Compact Facility operator a copy of the export petition (and any supplements or amendments thereto) at the time of filing with the Commission, and a copy shall also be delivered by Certified mail. Upon receipt, the Commission shall post the export petition to the Commission's web~~

site and to the *Texas Register.* Any comments by the Compact Facility operator on the export petition shall be filed in writing with the Commission no later than 30 days after the date the petition was received by the Commission. By electronic mail, the Compact Facility operator shall deliver to the petitioner a copy of all comments (and any supplements or amendments thereto) submitted to the Commission at the time of filing with the Commission, and a copy shall also be delivered by Certified mail. The Commission shall distribute the export petition and comments received from the Compact Facility operator, petitioner, and public to other interested parties by mail or email for information and comment and shall post the export petition, comments received and other pertinent information on the Commission's web site. The Commission shall distribute the export petition and any comments received from the Compact Facility operator, or others, to the members of the Commission, and distribute comments from others to the Compact Facility operator and the petitioner.]

(g) [(f)] Review of Petition--After receiving the export petition and any comments about the petition [that have been made thereon], the Commission shall, [at a meeting held] no earlier [sooner] than 30 [60] days after the petition is posted and no [or] later than 120 days after the [date the export] petition is posted, [was filed with the Commission, shall] act on the export petition, considering [utilizing] the following factors:

(1) The volume of waste proposed for exportation, the type of waste proposed for exportation by the generator, the approximate radioactivity of the waste, [the specific radionuclides contained therein,] the time [period] of the proposed exportation, and the location and name of the facility that[, which] will receive the waste for treatment and ultimate disposal;

(2) The policy and purpose of the Compact;

(3) The availability of the Compact Facility for the disposal of the waste involved;

(4) The economic impact on the host county, the host state, [Host County, the Host State,] and the Compact Facility Operator [operator] of granting the export permit;

(5) The economic impact on the petitioner;

(6) Whether the low-level radioactive waste disposal compact or the state unaffiliated with such a compact in which the proposed disposal facility is located authorizes the importation of [has authorization to import] the waste being exported from the party state or states [into the region in which the disposal is to take place];

(7) The existence of unresolved violations associated with radioactive waste receipt, handling, processing, or transportation pending against the petitioner with any other regulatory agency with jurisdiction to regulate radioactive material, and any comments by the regulatory agency with which the petitioner has such unresolved violations;

(8) Any unresolved violation, complaint, unpaid fee, or past due report that the petitioner has with the Commission;

(9) Any relevant comments received from any interested person; [the Compact Facility, the petitioner, the Host County, the Host State, or the public; and]

(10) The projected effect, if any, on the rates to be charged for disposal of in-compact waste;

(11) The projected effect on preservation of Compact Facility capacity for the party states; and

(12) [(10)] Any other factor the Commission deems relevant to carry out the policy and purpose of the Compact.

(h) [(g)] Decision by the Commission--The Commission may [take one of the following actions on the export petition, in whole or in part]: approve the export petition in whole or in part; deny the export petition in whole or in part; [or] approve the export petition subject to terms and conditions selected [as determined] by the Commission and included [as ultimately documented] in the export permit; or request additional information needed for a decision. The Commission's decision to approve or deny the petition, either in whole or in part, or to approve the petition subject to the Commission's terms and conditions, is final without the filing of a motion for rehearing.

(i) [(h)] Terms and Conditions--The Commission may include any reasonable [impose any] terms or conditions in [on] the export permit that it deems appropriate or necessary [as is determined by the Commission].

(j) [(i)] Permit Duration, Amendment, Revocation, Reporting, and Assignment.

(1) An export permit shall be issued for the term specified in the permit and shall remain in effect for that term unless amended, revoked, or canceled by the Commission. The specified term in the export permit shall not authorize shipments of waste by the petitioner to occur beyond the end of the fiscal year for which the export permit is approved [more than 12 months from the date the export permit is issued].

(2) The Commission may[, on its own motion or in response to a petition for amendment from the permit holder of an export permit for which prior written notice has been given to the permit holder and the Compact Facility operator,] add requirements or limitations to or delete requirements or limitations from [to] the permit. Before doing so, the Commission will provide the permit holder and the Compact Facility Operator five business days' notice, so that they may comment on the proposed amendments to the permit. The Commission may also provide the permit holder a reasonable time [to allow the existing permit holder] to make any changes necessary to comply with the additional requirements or limitations imposed by the Commission. No exports will be allowed under any amended export permit until:

(A) the amendment to the export permit has been executed by both the permittee and the Commission; and

(B) the permittee has made any changes necessary to comply with any additional requirements that the Commission has imposed.

(3) The Commission's Chair or his or her delegate may review applications for amendments and, in consultation with the Commission's Technical Committee, approve minor amendments without a vote of the entire Commission, although the Chair or his or her delegate has the discretion to refer an application for an amendment to the full Commission for a decision. Notwithstanding the foregoing, the Commission will not approve an amendment that will extend the date on which an export permit expires beyond the end of a fiscal year.

(4) [(3)] Not later than October 31 of each calendar year, a person who holds an export permit shall file with the Commission a report concerning the [describing the amount and type of] waste exported in the immediately preceding period from September 1 to August 31. The [form of the] report shall specify the volume of low-level radioactive waste actually exported for disposal, the total radioactivity of the waste exported, the date or dates on which the waste was exported, and the name and location of the disposal facility to which the exported waste was delivered, along with the date or dates on which it was delivered to that facility [be prescribed by the Commission and shall be available on the Commission's web site, or may be obtained at a lo-

cation that will be posted on the Commission's web site]. Failure to timely file this report may result in denial of future export petitions.

(5) [(4)] An export permit [Export Permit] is not assignable or transferable to any other person.

(k) [(j)] Agreements to Export--Nothing in this subchapter shall limit the authority of the Commission to enter into agreements with the United States, other regional compact commissions, or individual states for the exportation or management of low-level radioactive waste. Nothing in this subchapter shall be construed to prohibit the storage or management of low-level radioactive waste by an in-compact [a] generator, or its disposal pursuant to 10 Code of Federal Regulations [CFR §20.302 (now 10 CFR] §20.2002[)].

[(k) Form of Export Permit--The Export Permit shall be on a form promulgated by the Commission and posted on the Commission's web site. The form may be amended by the Commission from time to time.]

[(l) Notwithstanding any other provision of this section, the Commission shall receive but will not begin to process applications for exportation of waste under this section by a compact generator to a non-party state for disposal until such time as the Commission determines by vote taken pursuant to §3.02 of the Compact as compiled at §403.006, Texas Health and Safety Code that it has adequate resources to properly examine applications prior to issuing permits and thereafter to enforce the terms and conditions of such permits as are issued. During the period between the adoption of this rule and the required determination pursuant to §3.02 of the Compact, permits granted pursuant to the resolution adopted by the Commission on December 11, 2009 will continue to be in effect. If, in the judgment of the Commission, circumstances warrant, new permits may be granted under the terms of that same resolution until such time as the Commission makes the required determination under §3.02 of the Compact.]

[(m) Definitions--Terms used in this subchapter shall have the meaning ascribed to them in the Compact.]

§675.22. Exportation of Waste to a Non-Party State for Management or Processing and Return to the Party States for Management or for Disposal in the Compact Facility.

(a) Where the sole purpose of the exportation of low-level radioactive waste is to manage or process the waste for recycling or waste reduction and to return the waste [it] to the party states for disposal in the Compact Facility, party-state [party state] generators are not required to obtain an export permit.[; however,]

(b) The generator exporting such waste must, however, [shall be required to] file a report with the Commission no later than 10 days after the shipment of the waste described in [under] subsection (a) of this section. Reports may be submitted by United Parcel Service (UPS), FedEx delivery service, [filed by facsimile] or by e-mail. A generator may satisfy the reporting requirement by timely submitting to [filing with] the Commission Forms 540 and 541 promulgated by the United States [U.S.] Nuclear Regulatory Commission, as applicable, with supplemental data indicating the types of waste management employed at the [waste management] facility to which the waste is being shipped. Alternatively, generator reports shall include the following information:

(1) The volume of waste proposed for exportation, the type, physical and chemical form of waste proposed for exportation, the approximate radioactivity of the waste, and the specific radionuclides contained therein;

(2) The location and name of waste processing facility or facilities [facility(ies)] receiving and processing the waste, the type of waste management employed at each [the] waste management facility, and whether the exported waste is to be mixed or commingled with waste from other generators.

(c) When the exported waste is either returned to the generator or shipped to the Compact Facility, the [Upon return of the waste to the generator:]

[(1)] [The] generator shall file a report informing the Commission of the volume, physical form, and activity of the waste returned to the party-state [party state] generator or shipped to the Compact Facility. The generator may rely on information provided to it by the processor who ships the waste back to the Compact Facility when making its report.[; and]

[(2) The generator and the processor shall certify that the waste has not been down-blended or blended, mixed or commingled with low-level radioactive waste that was not generated in the party states, except for waste incidental to processing, and that does not exceed 5-percent of the total activity.]

§675.23. Importation of Waste from a Non-Party [Nonparty] Generator for Disposal.

(a) It is the policy of the Commission to: [that any financial savings and other benefits generated by importation accrue to the benefit of the party states.]

(1) promote the health, safety, and welfare of the citizens and the environment of Texas and Vermont;

(2) limit the number of facilities needed to effectively, efficiently, and economically manage low-level radioactive waste;

(3) distribute the costs, benefits, and obligations among the party states; and

(4) refuse to allow [It is also the policy of the Commission that it will not accept] the importation of low-level radioactive waste of international origin for disposal at the Compact Facility.

(b) Vermont's disposal capacity reserve is 20% of the Compact Facility maximum volume as stated in the Compact, [stated in the Radioactive Materials License dated September 10, 2009, as well as 20% of any additional maximum volume approved in a later license,] and this capacity shall not be reduced by non-party [nonparty] waste. The [Compact Facility's disposal capacity shall be established at least every 5 years by a report of the Commission. The Commission's report shall be based on relevant information including without limitation the annual report by the host State on the status of the facility, including projections of the facility's anticipated future capacity, and remaining radionuclide-specific radioactivity to comply with the Compact Facility Radioactive Materials License. In view of the requirements of Texas Health and Safety Code (THSC), §401.207, as amended by Senate Bill 1504, 82nd Texas Legislature, 2011, the Commission shall revisit the terms of this subsection no later than one year from the effective date of the first amendments to this rule adopted in calendar year 2012. In the meantime, the] Commission will utilize the volumetric and curie limits set out in Texas Health and Safety Code (THSC), §401.207 [THSC, §401.207(b), (e), (e-1) (if applicable) and (f)], as guidelines with respect to authorizing the importation [import] of waste.

(c) If any state other than [a state or states in addition to] Texas or [and] Vermont becomes a member of the Compact in accordance with Article VII of the Compact, the waste from that state or states shall be deposited in space reserved for non-party [nonparty] compact waste, to the extent such space is available at the time the waste is to be deposited; in no event shall waste from that state be deposited in space reserved for waste generated in Texas or Vermont.

[(d) No application for an agreement to import low-level radioactive waste for disposal shall be granted by the Commission unless:]

[(1) The Compact Facility operator has provided to the Commission a recommended total annual volume to be imported for disposal to the Compact Facility and certified pursuant to THSC, §401.207(b) that the disposal of imported Class A, Class B, or Class C low-level radioactive waste will not reduce capacity for Party State-generated waste, based on the currently licensed volume and activity. Any operator of a low-level radioactive waste disposal compact facility, as defined in §2.01 of THSC, §403.006, must in good faith and with commercially reasonable efforts apply for all necessary permits and licenses to maintain the facility in continual operation; and]

[(2) The agreement contains a provision acknowledging the right of the Commission to audit or cause to be audited compliance with the agreement.]

(d) [(e)] Agreement Required. No person shall import any low-level radioactive waste for disposal that was generated in a non-party state unless the Commission has entered into an agreement for the importation of that waste pursuant to this section [rule]. No radioactive waste of international origin shall be imported into the Compact Facility for disposal. Violations of this subsection may result in prohibiting the violator from disposing of low-level radioactive waste in the Compact Facility, or in the imposition of penalty surcharges on shipments to the facility, as determined by the Commission. Each such agreement shall contain a provision acknowledging the right of the Commission to audit compliance with the agreement.

(e) [(f)] Form of Import Application and Terms of Import Agreement. Annex A in paragraph (1) of this subsection sets out the form that must be completed by an applicant to import low-level radioactive waste. The form will also be posted on the Commission's website and may contain minor modifications. The act of submitting an application means that the applicant is willing to enter into an agreement with the Commission containing at a minimum the terms set forth in the Term Sheet which is Annex B in paragraph (2) of this subsection. [When an applicant submits the application form prescribed by Annex A in paragraph (1) of this subsection, the applicant shall also submit a proposed agreement that addresses all of the terms set forth in the Term Sheet which is Annex B in paragraph (2) of this subsection.]

(1) Annex A.
Figure: 31 TAC §675.23(e)(1)
[Figure: 31 TAC §675.23(f)(1)]

(2) Annex B.
Figure: 31 TAC §675.23(e)(2)
[Figure: 31 TAC §675.23(f)(2)]

[(g) Fee for Proposed Importation Agreements. The Commission shall consider no later than one year from the effective date of the first amendments to this rule adopted in calendar year 2012 whether to impose fees with respect to applications and/ or agreements to import waste.]

(f) [(h)] Submission of an Application for an Import [Notice and Timing of] Agreement. A person who is a generator, a broker acting on behalf of one or more small quantity generators, or an authorized representative of the Department of Defense shall submit [file] an application to [and a proposed import agreement with] the Commission by electronic [and certified] mail; an additional copy of the application must also be sent to the Commission through the United Parcel Service (UPS) or FedEx delivery service. The applicant may not ship any waste for disposal under the importation agreement sought until the Commission has formally elected to enter into an agreement with the applicant and both parties have executed the agreement. In addition, the applicant shall [and must receive approval by the Commission prior to the shipment date, and]:

(1) certify that [The proposed import agreement shall be accompanied by a certification by the applicant that] the waste acceptance criteria promulgated by the Texas Commission on Environmental Quality (TCEQ) will be met for the proposed waste importation; and

(2) [The applicant shall] deliver to the [Commission,] Compact Facility Operator [operator] and TCEQ a copy of the application [and the proposed import agreement] (and any supplements or amendments thereto) by electronic mail at the same time the applicant submits the application to [of filing with] the Commission. The applicant must also send a hard copy of the application to[, and a copy shall also be delivered to] the Compact Facility Operator [facility] and [the] TCEQ through the UPS or FedEx delivery service. [by certified mail;]

[(3) Proposed import agreements received by the Commission during any calendar month may be processed in aggregate at the beginning of the following calendar month. The date of receipt of proposed import agreements shall be deemed the first business day of the following calendar month. Within seven days of the date of receipt, the Commission shall transmit notice of the receipt of the application and the proposed import agreement to the *Texas Register* for publication according to the schedule of the *Texas Register* and shall publish the application and proposed import agreement on the Commission's Web site; and]

[(4) Comments on the proposed import application may be submitted to the Commission by any person by electronic or certified mail during the 25-day period following the earlier of the date of posting and the date of transmittal as specified in paragraph (3) of this subsection.]

(g) Notice of Applications for Import Agreements. All applications for import agreements will be posted to the Commission's website within five business days of their submission.

(h) Comments on Applications for Import Agreements. Any person may submit comments on an application for an import agreement by electronic mail or by use of the UPS or FedEx delivery service after the application is posted on the Commission's website. The Commission will consider all comments received at least one week before the meeting at which it considers action on the application. The Commission may, but shall not be bound to, consider comments submitted less than one week before such a meeting.

(i) Review of Applications for [Proposed] Import Agreements [Agreement]. The Commission, a committee of the Commission [commission], or other persons employed or retained by the Commission shall, [promptly, but not sooner than 25 days or more than 60 days] after the posting of the application for an import agreement [earlier of the dates the application and proposed import agreement were posted] on the Commission's website, [Web site and the date of transmittal to the *Texas Register*,] review the application for an [and proposed] import agreement utilizing the following factors:

(1) The [characteristics of the waste proposed for importation including (but not limited to)] volume, type, physical form, and total radioactivity of the waste proposed for importation [and certain radionuclide-specific activities subject to subsection (d)(1) of this section];

(2) The policy and purpose of the Compact, as set out in Public Law 105-236, a federal law known as the "[The] Texas Low-Level Radioactive Waste Disposal Compact Consent Act"; in THSC,

§403.006, the Texas Low-Level Radioactive Waste Disposal Compact; and 10 V.S.A. §7069, the Texas Low-Level Radioactive Waste Disposal Compact;

(3) The economic impact, including both potential benefits and liabilities, on the host county, the host state, [~~Host County, the Host State,~~] other party states, the in-compact generators, and the Compact Facility Operator [~~operator~~] of entering into the import agreement;

(4) Whether the Compact Facility Operator has obtained authorization from TCEQ to dispose of the proposed waste;

(5) The effect of the Commission's approval of the proposed import agreement on the Compact Facility's total annual volume [~~and radionuclide-specific activity~~];

(6) The existence of unresolved violations associated with radioactive waste receipt, storage, handling, management, processing, or transportation pending against the applicant with any other regulatory agency with jurisdiction to regulate radioactive material, and any comments by the regulatory agency with which the applicant [~~petitioner~~] has unresolved violations;

(7) Any unresolved violation, complaint, unpaid fees, or past due report that the applicant has with the Commission;

(8) Any relevant comments received from any person [~~the Compact Facility operator, in-compact generators, the applicant, the Host County, the Host State, other party states, interested state or federal regulatory agencies, or the public~~];

(9) The generator of the waste and any necessary authorization of an applicant to export [~~(if applicable)~~];

(10) The projected effect on the rates to be charged for disposal of party-state [~~party state~~] compact waste;

(11) Whether by acceptance of the waste for disposal, the Compact Facility will remain below the applicable annual and total volume and curie capacity disposal limits set forth in THSC, §401.207 [~~§401.207(b), (e), (e-1) (if applicable), and (f)~~];

(12) To the extent applicable, compliance with the rules related to commingling adopted by TCEQ in coordination with the Commission pursuant to THSC, §401.207(k); and

(13) Any other factor the Commission deems relevant to carry out the policy and purpose of the Compact.

(j) Decision by the Commission. No earlier than 35 days after an application is posted and no later than 100 days after it is received [~~Within 120 days of receipt~~], the Commission shall take one of the following actions on the application for a proposed importation agreement, in whole or in part: approve the proposed agreement; deny the proposed agreement; approve the proposed agreement subject to terms and conditions as determined by the Commission; or request additional information needed for a decision. The Commission's decision to approve[~~, approve~~] in whole or in part, deny, or approve subject to terms and conditions is final without the filing of a motion for rehearing [~~and unappealable~~]. However, after the Commission has acted on an applicant's proposed importation agreement, an applicant immediately may file another application. The Commission may deny an [~~the~~] application for any of the following reasons [~~set out as follows~~]:

(1) Lack of current or anticipated capacity beyond that required by party-state [~~party state~~] generators;

(2) The waste destined for the facility is not in accord with the license issued by TCEQ to the Compact Facility;

(3) The shipment potentially contains waste of international origin as defined in THSC, §401.2005(9); or

(4) Any other relevant issue.

(k) Terms and Conditions. The Commission may include [~~impose~~] any terms or conditions in [~~on~~] the import agreement reasonably related to furthering the policy and purpose of the Compact including, but not limited to, the policies referenced in subsection (a) of this section.

(l) Importation Agreement Duration, Amendment, Revocation, Indemnification, Reporting, and Assignment[~~, and Fees~~].

(1) An importation agreement shall remain in effect for the term specified in the agreement, which term shall end on August 31 of the fiscal year for which the agreement is approved. The importation agreement [~~and~~] shall remain in effect as approved [~~for that term~~] unless amended by agreement of the Commission and the applicant, or revoked by the Commission prior to importation. A condition of every importation agreement shall be that any generator of low-level radioactive waste must agree to comply with §8.03 of the Compact. In addition, every importation agreement approved by the Commission shall include a condition requiring the Compact Facility Operator [~~operator~~] to receive written certification from the TCEQ that the waste is authorized for disposal under the license prior to the acceptance of waste under the importation agreement.

(2) The Commission may revoke or amend an agreement[~~,~~] on its own motion or in response to an application by the agreement holder. When the [~~The~~] Commission amends an importation agreement on its own motion, it may provide a reasonable time to allow the agreement holder and the Compact Facility Operator [~~operator~~] to make the changes necessary to comply with any additional requirements imposed by the Commission. No imports shall be allowed under any amended agreement for the importation of waste until:

(A) the amendment to the importation agreement has been executed by both the Commission and the agreement holder; and

(B) the agreement holder has made any [~~the appropriate~~] changes necessary to comply with[~~, based on~~] additional requirements imposed by the Commission[~~, are implemented~~].

(3) The Commission's Chair or his or her delegate may review applications for minor amendments and, in consultation with the Commission's Technical Committee, approve them without a vote of the entire Commission, although the Chair or his or her delegate has the discretion to refer the application for the amendment to the full Commission for a decision. The following changes are considered to be minor amendments: inclusion of additional compacts or unaffiliated states, territories, possessions, or districts of the United States from which waste will be shipped; inclusion of an additional waste stream; a change in waste form; and inclusion of an additional type of generator. If the holder of an importation agreement seeks to add points of origin of the waste to be disposed of in the Compact Facility, the agreement holder must also provide export authorization, as necessary, from a compact to which the state being added is a party. The Commission will not treat an application for amendment as a request for a minor amendment simply because the applicant has described the amendment as "minor." If the Chair or his or her delegate, in consultation with the Commission's Technical Committee, decides that an application purporting to be an application for a minor amendment is actually an application for a major amendment, the Commission will return the application to the applicant who may resubmit the application as an application for a major amendment.

(4) Notice of Applications for Amendments to Import Agreements. All applications for amendments to import agreements, including applications for minor amendments, shall be posted to the Commission's website within five business days of their submission.

(5) Commission Decisions on Applications for Amendments to Import Agreements. If an application is for a minor amendment, neither the Chair nor his or her delegate will act on the application before the 15th calendar day after the posting of the application for amendment. The Commission will act on applications for major amendments in the same manner that it acts on original applications for import agreements and within the same time period. An import agreement is not assignable or transferable to any other person. The Commission's action, or that of the Chair or his or her delegate, on an application for amendment to an import agreement is final without the filing of a motion for rehearing.

[(3) An import agreement is not assignable or transferable to any other person.]

[(4) The Commission continues to consider the policy issues related to assessment of fees for the importation of low-level radioactive waste based on volume or activity of the waste. Upon conclusion of consideration of this issue, the Commission may provide for such fees in this section.]

(m) The Compact Facility Operator [operator] shall file with the Commission a Quarterly Import Report, no later than 30 days after the end of each calendar quarter, describing the imported waste that was disposed and stored under the import agreement during the quarter by the Compact Facility, including the physical, radiological, and chemical properties of the waste consistent with the identification required by the Compact Waste Facility license. Each Quarterly Import Report will provide the identity of the generator, the manifested volume and activity of each imported class of waste (A, B, and C[, or in the case of waste imported for management or processing, greater than Class C]), the state or United States Territory of origin, and the date(s) of waste disposal[, if applicable]. The Quarterly Report shall provide this information for the imported waste disposed of during the most recent quarter, as well as the cumulative information for imported waste disposed of in prior quarters under this Agreement. The Quarterly Import Reports shall be posted on the Commission's website [Web site].

(n) Small Quantity Generators. A small quantity generator [Small Generator] may use a broker to file import applications and proposed agreements with the Commission on its behalf. Such applications and proposed agreements shall comply in all respects with this section.

[(o) Definitions.]

[(1) Terms used in this subchapter shall have the meaning ascribed to them in the Compact and in THSC, §401.2005.]

[(2) Where time requirements are specified in "days," that shall be in calendar days unless otherwise specified.]

[(3) "Small Generator" means a generator of low-level radioactive waste who generates no more than 100 cubic feet of such waste per year, provided that the curie level of such waste is minimal as compared to the Compact Facility's license.]

[(4) "Commission" means the Texas Low-Level Radioactive Waste Disposal Compact Commission.]

[(5) "TCEQ" means the Texas Commission on Environmental Quality.]

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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Leigh Ing

Executive Director

Texas Low-Level Radioactive Waste Disposal Compact Commission

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For further information, please call: (512) 239-6087

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 19. NURSING FACILITY REQUIREMENTS FOR LICENSURE AND MEDICAID CERTIFICATION

SUBCHAPTER X. REQUIREMENTS FOR MEDICAID-CERTIFIED FACILITIES

40 TAC §19.2322

The Texas Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), an amendment to §19.2322, concerning Medicaid bed allocation requirements, in Chapter 19, Nursing Facility Requirements for Licensure and Medicaid Certification.

BACKGROUND AND PURPOSE

DADS proposes an amendment to 40 TAC §19.2322 to implement Texas Human Resources Code, §32.0213(d), which authorizes a rule to require an applicant for Medicaid beds in a nursing facility to provide a performance bond of $500,000 or other financial security as determined by DADS. The purpose of the performance bond or other security is to ensure that an applicant provides the Medicaid beds granted under the waiver within the time limit required by DADS. The proposed amendment requires an applicant that is granted Medicaid beds to provide the performance bond or other security.

The proposed amendment also moves the provision in subsection (f)(4)(D), which allows a facility that has been allocated beds under an Alzheimer's waiver to apply for general Medicaid beds, to subsection (h)(5)(E), which is specific to an Alzheimer's waiver. The proposed amendment describes how DADS determines compliance of a multiple-facility owner with level of acceptable care requirements, states that Medicaid beds granted through the small house waiver are not considered in determining an allowable Medicaid bed increase for a facility, clarifies when evidence of compliance with building benchmarks is due to DADS and when an architect or engineer must be under contract for final construction documents, and allows a construction progress report to serve as evidence of active and ongoing construction.

The proposed amendment clarifies when DADS decertifies and de-allocates Medicaid beds allocated through a criminal justice waiver, Alzheimer's waiver, a teaching nursing facility waiver, state veterans home waiver, and a small house waiver.

The proposed amendment updates terminology and makes editorial and organizational changes for clarity and consistency.

The requirement to obtain a performance bond, surety bond, or irrevocable letter of credit added by this amendment applies to a

Medicaid bed waiver application that DADS receives on or after the effective date of this amendment.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §19.2322(e)(4) clarifies that DADS considers the number of facilities that have received sanctions in relation to the number of facilities the applicant owns when determining if a multiple facility owner meets level of acceptable care requirements.

The proposed amendment to §19.2322(f)(4) deletes subparagraph (D), related to a facility with an Alzheimer's waiver applying for general Medicaid beds, and adds it to §19.2322(h)(5)(E), which is specific to the Alzheimer's waiver.

The proposed amendment to §19.2322(h) adds performance bond, surety bond or irrevocable letter of credit requirements for an applicant granted Medicaid beds under a high occupancy waiver, community needs waiver, economically disadvantaged waiver, rural county waiver, or small house waiver. An applicant granted a waiver must provide a performance bond, surety bond, or irrevocable letter of credit in the amount of $500,000 to ensure the Medicaid beds are developed within the time limit provided in the section. DADS will void a waiver if the performance bond, surety bond, or letter of credit is not provided within 90 days after DADS approves the waiver application. The proposed amendment requires a performance bond or surety bond be executed by a corporate entity in accordance with Subchapter A, Chapter 3503, Texas Insurance Code; be in a form approved by DADS; and clearly and prominently display certain information on the face of the bond. An irrevocable letter of credit must be issued by a banking institution or similar financial or lending institution. The bond or letter of credit must remain in effect until the facility is certified to participate in the Medicaid program. The bond or letter of credit is due and payable to DADS upon receipt of notice from DADS that the applicant failed to meet the required time frame, DADS declared the wavier void or revoked, or the applicant failed to notify DADS of the intent not to renew a bond or letter of credit at least 60 days before the automatic annual renewal provision of the bond or letter of credit, or of a change in the institution or company administering the bond or letter of credit.

The proposed amendment adds the following subparagraphs to address the performance bond, surety bond or irrevocable letter of credit in specific waiver types:

Section 19.2322(h)(1)(H) - (M)(i) - (iv) relating to a high occupancy waiver;

Section 19.2322(h)(2)(I) - (N)(i) - (iv) relating to a community needs waiver;

Section 19.2322(h)(4)(H) - (M)(i) - (iv) relating to an economically disadvantaged waiver;

Section 19.2322(h)(7)(F) - (K)(i) - (iv) relating to a rural county waiver; and

Section 19.2322(h)(9)(I) - (N)(i) - (iv) relating to a small house waiver.

The proposed amendment to §19.2322(h)(5) adds subparagraph (E), the provision deleted from §19.2322(f)(4)(D), which allows a facility that has beds allocated under an Alzheimer's waiver to apply for general Medicaid beds and provides that DADS does not count the Alzheimer's beds in determining the allowable beds increase.

The proposed amendment to §19.2322(h)(9) adds subparagraph (H) that allows a facility that has beds allocated under a small house waiver to apply for general Medicaid beds and provides that DADS does not count the small house beds in determining the allowable increase.

The proposed amendment to §19.2322(i)(4) clarifies that evidence of compliance with benchmarks must be submitted on or before the date required in each benchmark.

The proposed amendment to §19.2322(i)(4)(B) clarifies that an architect or engineer must be under contract for final construction documents within 15 months after DADS approval of the waiver or replacement.

The proposed amendment to §19.2322(i)(4)(F) clarifies that a construction progress report serves as evidence of compliance with active and ongoing construction requirements.

The proposed amendment to §19.2322(j)(1)(D) addresses decertification and de-allocation of Medicaid beds granted through a criminal justice waiver, Alzheimer's waiver, a teaching nursing facility waiver, state veterans home waiver, and a small house waiver.

FISCAL NOTE

David Cook, DADS Chief Financial Officer, has determined that, for the first five years the proposed amendments are in effect, there may be a fiscal impact to the revenues of state government as a result of administering or enforcing the proposed amendment if DADS collects on a bond or irrevocable letter of credit. However, the agency cannot estimate the number of defaults that might occur and, therefore, cannot estimate the fiscal impact to state revenues.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed new sections may have an adverse economic effect on small and micro-businesses due to the cost of obtaining a performance bond, surety bond, or letter of credit. The agency is allowing a nursing facility to submit an irrevocable letter of credit, instead of a performance or surety bond, because the letter of credit would be less expensive for many facilities to obtain. The agency considered exempting small or micro-businesses from the requirement to provide financial security, or reducing the amount of the security, but the agency determined the amount of the security required in the proposed rule is necessary to accomplish the objective of the statute, which is to ensure that an applicant for a waiver develops the Medicaid beds granted under the waiver within the time limit required by DADS.

PUBLIC BENEFIT AND COSTS

Mary T. Henderson, DADS Assistant Commissioner for Regulatory Services, has determined that, for each year of the first five years the amendments are in effect, the public will benefit from rules that allow additional Medicaid beds in nursing facilities to be certified by providing an incentive to a nursing facility to complete construction within the time required by DADS. The public will also benefit from the increased competition between nursing facilities that the additional beds will create.

Ms. Henderson anticipates that there will be an economic cost to persons who are required to comply with the amendments. Applicants for certain Medicaid bed waivers will be required to purchase a surety or performance bond or an irrevocable letter of credit. The cost of the surety or performance bond is estimated

to be 3% of $500,000, or $15,000. The cost of an irrevocable letter of credit is based on a negotiated fee with a financial institution, estimated to be 1 to 2% of $500,000, or $5,000 - $10,000. In addition, if a nursing facility's bond or letter of credit becomes due and payable, the facility will incur additional costs. DADS cannot, however, accurately predict how often that will occur.

The amendments 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 Sharon Wallace at (210) 619-8292 in DADS Regulatory Services/Policy, Rules and Curriculum Development. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-14R09, 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 14R09" 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; and Texas Human Resources Code §32.0213, which requires DADS to control the number of Medicaid beds in nursing facilities.

The amendment affects Texas Government Code, §531.0055, Texas Human Resources Code, §161.021, and Texas Human Resources Code §32.0213.

§19.2322. Medicaid Bed Allocation Requirements.

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

(1) Applicant--An individual or entity requesting a bed allocation waiver or exemption.

(2) Assignment of rights--The Department of Aging and Disability Services (DADS) conveyance of a specific number of allocated Medicaid beds from a nursing facility or entity to another entity for purposes of constructing a new nursing facility or for any other use as authorized by this chapter.

(3) Bed allocation--The process by which DADS controls the number of nursing facility beds that are eligible to become Medicaid-certified in each nursing facility.

(4) Bed certification--The process by which DADS certifies compliance with state and federal Medicaid requirements for a specified number of Medicaid beds allocated to a nursing facility.

(5) County or precinct occupancy rate--The number of residents, regardless of source of payment, occupying certified Medicaid beds in a county divided by the number of Medicaid beds allocated in the county, including Medicaid beds that are certified and Medicaid beds that have been allocated but are not certified. In the four most populous counties in the state, the occupancy rate is calculated for each county commissioner precinct.

(6) Licensee--The individual or entity, including a controlling person, that is:

(A) an applicant for licensure by DADS under Chapter 242 of the Texas Health and Safety Code and for Medicaid certification;

(B) licensed by DADS under Chapter 242 of the Texas Health and Safety Code; or

(C) licensed under Chapter 242 of the Texas Health and Safety Code and holds the contract to provide Medicaid services.

(7) Lien holder--The individual or entity that holds a lien against a physical plant.

(8) Multiple-facility owner--An individual or entity that owns, controls, or operates under lease two or more nursing facilities within or across state lines.

(9) Occupancy rate--The number of residents occupying certified Medicaid beds divided by the number of certified Medicaid beds in a nursing facility.

(10) Open solicitation period--A period during which an individual or entity may apply for an allocation of Medicaid beds in a high-occupancy county or precinct.

(11) Physical plant--The land and attached structures to which beds are allocated or for which an application for bed allocation has been submitted.

(12) Property owner--The individual or entity that owns a physical plant.

(13) Transfer of beds--DADS conveyance of a specific number of allocated Medicaid beds from an existing nursing facility or entity to another existing licensed nursing facility. The nursing facility may use the transferred Medicaid beds to increase the number of Medicaid-certified beds currently licensed or to increase the number of Medicaid-certified beds when additional licensed beds are added to the nursing facility in the future.

(b) Purpose. The purpose of this section is to control the number of Medicaid beds that DADS contracts, to improve the quality of resident care by selective and limited allocation of Medicaid beds, and to promote competition.

(c) Bed allocation general requirements. The allocation of Medicaid beds is an opportunity for the property owner or the lessee of a nursing facility to obtain a Medicaid nursing facility contract for a specific number of Medicaid-certified beds.

(1) Medicaid beds are allocated to a nursing facility and remain at the physical plant where they were originally allocated, unless DADS transfers or assigns the beds.

(2) When DADS allocates Medicaid beds to a nursing facility as a result of actions by the licensee, DADS requires that the beds remain allocated to the physical plant, even when the licensee ceases operating the nursing facility, unless DADS assigns or transfers the beds.

(3) Notwithstanding any language in subsections (f) and (g) of this section and the fact that applicants for bed allocation waivers and exemptions may be licensees or property owners, DADS allocates beds to the physical plant and the owner of that property controls the Medicaid beds subject to DADS rules and requirements and all valid physical plant liens.

(d) Control of beds. Except as specified in this section, DADS does not accept applications for a Medicaid contract for nursing facility beds from any nursing facility that was not granted:

(1) a valid certificate of need (CON) by the Texas Health Facilities Commission before September 1, 1985;

(2) a waiver or exemption approved by the Department of Human Services before January 1, 1993; or

(3) a valid order that had the effect of authorizing the operation of the nursing facility at the bed capacity for which participation is sought.

(e) Level of acceptable care. Unless specifically exempted from this requirement, applicants and controlling persons of an applicant for Medicaid bed allocation waivers or exemptions must comply with level of acceptable care requirements. Level of acceptable care requirements apply only in determining bed allocation waiver and exemption eligibility and have no effect on other sections of this chapter.

(1) DADS determines a waiver or exemption applicant or a controlling person of an applicant complies with level of acceptable care requirements if, within the preceding 24 months, the applicant or controlling person:

(A) has not received any of the following sanctions:

(i) termination of Medicaid or Medicare certification;

(ii) termination of Medicaid contract;

(iii) denial, suspension, or revocation of a nursing facility license;

(iv) cumulative Medicaid or Medicare civil monetary penalties totaling more than $5,000 per facility;

(v) civil penalties pursuant to §242.065 of the Texas Health and Safety Code; or

(vi) denial of payment for new admissions;

(B) does not have a pattern of substantial or repeated licensing and Medicaid sanctions, including administrative penalties or other sanctions; and

(C) does not have a condition listed in §19.214(a) of this chapter (relating to Criteria for Denying a License or Renewal of a License).

(2) DADS considers the criteria in paragraph (1) of this subsection to determine if local facilities provide a level of acceptable care in counties, communities, ZIP codes or other geographic areas that are the subject of a waiver application. DADS only considers sanctions that are final and are not subject to appeal when determining if a local facility complies with level of acceptable care requirements.

(3) Nursing facilities that have received any of the sanctions listed in paragraph (1) of this subsection within the previous 24 months are not eligible for an allocation of Medicaid beds under subsection (h) of this section or an allocation of additional Medicaid beds under subsection (f) of this section. In the case of sanctions against the nursing facility to which the beds would be allocated that are appealed, either administratively or judicially, an application will be suspended until the appeal has been resolved. Sanctions that have been administratively withdrawn or were subsequently reversed upon administrative or judicial appeal are not considered.

(4) If an [~~When the~~] applicant for an allocation of additional Medicaid beds or a controlling person of an applicant is a multiple-facility owner or a multiple-facility owner owns the [~~an~~] applicant [~~nursing facility~~], the multiple-facility owner must demonstrate an overall record of complying with level of acceptable care requirements. DADS considers the number of facilities that have received sanctions listed in paragraph (1) of this subsection in relation to the number of facilities that the multiple-facility owner owns to determine if a multiple-facility owner meets level of acceptable care requirements. DADS only considers sanctions that are final and are not subject to appeal when determining whether the multiple-facility [~~multi-facility~~] owner's facilities not receiving the new bed allocation comply with level of care requirements.

(5) When the applicant is a licensee that has operated a nursing facility less than 24 months, the nursing facility must establish at least a 12-month compliance record immediately preceding the application in which the nursing facility has not received any of the sanctions listed under paragraph (1) of this subsection.

(6) When the applicant has no history of operating nursing facilities, DADS will review the compliance record of health-care facilities operated, managed, or otherwise controlled by controlling parties of the applicant. If a controlling party or the applicant has never operated, managed, or otherwise controlled any health-care facilities, a compliance review is not required.

(7) The commissioner, or the commissioner's designee, may make an exception to any of the requirements in this subsection if the commissioner or the commissioner's designee determines the needs of Medicaid recipients in a local community will be served best by granting a Medicaid bed allocation waiver or exemption. In determining whether to make an exception to the requirements, the commissioner or the commissioner's designee may consider the following:

(A) the overall compliance record of the waiver or exemption applicant;

(B) the current availability of Medicaid beds in facilities that comply with level of acceptable care requirements in the local community;

(C) the level of support for the waiver or exemption from the local community;

(D) the way a waiver or exemption will improve the overall quality of care for nursing facility residents; and

(E) the age and condition of nursing facility physical plants in the local community.

(f) Exemptions. DADS may grant an exemption from the requirements in subsection (d) of this section. All exemption actions must comply with the requirements in this subsection and with requirements of the Centers for Medicare and Medicaid Services (CMS) regarding bed capacity increases and decreases. When a bed allocation exemption is approved, the licensee must comply with the requirements

in §19.201 of this chapter (relating to Criteria for Licensing) at the time of licensure and Medicaid certification of the new beds or nursing facility.

(1) Replacement Medicaid nursing facilities and beds. An applicant may request that DADS approve replacement of allocated Medicaid beds by the construction of one or more new nursing facilities.

(A) The applicant must own the physical plant where the beds are allocated or possess a valid assignment of rights to the Medicaid beds.

(B) The applicant must obtain written approval by all lien holders of the physical plant where the beds are allocated before requesting DADS approval to relocate the Medicaid beds to the replacement facility if the replacement facility will be constructed at a different address than the current facility. The applicant must submit the lien holder approval with the replacement nursing facility request. If the physical plant where the Medicaid beds are allocated does not have a lien, the applicant must submit a written attestation of that fact with the replacement nursing facility request.

(C) Replacement nursing facility applicants, including those who obtained the rights to the beds through a DADS assignment of beds, must comply with the level of acceptable care requirements in subsection (e) of this section, unless the applicant for a replacement nursing facility is the current property owner.

(D) DADS may grant a replacement facility an increase of up to 25 percent of the currently allocated Medicaid beds, if the applicant complies with the level of acceptable care requirements in subsection (e) of this section. DADS will not transfer or assign the additional allocation of beds until they are certified at the replacement facility.

(E) The physical plant of the replacement nursing facility must be located in the same county in which the Medicaid beds currently are allocated.

(2) Transfer of Medicaid beds. An applicant may request DADS transfer allocated Medicaid beds certified or previously certified to another physical plant.

(A) The applicant must own the physical plant where the beds are allocated, or the applicant must present DADS with:

(i) a valid Medicaid bed transfer agreement that specifies the number of additional Medicaid beds the applicant is requesting DADS allocate to the receiving nursing facility; or

(ii) a valid Medicaid bed assignment that specifies the number of additional Medicaid beds the applicant is requesting DADS allocate to the receiving nursing facility.

(B) If the Medicaid beds are allocated to a specific physical plant, the applicant must obtain and submit written approval from the property owner and, if the physical plant has a lien, written approval from all lien holders to obtain a DADS transfer of the Medicaid beds to another facility. If the physical plant where the Medicaid beds are allocated does not have a lien, the applicant must submit a written attestation of that fact with the transfer request.

(C) The receiving licensee must comply with level of acceptable care requirements in subsection (e) of this section.

(D) Both facilities must be located in the same county.

(3) High-occupancy facilities. Medicaid-certified nursing facilities with high occupancy rates may periodically apply to DADS to receive bed allocation increases.

(A) The occupancy rate of the Medicaid beds of the applicant nursing facility must be at least 90.0 percent for nine of the previous 12 months prior to the application.

(B) The application for additional Medicaid beds may be for no more than 10 percent (rounded to the nearest whole number) of the facility's Medicaid-certified nursing facility beds.

(C) The applicant nursing facility must comply with level of acceptable care requirements in subsection (e) of this section.

(D) The applicant nursing facility may reapply for additional Medicaid beds no sooner than nine months from the date of the previous allocation increase.

(E) Medicaid beds allocated to a nursing facility under this requirement may only be certified at the applicant nursing facility. DADS does not transfer or assign the additional allocation of beds until they are certified at the applicant nursing facility.

(4) Non-certified nursing facilities. Licensed nursing facilities that do not have Medicaid-certified beds may apply to DADS for an initial allocation of Medicaid beds.

(A) The application for Medicaid beds may be for no more than 10 percent (rounded to the nearest whole number) of the facility's licensed nursing facility beds.

(B) The applicant nursing facility must comply with level of acceptable care requirements in subsection (e) of this section.

(C) After the applicant nursing facility receives an allocation of Medicaid beds, the facility may apply for additional Medicaid beds in accordance with paragraph (3) of this subsection.

~~[(D) Facilities that have Medicaid beds allocated under provisions of an Alzheimer's waiver may apply for general Medicaid beds in accordance with paragraph (3) or (4) of this subsection. DADS does not count the beds allocated under an Alzheimer's waiver provision in determining the allowable bed allocation increase. For example, a 120-bed nursing facility with 60 Alzheimer waiver beds would be eligible for 10 percent of the 60 remaining beds or six additional Medicaid beds.]~~

(5) Low-capacity facilities. For purposes of efficiency, nursing facilities with a Medicaid bed capacity of less than 60 may receive additional Medicaid beds to increase their capacity up to a total of 60 Medicaid beds.

(A) The nursing facility must be licensed for less than 60 beds and have a current certification of less than 60 Medicaid beds.

(B) The nursing facility must have been Medicaid-certified before June 1, 1998.

(C) The applicant licensee must comply with level of acceptable care requirements in subsection (e) of this section.

(D) Facilities that have a Medicaid capacity of less than 60 beds due to the loss of Medicaid beds under provisions in subsection (j) of this section are not eligible for this exemption.

(6) Spend-down Medicaid beds. Licensed nursing facilities may apply to DADS for temporary spend-down Medicaid beds for residents who have "spent down" their resources to become eligible for Medicaid, but for whom no Medicaid bed is available. A DADS approval of spend-down Medicaid beds allows a nursing facility to exceed temporarily its allocated Medicaid bed capacity.

(A) The applicant nursing facility must have a Medicaid contract with a Medicaid bed capacity of at least 10 percent of licensed capacity authorized in paragraph (4) of this subsection. If the

nursing facility is not currently Medicaid-certified, the licensee must be approved for Medicaid certification and obtain a Medicaid contract with a Medicaid bed capacity at least as large as that authorized in paragraph (4) of this subsection.

(B) All Medicaid or dually certified beds must be occupied by Medicaid or Medicare recipients at the time of application.

(C) The application for a spend-down Medicaid bed must include documentation that the person for whom the spend-down bed is requested:

(i) was not eligible for Medicaid at the time of the resident's most recent admission to the nursing facility; and

(ii) was a resident of the nursing facility for at least the immediate three months before becoming eligible for Medicaid, excluding hospitalizations.

(D) The nursing facility is eligible to receive Medicaid benefits effective the date the resident meets Medicaid eligibility requirements.

(E) The nursing facility must assign a permanent Medicaid bed to the resident as soon as one becomes available.

(F) Facilities with multiple residents in spend-down beds must assign permanent Medicaid beds to those residents in the same order the residents were admitted to spend-down beds.

(G) The assignment of residents in spend-down beds to permanent Medicaid beds must precede the admission of new residents to permanent beds.

(H) The nursing facility must notify DADS immediately upon the death or permanent discharge of the resident or transfer of the resident to a permanent Medicaid bed. Failure of the nursing facility to notify DADS of these occurrences in a timely manner is basis for denying applications for spend-down Medicaid beds.

(I) The nursing facility is not required to comply with level of acceptable care requirements in subsection (e) of this section.

(g) Waivers. The commissioner or the commissioner's designee may grant a waiver of the requirements stated in subsection (d) of this section under certain conditions.

(1) Applicants must meet the following conditions to be eligible for the specific waivers in subsection (h) of this section.

(A) The applicant must meet the level of acceptable care requirement in subsection (e) of this section.

(B) The applicant must submit a complete DADS waiver application.

(C) At the time of licensure and Medicaid certification of the allocated beds, the licensee must comply with the requirements in §19.201 of this chapter.

(D) A waiver recipient or a subsequent waiver assignee must, at the time of licensure and Medicaid certification, be the property owner or the licensee of the facility where Medicaid beds allocated through the waiver process are certified.

(2) A waiver recipient may request that DADS approve the assignment of an approved waiver to another entity in accordance with this paragraph. A waiver recipient may request DADS approval of only one assignment. A waiver assignment is not valid unless and until it is approved by DADS.

(A) The waiver recipient or the owner of the waiver recipient must maintain majority ownership and management control of the assignee.

(B) The assignee must not have an owner or controlling person who was not an owner or controlling person of the waiver recipient.

(C) The assignee must own the physical plant of the waiver facility at the time of licensure and certification (as landlord) or be the licensee at the time of licensure and certification (as the licensed operator). Under either circumstance, the allocated beds are subject to subsection (c) of this section.

(D) The assignee must meet the requirements in subsection (e) of this section regarding level of acceptable care.

(3) A waiver recipient entity may remove a controlling person from ownership of the entity, but the waiver recipient entity must not add an owner after the waiver is approved by DADS. A change to the ownership of the waiver recipient entity or the waiver assignment entity must be reported to DADS.

(4) DADS may in its sole discretion determine that a waiver applicant that submits false or fraudulent information is not eligible for a waiver. DADS may, in its sole discretion, revoke a waiver issued and decertify Medicaid beds issued based on false or fraudulent information provided by the applicant.

(5) Except as provided in paragraphs (6) - (9) of this subsection, DADS considers waiver applications in the order in which they are received. A waiver applicant may request that review of its application be deferred until one or more applications submitted after its application has been reviewed. This request must be in writing.

(6) DADS gives priority to a small house waiver application submitted in accordance with subsection (h)(9) of this section over a pending community needs waiver application submitted in accordance with subsection (h)(2) of this section for the same county. If approved, DADS includes the small house facility beds when determining the need for a community needs waiver.

(7) During any period in which DADS is processing a waiver application in accordance with subsection (h)(2), (4), (5), or (9) of this section, DADS may suspend processing the waiver application for up to six months if DADS determines the county or precinct occupancy rate of the county or precinct in which the site of the proposed waiver is located is at least 85 percent during at least six of the previous nine months. DADS calculates the occupancy rate based on the monthly Medicaid occupancy reports submitted to DADS by Medicaid-certified nursing facilities and includes the occupancy rate of certified Medicaid beds and allocated Medicaid beds that are encumbered for future certification as a result of approval of a waiver or exemption in the subject county or precinct.

(8) DADS initiates the high occupancy county or precinct waiver process referenced in subsection (h)(1) of this section if DADS determines requirements for the open solicitation process for a high occupancy county or precinct waiver are met during the temporary suspension period referenced in paragraph (7) of this subsection. DADS does not process any pending waiver applications in the affected county or precinct until the open solicitation process referenced in subsection (h)(1) of this section is complete.

(9) DADS continues to process a suspended waiver application in the affected county or precinct if DADS determines requirements for the open solicitation process of the high occupancy county or precinct waiver are not met during the suspension period referenced in paragraph (7) of this subsection.

(h) Specific waiver types. DADS may grant a waiver if it determines that Medicaid beds are necessary for the following circumstances.

(1) High occupancy waiver. A high occupancy waiver is designed to meet the needs of counties and certain precincts that have a high county or precinct occupancy rate for multiple months.

(A) DADS monitors monthly county or precinct occupancy rates. If DADS determines that a county or precinct occupancy rate equals or exceeds 85 percent for at least nine of the previous twelve months, DADS may initiate a waiver process by placing a public notice in the Texas Register and the Electronic State Business Daily (ESBD) to announce an open solicitation period.

(B) The public notice announces that DADS may allocate 90 additional Medicaid beds in the county or precinct.

(C) The notice identifies the county or precinct and the beginning and end dates of the solicitation period. The notice also includes the DADS address to which the application for additional Medicaid beds must be submitted and specifies that the application must be received by DADS before the close of business on the end date of the solicitation period.

(D) An applicant for additional Medicaid beds must comply with the level of acceptable care requirements in subsection (e) of this section.

(E) An applicant must submit a complete DADS waiver application.

(F) At the end of the solicitation period, DADS determines if an applicant is eligible for additional Medicaid beds. If multiple applicants are eligible, the applicant who will receive the allocation of beds will be chosen by a lottery selection.

(G) If no application for the waiver process is received or if no applicant meets the requirements in this section, DADS conducts no further solicitation. DADS closes the process without allocating Medicaid beds.

(H) An applicant that is granted a high occupancy waiver must provide to DADS a performance bond, surety bond, or an irrevocable letter of credit in the amount of $500,000 payable to DADS to ensure that the Medicaid beds granted to the applicant under the waiver are certified within the time periods required by subsection (i)(4)(G) of this section, including any extensions granted under subsection (i)(6) of this section. DADS will revoke a waiver if the performance bond, surety bond, or irrevocable letter of credit is not provided within 90 days after DADS approves the waiver application.

(I) If an applicant chooses to provide a performance bond or surety bond instead of an irrevocable letter of credit, the performance bond or surety bond provided under this subchapter must:

(i) be executed by a corporate entity in accordance with Texas Insurance Code, Chapter 3503, Subchapter A;

(ii) be in a form approved by DADS; and

(iii) clearly and prominently display on the face of the bond:

(I) the name, mailing address, physical address, and telephone number of the surety company or financial institution to which any notice of claim should be sent; or

(II) the toll-free telephone number maintained by the Texas Department of Insurance in accordance with Texas Insurance Code, Chapter 521, Subchapter B, and a statement that the address of the surety company to which any notice of claim should be sent may be obtained from the Texas Department of Insurance by calling the toll-free telephone number.

(J) If an applicant chooses to provide an irrevocable letter of credit, the irrevocable letter of credit must be issued by a banking institution or similar financial institution.

(K) An applicant must notify DADS at least 60 days in advance if:

(i) the applicant does not intend to renew its performance bond, surety bond, or irrevocable letter of credit on the annual renewal date; or

(ii) the applicant changes the lending institution or surety bond company administering the performance bond, surety bond, or irrevocable letter of credit.

(L) An applicant may choose a performance bond, surety bond, or irrevocable letter of credit and substitute one for the other over the course of development and construction, but regardless of which option is chosen, the performance bond, surety bond, or irrevocable letter of credit must continue in effect until the facility is certified to participate in the Medicaid program or until paid to DADS after notice provided in accordance with subparagraph (M) of this paragraph.

(M) A performance bond, surety bond, or irrevocable letter of credit is immediately due and must be paid to DADS upon receipt of notice from DADS to the issuer of the performance bond, surety bond, or irrevocable letter of credit that:

(i) the applicant did not comply with subsection (i)(4)(G) of this section, which may include an extension granted under subsection (i)(6) of this section;

(ii) DADS revokes the applicant's waiver;

(iii) the applicant did not notify DADS of its intent not to renew the performance bond, surety bond, or irrevocable letter of credit at least 60 days before its automatic annual renewal date; or

(iv) the applicant did not notify DADS of a change in the lending institution or surety bond company administering the performance bond, surety bond, or irrevocable letter of credit.

(2) Community needs waiver. A community needs waiver is designed to meet the needs of communities that do not have reasonable access to acceptable nursing facility care.

(A) The applicant must submit a demographic or health needs study, prepared by an independent professional experienced at preparing demographic or health needs studies, that documents:

(i) an immediate need for additional Medicaid beds in the community; and

(ii) Medicaid residents in the community do not have reasonable access to acceptable nursing facility care.

(B) The application must include a statement by the preparer of the study that the preparer has no interest, financial or otherwise, in the outcome of the waiver application.

(C) The demographic or health needs study must include at least the following information pertaining to the community's population:

(i) population growth trends;

(ii) population growth trends specific to the elderly, including income or financial condition;

(iii) Medicaid bed occupancy data;

(iv) level of acceptable care provided by local nursing facilities; and

(v) any existing allocated Medicaid beds not currently certified but that could be used for a new Medicaid nursing facility.

(D) The applicant must submit documentation of substantial community support for the new nursing facility or beds.

(E) When determining the immediate need for additional Medicaid beds, and whether residents have reasonable access to acceptable nursing facility care, DADS considers:

(i) the number and occupancy rate of certified Medicaid beds that comply with level of acceptable care requirements; and

(ii) the number of encumbered Medicaid beds that have been approved by DADS but are not yet certified.

(F) Replacement beds or waiver beds approved in accordance with subsection (f)(1) or (h) of this section will not be considered in the calculation in subparagraph (D) of this paragraph if the owner of the replacement beds or waiver beds has not purchased land for a new construction site within 24 months after the date DADS initially approves the replacement request or the waiver for the beds.

(G) DADS considers an application withdrawn if it is not completed within 90 days after the application is submitted to DADS.

(H) DADS notifies local nursing facilities when a complete community needs waiver application is received and affords local nursing facilities an opportunity to comment on the waiver application. The notification includes a deadline for submission of comments. DADS limits subsequent comments during the review process to facilities that submit timely comments in response to the notification of a completed application.

(I) An applicant that is granted a community needs waiver must provide to DADS a performance bond, surety bond, or an irrevocable letter of credit in the amount of $500,000 payable to DADS to ensure that the Medicaid beds granted to the applicant under the waiver are certified within the time periods required by subsection (i)(4)(G) of this section, including any extensions granted under subsection (i)(6) of this section. DADS will revoke a waiver if the performance bond, surety bond, or irrevocable letter of credit is not provided within 90 days after DADS approves the waiver application.

(J) If an applicant chooses to provide a performance bond or surety bond, instead of an irrevocable letter of credit, the performance bond provided under this subparagraph must:

(i) be executed by a corporate entity in accordance with Texas Insurance Code, Chapter 3503, Subchapter A;

(ii) be in a form approved by DADS; and

(iii) clearly and prominently display on the face of the bond;

(I) the name, mailing address, physical address, and telephone number of the surety company or financial institution to which any notice of claim should be sent; or

(II) the toll-free telephone number maintained by the Texas Department of Insurance in accordance with Texas Insurance Code, Chapter 521, Subchapter B, and a statement that the address of the surety company to which any notice of claim should be sent may be obtained from the Texas Department of Insurance by calling the toll-free telephone number.

(K) If an applicant chooses to provide an irrevocable letter of credit, the irrevocable letter of credit must be issued by a banking institution or similar financial/lending institution.

(L) An applicant must notify DADS at least 60 days in advance if:

(i) the applicant does not intend to renew its performance bond, surety bond, or irrevocable letter of credit on the annual renewal date; or

(ii) the applicant changes the lending institution or surety bond company administering the performance bond, surety bond, or irrevocable letter of credit.

(M) An applicant may choose a performance bond, surety bond, or irrevocable letter of credit, and may substitute one for the other over the course of development and construction, but regardless of which option is chosen, the performance bond, surety bond, or irrevocable letter of credit must continue in effect until the facility is certified to participate in the Medicaid program; or until paid to DADS after notice provided in accordance with subparagraph (N) of this paragraph.

(N) A performance bond, surety bond, or irrevocable letter of credit is immediately due and must be paid to DADS upon receipt of notice from DADS to the issuer of the performance bond, surety bond, or irrevocable letter of credit that:

(i) the applicant did not comply with subsection (i)(4)(G) of this section, which may include an extension granted under subsection (i)(6) of this section;

(ii) DADS revokes the applicant's waiver;

(iii) the applicant did not notify DADS of its intent not to renew the performance bond, surety bond, or irrevocable letter of credit at least 60 days before its automatic annual renewal date; or

(iv) the applicant did not notify DADS of a change in the lending institution or surety bond company administering the performance bond, surety bond, or irrevocable letter of credit.

(3) Criminal justice waiver. The criminal justice waiver is designed to meet the needs of the Texas Department of Criminal Justice (TDCJ). The applicant must document that:

(A) the waiver is needed to meet the identified and determined nursing facility needs of TDCJ; and

(B) the new nursing facility is approved by TDCJ to serve persons under their supervision who have been released on parole, mandatory supervision, or special needs parole in accordance with Texas Government Code, Chapter 508, Parole and Mandatory Supervision.

(4) Economically disadvantaged waiver. The economically disadvantaged waiver is designed to meet the needs of residents of ZIP codes located in communities where a majority of residents have an average income below the countywide average income and do not have reasonable access to acceptable nursing facility care.

(A) The applicant must submit a demographic or health needs study, prepared by an independent professional experienced at preparing demographic or health needs studies that documents:

(i) the ZIP code in which the new nursing facility will be constructed has a population with an income that is at least 20 percent below the average income of the county according to the most recent U.S. census or more recent census projection;

(ii) an immediate need for additional Medicaid beds in the ZIP code in which the new nursing facility will be constructed; and

(iii) residents in the ZIP code in which the nursing facility or beds will be located do not have reasonable access to acceptable nursing facility care.

(B) The application must include a statement by the preparer of the study that the preparer has no interest, financial or otherwise, in the outcome of the waiver application.

(C) The demographic or health needs study must include at least the following information pertaining to the community's population:

(i) population growth trends;

(ii) population growth trends specific to the elderly, including income or financial condition;

(iii) Medicaid bed occupancy data;

(iv) level of acceptable care provided by local facilities; and

(v) any existing allocated Medicaid beds not currently certified but could be used for a new Medicaid nursing facility.

(D) When determining the immediate need for additional Medicaid beds, and whether residents have reasonable access to acceptable nursing facility care, DADS considers:

(i) the number and occupancy rate of certified Medicaid beds that comply with level of acceptable care requirements; and

(ii) the number of encumbered Medicaid beds that have been approved by DADS but are not yet certified.

(E) Replacement beds or waiver beds approved in accordance with subsection (f)(1) or (h) of this section will not be considered in the calculation in subparagraph (D) of this paragraph if the owner of the replacement beds or waiver beds has not purchased land for a new construction site within 24 months after the date DADS initially approves the replacement request or the waiver for the beds.

(F) DADS considers an application withdrawn if it is not completed within 90 days after the application is submitted to DADS.

(G) DADS notifies local nursing facilities when a complete economically disadvantaged waiver application is received and affords local nursing facilities an opportunity to comment on the waiver application. The notification includes a deadline for submission of comments. DADS limits subsequent comments during the review process to facilities that submit timely comments in response to the notification of a completed application.

(H) An applicant that is granted an economically disadvantaged waiver must provide to DADS a performance bond, surety bond, or an irrevocable letter of credit in the amount of $500,000 payable to DADS to ensure that the Medicaid beds granted to the applicant under the waiver are certified within the time periods required by subsection (i)(4)(G) of this section, including any extensions granted under subsection (i)(6) of this section. DADS will revoke a waiver if the performance bond, surety bond, or irrevocable letter of credit is not provided within 90 days after DADS approves the waiver application.

(I) If an applicant chooses to provide a performance bond or surety bond instead of an irrevocable letter of credit, the performance bond provided under this subparagraph must:

(i) be executed by a corporate entity in accordance with Texas Insurance Code, Chapter 3503, Subchapter A;

(ii) be in a form approved by DADS; and

(iii) clearly and prominently display on the face of the bond;

(I) the name, mailing address, physical address, and telephone number of the surety company or financial institution to which any notice of claim should be sent; or

(II) the toll-free telephone number maintained by the Texas Department of Insurance in accordance with Texas Insurance Code, Chapter 521, Subchapter B, and a statement that the address of the surety company to which any notice of claim should be sent may be obtained from the Texas Department of Insurance by calling the toll-free telephone number.

(J) If an applicant chooses to provide an irrevocable letter of credit, the irrevocable letter of credit must be issued by a banking institution or similar financial institution.

(K) An applicant must notify DADS at least 60 days in advance if:

(i) the applicant does not intend to renew its performance bond, surety bond, or irrevocable letter of credit on the annual renewal date; or

(ii) the applicant changes the lending institution or surety bond company administering the performance bond, surety bond, or irrevocable letter of credit.

(L) An applicant may choose a performance bond, surety bond, or irrevocable letter of credit, and may substitute one for the other over the course of development and construction, but regardless of which option is chosen, the performance bond, surety bond, or irrevocable letter of credit must continue in effect until the facility is certified to participate in the Medicaid program; or until paid to DADS after notice provided in accordance with subparagraph (M) of this paragraph.

(M) A performance bond, surety bond, or irrevocable letter of credit is immediately due and must be paid to DADS upon receipt of notice from DADS to the issuer of the performance bond, surety bond, or irrevocable letter of credit that:

(i) the applicant did not comply with subsection (i)(4)(G) of this section, which may include an extension granted under subsection (i)(6) of this section;

(ii) DADS revokes the applicant's waiver;

(iii) the applicant did not notify DADS of its intent not to renew the performance bond, surety bond, or irrevocable letter of credit at least 60 days before its automatic annual renewal date; or

(iv) the applicant did not notify DADS of a change in the lending institution or surety bond company administering the performance bond, surety bond, or irrevocable letter of credit.

(5) Alzheimer's waiver. The Alzheimer's waiver is designed to meet the needs of communities that do not have reasonable access to Alzheimer's nursing facility services.

(A) The applicant must document that:

(i) the nursing facility is affiliated with a medical school operated by the state;

(ii) the nursing facility will participate in ongoing research programs for the care and treatment of persons with Alzheimer's disease;

(iii) the nursing facility will be designed to separate and treat residents with Alzheimer's disease by stage and functional level;

(iv) the nursing facility will obtain and maintain voluntary certification as an Alzheimer's nursing facility in accordance with §§19.2204, 19.2206, and 19.2208 of this chapter (relating to Voluntary Certification of Facilities for Care of Persons with Alzheimer's Disease; General Requirements for a Certified Facility; and Standards for Certified Alzheimer's Facilities); and

(v) only residents with Alzheimer's disease or related dementia will be admitted to the Alzheimer's Medicaid beds.

(B) The applicant must submit a demographic or health needs study, prepared by an independent professional experienced at preparing demographic studies that documents the need for the number of Medicaid Alzheimer's beds requested. The study must include a statement by the preparer of the study that the preparer has no interest, financial or otherwise, in the outcome of the waiver application.

(C) DADS notifies local nursing facilities when a complete Alzheimer's waiver application is received and afford local nursing facilities an opportunity to comment on the waiver application. The notification will include a deadline for submission of comments. DADS limits subsequent comments during the review process to facilities that submit timely comments in response to the notification of a completed application.

(D) DADS considers an application withdrawn if it is not completed within 90 days after the application is submitted to DADS.

(E) A facility that has Medicaid beds allocated under provisions of an Alzheimer's waiver may apply for a waiver in accordance with other subsections of this section, including subsection (f)(3) or (4) of this section. DADS does not count the beds allocated under an Alzheimer's waiver to determine the allowable bed allocation increase. For example, a 120-bed nursing facility with 60 Alzheimer waiver beds would be eligible for 10 percent of the 60 remaining beds or six additional Medicaid beds.

(6) Teaching nursing facility waiver. A teaching nursing facility waiver is designed to meet the statewide needs for providing training and practical experience for health-care professionals. The applicant must submit documentation that the nursing facility:

(A) is affiliated with a state-supported medical school;

(B) is located on land owned or controlled by the state-supported medical school; and

(C) serves as a teaching nursing facility for physicians and related health-care professionals.

(7) Rural county waiver. A rural county waiver is designed to meet the needs of rural areas of the state that do not have reasonable access to acceptable nursing facility care. For purposes of this waiver, a rural county is one that has a population of 100,000 or less according to the most recent census, and has no more than two Medicaid-certified nursing facilities. DADS approves no more than 120 additional Medicaid beds per county per year and no more than 500 additional Medicaid beds statewide in a calendar year under this waiver provision. DADS considers a waiver application on a first-come, first-served basis. Requests received in a year in which the 500-bed limit has been met will be carried over to the next year. The county commissioner's court must request the waiver.

(A) The commissioner's court must notify DADS of its intent to consider a rural county waiver and obtain verification from DADS that the county complies with the definition of rural county.

(B) The commissioner's court must publish a notice in the Texas Register and in a newspaper of general circulation in the county. The notice must seek:

(i) comments on whether a new Medicaid nursing facility should be requested; and

(ii) proposals from persons or entities interested in providing additional Medicaid-certified beds in the county, including persons or entities currently operating Medicaid-certified facilities with high occupancy rates. DADS, in its sole discretion, may eliminate from participating in the process persons or entities that submit false or fraudulent information.

(C) The commissioner's court must determine whether to proceed with the waiver request after considering all comments and proposals received in response to the notices provided under subparagraph (B) of this paragraph. In determining whether to proceed with the waiver request, the commissioner's court must consider:

(i) the demographic and economic needs of the county;

(ii) the quality of existing Medicaid nursing facilities in the county;

(iii) the quality of the proposals submitted, including a review of the past history of care provided, if any, by the person or entity submitting the proposal; and

(iv) the degree of community support for additional Medicaid nursing facility services.

(D) The commissioner's court must document the comments received, proposals offered and factors considered in subparagraph (C) of this paragraph.

(E) If the commissioner's court decides to proceed with the waiver request, it must submit a recommendation that DADS issue a waiver to a person or entity who submitted a proposal for new or additional Medicaid beds. The recommendation must include:

(i) the name, address, and telephone number of the person or entity recommended for contracting for the Medicaid beds;

(ii) the location, if the commissioner's court desires to identify one, of the recommended nursing facility;

(iii) the number of beds recommended; and

(iv) the information listed in subparagraph (D) of this paragraph used to make the recommendation.

(F) An applicant that is granted a rural county waiver must provide to DADS a performance bond, surety bond, or an irrevocable letter of credit in the amount of $500,000 payable to DADS to ensure that the Medicaid beds granted to the applicant under the waiver are certified within the time periods required by subsection (i)(4)(G) of this section, including any extensions granted under subsection (i)(6) of this section. DADS will revoke a waiver if the performance bond, surety bond, or irrevocable letter of credit is not provided within 90 days after DADS approves the waiver application.

(G) If an applicant chooses to provide a performance bond or surety bond, instead of an irrevocable letter of credit, the performance bond or surety bond provided under this subchapter must:

(i) be executed by a corporate entity in accordance with Texas Insurance Code, Chapter 3503, Subchapter A;

(ii) be in a form approved by DADS; and

(iii) clearly and prominently display on the face of the bond;

(I) the name, mailing address, physical address, and telephone number of the surety company or financial institution to which any notice of claim should be sent; or

(II) the toll-free telephone number maintained by the Texas Department of Insurance in accordance with Texas Insurance Code, Chapter 521, Subchapter B, and a statement that the address of the surety company to which any notice of claim should be sent may be obtained from the Texas Department of Insurance by calling the toll-free telephone number.

(H) If an applicant chooses to provide an irrevocable letter of credit, the irrevocable letter of credit must be issued by a banking institution or similar financial/lending institution.

(I) An applicant must notify DADS at least 60 days in advance if:

(i) the applicant does not intend to renew its performance bond, surety bond, or irrevocable letter of credit on the annual renewal date; or

(ii) the applicant changes the lending institution or surety bond company administering the performance bond, surety bond, or irrevocable letter of credit.

(J) An applicant may choose a performance bond, surety bond, or irrevocable letter of credit, and may substitute one for the other over the course of development and construction, but regardless of which option is chosen, the performance bond, surety bond, or irrevocable letter of credit must continue in effect until the facility if certified to participate in the Medicaid program; or until paid to DADS after notice provided in accordance with subparagraph (K) of this paragraph.

(K) A performance bond, surety bond, or irrevocable letter of credit is immediately due and must be paid to DADS upon receipt of notice from DADS to the issuer of the performance bond, surety bond, or irrevocable letter of credit that:

(i) the applicant did not comply with subsection (i)(4)(G) of this section, which may include an extension granted under subsection (i)(6) of this section;

(ii) DADS revokes the applicant's waiver;

(iii) the applicant did not notify DADS of its intent not to renew the performance bond, surety bond, or irrevocable letter of credit at least 60 days before its automatic annual renewal date; or

(iv) the applicant did not notify DADS of a change in the lending institution or surety bond company administering the performance bond, surety bond, or irrevocable letter of credit.

(8) State veterans homes. State veterans homes, authorized and built under the auspices of the Texas Veterans Land Board, must meet all requirements for Medicaid participation.

(9) Small house waiver. A small house waiver is designed to promote the construction of smaller nursing facility buildings that provide a homelike environment.

(A) A facility must meet the requirements in §19.345 of this chapter (relating to Small House and Household Facilities) for DADS to grant a small house waiver for the facility.

(B) An applicant for a small house waiver must submit an application to DADS and a schematic building plan of the proposed facility with sufficient detail to demonstrate that the proposed project meets the requirements in §19.345 of this chapter.

(C) An applicant that is granted a small house waiver must submit final construction documents in accordance with §19.344 of this chapter (relating to Plans, Approvals, and Construction Procedures) before facility construction begins.

(D) DADS notifies local nursing facilities when a complete small house waiver application is received and allows the local nursing facilities to comment on the waiver application. The notification includes the deadline for submitting comments. DADS limits subsequent comments during the review process to facilities that submit timely comments in response to the notification of a completed application.

(E) DADS does not approve more than 16 beds for a small house facility or for a household in a facility that is granted a small house waiver.

(F) DADS considers an application withdrawn if it is not completed within 90 days after the application is submitted to DADS.

(G) Subject to subparagraph (E) of this paragraph, DADS approves the replacement or transfer of beds certified at a small house nursing facility in accordance with subsection (f)(1) or (2) of this section only to another small house or household facility.

(H) A facility that has Medicaid beds allocated under provisions of a small house waiver may apply for general Medicaid beds in accordance with other subsections of this section, including subsection (f)(3) or (4) of this section. DADS does not count the beds allocated under a small house waiver provision in determining the allowable bed allocation increase. For example, a 120-bed nursing facility with 60 Small House waiver beds would be eligible for 10 percent of the 60 remaining beds or six additional Medicaid beds.

(I) An applicant that is granted a small house waiver must provide to DADS a performance bond, surety bond, or an irrevocable letter of credit in the amount of $500,000 payable to DADS to ensure that the Medicaid beds granted to the applicant under the waiver are certified within the time periods required by subsection (i)(4)(G) of this section, including any extensions granted under subsection (i)(6) of this section. DADS will revoke a waiver if the performance bond, surety bond, or irrevocable letter of credit is not provided within 90 days after DADS approves the waiver application.

(J) If an applicant chooses to provide a performance bond or surety bond, instead of an irrevocable letter of credit, the performance bond or surety bond provided under this subparagraph must:

(i) be executed by a corporate entity in accordance with Texas Insurance Code, Chapter 3503, Subchapter A;

(ii) be in a form approved by DADS; and

(iii) clearly and prominently display on the face of the bond;

(I) the name, mailing address, physical address, and telephone number of the surety company or financial institution to which any notice of claim should be sent; or

(II) the toll-free telephone number maintained by the Texas Department of Insurance in accordance Texas Insurance Code, Chapter 521, Subchapter B, and a statement that the address of the surety company to which any notice of claim should be sent may

be obtained from the Texas Department of Insurance by calling the toll-free telephone number.

(K) If an applicant chooses to provide an irrevocable letter of credit, the irrevocable letter of credit must be issued by a banking institution or similar financial/lending institution.

(L) An applicant must notify DADS at least 60 days in advance if:

(i) the applicant does not intend to renew its performance bond, surety bond, or irrevocable letter of credit on the annual renewal date; or

(ii) the applicant changes the lending institution or surety bond company administering the performance bond, surety bond, or irrevocable letter of credit.

(M) An applicant may choose a performance bond, surety bond, or irrevocable letter of credit, and may substitute one for the other over the course of development and construction, but regardless of which option is chosen, the performance bond, surety bond, or irrevocable letter of credit must continue in effect until the facility is certified to participate in the Medicaid program; or until paid to DADS after notice provided in accordance with subparagraph (N) of this paragraph.

(N) A performance bond, surety bond, or irrevocable letter of credit is immediately due and must be paid to DADS upon receipt of notice from DADS to the issuer of the performance bond, surety bond, or irrevocable letter of credit that:

(i) the applicant did not comply with subsection (i)(4)(G) of this section, which may include an extension granted under subsection (i)(6) of this section;

(ii) DADS revokes the applicant's waiver;

(iii) the applicant did not notify DADS of its intent not to renew the performance bond, surety bond, or irrevocable letter of credit at least 60 days before its automatic annual renewal date; or

(iv) the applicant did not notify DADS of a change in the lending institution or surety bond company administering the performance bond, surety bond, or irrevocable letter of credit.

(i) Time Limits and Extensions.

(1) Medicaid beds transferred in accordance with subsection (f)(2) of this section must be certified within six months after DADS grants the exemption.

(2) Time limits applicable to temporary Medicaid beds are specified in subsection (f)(6) of this section.

(3) All facilities and beds approved in accordance with waiver provisions of subsection (h) of this section and replacement nursing facilities approved in accordance with subsection (f)(1) of this section, must be constructed, licensed, and Medicaid-certified within 42 months after the waiver or replacement exemption is granted.

(4) A recipient of a waiver must provide DADS with evidence of compliance with subparagraphs (A) - (G) of this paragraph. The recipient must submit evidence of compliance on or before the date stated in the subparagraph, including any extensions granted under paragraph (6) of this subsection. [~~Recipients of a waiver approval or a replacement nursing facility approval must comply with the following benchmarks and submit evidence of compliance to DADS at the time of compliance.~~]

(A) The land must be under contract within 12 months after DADS approval of the waiver or replacement.

(B) An architect or engineer must be under contract to prepare final construction documents within 15 months after DADS approval of the waiver or replacement.

(C) The facility's preliminary plans must be completed within 18 months after DADS approval of the waiver or replacement.

(D) The land must be purchased and a progress report submitted to DADS within 24 months after DADS approval of the waiver or replacement.

(E) Entitlements (including municipality, planning and zoning, building permit) and the facility's foundation must be completed within six months after land purchase or 30 months after DADS approval of the waiver or replacement, whichever is later.

(F) Facility construction must be active and ongoing, as evidenced by a construction progress report submitted to DADS [~~A construction progress report confirming active and ongoing construction must be submitted~~] within 12 months after land purchase or 36 months after DADS approval of the waiver or replacement, whichever is later[~~, if the facility is not constructed, licensed and certified by that date~~].

(G) The facility must be constructed, licensed, and certified within 18 months after land purchase or 42 months after DADS approval of the waiver or replacement, whichever is later.

(5) DADS, in its sole discretion, may declare the exemption or the waiver void if the applicant fails or refuses to provide evidence of compliance with each benchmark or deadline, or the evidence of compliance submitted to DADS in accordance with paragraph (4) of this subsection contains false or fraudulent information.

(6) Waiver or exemption recipients may request an extension of the deadlines in this section. At the discretion of the commissioner or the commissioner's designee, deadlines specified in this section may be extended. The applicant must substantiate every element of its extension request with evidence of good-faith efforts to meet the benchmarks and construction deadlines or evidence confirming that delays were beyond the applicant's control.

(7) Waiver or exemption recipients who receive an extension of their waiver or exemption must submit a progress report every six months after approval of the extension until the nursing facility beds are certified. DADS may declare the waiver or exemption void if the applicant fails or refuses to provide the progress report as required or if the progress report contains false or fraudulent information.

(8) DADS may revoke a bed allocation for failure to meet the requirements of this section.

(j) Loss of Medicaid Beds.

(1) Loss of Medicaid beds that are not available to be occupied.

(A) Medicaid nursing facilities must report certified Medicaid beds that do not comply with requirements of §19.1701 of this chapter (relating to Physical Environment) and are not available for occupancy on monthly Medicaid occupancy reports.

(B) DADS decertifies and de-allocates Medicaid beds that are intended for use in bedrooms that have been converted to other uses if the rooms are not being used for bedroom occupancy use on two consecutive standard surveys.

(C) DADS does not decertify and de-allocate Medicaid beds that are intended for use in rooms that are licensed and certified for multi-occupancy use but are being used for single occupancy only.

(D) DADS decertifies and de-allocates Medicaid beds granted through a criminal justice waiver, Alzheimer's waiver, a teaching nursing facility waiver, state veterans home waiver, or a small house waiver that are no longer being used for the intended purpose for which the waiver was granted.

~~[(D) DADS decertifies and de-allocates Medicaid beds granted through a small house waiver if the facility in which the beds are located does not continue to meet the requirements in §19.345 of this chapter.]~~

(2) Loss of Medicaid beds based on sanctions.

(A) A Medicaid nursing facility operated by the person or entity who also owns the property will lose the allocation of all Medicaid beds assigned to the nursing facility property if the nursing facility's license is denied or revoked.

(B) A Medicaid nursing facility operated by one person or entity and owned by another person or entity will lose the allocation of Medicaid beds if two or more of the following actions occur within a 42-month period:

(i) licensure denial;

(ii) licensure revocation; or

(iii) Medicaid termination.

(C) DADS may waive this loss of allocation of Medicaid beds in order to facilitate a change of ownership or other actions that would protect the health and safety of residents or assure reasonable access to acceptable nursing facility care.

(3) Voluntary decertification of Medicaid beds.

(A) Facilities may request to voluntarily decertify Medicaid beds.

(B) The licensee must submit written approval of the Medicaid bed reduction signed by the property owner and all physical plant lien holders.

(C) DADS reduces the number of allocated Medicaid beds equal to the number of beds voluntarily decertified.

(D) Facilities that voluntarily decertify Medicaid beds are eligible to receive an increased allocation of Medicaid beds if the facility qualifies for a bed allocation waiver or exemption.

(4) Nursing facility ceases to operate or participate in Medicaid.

(A) The property owner of a nursing facility that closes or ceases to participate in the Medicaid program must inform DADS in writing of the intended future use of the Medicaid beds within 90 days after closure or ceasing participation in Medicaid.

(B) Unless the Medicaid beds will be used for a replacement nursing facility, the allocated beds must be re-certified within 12 months of the date the Medicaid contract was terminated.

(C) Time limits in subparagraphs (A) and (B) of this paragraph may be extended in accordance with subsection (i)(6) of this section.

(D) DADS may de-allocate Medicaid beds for failure to meet the requirements of this paragraph.

(5) Loss of Medicaid beds based on low occupancy.

(A) DADS may review Medicaid bed occupancy rates annually for the purpose of de-allocating and decertifying unused Medicaid beds. The Medicaid bed occupancy reports for the most recent six-month period that DADS has validated are used to determine the bed occupancy rate of each nursing facility.

(B) DADS de-allocates and decertifies Medicaid beds in facilities with an average occupancy rate below 70 percent. The number of beds decertified is calculated by subtracting the preceding six-month average occupancy rate of Medicaid-certified beds from 70 percent of the number of allocated certified beds and dividing the difference by 2, rounding the final figure down if necessary. For example, for a facility with 100 Medicaid-certified beds and a 50 percent occupancy rate, the difference between 70 percent (70 beds) and 50 percent (50 beds) is 20 beds, divided by 2, is 10 beds to be decertified.

(C) Medicaid beds in a nursing facility that has obtained a replacement nursing facility exemption are not subject to the de-allocation and decertification process.

(D) Medicaid beds in a new or replacement physical plant or a newly constructed wing of an existing physical plant are exempt from this de-allocation and decertification process until the new physical plant or new wing has been certified for 24 months.

(E) Medicaid beds that have been subject to a change of ownership within the past 24 months are exempt from the de-allocation and decertification process.

(F) Medicaid beds in a county or in a precinct in one of the four most populous counties in the state in which a facility approved through the waiver process is constructed are exempt from the de-allocation and decertification process for 24 months after licensure and certification of the facility.

(G) Medicaid beds allocated to a closed nursing facility are exempt from this de-allocation and decertification process.

(H) Nursing facilities that lose Medicaid beds through this process are eligible to receive an additional allocation of Medicaid beds at a later date if the facility qualifies for a bed allocation waiver or exemption.

(I) The de-allocation and decertification of unused beds does not affect the licensed capacity of a nursing facility.

(k) Informal review procedures.

(1) Applicants may request an informal review of DADS actions regarding bed allocations. The request must be submitted within 30 days after the date referenced on the notification of the proposed action.

(2) An applicant must submit a request for an informal review and all documentation or evidence that forms the basis for the informal review in writing.

(3) The commissioner or the commissioner's designee conducts the informal review.

(l) Medicaid occupancy reports.

(1) Medicaid nursing facilities must submit occupancy reports to DADS each month.

(A) The occupancy data must be reported on a form prescribed by DADS. The form must be completed in accordance with instructions and the occupancy data must be accurate and verifiable. The completed report must be received by DADS no later than the fifth day of the month following the reporting period.

(B) DADS determines the Medicaid occupancy rate by calculating the monthly average of the number of persons who occupy Medicaid beds.

(C) DADS includes all persons residing in Medicaid-certified beds, including Medicaid recipients, Medicare recipients, private-pay residents, or residents with other sources of payment, in the calculation.

(D) Failure or refusal to submit accurate occupancy reports in a timely manner may result in the nursing facility's vendor payment being held in abeyance until the report is submitted.

(2) DADS determines nursing facility and county occupancy rates based on the data submitted by the nursing facilities.

(A) DADS uses the occupancy data to determine eligibility for or compliance with waiver and exemption requirements. DADS also uses the occupancy data to determine if Medicaid beds should be decertified based on low occupancy.

(B) DADS makes the occupancy data available to nursing facilities, licensees, property owners, waiver or exemption applicants, and others in accordance with public disclosure requirements.

(C) DADS may disqualify a facility that provides inaccurate or falsified occupancy data from eligibility for bed allocation exemptions and waivers. DADS may refuse to accept corrections to bed occupancy data submitted more than six months after the due date of the occupancy report.

(m) School-age residents. Any bed allocation waiver or exemption applicant that serves or plans to serve school-age residents must provide written notice to the affected local education agency (LEA) of its intent to establish or expand a nursing facility within the LEA's boundary.

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 April 20, 2015.

TRD-201501362
Lawrence Hornsby
General Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: June 7, 2015
For further information, please call: (210) 619-8292

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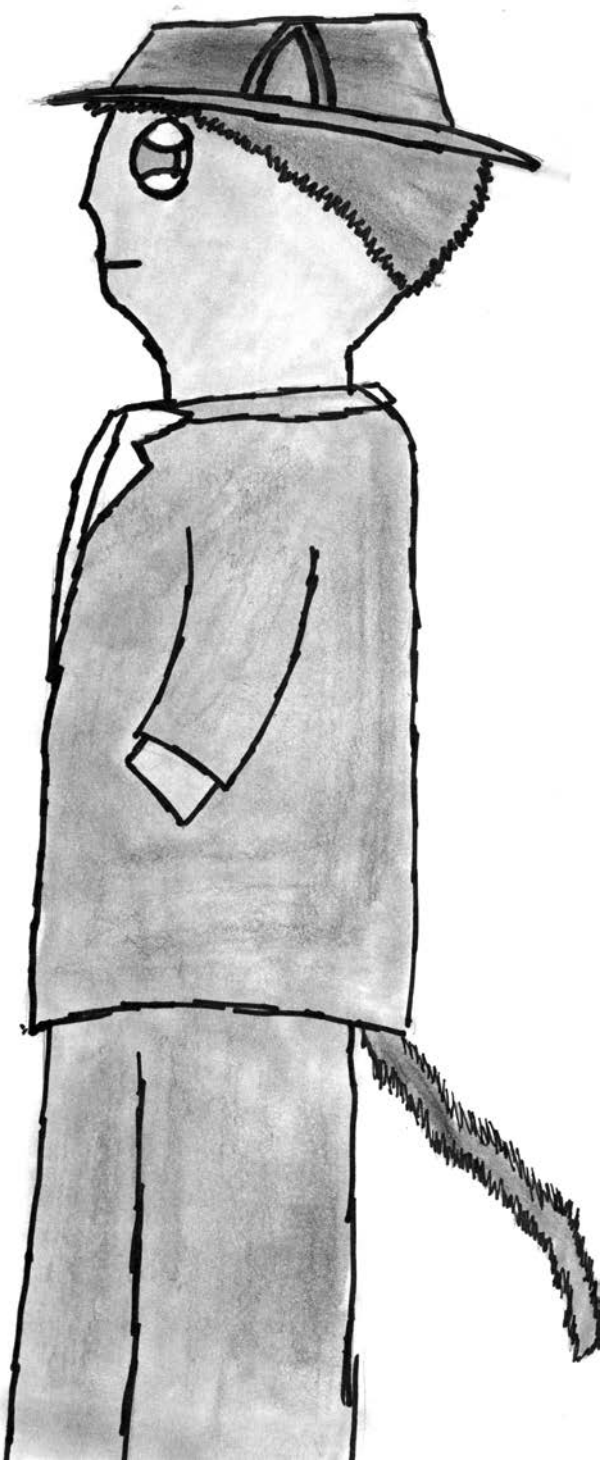

WITHDRAWN RULES

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

TITLE 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

The proposed repeals of §§201.1 - 201.5, 201.8 - 201.12, 201.14 - 201.16, 201.18, and 201.19, published in the October 17, 2014, issue of the *Texas Register* (39 TexReg 8146), are withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Filed with the Office of the Secretary of State on April 22, 2015.

TRD-201501390

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22 TAC §§201.1 - 201.17

Proposed new §§201.1 - 201.17, published in the October 17, 2014, issue of the *Texas Register* (39 TexReg 8147), are withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Filed with the Office of the Secretary of State on April 22, 2015.

TRD-201501391

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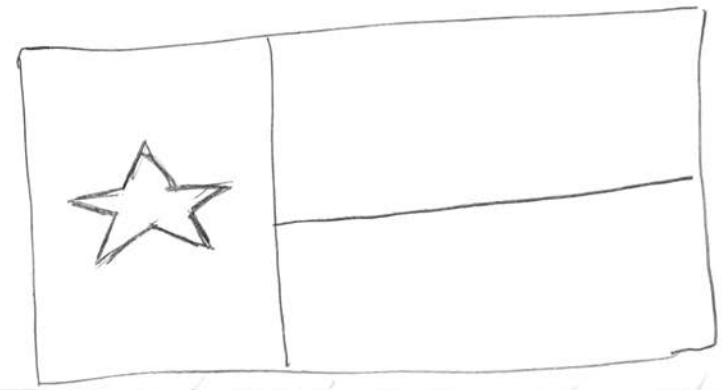
Kirdeja Weeds
11th Grade

Texas



ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 355. REIMBURSEMENT RATES

SUBCHAPTER J. PURCHASED HEALTH SERVICES

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

1 TAC §355.8443

The Texas Health and Human Services Commission (HHSC) adopts an amendment to §355.8443, concerning Reimbursement Methodology for the School Health and Related Services (SHARS), without changes to the proposed text as published in the February 13, 2015, issue of the *Texas Register* (40 TexReg 663) and will not be republished.

Background and Justification

SHARS is a joint program of HHSC and the Texas Education Agency that allows school districts to obtain federal Medicaid reimbursement for the provision of health-related services to students in special education. The rule amendment replaces district-specific interim rates that vary by the services provided with state-wide interim rates that vary by the services provided. This amendment ensures that the rule language reflects current practice.

Comments

The 30-day comment period ended March 15, 2015. During this period, HHSC received no comments regarding the proposed amendment to this rule.

Statutory Authority

The amendment is adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 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 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 April 27, 2015.

TRD-201501426
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Effective date: May 17, 2015
Proposal publication date: February 13, 2015
For further information, please call: (512) 424-6900

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TITLE 19. EDUCATION

PART 7. STATE BOARD FOR EDUCATOR CERTIFICATION

CHAPTER 231. REQUIREMENTS FOR PUBLIC SCHOOL PERSONNEL ASSIGNMENTS

SUBCHAPTER E. GRADES 9-12 ASSIGNMENTS

The State Board for Educator Certification (SBEC) adopts amendments to §§231.151, 231.255, 231.271, 231.283, 231.287, 231.307, 231.331, 231.361, 231.401, 231.403, 231.441, 231.445, 231.503, 231.541, 231.565, 231.569, and 231.575; new §§231.365, 231.391, 231.392, 231.393, and 231.394; and the repeal of §231.365, concerning requirements for public school personnel assignments. The amendments to §§231.151, 231.255, 231.271, 231.283, 231.287, 231.307, 231.331, 231.361, 231.401, 231.403, 231.441, 231.445, 231.503, 231.541, 231.565, 231.569, and 231.575; new §§231.365, 231.391, 231.392, 231.393, and 231.394; and the repeal of §231.365 are adopted without changes to the proposed text as published in the November 14, 2014 issue of the *Texas Register* (39 TexReg 8880) and will not be republished. The sections establish Grades 9-12 assignments. The adopted revisions to Chapter 231, Subchapter E, clarify the appropriate credential for placement in a particular teaching assignment and ensure alignment with changes to public school curriculum as a result of House Bill 5, 83rd Texas Legislature, Regular Session, 2013.

Current Chapter 231, Requirements for Public School Personnel Assignments, Subchapter E, provides guidance to school districts with regard to the certificates required for specific Grades 9-12 assignments of public school educators with corresponding certificates for each assignment for ease of use by school district personnel.

The adopted revisions to Chapter 231, Subchapter E, identify the appropriate certificates for placement in particular Grades

9-12 classroom assignments. In addition, Finance, Grades 9-12 assignments, was added as adopted new Division 15, and subsequent divisions were renumbered accordingly. The adopted revisions also correct any omissions due to the major reorganization of Chapter 231 in 2013.

The adopted amendments, new sections, and repeal have no procedural and reporting implications. Also, the adopted amendments, new sections, and repeal have no locally maintained paperwork requirements.

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

The public comment period on the proposal began November 14, 2014, and ended December 15, 2014. The SBEC also provided an opportunity for registered oral and written comments at the March 27, 2015 meeting in accordance with the SBEC board operating policies and procedures. No comments were received regarding the proposed amendments to §§231.151, 231.255, 231.271, 231.283, 231.287, 231.307, 231.331, 231.361, 231.401, 231.403, 231.441, 231.445, 231.503, 231.541, 231.565, 231.569, and 231.575; new §§231.365, 231.391, 231.392, 231.393, and 231.394; and the repeal of §231.365.

The State Board of Education (SBOE) took no action on the review of the proposed amendments to §§231.151, 231.255, 231.271, 231.283, 231.287, 231.307, 231.331, 231.361, 231.401, 231.403, 231.441, 231.445, 231.503, 231.541, 231.565, 231.569, and 231.575; new §§231.365, 231.391, 231.392, 231.393, and 231.394; and the repeal of §231.365 at the April 17, 2015 SBOE meeting.

DIVISION 2. LANGUAGES OTHER THAN ENGLISH, GRADES 9-12 ASSIGNMENTS

19 TAC §231.151

The amendment is adopted under the Texas Education Code (TEC), §21.031(a), which states that the State Board for Educator Certification (SBEC) shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; and §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates.

The adopted amendment implements the TEC, §21.031(a) and §21.041(b)(1) and (2).

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 April 27, 2015.

TRD-201501428

Cristina De La Fuente-Valadez

Director, Rulemaking, Texas Education Agency

State Board for Educator Certification

Effective date: May 17, 2015

Proposal publication date: November 14, 2014

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

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DIVISION 8. TECHNOLOGY APPLICATIONS, GRADES 9-12 ASSIGNMENTS

19 TAC §231.255

The amendment is adopted under the Texas Education Code (TEC), §21.031(a), which states that the State Board for Educator Certification (SBEC) shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; and §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates.

The adopted amendment implements the TEC, §21.031(a) and §21.041(b)(1) and (2).

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 April 27, 2015.

TRD-201501430

Cristina De La Fuente-Valadez

Director, Rulemaking, Texas Education Agency

State Board for Educator Certification

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Proposal publication date: November 14, 2014

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

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DIVISION 9. CAREER DEVELOPMENT, GRADES 9-12 ASSIGNMENTS

19 TAC §231.271

The amendment is adopted under the Texas Education Code (TEC), §21.031(a), which states that the State Board for Educator Certification (SBEC) shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; and §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates.

The adopted amendment implements the TEC, §21.031(a) and §21.041(b)(1) and (2).

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 April 27, 2015.

TRD-201501432
Cristina De La Fuente-Valadez
Director, Rulemaking, Texas Education Agency
State Board for Educator Certification
Effective date: May 17, 2015
Proposal publication date: November 14, 2014
For further information, please call: (512) 475-1497

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DIVISION 10. AGRICULTURE, FOOD, AND NATURAL RESOURCES, GRADES 9-12 ASSIGNMENTS

19 TAC §231.283, §231.287

The amendments are adopted under the Texas Education Code (TEC), §21.031(a), which states that the State Board for Educator Certification (SBEC) shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; and §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates.

The adopted amendments implement the TEC, §21.031(a) and §21.041(b)(1) and (2).

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 April 27, 2015.

TRD-201501433
Cristina De La Fuente-Valadez
Director, Rulemaking, Texas Education Agency
State Board for Educator Certification
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Proposal publication date: November 14, 2014
For further information, please call: (512) 475-1497

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DIVISION 11. ARCHITECTURE AND CONSTRUCTION, GRADES 9-12 ASSIGNMENTS

19 TAC §231.307

The amendment is adopted under the Texas Education Code (TEC), §21.031(a), which states that the State Board for Educator Certification (SBEC) shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; and §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates.

The adopted amendment implements the TEC, §21.031(a) and §21.041(b)(1) and (2).

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 April 27, 2015.

TRD-201501434
Cristina De La Fuente-Valadez
Director, Rulemaking, Texas Education Agency
State Board for Educator Certification
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Proposal publication date: November 14, 2014
For further information, please call: (512) 475-1497

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DIVISION 12. ARTS, AUDIO VIDEO TECHNOLOGY, AND COMMUNICATIONS, GRADES 9-12 ASSIGNMENTS

19 TAC §231.331

The amendment is adopted under the Texas Education Code (TEC), §21.031(a), which states that the State Board for Educator Certification (SBEC) shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; and §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates.

The adopted amendment implements the TEC, §21.031(a) and §21.041(b)(1) and (2).

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 April 27, 2015.

TRD-201501435
Cristina De La Fuente-Valadez
Director, Rulemaking, Texas Education Agency
State Board for Educator Certification
Effective date: May 17, 2015
Proposal publication date: November 14, 2014
For further information, please call: (512) 475-1497

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DIVISION 13. BUSINESS MANAGEMENT AND ADMINISTRATION, GRADES 9-12 ASSIGNMENTS

19 TAC §231.361, §231.365

The amendment and new section are adopted under the Texas Education Code (TEC), §21.031(a), which states that the State Board for Educator Certification (SBEC) shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; and §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates.

The adopted amendment and new section implement the TEC, §21.031(a) and §21.041(b)(1) and (2).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Cristina De La Fuente-Valadez
Director, Rulemaking, Texas Education Agency
State Board for Educator Certification
Effective date: May 17, 2015
Proposal publication date: November 14, 2014
For further information, please call: (512) 475-1497

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19 TAC §231.365

The repeal is adopted under the Texas Education Code (TEC), §21.031(a), which states that the State Board for Educator Certification (SBEC) shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; and §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates.

The adopted repeal implements the TEC, §21.031(a) and §21.041(b)(1) and (2).

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 April 27, 2015.

TRD-201501437
Cristina De La Fuente-Valadez
Director, Rulemaking, Texas Education Agency
State Board for Educator Certification
Effective date: May 17, 2015
Proposal publication date: November 14, 2014
For further information, please call: (512) 475-1497

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DIVISION 15. FINANCE, GRADES 9-12 ASSIGNMENTS

19 TAC §§231.391 - 231.394

The new sections are adopted under the Texas Education Code (TEC), §21.031(a), which states that the State Board for Educator Certification (SBEC) shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; and §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates.

The adopted new sections implement the TEC, §21.031(a) and §21.041(b)(1) and (2).

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 April 27, 2015.

TRD-201501438
Cristina De La Fuente-Valadez
Director, Rulemaking, Texas Education Agency
State Board for Educator Certification
Effective date: May 17, 2015
Proposal publication date: November 14, 2014
For further information, please call: (512) 475-1497

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DIVISION 16. GOVERNMENT AND PUBLIC ADMINISTRATION, GRADES 9-12 ASSIGNMENTS

19 TAC §231.401, §231.403

The amendments are adopted under the Texas Education Code (TEC), §21.031(a), which states that the State Board for Educator Certification (SBEC) shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; and §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates.

The adopted amendments implement the TEC, §21.031(a) and §21.041(b)(1) and (2).

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 April 27, 2015.

TRD-201501443
Cristina De La Fuente-Valadez
Director, Rulemaking, Texas Education Agency
State Board for Educator Certification
Effective date: May 17, 2015
Proposal publication date: November 14, 2014
For further information, please call: (512) 475-1497

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DIVISION 18. HOSPITALITY AND ADMINISTRATION, GRADES 9-12 ASSIGNMENTS

19 TAC §231.441, §231.445

The amendments are adopted under the Texas Education Code (TEC), §21.031(a), which states that the State Board for Educator Certification (SBEC) shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; and §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates.

The adopted amendments implement the TEC, §21.031(a) and §21.041(b)(1) and (2).

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 April 27, 2015.

TRD-201501445
Cristina De La Fuente-Valadez
Director, Rulemaking, Texas Education Agency
State Board for Educator Certification
Effective date: May 17, 2015
Proposal publication date: November 14, 2014
For further information, please call: (512) 475-1497

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DIVISION 21. LAW, PUBLIC SAFETY, CORRECTIONS, AND SECURITY, GRADES 9-12 ASSIGNMENTS

19 TAC §231.503

The amendment is adopted under the Texas Education Code (TEC), §21.031(a), which states that the State Board for Educator Certification (SBEC) shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; and §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates.

The adopted amendment implements the TEC, §21.031(a) and §21.041(b)(1) and (2).

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 April 27, 2015.

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Cristina De La Fuente-Valadez
Director, Rulemaking, Texas Education Agency
State Board for Educator Certification
Effective date: May 17, 2015
Proposal publication date: November 14, 2014
For further information, please call: (512) 475-1497

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DIVISION 23. MARKETING, GRADES 9-12 ASSIGNMENTS

19 TAC §231.541

The amendment is adopted under the Texas Education Code (TEC), §21.031(a), which states that the State Board for Educator Certification (SBEC) shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; and §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates.

The adopted amendment implements the TEC, §21.031(a) and §21.041(b)(1) and (2).

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 April 27, 2015.

TRD-201501447
Cristina De La Fuente-Valadez
Director, Rulemaking, Texas Education Agency
State Board for Educator Certification
Effective date: May 17, 2015
Proposal publication date: November 14, 2014
For further information, please call: (512) 475-1497

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DIVISION 24. SCIENCE, TECHNOLOGY, ENGINEERING, AND MATHEMATICS, GRADES 9-12 ASSIGNMENTS

19 TAC §§231.565, 231.569, 231.575

The amendments are adopted under the Texas Education Code (TEC), §21.031(a), which states that the State Board for Educator Certification (SBEC) shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; and §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates.

The adopted amendments implement the TEC, §21.031(a) and §21.041(b)(1) and (2).

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 April 27, 2015.

TRD-201501448
Cristina De La Fuente-Valadez
Director, Rulemaking, Texas Education Agency
State Board for Educator Certification
Effective date: May 17, 2015
Proposal publication date: November 14, 2014
For further information, please call: (512) 475-1497

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CHAPTER 233. CATEGORIES OF CLASSROOM TEACHING CERTIFICATES

19 TAC §§233.3 - 233.5, 233.14

The State Board for Educator Certification (SBEC) adopts amendments to §§233.3-233.5 and 233.14, concerning categories of classroom teaching certificates. The amendments to §§§233.3-233.5 and 233.14 are adopted without changes to the proposed text as published in the November 14, 2014 issue of the *Texas Register* (39 TexReg 8890) and will not be republished. The sections contain the current classroom teaching certificates by category, grade level, and subject areas. The adopted amendments to §§233.3-233.5 and 233.14 add deadlines for completion and submission requirements for specific Grades 8-12 certificates in the subject areas of English Language Arts and Reading, Social Studies, Mathematics, Science, Technology Applications and Computer Science, and Career and Technical Education (Certificates requiring experience and preparation in a skill area).

The Texas Education Code, §21.041(b)(1), authorizes the SBEC to propose rules that provide for the regulation of educators. Sections 233.3, English Language Arts and Reading; Social Studies; 233.4, Mathematics; Science; 233.5, Technology Applications and Computer Science; and 233.14, Career and Technical Education (Certificates requiring experience and preparation in a skill area), address the source of general authority for Chapter 233, Categories of Classroom Teaching Certificates, and establish teaching assignment certificates for English Language Arts and Reading, Social Studies, Mathematics, Science, Technology Applications and Computer Science, and Career and Technical Education (Certificates requiring experience and preparation in a skill area). The following changes establish deadlines to complete all requirements for the issuance of the last group of those certificates the SBEC will issue and establish a deadline for candidates and EPPs to submit completed applications to the Texas Education Agency (TEA).

In §233.3(d), (f), and (h), language was amended to remove provisions for expiration of those subsections of the rule and, instead, provide a deadline of August 31, 2015, for candidates to complete all requirements for issuance of the last group of English Language Arts and Reading: Grades 8-12; Social Studies: Grades 8-12; and History: Grades 8-12 certificates the SBEC will issue. Language was also amended to provide a deadline of October 30, 2015, for candidates and EPPs to submit completed applications to the TEA. In §233.3(j), language was amended to remove provisions for expiration of the subsection and, instead, provide a deadline of August 31, 2016, for candidates to complete all requirements for issuance of the last group of the Journalism: Grades 8-12 certificate the SBEC will issue and a deadline of October 30, 2016, for candidates and EPPs to submit completed applications to the TEA. In addition, §233.3(m) was deleted since the Speech: Grades 8-12 examination was administered for the last time on August 31, 2011.

In §233.4(d), (f), (h), (j), and (p), language was amended to remove provisions for expiration of those subsections of the rule and, instead, provide a deadline of August 31, 2015, for candidates to complete all requirements for issuance of the last group of Mathematics: Grades 8-12; Science: Grades 8-12; Life Science: Grades 8-12; Physical Science: Grades 8-12; and Chemistry: Grades 8-12 certificates the SBEC will issue and a deadline of October 30, 2015, for candidates and EPPs to submit completed applications to the TEA. In §233.4(l) and (n), language was amended to remove provisions for expiration of the subsections and, instead, provide a deadline of August 31, 2016, for candidates to complete all requirements for issuance of the last group of Physics/Mathematics: Grades 8-12 and Mathematics/Physical Science/Engineering: Grades 8-12 certificates the SBEC will issue and a deadline of October 30, 2016, for candidates and EPPs to submit completed applications to the TEA.

Development of the new technology applications educator standards for the Technology Applications: Grades 7-12 certificate is currently underway, and TEA staff anticipates that the new examination will be available in fall 2016. The current examination will be administered for the last time in summer 2017. As a result, language was amended in §233.5(a) to remove the provision for expiration of the subsection of the rule and, instead, provide a deadline of August 31, 2018, for candidates to complete all requirements for issuance of the last group of the Technology Applications: Grades 8-12 certificate the SBEC will issue and a deadline of October 30, 2018, for candidates and EPPs to submit completed applications to the TEA.

In §233.14(b) and (d), language was amended to remove provisions for expiration of those subsections of the rule and, instead, provide a deadline of August 31, 2017, for candidates to complete all requirements for issuance of the last group of Marketing Education: Grades 8-12 and Health Science Technology Education: Grades 8-12 certificates the SBEC will issue and a deadline of October 30, 2017, for candidates and EPPs to submit completed applications to the TEA. In §233.14(f), language was amended to remove the provision for expiration of the subsection and, instead, provide a deadline of August 31, 2016, for candidates to complete all requirements for issuance of the last group of the Trade and Industrial Education: Grades 8-12 certificate the SBEC will issue and a deadline of October 30, 2016, for candidates and EPPs to submit completed applications to the TEA.

The adopted amendments have no procedural and reporting implications. Also, the adopted amendments have no locally maintained paperwork requirements.

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

The public comment period on the proposal began November 14, 2014, and ended December 15, 2014. The SBEC also provided an opportunity for registered oral and written comments at the March 27, 2015 meeting in accordance with the SBEC

board operating policies and procedures. No comments were received regarding the proposed amendments to §§233.3-233.5 and 233.14.

The State Board of Education (SBOE) took no action on the review of the proposed amendments to §§233.3-233.5 and 233.14 at the April 17, 2015 SBOE meeting.

The adopted amendments implement the TEC, §§21.003(a), 21.031, 21.041(b)(1)-(4) and (6), 21.044(e) and (f), 21.048(a), 21.050, and 22.0831(f).

The amendments are adopted under the Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; §21.031(a), which states that the State Board for Educator Certification (SBEC) shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.031(b), which states that in proposing rules under the TEC, Chapter 21, Subchapter B, the SBEC shall ensure that all candidates for certification or renewal of certification demonstrate the knowledge and skills necessary to improve the performance of the diverse student population of this state; §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; §21.041(b)(3), which requires the SBEC to propose rules that specify the period for which each class of educator certificate is valid; §21.041(b)(4), which requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate; §21.041(b)(6), which requires the SBEC to propose rules that provide for special or restricted certification of educators, including certification of instructors of American Sign Language; §21.044(e), which provides the requirements that SBEC rules must specify for a person to obtain a certificate to teach a health science technology education course; §21.044(f), which provides that SBEC rules for a person to obtain a certificate to teach a health science technology education course shall not specify that a person must have a bachelor's degree or establish any other credential or teaching experience requirements that exceed the requirements under §21.044(e); §21.048(a), which specifies that the board shall propose rules prescribing comprehensive examinations for each class of certificate issued by the board; §21.050(a), which states that a person who applies for a teaching certificate for which SBEC rules require a bachelor's degree must possess a bachelor's degree received with an academic major or interdisciplinary academic major, including reading, other than education, that is related to the curriculum as prescribed under TEC, Chapter 28, Subchapter A; §21.050(b), which states that the SBEC may not require more than 18 semester credit hours of education courses at the baccalaureate level for the granting of a teaching certificate; §21.050(c), which states that a person who receives a bachelor's degree required for a teaching certificate on the basis of higher education coursework completed while receiving an exemption from tuition and fees under the TEC, §54.363, may not be required to participate in any field experience or internship consisting of student teaching to receive a teaching certificate; and §22.0831(f), which authorizes the SBEC to propose rules to implement the national criminal history record information review of certified educators.

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 April 27, 2015.

TRD-201501453
Cristina De La Fuente-Valadez
Director, Rulemaking, Texas Education Agency
State Board for Educator Certification
Effective date: May 17, 2015
Proposal publication date: November 14, 2014
For further information, please call: (512) 475-1497

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TITLE 22. EXAMINING BOARDS

PART 9. TEXAS MEDICAL BOARD

CHAPTER 161. GENERAL PROVISIONS

22 TAC §161.3

The Texas Medical Board (Board) adopts an amendment to §161.3, concerning Organization and Structure, without changes to the proposed text as published in the March 6, 2015, issue of the *Texas Register* (40 TexReg 1009). The rule text will not be republished.

The amendment clarifies the process for reporting potential grounds for removal of a board member and adds a potential ground that must be reported related to both disciplinary and non-disciplinary action against a physician board member under subsection (f). The amendment also adds new subsection (g), providing that the validity of an action of the board is not affected by the fact that the action is taken when a ground for removal of a board member exists. Remaining amendments represent general cleanup of the rule.

No comments were received regarding adoption of the rule.

The amendment is adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure. The amendments are also proposed under the authority of Texas Occupations Code Annotated, §152.006.

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 April 27, 2015.

TRD-201501427
Mari Robinson, J.D.
Executive Director
Texas Medical Board
Effective date: May 17, 2015
Proposal publication date: March 6, 2015
For further information, please call: (512) 305-7016

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CHAPTER 176. HEALTH CARE LIABILITY LAWSUITS AND SETTLEMENTS

22 TAC §176.1

The Texas Medical Board (Board) adopts an amendment to §176.1, concerning Definitions, without changes to the proposed text as published in the March 6, 2015, issue of the *Texas Register* (40 TexReg 1018). The rule text will not be republished.

The amendment to §176.1 corrects the spelling of the term "x-ray" located in paragraph (6).

No comments were received regarding adoption of the rule.

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

The 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 April 27, 2015.

TRD-201501424
Mari Robinson, J.D.
Executive Director
Texas Medical Board
Effective date: May 17, 2015
Proposal publication date: March 6, 2015
For further information, please call: (512) 305-7016

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CHAPTER 185. PHYSICIAN ASSISTANTS

22 TAC §185.4

The Texas Medical Board (Board) adopts an amendment to §185.4, concerning Procedural Rules for Licensure Applicants, without changes to the proposed text as published in the December 26, 2014, issue of the *Texas Register* (39 TexReg 10149). The rule text will not be republished.

The amendment to §185.4 adds new subsection (h) with language providing that a person who has been determined ineligible for a license by the Physician Assistant Licensure Committee may not reapply for a license prior to the expiration of one year from the date of the Physician Assistant Board's ratification of the Licensure Committee's determination of ineligibility and denial of licensure.

No comments were received regarding adoption of the rule.

The amendment is adopted under the authority of the Texas Occupations Code Annotated, §204.101, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; enforce this subtitle; and establish rules related to licensure.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Mari Robinson, J.D.
Executive Director
Texas Medical Board
Effective date: May 17, 2015
Proposal publication date: December 26, 2014
For further information, please call: (512) 305-7016

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 37. MATERNAL AND INFANT HEALTH SERVICES

SUBCHAPTER S. NEWBORN HEARING SCREENING

The Executive Commissioner of the Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department), adopts the repeal of §§37.501 - 37.512 and new §§37.501 - 37.507, concerning Newborn Hearing Screening. New §§37.501 - 37.505 are adopted with changes to the proposed text as published in the November 7, 2014, issue of the *Texas Register* (39 TexReg 8678). The repeal of §§37.501 - 37.512 and new §37.506 and §37.507 are adopted without changes and will not be republished.

BACKGROUND AND PURPOSE

The department administers the Newborn Hearing Screening Program, which provides guidance for performing point-of-care hearing screening required for all newborns in the state. The goal of newborn hearing screening and early detection of hearing loss is to maximize linguistic competence and literacy development. If hearing loss is not detected early, children miss opportunities to learn language and will fall behind their hearing peers in communication, cognition, reading and social-emotional development. Such developmental delays may result in lower educational and employment levels in adulthood. All hearing screening providers report data through the department's management information system to connect all providers and facilitate tracking the status of at-risk infants throughout the process of screening, diagnosis, treatment and referral to early childhood intervention services. The new rules include timelines for early detection so that newborns and infants identified with hearing loss receive timely follow-up and intervention.

The rules incorporate legislative revisions from House Bill (HB) 411 and Senate Bill (SB) 229, 82nd Legislature, Regular Session, 2011, and SB 793, 83rd Legislature, Regular Session, 2013, which amended Health and Safety Code, Chapter 47, Hearing Loss in Newborns. The revisions reflect changes in definitions; changes in roles and responsibilities; clarification of requirements for birthing facilities; and changes to reporting by health care providers, including performance, tracking and documentation and intervention requirements. The repeals and new rules are necessary to update, clarify, and restructure sections to improve readability and user-friendliness.

Government Code, §2001.039, requires that each state agency review and consider for re-adoption each rule adopted by that agency pursuant to Government Code, Chapter 2001 (Admin-

istrative Procedure Act). Sections 37.501 - 37.512 have been reviewed and the department has determined that reasons for adopting the sections continue to exist because rules on this subject are necessary, although revisions are needed as detailed herein.

SECTION-BY-SECTION SUMMARY

New §37.501 provides a detailed summary of the contents of the subchapter. It identifies the statutory authority for the various elements of the program, identifies the guidelines the department will use to protect patient confidentiality, identifies the department's information management system as the mechanism used to capture and report newborn hearing screening data, and references the online policy regarding the department 's protocols and certification process for newborn hearing screening programs.

New §37.502 provides definitions for terminology used throughout the subchapter.

New §37.503 establishes the process the department will use to obtain parental consent before capturing or sharing individually-identifiable information through the Texas Early Hearing Detection and Intervention Management Information System (TEHDI MIS) and the guidelines used to protect patient data.

New §37.504 identifies the department's TEHDI MIS for all newborn hearing screening programs to report and share information regarding infants that do not pass hearing screenings. This information is vital to the infant's physician or health care provider to ensure follow-up and coordinate appropriate and necessary care as required by Health and Safety Code, §47.005.

New §37.505 documents the timelines required for each level of care for infants that do not pass hearing screenings and the audiological diagnostic evaluation. The section simplifies and condenses the reporting requirements for all hearing screening participants and promotes the TEHDI MIS as a shared resource to follow the progress of an infant that requires follow-up services.

New §37.506 establishes program protocols and certification. The current nationally-recognized standard for newborn hearing screening is the most recent Joint Committee on Infant Hearing (JCIH) Position Statement. The standards are incorporated into the section by reference to allow the department to stay current with national standards without having a potential contradiction in the department rules.

New §37.507 identifies statutory references for authorizing hearing screening services under Medicaid and private insurance.

COMMENTS

The proposed rules were published in the November 7, 2014, issue of the *Texas Register.*

The department, on behalf of the commission, has reviewed and prepared responses to the comments received regarding the proposed rules during the 30-day comment period, which the commission has reviewed and accepts. The commenters included the University of Texas Medical Branch (UTMB), Pediatrix Medical Group (Pediatrix), and March of Dimes. The commenters were not against the rules in their entirety; however, the commenters suggested recommendations for change as discussed in the summary of comments.

COMMENT: March of Dimes submitted a comment in support of the language in the new rules in their entirety.

COMMENT: Concerning the definition of "Program" in §37.502(13), Pediatrix stated that there is no detail in the rules regarding the qualifications for a program to be certified by the department.

RESPONSE: The commission disagrees because the new §37.501 and §37.506(a) direct programs to the online policy for specific requirements related to program certification criteria outlined in a protocol accessible on the TEHDI home page titled, "Newborn Hearing Screening Program Protocols and Certification." The department references Health and Safety Code, §47.004 in the protocol that states requirements and qualifications for supervision of a certified program. The protocol referenced in the new rules is now located online instead of in the rules to streamline the rules and to allow the department to update and stay current with national standards. No change was made to the rule as a result of this comment.

COMMENT: Concerning §37.503, Pediatrix stated that the rule language does not address "de-identified information" and would lead to the potential interpretation that consent is required for all screenings.

RESPONSE: The commission disagrees that the rule would lead to an interpretation that consent is required for all screenings because the rule only requires consent for entering any individually-identifiable information into the TEHDI MIS. This is not to be confused with consent to perform the screening which is not required or addressed in the rule. However, the commission agrees that further clarification on this distinction would be helpful. Therefore, the department modified the language in §37.505(a) to expressly state that parental consent is only required when reporting the results with individually-identifiable information to the department. Providers need individually-identifiable information in the TEHDI MIS to track the progress of newborns or infants who do not pass screening. Other requirements regarding confidentiality and individually-identifiable information are referenced in §37.503, which includes Health and Safety Code, §47.008 and §47.009, and Texas Occupations Code, Chapter 159.

COMMENT: UTMB asked whether a birthing facility will comply with program certification if only the attending physician receives the results of the hearing screen as indicated in §37.505(a).

RESPONSE: Health and Safety Code, §47.005 directs birthing facilities to report the results of the hearing screen to the attending physician, the primary care physician (PCP) or other applicable healthcare provider. Providing the result to the PCP is specifically related to infants who do not pass the initial hearing screening and is required to obtain credit for program certification. This metric is measured through the TEHDI MIS when a PCP is reported, not an attending physician. Attending physicians may not have the means to offer follow-up services for newborns who do not pass the initial hearing screen. Thus, providing the results to the PCP promotes outpatient follow-up screening before the newborn reaches one month of age. No change was made to the rule as a result of this comment.

COMMENT: UTMB asked how reporting the results within five days as stated in §37.505(a) will be measured for program certification when it may take up to two weeks to obtain the name of a PCP.

RESPONSE: The five day requirement and the identification of a PCP are distinct certification metrics. Section 37.505(a) requires that results are reported to the department within five business days after the date of birth or the date of discharge. This requirement refers to all hearing screening results and is consistent

with statutory and program certification requirements. Naming and reporting the PCP is a separate program certification metric specifically related to infants who do not pass the initial hearing screening. The department takes into consideration that the parents of a newborn may not have named a PCP upon discharge and structured the certification metric percentages accordingly. This metric is important to ensure timely coordination of care for at-risk newborns and infants. No change was made to the rule as a result of this comment.

COMMENT: The follow-up hearing screening referenced in proposed §37.505(b) creates a higher standard than required by statute according to Pediatrix and UTMB.

RESPONSE: The commission agrees that clarification is needed. It is not the department's intent to set a higher standard than the statute. Health and Safety Code, §47.0031(a) states that a follow-up screening should be performed not later than the 30th day after discharge from the birthing facility. Exceptions such as when an infant is hospitalized since birth or other extenuating circumstances may occur. Section 37.505(b) was revised to be consistent with statutory language and now reads, "The follow-up hearing screen should be performed..." instead of "The follow-up hearing screen must be performed....".

COMMENT: Concerning §37.505(b), Pediatrix suggested a mechanism in the TEHDI MIS for noting unsuccessful attempts to schedule the follow-up screening.

RESPONSE: The commission disagrees because the TEHDI MIS has the capability to document case activities such as attempts to schedule follow-up screening. Technical assistance is available for the TEHDI MIS and can be accessed through the Newborn Hearing Screening Program Protocols and Certification online document. No change to the rule was made as a result of this comment.

COMMENT: Concerning §37.505(d)(1), UTMB suggested specific language to avoid potential misinterpretation such as "no later than the end of the third month of birth."

RESPONSE: The commission disagrees because the rule language is sufficient and consistent with Health and Safety Code, §47.005(d)(1) and the JCIH's recommendation to identify the infant's third month of age as the goal for performing the diagnostic audiological evaluation. No change to the rule was made as a result of this comment.

COMMENT: UTMB asked whether proposed §37.505(e) requires an additional referral to Early Childhood Intervention (ECI).

RESPONSE: Health and Safety Code, Chapter 47, requires two ECI referrals. The first ECI referral occurs when the newborn does not pass the outpatient screening. The second referral occurs when hearing loss is confirmed with diagnostic audiological evaluation. To help clarify these requirements, the new rules specify the requirement for two separate referrals: after the suspected hearing loss in §35.505(c)(2) and again when hearing loss is confirmed in §35.505(e). No change to the rule was made as a result of this comment.

COMMENT: UTMB suggested a time limit for follow up services in §37.505(f)(2) and (4).

RESPONSE: The commission agrees that clarification of the timelines for follow-up services would be helpful. Pursuant to Health and Safety Code, §47.0031(b)(2), timelines for follow-up services are based on the most recent JCIH guidelines. The JCIH recommends the "one-three-six" process, which is equivalent to the monthly age of the infant when certain activities should be performed if they are suspected to be deaf or hard-of-hearing. These timelines are established in new rule §37.505(b), (d)(1), and (e), with the goal of referring the infant to ECI services as early as possible. Timelines for reporting other medical interventions are not established in the JCIH guidelines; however, the information entered into the TEHDI MIS is still essential for tracking the progress of the infant in the hearing continuum of care. Accordingly, the department revised §37.505(f) to reference the recommendations of the most recent JCIH guidelines.

COMMENT: UTMB suggested that alternate wording be considered in §37.505(f)(6) for "case-level information necessary to report required statistics..." as this term may be unfamiliar to some providers.

RESPONSE: The commission agrees that alternate wording would clarify the meaning of case-level information. Case-level data means the same as patient-level information and the word "(patient)" was added in §37.505(f)(6) to state "case-level (patient) information necessary to report required statistics...."

DEPARTMENT COMMENTS

The department staff, on behalf of the commission, provided comments and the commission has reviewed and agrees to the following changes.

Concerning §37.502, the department identified language inconsistency and outdated information in the proposed rules, as published. The department added language to §37.502(5) to clarify the definition referring to newborns or infants who do not pass the initial hearing screening. The department replaced the word "Invention" with "Intervention" in the definition in §37.502(9) for consistency with the title, "Part C Early Childhood Intervention." The department replaced the statutory reference in §37.502(12) from "...(20) United States Code §§1431-1445, as amended by Pub. L. No. 105-17" with the updated reference "(20) United States Code §§1431-1443."

Concerning §37.503(2) and §37.504(a), the department revised the references to "birthing facility, provider, or program" for consistency with §37.503(1).

Concerning §37.501, §37.503(3), §37.504(b), and §37.505(a), the department made changes that were necessary to maintain consistency and to clarify sentences for improved readability.

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.

25 TAC §§37.501 - 37.512

STATUTORY AUTHORITY

The repeals are adopted under the Health and Safety Code, §47.010, which requires the department to adopt rules necessary to carry out the program, and by Chapter 47 in general; and Government Code, §531.0055(e), and the 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 April 24, 2015.

TRD-201501420
Lisa Hernandez
General Counsel
Department of State Health Services
Effective date: May 14, 2015
Proposal publication date: November 7, 2014
For further information, please call: (512) 776-6972

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25 TAC §§37.501 - 37.507

STATUTORY AUTHORITY

The new sections are adopted under the Health and Safety Code, §47.010, which requires the department to adopt rules necessary to carry out the program, and by Chapter 47 in general; and Government Code, §531.0055(e), and the 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.

§37.501. Purpose.

The purpose of this subchapter:

(1) describes point-of-care newborn hearing screening process administered by the Department of State Health Services (department) pursuant to Texas Health and Safety Code, Chapter 47;

(2) details confidentiality and general access to data regarding newborn hearing screening with state and federal privacy guidelines;

(3) identifies the department's Texas Early Hearing Detection and Management Information System (TEHDI MIS) used to capture and report newborn hearing screening information, and describes the requirements for follow-up, intervention, and reporting to the department by newborn hearing screening participants; and

(4) incorporates by reference the protocols for newborn hearing screening programs and the criteria used by the department to certify hearing screening programs.

§37.502. Definitions.

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

(1) Audiologist--A person licensed pursuant to Texas Occupations Code, Chapter 401.

(2) Birthing facility:

(A) a hospital licensed under Texas Health and Safety Code, Chapter 241 that offers obstetrical services;

(B) a birthing center licensed under Texas Health and Safety Code, Chapter 244;

(C) a children's hospital licensed under Texas Health and Safety Code, Chapter 241 that offers obstetrical and/or neonatal intensive care unit services; or

(D) a facility maintained or operated by this state or an agency of this state that provides obstetrical services.

(3) Consent--A written statement signed by a parent agreeing that individually-identifying information may be disclosed to the department.

(4) Department--The Department of State Health Services.

(5) Follow-Up Care--Additional screening, diagnostic audiological evaluation, or treatment and services for newborns or infants who do not pass the initial hearing screening.

(6) Hearing loss--A hearing loss averaging 30 dB hearing level or greater in the frequency region important for speech recognition and comprehension in one or both ears, 500 through 4000 Hz.

(7) Individually-identifying information--Confidential and protected health information (PHI) that identifies the parent or newborn including common identifiers such as, but not limited to, names, addresses, birthdates, and social security numbers.

(8) Infant--A child who is at least 30 days but who is younger than 24 months old.

(9) Intervention--Other intervention services separate from Part C Early Childhood Intervention and include those medical and therapeutic services designed to support infants with hearing loss.

(10) Newborn--A child younger than 30 days old.

(11) Parent--A natural parent, stepparent, adoptive parent, legal guardian, or other legal custodian of a child.

(12) Part C Early Childhood Intervention--The early intervention services described in Part C, Individuals with Disabilities Education Act (20) United States Code §§1431-1443.

(13) Program--A supervised newborn hearing screening, tracking and intervention program certified by the department.

(14) Protocol(s)--Guidelines or procedures, based on the latest Joint Committee on Infant Hearing (JCIH) position statement, used by programs to conduct newborn hearing screening.

(15) Screen--An initial or a repeat test that identifies an increased risk for hearing loss, which must be confirmed by an audiological diagnostic evaluation.

(16) State--The State of Texas.

(17) Texas Early Hearing Detection and Intervention Management Information System (TEHDI MIS)--The department's central information source of newborn hearing screens and audiological diagnostics to ensure follow-up and any type of intervention for newborns or infants identified as hard of hearing or deaf.

§37.503. Confidentiality and General Access to Data.

This section establishes the guidelines to protect the confidentiality of patients in accordance with Texas Occupations Code, Chapter 159, and Texas Health and Safety Code, §47.008 (relating to Confidentiality and General Access to Data) and §47.009 (relating to Immunity from Liability).

(1) The birthing facility, provider, or program shall ensure that the written consent of a parent is obtained before any individually-identifying information on the newborn or infant is released through the TEHDI MIS.

(2) If consent to disclose individually-identifying information to the department is obtained, the birthing facility, provider, or program obtaining consent shall retain the consent in the patient's medical record.

(3) At any time a parent may request in writing that the department remove individually-identifying information concerning his or her child from the department's TEHDI MIS. The department shall act on any request in a timely manner.

(4) Sample consent forms can be found on the department's newborn hearing website at: www.dshs.state.tx.us/tehdi.

§37.504. Information Management and Tracking System.

(a) Birthing facilities, providers, or programs mentioned in this subchapter that perform hearing screening, diagnosis, and provide follow-up and intervention, including Part C early childhood intervention services for newborns or infants shall have access to the department's TEHDI MIS. Information regarding access and technical assistance is located at www.dshs.state.tx.us/tehdi.

(b) Reporting to the department's TEHDI MIS is required. The TEHDI MIS shall be updated to provide the department with information and data necessary to plan, monitor, and evaluate the program, including the program's screening, follow-up, diagnostic, and intervention components. The department may also use the collected data to monitor for health events of epidemiological importance.

§37.505. Screens, Follow-up, and Reporting.

(a) After an initial or a follow-up hearing screening is performed, the birthing facility that operates the program, other programs, or other providers shall report the results to the parents. The results are also reported to the attending or primary care physician or other applicable healthcare provider, and with parental consent, any individually-identifying information to the department according to the requirements in Texas Health and Safety Code, Chapter 47. The results are reported to the department within five business days after the date of birth or the date of discharge. The physician or health care provider attending to the infant who needs follow-up care should direct, track, and coordinate appropriate and necessary care.

(b) The follow-up hearing screen should be performed within 30 days from date of discharge from the birthing facility.

(c) If the newborn or infant does not pass the follow-up hearing screen, the program or provider performing the screens shall:

(1) assist in coordinating and scheduling a diagnostic audiological evaluation with another program or licensed audiologist who performs these evaluations; and

(2) refer the newborn or infant to Early Childhood Intervention Services, Department of Assistive and Rehabilitative Services.

(d) Unless the newborn or infant has been hospitalized since birth, the diagnostic audiological evaluation must be completed:

(1) no later than the third month of birth; or

(2) upon referral by the newborn's or infant's primary care physician or other applicable health care provider.

(e) The program, person, or provider that identified or diagnosed the newborn or infant with hearing loss shall refer the family for Part C Early Childhood Intervention services, in accordance with 34 Code of Federal Regulations §303.303(a)(2)(i) (relating to Referral Procedures) as soon as possible, but in no case more than seven days after the child has been identified and not later than the sixth month after birth and through the time the child is an infant, unless the infant has been hospitalized since birth. A referral can come from a primary referral resource identified in §303.303(c) (relating to Primary Referral Sources).

(f) Audiologists, hospitals, physicians, health care providers, qualified hearing screeners, early childhood intervention specialists, educators, and others who receive referrals from programs under this subchapter shall either provide the needed services or refer the newborn or infant to appropriate services in accordance with the most recent JCIH guidelines. With parental consent, these providers shall report the following information to the department's TEHDI MIS. These providers may also track the activities and progress of the infant and obtain information from the TEHDI MIS relating to:

(1) results of each hearing screening performed;

(2) results of all follow-up care and services;

(3) results of each diagnostic audiological evaluation;

(4) reports on initiation and results of intervention services;

(5) reports on the initiation of Part C Early Childhood Intervention services; and

(6) case-level (patient) information necessary to report required statistics to the:

(A) Maternal and Child Health Bureau/Health Resources and Services Administration on an annual basis; and

(B) federal Centers for Disease Control and Prevention.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 12. INDEPENDENT REVIEW ORGANIZATIONS

The Texas Department of Insurance (TDI) adopts amendments to 28 TAC §§12.1, 12.3 - 12.6, 12.101 - 12.110, 12.201 - 12.208, 12.301 - 12.303, 12.401 - 12.406, and 12.501, 12.502, and new §12.111, concerning independent review organizations (IROs). TDI adopts the new section and amendments with changes to the proposed text published in the November 28, 2014, issue of the *Texas Register* (39 TexReg 9310). Two correction of error notices were published in the December 12, 2014 (39 TexReg 9738) and December 19, 2014 (39 TexReg 10083) issues of the *Texas Register* to correct errors in the proposal published in the November 28, 2014, issue of the *Texas Register* (39 TexReg 9310). In response to comments on the proposal, TDI added the phrase "if any" in §12.103(4)(A) to track Insurance

Code §4202.004(6)(B). Also in response to comments, TDI deleted "a letter from the Texas Secretary of State" and added "a copy of the Certificate of Formation from the Secretary of State" in §12.103(8)(a) to reflect the formation and existence requirements of Business Organizations Code §3.001.

In addition to changes made in response to comments and to conform to the agency's current style guidelines, TDI deleted "as of September 1, 2013," in §12.1. TDI deleted "applications for a certificate of registration as an IRO, and for a renewal of a certificate of registration as an IRO" and "April 1, 2015," and added "This chapter is effective on July 7, 2015," and "July 7, 2015" in §12.4 to clarify that all of 28 TAC Chapter 12 is effective on July 7, 2015.

TDI revised §§12.5(20), 12.5(22), 12.101, 12.103, 12.104, 12.107, 12.108, 12.111, 12.206(d)(7), 12.208(f), 12.302(f), 12.401(a), and 12.406 to replace "certified," "renew," and "certification." The term "certification" refers to an issuance of the certificate of registration. For consistency of terminology throughout 28 TAC Chapter 12, TDI removed references to the term "certification," instead referring to a "certificate of registration." As a conforming change, TDI also changed the title of Subchapter B.

TDI deleted "pertaining to" and added "on" in §12.5(15) to conform to current agency writing style. TDI deleted "including" and added "includes" in §12.5(23)(a) to conform to current agency writing style. TDI capitalized deleted "Federal" and added "federal" in §12.5(25)(E)(i) to conform to current agency writing style. TDI deleted "pertaining to" and added "about" in §12.5(32) to conform to current agency writing style.

TDI deleted "where the activities and computer systems described in" and "are maintained, performed, and located" and added "the IRO's primary office" in §12.5(30) to implement Insurance Code §4202.002(c)(2)(A)(i), which requires the IRO to maintain a physical address in Texas, and Insurance Code §4202.002(c)(2)(A)(iv), which requires the IRO to maintain its primary offices in this state. TDI also made these changes throughout 28 TAC Chapter 12 for consistency. TDI added "in Texas" in §12.5(32) for clarity and to implement Insurance Code §4202.002(c)(2)(A)(i). TDI deleted "pertaining to" and added "about" in §12.5(32) to conform to current agency writing style. TDI made a nonsubstantive correction to punctuation in §12.5(35).

TDI deleted "Certification" and "Organizations" and added "Certificate" and "IROs" in the title of subchapter B to correct the existing title and to comply with current agency writing style. TDI deleted "to" and added "in an IRO application form for" in §12.102(a) to be consistent throughout 28 TAC Chapter 12. TDI made nonsubstantive corrections to punctuation throughout §12.103. TDI deleted "title" and added "chapter" in §12.103(1)(E) to conform to current agency writing style. TDI deleted "title" and added "chapter" in §12.103(1)(E) to conform to current agency writing style. TDI deleted "above" and added "in subparagraph (A)" in §12.103(4)(B) to conform to current agency writing style. TDI moved "for an applicant that is publicly held" from the end to the beginning of §12.103(8)(B) to better track Insurance Code §4202.004(a)(1).

TDI deleted "IRO" and added "applicant" in §12.103(8)(D), §12.103(8)(E), and §12.103(11)(D) to be consistent with existing language. TDI deleted "subchapter" and added "chapter" in §12.103(11) to conform to current agency writing style.

TDI deleted "noted on the application" and added "included on the IRO application form" in §12.103(13)(A) for consistency and to conform to current agency writing style. TDI made a nonsubstantive amendment to renumber the paragraphs in §12.104 by deleting "4" and adding "3." TDI replaced "will" with "may" in §12.106(a) to clarify that TDI conducts examinations at its discretion. TDI made a nonsubstantive correction to punctuation in §12.104(2)(B). TDI deleted "or the commissioner's designee" in §12.106(a) because the commissioner's designee is included in the definition of commissioner in §12.5(8). TDI deleted "Prior to" and added "Before" to the title of §12.107 to conform to current agency writing style. TDI added "of" to §12.108(a) to correct a grammatical error. TDI moved "Every two years" to the beginning of the sentence in §12.108(a) to conform to current agency writing style. TDI deleted "not" and added "no" in §12.108(a) to conform to current agency writing style. TDI deleted "responses" and added "responded" in §12.108(e)(2) to correct a grammatical error.

TDI replaced "may" with "must" in §12.110(a) for consistency with §12.102(a), which requires the use of the IRO application form for reporting a material change. TDI also deleted "applicant's" and added "purchaser's" in §12.110(a) for consistency. TDI replaced "addresses" with "address" to clarify that the IRO is only required to maintain one physical address under Insurance Code §4202.0029(a)(2)(A). TDI deleted "not" and added "no" in §12.110(a) to conform to current agency writing style. TDI deleted "prior to" and added "before" in §12.110(c) to conform to current agency writing style. TDI deleted "§12.102" and added "§12.103" in §12.111(a) to cite to the correct section about reporting a material change. TDI deleted "not" and added "no" in §12.111(a) to conform to current agency writing style.

TDI deleted "A" and added "a" in §12.201(1) to conform to current agency writing style. TDI deleted "utilize" and added "use" in §12.201(3)(A) to conform to current agency writing style. TDI deleted "utilize" and added "use" in §12.201(4)(A) to conform to current agency writing style. TDI made a nonsubstantive correction to punctuation in §12.202(a). TDI deleted "the" and added "who are" in §12.202(d) to conform to current agency writing style. TDI deleted "by" in §12.202(d) to conform to current agency writing style. TDI made a nonsubstantive change to the requirement in §12.202(d)(1) for readability and clarity. TDI deleted "screening criteria" and added "review criteria" in §12.202(c)(1). Proposed §12.202(c)(1) referred to the term "screening criteria" to describe the criteria used in the IRO's review process. However, screening criteria applies more appropriately to the utilization review process than the independent review process, while review criteria is more reflective of the independent review process. TDI deleted "prior to" and "being" and added "before" and "is" in §12.202(g)(4) to conform to current agency writing style.

TDI moved language about the definition of control from §12.203(b) to §12.5(9) to clarify that the language applies to the entire chapter, and further defines the term "control." TDI removed the subsection numbering because there are no longer subsections within §12.203. Also in §12.203, TDI replaced "pursuant to" with "under" to conform to current agency writing style. TDI made a nonsubstantive correction to punctuation in §12.203. TDI added "and Relationships" to the title of §12.204 to correct the existing title. TDI deleted "not" and added "no" in §12.206(b) to conform to current agency writing style. TDI deleted "not" and added "no" in §12.206(c) to conform to current agency writing style. TDI deleted "prior to" and added "before its" in §12.206(d)(11)(F) to conform to current agency writing

style. TDI made nonsubstantive corrections to punctuation throughout §12.208. TDI deleted "as" in §12.302(a) to conform to current agency writing style. TDI deleted "a" and "case" and added "cases" in §12.302(c) to conform to current agency writing style. TDI deleted "prior to" and added "before" in §12.502(f)(1) to conform to current agency writing style.

REASONED JUSTIFICATION. The amendments and new section are necessary to implement HB 2645, 83rd Legislature, Regular Session (2013), which amended Insurance Code Chapter 4202, relating to the certification and operation of IROs in Texas. HB 2645 allows TDI to continue to regulate IROs after January 1, 2016. It also establishes an advisory group. In addition, TDI has determined that other amendments are necessary to enforce Insurance Code Chapter 4202. The entire adoption order is part of the reasoned justification for the amendments and new section.

Insurance Code §4202.002, concerning adoption of standards for IROs, requires the commissioner to adopt standards and rules for the certification, selection, and operation of IROs that perform independent reviews described by Insurance Code Chapter 4201, Subchapter I; and for the suspension and revocation of the certificate of registration issued to IROs. Insurance Code §4202.002(c) specifies that the commissioner must adopt standards and rules that prohibit an individual who serves as an officer, director, manager, executive, or supervisor of an IRO from serving as an officer, director, manager, executive, supervisor, employee, agent, or independent contractor of another IRO. Amendments to §12.204(d) implement the prohibition of persons from serving in certain positions with other IROs mandated in Insurance Code §4202.002(c).

HB 2645 amends Insurance Code §4202.002, in part, to require an IRO to maintain a physical address and a mailing address in this state, to notify TDI of an agreement to sell the IRO or shares in the IRO, and to complete the transfer of ownership after TDI has sent written confirmation that the requirements are satisfied. Amendments to §12.103(13)(A) provide that an IRO must locate and maintain its primary office at the physical address in this state as noted on its application. Amendments to §12.103(13)(A) further require, as a condition of holding a certificate of registration to conduct the business of independent review in this state, that the physical address of the IRO's primary office be maintained in this state.

New §12.5(30) defines "physical address." The existing definition of "primary office" is redesignated in §12.5(32) and adds the requirement that an IRO "maintain its physical address in Texas." These amendments are necessary to implement Insurance Code §4202.002(c), which requires an IRO to maintain its primary office at a physical address in this state. Amendments to §12.110 are necessary to ensure TDI receives notice of an agreement to sell or transfer the ownership or shares in the IRO, and require the IRO to release certain information to TDI.

HB 2645 adds Insurance Code §4202.002(f), which, in part requires the commissioner to adopt standards that require that the IRO's primary office is equipped with a computer system capable of processing requests for independent review, that all records are maintained electronically, that records are made available to TDI on request, and that independent review offices located in residences are located in a room set aside for business purposes to ensure confidentiality of medical records. Amendments to §12.103(13) add a new subparagraph (B) to require an applicant for an initial or renewal certificate of registration to submit as part of the application process evidence that the applicant's primary office is equipped with a computer system capable of certain requirements. Amendments to §12.103(13)(D) require that if the IRO's primary office is in a residence, dedicated space is set aside for business purposes.

HB 2645 amends Insurance Code §4202.003, which requires each IRO to make the IRO's determination for a life-threatening condition, as defined by Insurance Code §4201.002, no later than the earlier of the third day (rather than the fifth day) after the date the IRO receives the information necessary to make the determination. With respect to a review of a health care service provided to a person eligible for workers' compensation medical benefits, the IRO must make its determination for a life-threatening condition by the eighth day after the date the IRO receives the request that the determination be made.

HB 2645 amends Insurance Code §4202.004, which requires a description of any relationship the applicant or the named individual has with specified entities. It also requires the IRO application form to include information about an applicant's procedures for verifying physician and provider credentials, including the computer processes, electronic databases, and records used, if any, and the software used by the credentialing manager for managing the processes, databases, and records. Insurance Code §4202.004(a)(8) requires the IRO application form to include a description of the applicant's use of communications, records, and computer processes to manage the independent review process. Insurance Code §4202.004 also requires the commissioner to establish certifications for independent review of health care services provided to persons eligible for workers' compensation medical benefits and other health care services, after considering accreditation, if any, by a nationally recognized accrediting organization that imposes requirements for accreditation that are the same as, substantially similar to, or more stringent than TDI's requirements for a certificate of registration. HB 2645 amends Insurance Code §4202.004(g), which requires that the certification be renewed biennially.

HB 2645 amends Insurance Code §4202.005(c), which requires that information about a material change be submitted on a form adopted by the commissioner no later than the 30th day after the date the material change occurs. If the material change is a relocation, §4202.005(c) requires the IRO to inform TDI that the new location is available for inspection by TDI before the date of the relocation, and that an officer of the IRO must attend the inspection on TDI's request. Amendments to §12.5(22) define "IRO application form" to include that the IRO application form must be used to report a material change to TDI. Amendments to §12.102(a) require an IRO to report a material change in an IRO application form by submitting the IRO application form to TDI.

In compliance with new Insurance Code §4202.011, the commissioner appointed an IRO advisory group on July 31, 2014, composed of members as required by Insurance Code §4202.011(a).

TDI has also determined that other amendments are necessary to enforce Insurance Code Chapter 4202. Insurance Code §4202.002(a) requires the commissioner to adopt "standards and rules for...the certification, selection, and operation of independent review organizations." Under Insurance Code §4202.002(b), these standards must ensure the qualifications and independence of each reviewer, the fairness of the procedures used by an IRO in making review determinations, and that the procedures maintain the confidentiality of medical records transmitted to an IRO.

TDI adopts amendments throughout the rule text to correct grammar and punctuation, and to make other nonsubstantive changes to update and conform rule text to the current agency writing style.

TDI posted a concept draft of these rules to its website and held a public stakeholder meeting on November 20, 2013; posted to its website an informal draft of the rules on August 5, 2014; and held a public hearing on the proposed rules on December 15, 2014, under Docket Number 2776. In response to both written comments and comments made at the hearing, TDI made several changes to the proposal, but none of the changes made to the proposed text or form in this adoption materially alter issues raised in the proposal, introduce new subject matter, or affect persons other than those previously on notice.

Section 12.1. Statutory Basis. Section 12.1 changes the existing provisions relating to the statutory basis for the rules in Subchapters A through F to reflect that the adopted rule amendments incorporate the most recent amendments to Insurance Code Chapter 4202. TDI adopts nonsubstantive amendments to §12.1 to conform to current agency writing style.

Section 12.3. Effects of Chapter. TDI adopts nonsubstantive amendments to §12.3 to conform to current agency writing style.

Section 12.4. Applicability. Section 12.4(b) specifies the applicability of Insurance Code Chapter 4202 to independent review requests filed with TDI before the effective date of the rules. The effective date of July 7, 2015, in §12.4(b) gives IROs time to comply with the amendments and new sections in 28 TAC Chapter 12, and allows time for IROs to complete any remaining reviews assigned to them under the current rules. TDI also adopts nonsubstantive amendments to §12.4 to conform to current agency writing style.

Section 12.5. Definitions. New §12.5(4) adds the definition for "biographical affidavit." This new definition is necessary to specify that the biographical affidavit form used in IRO applications must be the National Association of Insurance Commissioners biographical affidavit form. This amendment establishes the standardized form for submitting biographical information as required under Insurance Code §4202.004(4).

New §12.5(9) adds the definition of "control." This new definition is necessary to clarify how an IRO may comply with Insurance Code §4202.008, which prohibits an IRO from being a subsidiary of, or in any way owned or controlled by, a payor or a trade or professional association of payors. The definition of "control" is also necessary to clarify the use of the term in the existing definition of "affiliate" in §12.5(2), for disclosure to TDI in the original application under §12.103(10), and for determining whether control exists under §12.203.

Insurance Code §4202.002(a)(1) requires the commissioner to adopt "standards and rules for...the certification, selection, and operation of independent review organizations." The definition of "control" under new §12.5(9) will assist TDI in its goal to ensure compliance with Insurance Code Chapter 4202, and also to ensure that there are no conflicts of interest involving an IRO being controlled by a payor or professional association of payors. TDI defined this new term based on its rulemaking authority under Insurance Code §4202.002(a)(1).

New §12.5(22) adds the definition of "IRO application form." The definition is necessary to clarify the form to use to apply for a certificate of registration as an IRO in Texas, for renewal of a certificate of registration, and for reporting a material change to an IRO application for a certificate of registration previously submitted to TDI. Insurance Code §4202.004 requires an organization to submit an application in the form required by the commissioner. This definition also implements Insurance Code §4202.005(c), which provides that an IRO shall report any material change to the information submitted on a form adopted by the commissioner no later than the 30th day after the date the material change occurs.

New §12.5(30) adds the definition of "physical address." This definition is necessary to clarify the use of the term in amended §12.103(13)(A), which implements the requirements in Insurance Code §4202.002(c)(2)(A)(i) and (f). Insurance Code §4202.002(c)(2)(A)(i) requires the commissioner to adopt rules that require IROs to maintain a physical address in this state. Insurance Code §4202.002(f) requires the commissioner to adopt standards requiring an officer of an organization to attest that the organization's office is located at a physical address in its application for certification. The requirement in new §12.5(30) that the IRO have personnel reasonably available by telephone at least 40 hours per week during normal business hours is an existing requirement in existing §12.207(a).

Amendments to the definition of "primary office" in §12.5(32) delete "based upon the totality of the business activities related to independent review performed under this chapter" and add "maintains its physical address in Texas" to implement the requirements in Insurance Code §4202.002(c)(2)(A)(i) and (f). Insurance Code §4202.002(c) requires the commissioner to adopt standards and rules that require an IRO to maintain a physical address in this state. Insurance Code §4202.002(f) requires the commissioner to adopt standards requiring that, on application for certification, an officer of the IRO attest that the office is located at a physical address. TDI clarifies that the primary office cannot be virtual and must be at a physical address. Amendments to §12.5(32) also replace the term "stored" with the phrase "maintained and accessible" regarding the IRO's books and records. These amendments are necessary for TDI staff to conduct on-site examinations that include an examination of the IRO's records as part of its ongoing oversight requirement under Insurance Code §4202.007, and to ensure continued compliance with Insurance Code Chapter 4202 and 28 TAC Chapter 12.

TDI also adopts nonsubstantive amendments to §12.5 to conform to current agency writing style.

Section 12.6. Independent Review of Adverse Determinations of Health Care Provided Under Labor Code Title 5 or Insurance Code Chapter 1305. TDI adopts nonsubstantive amendments to §12.6 to conform to current agency writing style.

Section 12.101. Certificate of Registration for Independent Review. Amendments to §12.101 change the heading of the section from "Where to File Application" to "Certificate of Registration for Independent Review" to more accurately reflect the content of the section. TDI also adopts nonsubstantive amendments to §12.101 to conform to current agency writing style.

Section 12.102. IRO Application Form. Amendments to §12.102 include changing the title of the section to "IRO Application Form," and other amendments to conform to current agency writing style. Amendments to §12.102(a) delete the adoption by reference of Form No. LHL006 (IRO Application Form). Amendments to §12.102(a) also instruct applicants to use the IRO application form to report a material change to a certificate of registration and require IRO applicants to use the IRO application form prescribed by TDI. These amendments are

necessary to implement Insurance Code §4202.005(c), which requires that information about a material change be submitted on a form adopted by the commissioner no later than the 30th day after the date the material change occurs. Insurance Code §4202.005(c) also provides that if the material change is a relocation of the IRO, the IRO must inform TDI that the location is available for inspection by TDI before the date of the relocation, and an IRO officer must attend the inspection on TDI's request. Amendments to §12.102(c) are necessary to provide the correct Internet and mailing addresses from which an applicant may obtain the form.

TDI also adopts nonsubstantive amendments to §12.102 to conform to current agency writing style.

Section 12.103. Information Required in Original Application for Certificate of Registration. Amendments to §12.103 change the name of the section from "Information Required in Application and Renewal Form" to "Information Required in Original Application for Certificate of Registration" to distinguish the requirements for an original application for certificate of registration from the requirements for a renewal of a certificate of registration. Amendments to §12.103 also delete the reference to Form No. LHL006 to conform to adopted amendments to §12.102.

Amendments to §12.103(1)(C) replace "an authorized representative" with "the IRO's medical director" as the person who must sign the certification that criteria and review procedures for review determinations are established with input from appropriate health care providers and physicians under existing §12.201(3). The requirement that a medical director sign the certification ensures that an appropriately qualified individual approves criteria for a higher quality of review. These amendments are necessary to implement Insurance Code §4202.002(b)(3) and (4), which require the commissioner to adopt standards to ensure the qualifications and independence of each reviewer, the fairness of the procedures used by an IRO in making review determinations, and the confidentiality of medical records transmitted to an IRO. They are also necessary to implement Insurance Code §4202.007, which requires TDI to maintain oversight of IROs to ensure continued compliance with Insurance Code Chapter 4202 and 28 TAC Chapter 12.

Amendments to §12.103(1)(D) delete "§12.105(d)" and add "§12.111(a)" to more accurately reflect the new content of the section.

New §12.103(1)(E) requires an IRO applicant to include a summary of the description of criteria and review procedures to be used by the medical director to conduct quality assurance audits under §12.202(c)(2). As in the paragraph above, new §12.103(1)(E) is also necessary to implement Insurance Code §4202.002(b)(3) and (4), and §4202.007.

Amendments to §12.103(3) require an officer, director, or owner of the IRO to certify compliance with Insurance Code Chapter 4202 and 28 TAC Chapter 12, instead of only an authorized representative. The officer, director, or owner of the IRO must also certify that any party that performs an IRO function through contracts and subcontracts will comply with Insurance Code Chapter 4202 and 28 TAC Chapter 12. The certification must also state that the IRO retains responsibility to ensure compliance. Insurance Code §4202.002(a), in part, authorizes the commissioner to adopt standards and rules for the certification, selection, and operation of IROs to perform independent review. As outlined in paragraphs above, these amendments are also necessary to implement Insurance Code §4202.002(b)(3) and (4), and §4202.007.

Amendments to §12.103(4) replace "credentialing" with "their credentials" for clarity and delete "relating to Personnel and Credentialing" to conform to agency writing style. New §12.103(4)(A) and (B) require an IRO applicant to include in the original application for a certificate of registration a description of the credentialing and recredentialing procedures, computer processes, electronic databases, records, and software used by the applicant to verify physician and provider credentials. These amendments are necessary to implement the requirements in Insurance Code §4202.004(a)(6)(B) and (C), which require the IRO application form to include a description of the procedures used by the applicant to verify physician and provider credentials, including the computer processes, electronic databases, and records used, if any, and the software used by the credentialing manager for managing those processes, databases, and records.

New §12.103(6) requires the applicant to include a description of the applicant's use of communications, records, and computer processes to manage the independent review process. This amendment is necessary to implement Insurance Code §4202.004(a)(8), which requires the IRO application to include a description of the applicant's use of communications, records, and computer processes to manage the independent review process.

New §12.103(7) requires the applicant to include a description and evidence of accreditation from a nationally recognized accrediting organization, if any, that imposes the same, substantially similar to, or stricter requirements than TDI's certificate of registration in the IRO application form. Section 12.103(7) provides that TDI will maintain evidence of accreditation on file for the applicant, and allows the applicant to request expedited approval of the application for a certificate of registration based on the evidence of accreditation. These amendments are necessary to implement Insurance Code §4202.004(b), (e) and (f), which establish requirements for certifications for independent review of health care services provided to persons eligible for workers' compensation medical benefits and other health care services after considering accreditation, if any, by a nationally recognized accrediting organization that imposes the same, substantially similar to, or stricter requirements than TDI's requirements for accreditation. Insurance Code §4202.004(e), in part, requires that an IRO that applies for a certificate of registration to review health care services that is accredited by an organization described Insurance Code §4202.004(b) provide TDI with evidence of the accreditation. Insurance Code §4202.004(e) requires the commissioner to consider the evidence if the accrediting organization publishes and makes available to the commissioner the accrediting organization's requirements for and methods used in the accreditation process, and authorizes an accredited IRO to request that TDI expedite the application process. HB 2645 amended Insurance Code §4202.004(f), in part, to authorize a certified IRO that becomes accredited by certain organizations to provide evidence of that accreditation to TDI and requires that evidence be maintained in TDI's file related to the IRO's certification.

Amendments to redesignated §12.103(8)(A) require the applicant to submit written evidence that the applicant is incorporated in this state, which may include a copy of the Certificate of Formation from the Secretary of State. These amendments are necessary to implement Insurance Code §4202.002(c)(2)(A)(ii),

which requires an IRO to be incorporated in this state. Amendments to §12.103(8)(A) also delete language requiring the applicant to submit documents relating to its internal affairs, such as bylaws, because TDI has included more specific requirements about the information necessary for the commissioner to determine whether an applicant is qualified to obtain a certificate of registration as an IRO in amended §12.103.

Amendments to §12.103(8)(B) require the applicant to submit the address and Federal Employer Identification Number (EIN) for each stockholder or owner of more than 5 percent of the applicant's stock or options if the applicant is publicly held. These amendments are necessary under Insurance Code §§4202.002, 4202.004, 4202.005, and 4202.007 for TDI staff reviewing IRO applications for certificates of registration, renewals of certificates of registration, and reports of material changes to quickly and efficiently verify the identification information submitted by the applicant in the IRO application form. TDI recognizes that IROs and IRO applicants benefit from a more efficient process.

Amendments to §12.103(8)(D) clarify the contents of the chart of contractual arrangements to include contracts between the applicant and any persons and all subcontracts with other persons to perform any business or daily functions of an IRO. New §12.103(8)(E) requires the applicant to submit copies of the contract and subcontract the applicant has with any person who will perform IRO functions, and new §12.103(8)(E)(i) - (iv) lists the elements those contracts must include. These amendments are necessary to implement Insurance Code §4202.002(a) and §4202.007, ensuring that the IRO is responsible for compliance with Insurance Code Chapter 4202 and 28 TAC Chapter 12 and to ensure TDI is aware of the actual parties conducting IRO functions.

Amendments to redesignated §12.103(10) require the applicant to submit the address and EIN of any organization the applicant controls or is affiliated with. These amendments also implement Insurance Code §4202.002(a) and are necessary for TDI staff reviewing IRO applications for certificates of registration to quickly and efficiently verify the identification information submitted by the applicant in the IRO application form. TDI recognizes that IROs and IRO applicants benefit from a more efficient process.

Amendments to redesignated §12.103(11) change "Form No. FIN311 (Biographical Affidavit)" to "biographical affidavit" to conform to new §12.5(4). New §12.103(11)(A) requires the applicant to submit fingerprints for each director, officer, executive, owner, or shareholder of the applicant. These amendments are necessary to implement Insurance Code §4202.004(d), which, in part, requires the commissioner to obtain from each officer of the applicant and each owner or shareholder of the applicant, or, if the purchaser is publicly held, each owner or shareholder of more than 5 percent of any of the applicant's stock or options, a complete and legible set of fingerprints for obtaining criminal history record information from the Texas Department of Public Safety (DPS) and the FBI. It also requires TDI to conduct a criminal history check of each applicant using information provided under this section, by obtaining information made available to TDI by the DPS, the FBI, and any other criminal justice agency under Government Code Chapter 411. Additionally, 28 TAC §1.501(b)(1)(B) authorizes TDI to determine a person's fitness for holding a certification or registration or a person's fitness to have the ability to control entities when that person has committed a criminal offense or has engaged in fraudulent or dishonest activity, including applicants for a certificate of registration under Insurance Code Chapter 4202. Title 28 TAC §1.503, in part, provides that the fingerprint requirement in 28 TAC §1.504(a) applies to applicants for certificates of registration under Insurance Code Chapter 4202.

Amendments to redesignated §12.103(11)(B) delete the application of the fingerprint requirement because that requirement is found in new §12.103(11)(A). Amendments to §12.103(11)(D) require the applicant to submit a list of any outstanding loans or contracts to provide service to "any other person relating to any functions performed by or on behalf of the applicant." These amendments are necessary to implement Insurance Code §4202.004(d).

New §12.103(12) requires the applicant to submit documentation from the comptroller demonstrating the applicant's good standing and the right to transact business in this state. This amendment is necessary to implement Insurance Code §4202.002(c)(2)(A)(iii), which specifies that the commissioner must adopt standards and rules that, among other things, require the IRO to be in good standing with the comptroller.

Amendments to redesignated §12.103(13) require a sworn statement from an officer of the IRO. The information required in the sworn statement in amendments to §12.103(13)(A) - (D) is necessary to implement Insurance Code §4202.002(f), which requires the commissioner to adopt standards requiring that: (i) on application for certification, an officer of the IRO attest that the office is located at a physical address; (ii) the office be equipped with a computer system capable of processing requests for independent review and accessing all electronic records related to the review and the independent review process; (iii) all records be maintained electronically and made available to TDI on request; and (iv) in the case of an office located in a residence, the working office be located in a room set aside for independent review business purposes and in a manner to ensure confidentiality.

New §12.103(13)(E) adds a requirement for the sworn statement that medical records be maintained according to §12.208. This amendment is necessary to implement Insurance Code §4202.002(e), which requires that the standards to ensure the confidentiality of medical records transmitted to an IRO under Insurance Code §4202.002(b)(2) require IROs and utilization review agents (URAs) to transmit and store records in compliance with the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. Section 1320d et seq.) (HIPAA) and the regulations and standards adopted under that Act.

TDI also adopts nonsubstantive amendments to §12.103 to conform to current agency writing style.

Section 12.104. Review of Original Application. TDI changed the title of the section from "Review of Application" to "Review of Original Application" to reflect that the content of the section is for review of an original application. New §12.104(1) and §12.104(2)(a) - (c) delete the current process for TDI's review of an original application and replace it with a new process that mirrors TDI's review of certification or registration of URAs in 28 TAC §19.1704(e) and (f), and §19.2004(e) and (f). These amendments are necessary to maintain consistency across TDI's processes. TDI has determined that the process for reviewing original applications for certificates of registration as IROs should be consistent with the process for review of applications for certification or registration of URAs. This change streamlines processes and enables TDI to process both types of applications efficiently for the benefit of regulated entities. TDI recognizes

that uniform standards offer a more consistent process for ease of stakeholder interpretation and compliance.

New §12.104(1) provides that TDI will grant or deny an original certificate of registration within 60 days of receipt of a complete original application. This section also provides an applicant the right to waive the 60-day time limit.

New §12.104(2)(A) provides that TDI will send the applicant written notice of any omissions or deficiencies in the original application. New §12.104(2)(B) changes the requirement in existing §12.104(2) by lessening the number of days that an applicant has to correct any omissions or deficiencies in the application from 30 days to 15 days from the date of TDI's latest notice of the omissions or deficiencies. This reduction in applicant response time is necessary to streamline the application process by providing TDI with necessary information more quickly. These amendments implement Insurance Code §4202.002, which requires the commissioner to adopt standards to ensure the qualifications and independence of each reviewer, the fairness of the procedures used by an IRO in making review determinations, and the confidentiality of medical records transmitted to an IRO. They are also necessary to implement Insurance Code §4202.007, which requires TDI to maintain oversight of IROs to ensure continued compliance with Insurance Code Chapter 4202 and 28 TAC Chapter 12. New §12.104(2)(B) also provides that the applicant may request in writing additional time to correct the omissions or deficiencies in the application. TDI clarifies that the request for additional time must be approved by TDI in writing for the requested extension to be effective.

New §12.104(2)(C) provides that an applicant's failure to correct omissions or deficiencies within the time frame provided will result in the application being closed as incomplete and provides that the application fee is not refundable. This amendment is adopted under the commissioner's authority in Insurance Code §4202.004(a) to prescribe the application form and its authority to adopt standards and rules for the certification, selection, and operation of IROs to perform independent review, and the requirement in Insurance Code §4202.007 for TDI to maintain oversight of IROs to ensure continued compliance with Insurance Code Chapter 4202 and 28 TAC Chapter 12.

TDI also adopts nonsubstantive amendments to §12.104 to conform to current agency writing style.

Section 12.105. Revisions During Review Process. Amendments to §12.202(b) include renumbering subsections. Amendments to §12.105 clarify that revisions made by the applicant must be submitted electronically in the manner specified by TDI in correspondence with the applicant or sent by mail. Amendments to §12.105 also correct the mailing address where applicants send revisions to TDI. Amendments to redesignated §12.105(b) make a conforming change to delete the requirement that revisions to bylaws be accompanied by a notarized certification because the requirement to submit bylaws in existing §12.103(8)(A) is also adopted for deletion. Amendments to redesignated §12.105(b) also delete "to be," "all copies of," and the quotes around "red-lined" to conform to current agency writing style. Additionally, amendments to redesignated §12.105(b) delete "or otherwise clearly designated" after "red-lined" to ensure that all revisions submitted to TDI are uniform and easily understood. Amendments to §12.105(d) - (f) delete the requirements for an applicant to report material changes to the application because that information is in new §12.111.

TDI also adopts nonsubstantive amendments to §12.105 to conform to current agency writing style.

Section 12.106. Examinations. TDI adopts an amendment to this section's title from "Qualifying Examinations" to "Examinations" to reflect that this section applies to all IRO examinations. Amendments to §12.106 include reformatting to add subsections. New §12.106(a) also clarifies that the examination will be at the applicant's primary office and is necessary to implement Insurance Code §4202.013, which requires an IRO to maintain its primary office in this state.

New §12.106(b) clarifies that TDI may conduct examinations as often as the commissioner deems necessary to determine compliance with Insurance Code Chapter 4202 and 28 TAC Chapter 12. Insurance Code §4202.007 requires the commissioner to provide ongoing oversight of IROs to ensure continued compliance with Insurance Code Chapter 4202 and 28 TAC Chapter 12.

New §12.106(c) deletes "Documents that support the application for the certificate of registration of renewal of the certificate of registration" and adds "The following documents." New §12.106(c)(1) - (8) are documents that an IRO must make available for review during the examinations. New §12.106(d) requires the IRO's owner and staff to be available at the IRO's primary office during the on-site examination. These amendments implement Insurance Code §4202.002(a) and Insurance Code §4202.007 and are necessary for TDI staff conducting on-site examinations to quickly and efficiently verify the IRO is in compliance with Insurance Code Chapter 4202 and 28 TAC Chapter 12.

TDI also adopts nonsubstantive amendments to §12.106 to conform to current agency writing style.

Section 12.107. Withdrawal of an Original Application Before Granting a Certificate of Registration and Subsequent Renewal Applications. Amendments to §12.107 revise the section title to more accurately reflect the content of the section. TDI also adopts nonsubstantive amendments to §12.107 to conform to current agency writing style.

Section 12.108. Renewal of Certificate of Registration. Amendments to §12.108(a) and (b) change the requirement that an IRO must apply for renewal of its certification of registration from every year to requiring renewal every two years to implement Insurance Code §4202.004(g), as amended. Amendments to §12.108(b) replace references to "Form No. LHL006" and "renewal form" with "IRO application form" to conform the new reference to language in the adopted amended §12.102. TDI adopts amendments to §12.108(b) and the deletion of subsections (e) - (g) to remove the requirements about reporting material changes because those requirements are adopted in new §12.111. Amendments to §12.108(b) and (d) delete the requirement that an IRO submit a summary of their current review criteria with the completed IRO application form. This summary submission will be unnecessary because TDI will already have this information from either the original application for a certificate of registration or the IRO reporting it as a material change required under new §12.111.

TDI also adopts nonsubstantive amendments to §12.108 to conform to current agency writing style.

Section 12.109. Appeal of Denial of Application or Renewal. TDI adopts nonsubstantive amendments to §12.109 to conform to current agency writing style.

Adopted §12.110. Effect of Sale or Transfer of Ownership of an Independent Review Organization. Amendments to §12.110 replace existing requirements for the sale of an IRO and the prohibition on transferring an IRO with requirements for the sale or transfer of ownership of an IRO to implement Insurance Code §4202.002(c)(2)(C), as amended. New §12.110(a) requires the IRO to notify TDI of the agreement to sell or transfer the ownership of the IRO no later than 60 days before the date of the sale or transfer of ownership, and provides the TDI address where the owner must send the notification. New §12.110(a)(1) requires the IRO to submit the name of the purchaser and a complete set of fingerprints for each officer, owner, and shareholder of the purchaser. New §12.110(b) provides that TDI will send the IRO written confirmation that the requirements under Insurance Code Chapter 4202 and 28 TAC Chapter 12 have been satisfied before the sale can be completed. These sections are necessary to implement amendments to Insurance Code §4202.002(c)(2)(C), which require an IRO to: (i) notify TDI of an agreement to sell the IRO or shares in the IRO; (ii) no later than the 60th day before the date of the sale, submit the name of the purchaser and a complete and legible set of fingerprints for each officer of the purchaser and for each owner or shareholder of the purchaser or, if the purchaser is publicly held, each owner or shareholder of more than 5 percent of the IRO's stock or options, and any additional information necessary to comply with Insurance Code §4202.004(d); and (iii) complete the transfer of ownership after TDI has sent written confirmation that the requirements of 28 TAC Chapter 12 have been satisfied. Amendments to §12.110 also delete existing requirements for sale of an IRO and the prohibition on transferring an IRO to implement Insurance Code §4202.004, as amended.

New §12.110 (a)(2) requires an IRO to notify TDI of any material changes in its notice of intent to sell or transfer ownership. Insurance Code §4202.005(c) requires the IRO to submit information about a material change to TDI no later than the 30th day after the date the material change occurs. In the case of a sale or transfer of ownership of an IRO, TDI has determined that this rule is necessary under TDI's rulemaking authority in Insurance Code §4202.002(a), the requirement under Insurance Code §4202.007 to provide ongoing oversight of IROs to ensure continued compliance with Insurance Code Chapter 4202 and 28 TAC Chapter 12, and for TDI staff to review all changes about an IRO sale or transfer of ownership at the same time for the sake of efficiency. The amendments to redesignated §12.110(c) add the phrase "the sale or transfer of ownership" for consistency throughout §12.110.

TDI also adopts nonsubstantive amendments to §12.110 to conform to current agency writing style.

Section 12.111. Regulatory Requirements Subsequent to Certificate of Registration. New §12.111(a) adds the requirement that an IRO must report to TDI a material change in the information required in the IRO application form no later than the 30th day after the date the change takes effect. New §12.111(b) contains the requirements for reporting a material change if the material change is a relocation of the IRO's primary office. These sections are necessary to implement Insurance Code §4202.005(c), which, in part, requires that information about a material change be submitted on a form adopted by the commissioner no later than the 30th day after the date the material change occurs. Insurance Code §4202.005 also requires the IRO, if the material change is a relocation of the IRO, to inform TDI that the location is available for inspection by TDI before the date of the IRO's relocation, and that an officer of the IRO attend the inspection on TDI's request.

New §12.111(c), an existing requirement that was formerly in deleted §12.108(f), exempts IROs from compliance with §12.111(a) in the event a contracted specialist IRO reviewer is unavailable and immediate contracting with a new specialist is necessary to complete an independent review. New §12.111(d), an existing requirement that was formerly in deleted §12.108(g), requires the IRO to notify TDI within 10 days after it enters into any new contracts under subsection (c), and requires the notification to include a complete explanation of the circumstances.

TDI also adopts nonsubstantive amendments to §12.111 to conform to current agency writing style.

Adopted §12.201. Independent Review Plan. Amendments to §12.201 delete "a physician" and adds "the IRO's medical director" to clarify that the medical director must review and approve the IRO's independent review plan. Insurance Code §4202.007 requires the commissioner to provide ongoing oversight of IROs to ensure continued compliance with Insurance Code Chapter 4202 and 28 TAC Chapter 12. These amendments are necessary because TDI has determined that a physician medical director is best qualified to ensure the qualifications and independence of each reviewer, the fairness of the procedures used by an IRO in making review determinations, and the confidentiality of medical records transmitted to an IRO. These are standards for which the commissioner must adopt rules under Insurance Code §4202.002(b).

TDI adopts nonsubstantive amendments to §12.201 to conform to current agency writing style.

Adopted §12.202. Personnel and Credentialing. New §12.202(a)(1) requires personnel conducting independent reviews for health services to hold an unrestricted license, an administrative license, or otherwise be authorized to provide the same or similar specialty health services by a licensing agency in the United States. New §12.202(a)(2) requires personnel conducting independent reviews for workers' compensation health services to hold an unrestricted license, an administrative license, or otherwise be authorized to provide the same or similar specialty health services by a licensing agency in this state. Amendments to §12.202(b)(1) require the IRO to provide the commissioner, in addition to the existing requirements, the name, license number, state of licensure, and date of contract of personnel employed or under contract to perform independent reviews.

Amendments to §12.202(b) include reformatting to add paragraphs. New §12.202(b)(2) deletes language about the IRO's maintenance of reviewer qualification records and profiles of reviewers. These requirements are now in §12.202(d). Amendments to §12.202(c) add "medical director who is a" before "physician," and add "The medical director functions must include, but are not limited to, conducting." New §12.202(c)(1) - (3) describe the functions of the IRO's medical director. These functions include, but are not limited to, the annual review and approval of review criteria, annual quality assurance audits of at least 25 percent of all decisions, and annual quality assurance audits of at least 25 percent of all assignments.

New §12.202(d) requires the IRO to maintain credentialing and recredentialing files of personnel employed or under contract to perform independent reviews. This is an existing requirement moved from §12.202(b)(2). New §12.202(d)(1) - (4) lists the minimum types of credentialing and recredentialing information that

the IRO must maintain current and that must be available for review by TDI. Amendments to §12.202(d) also delete existing language about the IRO's credentialing requirements because they are redundant in light of the more detailed credentialing requirements in amended §12.202. New §12.202(g) requires the providers conducting independent review to sign and date the certification of independence and qualifications of the reviewer in the format prescribed by TDI. New §12.202(g)(1) - (8) list the required elements of the certification of independence and qualifications of the reviewer.

New §12.202(h) provides that the information required in §12.202 must be available for examination and review by TDI and TDI-DWC personnel on request. New §12.202(i) requires IROs to require providers conducting independent reviews to notify the IROs of any changes in the information in §12.202(d). New §12.202(a)(1), §12.202(a)(2), §12.202(c)(1) - (3), §12.202(d)(1) - (4), and §12.202(g) - (i) and amendments to §12.202(b)(1) and §12.202(c) are necessary to implement Insurance Code §4202.007 and Insurance Code §4202.002(b). Insurance Code §4202.007 requires the commissioner to provide ongoing oversight of IROs to ensure continued compliance with Insurance Code Chapter 4202 and 28 TAC Chapter 12. TDI has determined the enhanced personnel and credentialing requirements of amended §12.202 are necessary to ensure the qualifications and independence of each reviewer and the fairness of the procedures used by an IRO in making review determinations, standards for which the commissioner must adopt rules under Insurance Code §4202.002(b).

TDI also adopts nonsubstantive amendments to §12.202 to conform to current agency writing style.

Section 12.203. Conflicts of Interest Prohibited. Amendments to §12.203 delete "is a subsidiary of, or in any way owned or controlled by" and add "has any ownership interest in or control over the person, or if the person has any ownership interest in or control over a payor" for clarity and to conform to current agency writing style.

Section 12.204. Prohibitions of Certain Activities and Relationships of Independent Review Organizations and Individuals or Entities Associated with Independent Review Organizations. New §12.204(d) prohibits an officer, director, manager, executive, or supervisor of an IRO from serving as an officer, director, manager, executive, supervisor, employee, agent, or independent contractor of another IRO. This amendment is necessary to implement Insurance Code §4202.002(c)(1)(E). Insurance Code §4202.002(c) requires the commissioner to adopt standards and rules that prohibit an individual who serves as an officer, director, manager, executive, or supervisor of an IRO from serving as an officer, director, manager, executive, supervisor, employee, agent, or independent contractor of another IRO. TDI deletes §12.204(h) because the "December 26, 2010," applicability dates are no longer relevant. Existing §12.204(g) is redesignated as §12.204(h).

TDI also adopts nonsubstantive amendments to §12.204 to conform to current agency writing style.

Section 12.205. Independent Review Organization Contact with and Receipt of Information from Health Care Providers and Patients. Amendments to §12.205(a) delete "preclude" and add "as the initial contract prevent" to clarify an existing requirement. Amendments to §12.205(e) delete "such expense shall be reimbursed by the" and "as expense of independent review" and add "The" and "must pay these unreimbursed costs to the health care provider" to clarify an existing requirement. TDI also adopts nonsubstantive changes to conform to current agency writing style.

Section 12.206. Notice of Determinations Made by Independent Review Organizations. Amendments to §12.206(c)(1) and new §12.206(c)(2) and (3) require IROs to make a determination on a life-threatening condition within three days after receiving the information necessary to make a determination or, with respect to workers' compensation medical benefits, within eight days after receiving the request to make a determination. These amendments are necessary to implement Insurance Code §4202.003(1), which provides that the standards adopted under §4202.002 require each IRO to make the IRO's determination for a life-threatening condition as defined by §4201.002 no later than the earlier of the third day, rather than the fifth day, after the date the IRO receives the information necessary to make the determination. With respect to a review of a health care service provided to a person eligible for workers' compensation medical benefits, the IRO must make its determination for a life-threatening condition by the eighth day after the date the IRO receives the request for determination. With respect to a review of a health care service other than services provided to a person eligible for workers' compensation medical benefits, the IRO must make its determination by the third day after the date the IRO receives the request that a determination be made.

An amendment to §12.206(e) updates the web address for TDI's forms.

TDI also adopts nonsubstantive amendments to §12.206 to conform to current agency writing style.

Section 12.207. Independent Review Organization Telephone Access. Amendments to §12.207(a) change "both time zones in Texas" to "both Central and Mountain time zones" for clarity. Amendments to §12.207(b) require an IRO's phone system to be "dedicated." TDI clarifies that a dedicated telephone system is a phone system intended primarily for use in the IRO business. These amendments are necessary to implement Insurance Code §4202.002(a) and (b). They are also necessary for TDI staff to be able to contact the IRO as part of its ongoing oversight of IROs under Insurance Code §4202.007. Moreover, the amendments ensure the IRO is preserving the confidentiality patient records.

TDI also adopts nonsubstantive amendments to §12.207 to conform to current agency writing style.

Section 12.208. Confidentiality. New §12.208(b) prohibits IROs from disclosing patient information protected by HIPAA to implement Insurance Code §4202.002(c)(1)(F). New §12.208(c) adds a reference to HIPAA to implement Insurance Code §4202.002(c)(1)(F). Amendments to redesignated §12.208(h) require IROs to transmit and store records in compliance with HIPAA to implement Insurance Code §4202.002(c)(1)(F). Insurance Code §4202.002(c), in part, requires the commissioner to adopt standards and rules that prohibit publicly disclosing patient information protected by HIPAA or transmitting the information to a subcontractor involved in the independent review process that has not signed an agreement similar to the business associate agreement required by regulations adopted under the HIPAA.

TDI also adopts nonsubstantive amendments to §12.208 to conform to current agency writing style.

Section 12.301. Complaints, Oversight, and Information. TDI adopts nonsubstantive amendments to §12.301 to conform to current agency writing style.

Section 12.302. Administrative Violations. TDI adopts nonsubstantive amendments to §12.302 to conform to current agency writing style.

Section 12.303. Surrender of Certificate of Registration. Amendments to §12.303(a) clarify when an IRO must surrender its certificate of registration. Amendments to §12.303(a) delete "while the organization is under investigation or as part of an agreed order" to implement Insurance Code §4202.002(c)(2)(B) as amended by HB 2645.

Amendments to existing §12.303(b) delete the definition of "investigation" to conform to changes to §4202.002(c)(2)(B), as amended by HB 2645, which deleted the term. Amendments to existing §12.303(c) delete "a certificate of registration that is surrendered under this section is temporarily suspended while the investigation is pending" also to conform to changes to §4202.002(c)(2)(B). Amendments to §12.303 delete existing §12.303(f), which states that §12.4 only applies to IROs licensed on or after December 26, 2010, or IROs with certificates of registration renewed in Texas on or after December 26, 2010, as the applicability of this chapter is addressed in amended §12.4.

TDI also adopts nonsubstantive amendments to §12.303 to conform to current agency writing style.

Section 12.401. Fees. TDI adopts nonsubstantive amendments to §12.401 to conform to agency writing style.

Section 12.402. Classification of Specialty. TDI adopts nonsubstantive amendments to §12.402 to conform to agency writing style.

Section 12.403 Fee Amounts. TDI adopts nonsubstantive amendments to §12.403 to conform to agency writing style.

Section 12.404. Payment of Fees. Amendments to §12.404(c) change the number of days within which URAs or payors must pay IROs from 30 to 15. These amendments implement Insurance Code §4202.002(a) and are necessary because TDI has determined 15 days is a sufficient amount of time for URAs or payors to pay IROs. TDI also adopts nonsubstantive amendments to §12.404 to conform to current agency writing style.

Section 12.405. Failure To Pay Invoice. TDI adopts nonsubstantive amendments to §12.405 to conform to agency writing style.

Section 12.406. Application and Renewal of Certificate of Registration Fees. Amendments to §12.406 change the fee for an original certificate of registration as an IRO from $800 to $1000, and the fee for renewal of a certificate of registration from $200 to $400. The increase in the fee for an original certificate of registration is necessary because the new fee better reflects the cost to TDI of regulating IROs. The amendment to the fee for the renewal of a certificate of registration is necessary because the renewal is now every two years instead of every year. TDI clarifies that the net cost of renewal for an IRO will remain the same. TDI clarifies that there is no fee for reporting a material change to a certification as an IRO. These amendments are adopted under TDI's rulemaking authority in Insurance Code §4202.002(a)(1).

TDI also adopts nonsubstantive amendments to §12.406 to conform to current agency writing style.

Section 12.501. Requests for Independent Review. Amendments to §12.501 include inserting "Chapter 4201," a reference to "Subchapter U," and a reference to "Chapter 134 of this title." These amendments are necessary under Insurance Code §4202.002(a) to properly cite the sections of the Insurance Code about utilization review.

TDI also adopts nonsubstantive amendments to §12.501 to conform to current agency writing style.

Section 12.502. Random Assignment. TDI adopts nonsubstantive amendments to §12.502(b) to conform to agency writing style.

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

General

Comment: Commenters express their support for the proposed amendments.

Agency Response: TDI appreciates the supportive comments.

Comment: A commenter requests that all agency responses in the adopted rules implementing HB 4519 from the December 17, 2010, issue of the *Texas Register* (35 TexReg 11281) be reviewed and that the precedents set in the rulemaking phase of HB 4519 be used in rulemaking for HB 2645.

A commenter states that the proposed rules have an "overly broad" interpretation of HB 2645 and that substantial portions of the proposed sections have no legislative authorization in HB 2645.

Agency Response: TDI declines to make the suggested change. TDI emphasizes that the amendments and new section are necessary to implement HB 2645, 83rd Legislature, Regular Session (2013), which amends Insurance Code Chapter 4202, relating to the certification and operation of IROs in Texas. In addition, TDI has determined that other amendments are necessary to enforce Insurance Code Chapter 4202. TDI clarifies that in the December 17, 2010, issue of the *Texas Register,* adopted rules implementing HB 4519 were published (35 TexReg 11281), and reconsideration and application of HB 4519 agency responses would be redundant.

Comment: A commenter requests the commissioner change the deadline for the submission of written comments on the proposed rules and delay the rule proposal public hearing for 30 days. The commenter states that IROs do not have full-time regulatory and advisory attorneys to prepare comments on new rules to determine constitutional issues such as legislative authority. The only option for IROs would be to retain law firms. Small IROs have had no surplus earnings to retain an attorney because average caseload was down to four per month in 2014. The commenter states that executives of the IROs prepare the comments and need more time. The commenter states that legislators who managed the passing of HB2645 should have additional time to review the proposed new rules to determine whether the rules faithfully implement the legislation that passed by overwhelming majorities in both houses and that was approved by the office of the governor. The commenter further explains that TDI has allowed IROs to comment on two draft proposals before publication of the proposed rules, but that the comments many submitted have not led to dialogue or discussion, and the same rules that were proposed will now be adopted.

Agency Response: TDI declines to provide additional time for submission of comments because TDI provided a reasonable opportunity for all interested persons to submit data, views, or arguments, orally and in writing as required under Government Code §2001.029(a). TDI provided many opportunities for public

comment, including a public stakeholder hearing, two advisory group forums, a public hearing on the rule proposal with oral testimony, and both a concept draft and proposed rule comment period.

Comment: A commenter expresses concern that a currently filed bill will jeopardize confidentiality of the IRO panels of reviewers. The commenter states that IROs will no longer be independent if the reviewers' identities are known.

Agency Response: TDI asserts that proposed legislation is outside the scope of the proposed IRO rules.

Section 12.4 Applicability

Comment: A commenter recommends changing the applicability date in one of two ways: (i) at the time of the renewal application in the first renewal period after the publication of the adoption, or (ii) 120 days after the publication of the adoption. The commenter states that at least 120 days may be required to comply with the provisions of the new rules that require IROs to develop software to manage IRO processes, including a system for credentialing verification. The commenter states that while some IROs have software, others do not, and software experts tell the commenter that it may take as long as 180 days to develop and test the new software. The commenter states that it may take IROs a considerable amount of time to contract with medical directors, and with reviewers whose contracts must be changed to disclose that another physician without the same specialization of the reviewer will be auditing their work product.

Agency Response: TDI agrees to change the effective date of the rule, but disagrees with the commenter's suggested change. As explained in the reasoned justification, TDI has determined that the effective date of the adopted rules, which gives stakeholders until July 7, 2015, is sufficient. Based on this effective date, TDI also clarifies that existing IROs have an obligation to update their applications, but their submission of updated information does not change their existing renewal date. TDI asserts that IROs that have been granted a renewal of a certificate of registration before the effective date of this rule must report any material change, which will include new requirements of §12.103, no later than the 30th day after the date on which the change takes effect under Insurance Code §4202.005(c).

TDI deleted the phrase "applications for a certificate of registration as an IRO, and for a renewal of a certificate of registration as an IRO" in adopted §12.4 to clarify that IROs must comply with the adopted amendments on the effective date of the rule. However, all independent reviews filed with TDI before the effective date of the rule are subject to the rules in effect at the time the independent review was filed with TDI.

TDI clarifies that amended §12.103(4)(A) and (B) does not require IROs to develop software to manage IRO processes. But amended §12.103(4)(A)and (B) does require an IRO to include in its original application the procedures used by the IRO applicant to verify physician and provider credentials and the computer processes, electronic databases, and records used to make the verification, if any, and the credentialing software used by the applicant for managing the processes, databases, and records. An extension of the effective date is not necessary for an IRO to develop and test the new software, because an IRO is not required to purchase new software under the proposed rules.

TDI clarifies that the new and amended rules neither require the IRO to change its contracts with reviewers nor require an IRO to disclose to reviewers that the medical director will perform quality assurance audits.

Section 12.5. Definitions

Comment: A commenter states the definition of "adverse determination" should be amended to highlight that a determination that a health care service is experimental or investigational is not an adverse determination for purposes of health care provided under workers' compensation insurance. Section 12.5(1) should be amended to be consistent with the definition of adverse determination for utilization review in §19.2003(b)(1) and state specifically that a determination that a health care service is experimental or investigational is not an adverse determination for purposes of health care provided under workers' compensation insurance. The commenter recommends that the definition of "adverse determination" include the sentence, "For purposes of workers' compensation, a determination that health care services are experimental or investigational does not constitute an adverse determination." The commenter states that the definition of "independent review" in amended §12.5(19) should be modified by removing the language after adverse determination. The commenter states this would permit the same definition of the phrase for both workers' compensation and group health, without continuing the misstatement that a determination that proposed health care is experimental or investigational is a basis for denial in workers' compensation. The commenter states the changes to both §12.5(1) and §12.5(19) provide precision and clarity as to the meaning of the rules.

Agency Response: TDI declines to make the suggested change. TDI did not propose amendments to the existing definition of "adverse determination" because existing §12.6(b), in part, provides that IROs and personnel conducting independent reviews must comply with Labor Code Title 5 and applicable TDI-DWC rules. For workers' compensation, in the event of a conflict between 28 TAC Chapter 12 and the Labor Code, the Labor Code controls. It is TDI's and TDI-DWC's position that, based on Labor Code §408.021, an injured employee under both network and nonnetwork coverage is entitled to all medically necessary health care services, including experimental and investigational health care services. Labor Code §408.021 entitles an injured employee, under both network and nonnetwork coverage, to health care reasonably required by the nature of the injury as and when needed.

Additionally, under §12.206(d)(15), the IRO's review outcome in the notice of determination must clearly state whether medical necessity or appropriateness exists for each of the health care services in dispute and whether the health care services in dispute are experimental or investigational, as applicable.

Comment: A commenter welcomes the replacement of the term "stored" with "maintained and accessible" in proposed §12.5(32) because most micro businesses, and businesses in general in the current technological environment, store their records in secure remote servers, accessible from their office computers. These records are "maintained and accessible" and managed by the computer in the office of the business. This contrasts with the past technological environment where business records were stored in file cabinets in physical offices.

Commenters also state that a short inspection of the computer system at the office of an IRO would allow TDI to verify both that an IRO has a physical office in the state and that the required records are "maintained and accessible" from the IRO's computer. A commenter states that the same records could be ac-

cessed by IRO staff at a computer at the TDI offices, which would allow TDI to hold examinations in a government office rather than in the home offices of small, micro businesses.

Agency Response: TDI appreciates the supportive comment but does not agree that TDI can access the IRO's computer from the TDI offices. Remotely accessing the IRO's records would require TDI to expend additional resources obtaining a system capable of such access and potentially jeopardize both the IRO's and TDI's security as well as patients' and reviewers' confidentiality.

In addition, TDI does not agree with the commenter's recommendation that TDI could hold examinations in TDI's offices. Existing §12.106(c) requires that documents that support the application for certificate of registration or renewal must be available for inspection at the primary office of the IRO. In addition to examining records, TDI staff must go on-site to determine continuing compliance with Insurance Code Chapter 4202. Under amended §12.106(c), TDI specifies that documents must be available for review during an examination at the IRO's primary office located in Texas, including information required in the original application for a certificate of registration. TDI will conduct an on-site examination at the applicant's primary office to ensure compliance with TDI's rules, including amended §12.106, §12.208, and §12.103(13), existing §12.204(c), and in the case of an office located in a residence, verifying that the office is located in a room set aside for IRO business.

Section 12.103. Information Required in Original Application for Certificate of Registration.

Comment: A commenter recommends clarifying in §12.103(1)(B) that the summary of review criteria and review procedures that will be used to determine the experimental and investigational nature of health care will have no application for IROs performing review of health care provided in workers' compensation. The commenter suggests adding "provided outside of workers' compensation" to the end of existing §12.103(1)(B).

Agency Response: TDI declines to make the suggested change. TDI clarifies that existing §12.6(b), in part, provides that IROs and personnel conducting independent reviews for workers' compensation must comply with Labor Code Title 5 and applicable TDI-DWC rules. In the event of a conflict between 28 TAC Chapter 12 and the Labor Code, the Labor Code controls. It is TDI's and TDI-DWC's position that based on Labor Code §408.021, an injured employee under both network and nonnetwork coverage is entitled to all medically necessary health care services, including experimental and investigational health care services. Labor Code §408.021 entitles an injured employee, under both network and nonnetwork coverage, to health care reasonably required by the nature of the injury as and when needed. Under §12.206(d)(15), the IRO's review outcome in the notice of determination must clearly state whether medical necessity or appropriateness exists for each of the health care services in dispute and whether the health care services in dispute are experimental or investigational, as applicable.

Comment: A commenter that is an accreditation board asks TDI to state whether its accreditation standards for IROs are substantially similar to TDI's requirements.

Agency Response: TDI will consider an organization's accreditation standards at the time an IRO applicant submits an application for or renewal of a certificate of registration.

Comment: A commenter requests that new §12.103(8)(A) state "the applicant shall submit written evidence in the form of a copy of the Certificate of Formation issued by the Texas Secretary of State, and nothing in this rule shall be taken to mean that the applicant must submit any additional 'letter' or other documentation from the secretary of state."

Agency Response: TDI agrees to amend §12.103, but disagrees with the suggested language. TDI deleted the phrase "a letter from the Texas Secretary of State" and added the phrase "a copy of the Certificate of Formation from the Texas Secretary of State" in §12.103(8) to reflect the formation and existence requirements of Business Organizations Code §3.001.

Comment: A commenter disagrees with TDI's proposed deletion of existing §12.103(8)(A), requiring an IRO to submit documentary evidence including the applicant's bylaws, rules, and regulations in the IRO application. The commenter requests that §12.103(8)(A) require an IRO to provide:

(A) Written evidence that the applicant is doing business in this state in accordance with the Business Organizations Code, which may include:

(i) a letter from the Secretary of State indicating the entity has filed the appropriate information to conduct business in this state; and

(ii) the bylaws, rules, and regulations, or any similar document regulating the conduct of the internal affairs of the applicant with a notarized certification bearing the original signature of an officer or authorized representative of the applicant that they are true, accurate, and complete copies of the originals.

Agency Response: TDI declines to make the suggested change. New §12.103(12) requires the IRO applicant to submit to TDI documentation from the comptroller demonstrating the applicant's good standing and the right to transact business in Texas. Insurance Code §4202.002(c)(2)(A)(ii) requires an IRO to be incorporated in this state. TDI deleted the phrase "a letter from the Texas Secretary of State" and added the phrase "a copy of the Certificate of Formation from the Texas Secretary of State" in new §12.103(8)(A) to reflect the formation and existence requirements of Business Organizations Code §3.001. TDI deleted language requiring the applicant to submit documents relating to its internal affairs, such as bylaws, because TDI has included more specific requirements about the information necessary for the commissioner to determine whether an applicant is qualified to obtain a certificate of registration as an IRO in amended §12.103.

Comment: A commenter states that new §12.103(8)(E) has no legislative authorization, is not in HB 2645, and is not in Insurance Code §4200.002(a) or any other section of the Insurance Code. Insurance Code §4200.002(a) requires IROs to submit a list of any contractors, and a list follows of the types of businesses, all of which are in the health care industry. The commenter suggests TDI make it clear that IROs must submit a list of contractors in the medical industry where there might be a conflict of interest, but this is not a demand for lists of contracts for any and all contractors, especially if not in the medical industry or if the contractor is not involved in processing cases and does not have access to medical records.

A commenter requests that TDI continue the same practice that has been in place for over a decade, requiring IROs to submit lists of contractors in the health insurance industry. If the contractor has access to medical records, the contractor must sign a

business associate agreement, as per HB 2645. A commenter states that until 2014, IROs were not required to submit either copies of contracts or lists.

Agency Response: TDI declines to make the suggested change. TDI clarifies that Insurance Code Chapter 4202 does not contain a requirement that IROs submit to TDI only a list of health care industry contracts. Insurance Code Chapter 4202 gives the commissioner the authority to adopt standards and rules for the certification, selection, and operation of IROs. Insurance Code §4202.007 requires the commissioner to provide ongoing oversight of IROs to ensure continued compliance. TDI's oversight of IROs includes oversight of contracts and subcontracts with third parties who perform any IRO functions on behalf of the IRO. TDI staff must determine compliance with all requirements of Insurance Code Chapter 4202, including processing the independent review requests that TDI assigns to the IRO, maintaining confidentiality, and credentialing of reviewers. To do so, TDI staff must be aware of all parties performing IRO functions.

TDI clarifies that new §12.103(8)(E) is necessary to implement Insurance Code §4202.002(a) and Insurance Code §4202.007, to ensure that IROs retain responsibility for compliance with Insurance Code Chapter 4202 and 28 TAC Chapter 12.

Section 12.104. Review of Original Application.

Comment: A commenter states that the existing 30-day time frame for an applicant to correct omissions or deficiencies in the application should be retained unless TDI publishes and makes available to applicants a guide to application for a certificate of registration as an IRO, in which case the proposed 15-day requirement would be sufficient. At one time before HB 4519, TDI published such a guide, but no such guide has been available since 2009. The commenter states that a guide would streamline the application and renewal process, and any audit or examination process. The commenter states that a guide would make TDI's understanding of the IRO process clear, and how to be successful and avoid lengthy disputes with IROs that have been certified as IROs.

Agency Response: TDI declines to make the suggested change. TDI clarifies that the requirement in new §12.104(2)(B) that an applicant correct omissions or deficiencies in the application within 15 days of the date of TDI's latest notice of omissions or deficiencies only applies to original applications for certificates of registration, and does not apply to renewals, audits, or examinations. TDI determined that 15 days is a sufficient amount of time for applicants to respond to TDI's notice of omissions and deficiencies.

Additionally, new §12.104(2)(B) provides that an applicant may request additional time, not to exceed 30 days, in writing to correct omissions or deficiencies.

TDI is not aware of any guide that TDI published for use by IRO applicants. The current and past application forms (LHL006) include and have included instructions for applicants. TDI has also prepared a Frequently Asked Questions page for IROs, available on TDI's website at www.tdi.texas.gov/hmo/irofaqs.html.

Section 12.106. Examinations.

Comment: A commenter commends TDI for establishing that the commissioner or the commissioner's designee will conduct an on-site examination of the IRO applicant's primary office. The commenter agrees that an on-site examination is the most effective mechanism for ensuring compliance with the requirements to be certified as an IRO.

Agency Response: TDI appreciates the supportive comment.

Comment: A commenter states that HB 2645 does not directly address examinations, either before or after certification, but it does address computer systems required at the office of the IRO, and the required use of electronic records by IRO. A commenter recommended that HB 2645 include a provision that IROs move to computer systems and electronic systems in the hope that TDI would see how these provisions would streamline the examination and certification process by making a form of eRegulation possible. The commenter states that in TDI's adopted rules in November 2010, implementing HB 4519, TDI declares that on-site examinations of IROs are necessary in order to examine the books and records of the IRO, which at that time were usually in file cabinets at the IROs primary office in Texas. The commenter states that HB 2645 requires IROs to maintain electronic records that are accessible from the computer systems in the IRO's offices.

A commenter states that proposed amended §12.106 was not required by HB 2645 and is not addressed in the Insurance Code. The commenter requests that TDI amend §12.106 to state:

"Prior to Certification: Prior to issuing a Certification, TDI will conduct an onsite 'Inspection' of the executive office of the IRO to verify that the IRO has a physical office, and that it is equipped with a computer system where records are maintained and accessible. In the case of home offices maintained by IROs that are not large enough to accommodate all the staff of the IRO and staff of TDI, 'Examinations' will be held at an office of TDI. At the inspection, an officer of the IRO and a the person who operates the computer of the IRO will be required to be present, and TDI regulators will be given a demonstration of the computer system to demonstrate how it operates and that records of the IRO are accessible from the computer system. At Time of Change of Address: TDI will have the option of conducting an 'inspection' at any time the IRO notifies TDI of a change of address, and that inspection shall be similar to the one conducted prior to Certification."

A commenter states that according to the proposed sections, all 41 currently certified IROs are small businesses as defined by federal and state law, and as such, government agencies must take this into account in the regulation process. A commenter states that substantial numbers of these small businesses are micro businesses. A commenter states that the offices of almost all IROs are in the homes of the officers of the IROs, and that HB 2645 acknowledges this by stating that IRO offices exist in residences, and that space must be set aside for them. As a practical matter, the IRO offices in residences cannot accommodate over one person, usually the officer of the IRO. In this space, an IRO officer can use his or her computer and usually a cell phone to communicate with staff members, who use computers in their homes, and, if necessary, communicate with URAs and TDI.

A commenter states that between 2010 and 2014, TDI conducted 18 examinations. For some of them, TDI held the examination in an office of TDI. In others, the examinations were held in the offices of attorneys. A commenter states that some of the examinations were required in IRO offices in residences, in which cases the IROs showed the computer systems to TDI regulators, and were required to use the living rooms or kitchens of the residences where IRO offices are located. During the home examinations, TDI regulators often had to leave the meetings to call in to regulators at TDI offices. The commenter states that the letter announcing the examinations demanded that IROs make conference phone systems available for the

exams, and assume liability if TDI officials were harmed during the visits. During those exams that were held at homes, the same questions about operations were addressed as at exams held at TDI offices, and there is no compelling requirement for exams to be held in homes, especially if an "inspection" has already occurred.

A commenter states that there should be a code, and that it should limit the regulated government agency to an inspection at a time before certification and to an inspection in the event the regulated entity changes offices. Commenters state that TDI should conduct examinations before the time of certification at an office of TDI, and that an officer of the IRO as well as a staff member who is a specialist in the computer operations of the IRO be required to be present at the examination. Commenters state all examinations should be held at TDI offices, and not in home offices. By holding the examination at TDI, TDI may have present as many regulators as they may deem necessary. The commenter states that this is simply practical. TDI is set up for examinations. Home offices are not set up for examinations. The commenter states that this is a reasonable accommodation to micro businesses that do not have conference room facilities.

Agency Response: TDI clarifies that new §12.106(c) includes a list of documents that an IRO must make available for review during an on-site examination by TDI. New §12.106(d) requires the IRO's owner and staff to be available at the IRO's primary office during the on-site examination. These amendments implement Insurance Code §4202.002(a) and are necessary for TDI staff conducting on-site examinations to quickly and efficiently verify the IRO is in compliance with Insurance Code Chapter 4202 and 28 TAC Chapter 12. Insurance Code §4202.007 requires the commissioner to provide ongoing oversight of IROs to ensure continued compliance with Insurance Code Chapter 4202 and 28 TAC Chapter 12.

Comment: A commenter states that in some instances an owner of a corporation that is an IRO may want to elect an "officer" of the entity to operate the entity, and in those instances, the elected officer should be present at an examination, but not the owner. In the case of a public company, a commenter asks if TDI interprets this provision to mean that all shareholders, who are in fact "owners" be present at the exam.

Agency Response: TDI declines to delete the requirement that the IRO owner appear at an on-site examination under new §12.106(d). IRO owners are responsible for compliance with all IRO requirements and are responsible for ensuring that officers, employed staff, and contracting parties comply with all requirements.

New §12.106(d) implements Insurance Code §4202.002(a) and is necessary for TDI staff conducting on-site examinations to quickly and efficiently verify the IRO is in compliance with Insurance Code Chapter 4202 and 28 TAC Chapter 12. Insurance Code §4202.007 requires the commissioner to provide ongoing oversight of IROs to ensure continued compliance with Insurance Code Chapter 4202 and 28 TAC Chapter 12.

Comment: A commenter states that with regard to medical directors, it is not practical to have physicians in active practice present at examinations because they have patients to care for and operations to perform. The commenter states that at no point in the entire history of exams has a medical director been present, so the safety and health of the people of Texas is not endangered by the medical director not being present. The commenter states that, should TDI examiners have questions that they believe only medical directors can answer, these can be submitted in writing, and answered in writing.

Agency Response: TDI declines to make the suggested change. Insurance Code §4202.002(a) mandates that the commissioner adopt standards and rules for the certification, selection, and operation of IROs to perform independent review and the suspension and revocation of the certification of registration issued to IROs. It is important for the regulation of IROs conducting independent reviews in this state under the adopted rules that the medical director be available for on-site examinations. TDI would incur substantial costs in conducting on-site audits if the necessary records or information were not available. TDI staff must be able to determine, through direct questioning and the immediate production of records, if the medical director is following the criteria and review procedures provided to TDI in the IRO application form under new §12.103(1)(E) for the quality assurance audits of decisions required under new §12.202(c)(2). TDI must be able to determine if there is a material change to review procedures that must be reported to TDI under Insurance Code §4202.005 and new §12.111(a). The medical director must also be present for TDI to determine that the medical director is performing the annual quality assurance audits of at least 25 percent of all assignments required under new §12.202(c)(3). Quality assurance audits are necessary to ensure that authorized reviewers with the same or similar specialties are being appropriately assigned to cases, as required by Insurance Code §4201.457 and Labor Code §§408.0043 - 408.0045.

TDI notifies the IRO before conducting the on-site examination and coordinates with the IRO to set the examination date and time unless TDI determines that immediate on-site auditing is necessary.

Section 12.108. Renewal of Certificate of Registration

Comment: A commenter requests that TDI revise the definition of "material change" to include "A material change shall include a change in ownership of shares, or of an officer, director, or executive of an IRO, or of the review criteria presented at the time of the certification."

Agency Response: TDI declines to make the suggested change because the suggested definition is overly narrow. New §12.111 requires the IRO to report to TDI any material changes to the information submitted in the IRO application form. TDI clarifies that a change in ownership of shares, a change of an officer, director, or executive of an IRO, and of the review criteria, are material changes that must be reported to TDI, but that list is not exhaustive.

§12.202. Personnel and Credentialing.

Comment: A commenter appreciates TDI's requirement that personnel conducting reviews provide the same or similar specialty health, or workers' compensation health care, services. The commenter recommends that proposed §12.202 be further clarified by adding the phrase "with same licensure." The commenter states that only physicians have the requisite education, training, and experience to evaluate other physicians. The commenter recommends that TDI revise §12.202(a)(1) by replacing the phrase "the same or similar specialty health services" with the phrase "health services in the same or similar specialty with same licensure." The commenter recommends that §12.202(a)(2) be revised by replacing the phrase "the same of similar specialty workers' compensation health care services" with the phrase "workers' compensation health care services in the same or similar specialty with same licensure."

A commenter prefers all physicians conducting independent reviews and all medical directors to be licensed in Texas but acknowledges that Insurance Code §4201.152 provides that in the non-workers'-compensation setting that the physician need only be licensed to practice medicine by a state licensing agency in the United States.

Agency Response: TDI appreciates the supportive comment, but declines to make the suggested change. New §12.202(a)(1) and (2) are necessary to implement Insurance Code §4202.007 and §4202.002(b). Insurance Code §4202.007 requires the commissioner to provide ongoing oversight of IROs to ensure continued compliance with Insurance Code Chapter 4202 and 28 TAC Chapter 12. TDI has determined the enhanced personnel and credentialing requirements of amended §12.202 are necessary to ensure the qualifications and independence of each reviewer, the fairness of the procedures used by an IRO in making review determinations, and the confidentiality of medical records transmitted to an IRO - all standards for which the commissioner must adopt rules under Insurance Code §4202.002(b).

In addition, Labor Code §413.031(e-2) requires a doctor performing an independent review for health care provided in the workers' compensation system to be licensed to practice in this state.

Comment: A commenter states that the cost section of the proposed rules provides that there is evidence that medical directors make an average of $69 an hour, but it is probable that this is the hourly for full-time medical directors, and micro IROs cannot employ full-time medical directors. The commenter states that the proposed rules do not address how an IRO could write a contract with a physician according to these terms and exactly where the IRO finds revenue for an additional $6900 in costs. The commenter states that the proposed rules ignore the APA's recommendations on fees, and offers no increase in fees. The commenter notes that under Government Code §2006.002(c-1), an agency must consider, consistent with the health, safety, and environmental and economic welfare of the state, using regulatory methods that will accomplish the objectives of applicable rules while minimizing adverse impacts on small businesses. The commenter states that for well over a decade, indeed, since the first IRO laws were passed in 1997, TDI has not acted as if it believes that health, safety, and environmental and economic welfare of the people of Texas requires that medical directors of IROs take on the additional duties that regulators now believe they must have. The commenter states that there is no doubt that there would be an "adverse impact on small businesses," which only have gross revenues of $2,600 per month and could not afford the additional $6900 to pay for a physician auditing existing cases, even if a physician would take the position, which is doubtful. A commenter asks where the $6900 is to come from for the additional duties of medical directors. The argument that an increase would lead to fewer requests by patients for appeals is weak: patients do not pay for independent reviews.

A commenter states that in all of the legislation related to IROs, only the physician preparing the review report has ever been given the authority to audit the work of members of the IRO panel of physicians. This requirement would be extremely expensive, as physicians who agree to serve as medical directors usually do so pro bono.

A commenter states that the proposed rules do not provide a new method for compensating the medical director for new duties, specifically the establishment and oversight of an internal audit. IROs have contracts with their medical directors, and the new published rules would require IROs to change the contracts in a way that would be unacceptable to medical professionals who have the credentials to serve as medical directors.

Agency Response: TDI estimated in the proposed rules that the annual quality assurance audits may take a medical director approximately 80 hours per year to complete. The median hourly rate of $86.58 for a medical director was taken from the Texas Workforce Commission website and the estimated cost of compliance for an IRO per year in the proposed rules was $6926.40.

TDI has complied with Government Code §2006.002, which requires the agency to reduce the adverse economic effects on small and micro businesses if doing so is legal and feasible considering the purpose of the statute under which the rule is to be adopted. TDI prepared an economic impact statement estimating the number of small and micro businesses subject to the proposed rule, projecting the economic impact of the rule on these entities, and describing the alternative methods of achieving the purpose of the proposed rule.

TDI also prepared a regulatory flexibility analysis that included consideration of alternative methods of achieving the purpose of the proposed rule. TDI estimated in the proposal that all of the approximately 41 IROs with certificates of registration in Texas are small or micro businesses. Making the rules inapplicable to such a large number of IROs would effectively negate the provisions and in most cases, the rule would not serve its intended purposes. Requiring such a small number of IROs to comply with the rules would result in an unfair competitive market and unfair loss of income for a few IROs. Additionally, proposed §12.103(8)(E) provides a requirement of what IRO contracts must include. TDI asserts that an IRO must determine the best means of compliance with proposed §12.202(c), including the allocation of costs.

Comment: A commenter states that prior to the proposed rules, regulators were careful to use the word "physician," and to use the title medical director as seldom as possible. A commenter states that there is no legislation in the history of independent review where the term "medical director" is used, and there is no provision in the Insurance Code that defines the duties of the medical director.

A commenter states in actual practice, no regulator who monitors or examines IROs has ever required anything but an advisory role for people with the title "medical director" in an IRO-while this issue arose in lengthy compliance examinations of 18 IRO members of AAIRO, at no point did TDI ever insist that a physician with the title medical director have any duties other than advising the CEO of the IRO, upon the request of the CEO.

Agency Response: TDI has rulemaking authority under Insurance Code §4202.002(a)(1), requiring the commissioner to adopt "standards and rules for...the certification, selection, and operation of independent review organizations," to define the functions of the medical director. Existing §12.202(a) already exempts medical directors from the active practice requirement, and existing §12.205(a) addresses medical directors' ability to contact medical providers and patients. As part of implementing Insurance Code §4202.002(a)(1), IRO medical directors perform annual quality assurance audits of at least 25 percent of all independent review decisions under new §12.202(c)(2) to ensure that IROs meet the existing independent review plan requirements of §12.201. These requirements include using medically acceptable review criteria based on medical

and scientific evidence under §12.201(3)(A), and using review criteria that are established and periodically evaluated and updated with appropriate involvement from physicians, including practicing physicians, and other health care providers under §12.201(3)(B).

New §12.202(a)(1) and (2) implement Insurance Code §4201.457 and Labor Code §§408.0043 - 408.0045, requiring personnel conducting independent reviews to hold an unrestricted license, an administrative license, or otherwise be authorized to provide the same or similar specialty health services or workers' compensation health care services, respectively. The requirement that medical directors perform an annual quality assurance audit of at least 25 percent of all assignments under §12.202(c)(3) is necessary to ensure that authorized reviewers with the same or similar specialties are being appropriately assigned to cases, as required by Insurance Code §4201.457 and Labor Code §§408.0043 - 408.0045.

Comment: A commenter notes that in the financial world, one must be a certified public accountant to conduct an "audit," and there is no equivalent of a CPA in the medical field. A commenter points to a dictionary definition of the word "audit" as "an official examination and verification of accounts or records..." The commenter asks how one physician can "audit" the medical opinion of another physician. By asking a physician to conduct an "audit," this rule is asking the physician to, in effect, provide an opinion that the notice of decision about medical necessity meets the standards of an "official examination," but this is impossible because no such auditing standards exist today.

A commenter states that the proposed rules introduce a fundamental change, one that requires the IROs to employ physicians of any specialty to review and audit the medical opinions of other physicians who are specialists. A commenter asks what the value would be in a cardiologist medical director, for example, auditing the review report of a neurosurgery or pain medicine specialist.

A commenter states that if the new rules were limited to implementing HB 2645, the current timing would be sufficient, but the new rules introduce provisions that neither HB 2645 nor any prior legislation envisioned. A commenter states that many of the new rules will disrupt the established independent review process in a fundamental way by authorizing a new power for IROs and IRO medical directors, including the power to conduct audits of the decisions of physicians who serve on the medical panels of IROs.

A commenter states that many of the new proposed rules, especially those that require IROs to cause the physicians that serve as their medical directors to conduct an entirely new level of review called audits, have no legislative mandate and that the proposed sections may constitute an unconstitutional assertion.

A commenter states that new rules require the IRO and the IRO's medical director to write additional standards for a "compliance audit" which are not defined in the proposed rules. The commenter states that the proposed rules also require the IRO's medical director to, in effect, take on any duties that TDI might, in the future, proclaim to be the medical director's duties.

A commenter states that these new rules will require dramatic and unprecedented change in the role of the IRO medical director who, in the entire history of IROs, has been a part-time role only and limited to providing defined advisory services to officers of IROs.

Agency Response: TDI emphasizes that the amendments and new section are necessary to implement HB 2645, which amends Insurance Code Chapter 4202, relating to the certification and operation of IROs in Texas. In addition, TDI has determined that other amendments are necessary to enforce Insurance Code Chapter 4202.

Insurance Code §4202.002(a)(1) mandates that the commissioner adopt standards and rules for the certification, selection, and operation of IROs to perform independent review. As part of implementing these requirements, TDI requires each IRO to develop an independent review plan under §12.201 that includes the review criteria used by the IRO in conducting independent review. The requirement that medical directors perform annual quality assurance audits of at least 25 percent of all IRO decisions under new §12.202(c)(2) is necessary to ensure that IROs meet the existing independent review criteria plan requirements of §12.201. These requirements include using medically acceptable review criteria based on medical and scientific evidence under §12.201(3)(A) and using review criteria that are established and periodically evaluated and updated with appropriate involvement from physicians, including practicing physicians, and other health care providers under §12.201(3)(B). The requirement that medical directors perform an annual quality assurance audit of at least 25 percent of all assignments under new §12.202(c)(3) is necessary to ensure that authorized reviewers with the same or similar specialties are being appropriately assigned to cases, as required by Insurance Code §4201.457 and Labor Code §§408.0043 - 408.0045.

TDI clarifies that the audits listed in new §12.202(c)(2) and (3) are not "compliance audits" but are "quality assurance audits." TDI clarifies that the quality assurance audits described in §12.202(c) are not examinations and clarifies that audits do not consist of medical directors approving the medical opinions of the physician reviewers. New §12.202(c)(1) and (2) implement Insurance Code §4201.457 and Labor Code §§408.0043 - 408.0045, requiring personnel conducting independent reviews to hold an unrestricted license, an administrative license, or otherwise be authorized to provide the same or similar specialty health services or workers' compensation health care services, respectively. The requirement that medical directors perform an annual quality assurance audit of at least 25 percent of all assignments under new §12.202(c)(3) is necessary to ensure that authorized reviewers with the same or similar specialties are being appropriately assigned to cases, as required by Insurance Code §4201.457 and Labor Code §§408.0043 - 408.0045.

TDI also has rulemaking authority under Insurance Code §36.001 and §4202.002(a)(1) to adopt rules to implement Insurance Code Chapter 4202.

Comment: A commenter requests that TDI strike all of the provisions in the proposed rule relating to increasing the duties of the medical director.

Agency Response: TDI declines to make the suggested change.

Comment: A commenter is concerned with the liability of the medical director. The commenter states that, as long as physicians act as advisors to the CEOs of IROs in advisory positions only, there is absolutely no question of legal liability. But once TDI publishes the name of an IRO and the name of the IRO's medical director, and when the new rules written by TDI regulators are published that state an IRO's medical director is engaged in "auditing," and thus approving the opinions of other

physicians, then the possibility of adverse litigation opens for any physician who has agreed to serve as medical director.

A commenter states that the very foundation of the IRO review system, which protects the identity of physicians involved in the independent review process, would be violated by the medical director audits because the name of the medical director would be in the public domain.

Agency Response: TDI clarifies that although amended §12.202(c) requires IROs to provide quality assurance reports to TDI when requested, amended §12.202(c) neither requires IROs to inform involved parties and the public about the audits, nor requires publication of the audit results. The identities of IRO reviewers remain confidential under Insurance Code §4202.009. Under Insurance Code §4202.010, an IRO is not liable for damages arising from the review determination made by the IRO unless an IRO's act or omission is made in bad faith or involves gross negligence.

TDI further clarifies that audits do not consist of medical directors approving the medical opinions of the physician reviewers. Under §12.202(c)(2), the medical director conducts quality assurance audits of independent review decisions to ensure the reviewer complied both the IRO's independent review plan and all requirements under Insurance Code Chapter 4202, 28 TAC Chapter 12, and other applicable statutory or regulatory requirements. Under §12.202(c)(3), the medical director conducts quality assurance audits of assignments to ensure authorized reviewers with the same or similar specialties are being appropriately assigned to cases, as required by Insurance Code §4201.457 and Labor Code §§408.0043 - 408.0045.

Comment: A commenter states the economic impact and flexibility section of the rule proposal acknowledges the adverse impact. TDI does not give a justification for the conclusion, except that TDI considers it "necessary" for the efficient operation of the regulating IROs.

Commenters state that IROs will not be able to find and contract with physicians who will serve as medical directors under the proposed rules. The commenters state that when IROs seek to renegotiate the contracts with their medical directors to include the functions in the proposed rules, the medical directors will not sign the contracts. The commenters state that was not considered by the proposed rule and could have an adverse impact on patients seeking independent review in the entire state of Texas.

A commenter questions what physician would agree to add 100 hours of audit time, and act as "auditors" of other physicians, according to auditing standards that TDI has not provided. The commenter also questions whether the physicians who are reviewers would agree to a change in their contracts, with the disclosure that the medical directors will be required to audit their work product.

Agency Response: TDI carefully considered the fiscal impact of the rule requirements and provided an analysis with the proposed rule. TDI disagrees that the proposed rules have an adverse impact on patients, and asserts that the rules have positive impacts on patients. For example, performing the annual quality assurance audits of assignments under new §12.202(c)(3) helps to ensure patient cases are reviewed by appropriate health care providers with the same or similar specialties, as required by Insurance Code §4201.457 and Labor Code §§408.0043 - 408.0045. The requirement that medical directors perform annual quality assurance audits of at least 25 percent of all IRO decisions under new §12.202(c)(2) ensures reviewers are using medically acceptable review criteria based on medical and scientific evidence, as required under existing §12.201(3)(A), and using review criteria that are established and periodically evaluated and updated with appropriate involvement from physicians, including practicing physicians, and other health care providers, as required under existing §12.201(3)(B).

TDI clarifies that the proposed rules do not require an IRO to disclose to reviewers that the medical director will perform quality assurance audits. The overhead costs will vary for each IRO based on the IRO's business model and expenses, and TDI asserts that an IRO will determine the best means of compliance with proposed §12.202(c)(1) - (3), including allocation of costs.

Comment: A commenter states that it is clear in HB 2645 that the word "director" refers to a person who is a member of the board of directors of a corporation, and not to a physician with the title "medical director." The commenter requests that TDI state clearly that "director" in the Insurance Code and in the Administrative Code refers to a person who is a member of the board of directors of the IRO and who is not physician with the title medical director.

Agency Response: TDI clarifies that a medical director under amended §12.202(c) may qualify as an officer, director, manager, executive, or supervisor of an IRO under Insurance Code §4202.002(c)(1)(E), as amended by HB 2645, under certain limited circumstances. Specifically, a medical director may qualify as an officer, director, manager, executive, or supervisor of an IRO under Insurance Code §4202.002(c)(1)(E) if the medical director has the right to control the IRO or has similar responsibilities. A medical director performs annual quality assurance audits of decisions and assignments under new §12.202(c)(2) and (3), performs annual review and approval of review criteria under new §12.202(c)(1), certifies that review criteria and review procedures applied in review determinations are established with input from appropriate health care providers and approved by physicians under §12.103(1)(C), and is available during on-site examinations under §12.106(d). TDI clarifies that these functions alone would not rise to the level of controlling the IRO or having similar responsibilities to an officer, director, manager, executive, or supervisor of an IRO under Insurance Code §4202.002(c)(1)(E).

§12.206. Notice of Determinations Made by Independent Review Organizations.

Comment: Two commenters recommend deleting "subparagraph (A)" and replacing it with "paragraph (2)" in §12.206(c).

Agency Response: TDI appreciates the comment and has already made the correction, published in the December 19, 2014, issue of the *Texas Register* (39 TexReg 10083).

Comment: A commenter recommends that existing §12.206(d)(12) be amended to require the exact professional specialty of the provider and the IRO reviewer be included in the notice of determination to clearly demonstrate that the specialty match requirement is met.

Agency Response: TDI declines to make the suggested change. Existing §12.206(d) provides a comprehensive list of the data elements that an IRO is required to include in its notification of determination. The list incorporates data elements identified by TDI as necessary to ensure that the review has been performed in compliance with the requirements of 28 TAC Chapter 12.

Insurance Code §4202.009 requires information that reveals the identity of a physician or other individual health care provider who makes a review determination for an IRO to be confidential.

Comment: A commenter states that the phrase "as applicable" in existing §12.206(d)(15) acknowledges the difference that an experimental or investigational treatment has in workers' compensation, but the commenter would prefer to see a more explicit statement. The commenter recommends that the phrase "in non-workers'-compensation cases" be added to existing §12.206

Agency Response: TDI declines to make the suggested change. TDI did not propose substantive amendments to existing §12.206(d)(15) because existing §12.6(b), in part, provides that IROs and personnel conducting independent reviews must comply with Labor Code Title 5 and applicable TDI-DWC rules. In the event of a conflict between 28 TAC Chapter 12 and the Labor Code, the Labor Code controls. It is TDI's and TDI-DWC's position that based on Labor Code §408.021, an injured employee under both network and nonnetwork coverage is entitled to all medically necessary health care services, including experimental and investigational health care services. Labor Code §408.021 entitles an injured employee, under both network and nonnetwork coverage, to health care reasonably required by the nature of the injury as and when needed.

§12.207. Independent Review Organization Telephone Access.

Comment: A commenter states that proposed §12.207 requires an IRO's phone system to be "dedicated," which is a telephone system intended primarily for use in the IRO business. A commenter states that the new rules appear to envision that a person who works for the IROs will be sitting by this dedicated landline "during normal business hours." A commenter states that neither HB 2645 nor any prior law or code requires such a dedicated landline. The commenter states that in actual practice telephones of any kind, and especially "dedicated" landlines are simply not used by businesses because email is far more effective. A commenter states that a dedicated landline would not improve communications and could decrease the efficiency of the system. According to commenter, IROs have phone systems that comply with current code, and does not see why installing a landline will improve communications.

A commenter states that electronic phone providers such as Skype link their services to computers by sending an email every time a caller leaves a message. A commenter states that Skype should be sufficient to meet the communications requirements of small or micro business entities such as IROs. The commenter states that use of computers and computer-enabled phone systems such as Skype make it possible to ensure communications, and that all phone messages that are left on Skype are connected to the computer, making it unnecessary for a person to be present at a physical office 40 hours a week and answer phones installed in that office. The commenter states that IROs now receive an average of one case and two calls a week, so it would be entirely unreasonable to have a rule requiring a person to be present in an office 40 hours a week.

The commenter reminds regulators that IROs are small micro or businesses that use computer-assisted phone services, and are not present in their physical offices 40 hours a week.

Agency Response: TDI clarifies that the proposed rules do not require IROs to maintain a "landline." However, IROs must have a telephone system solely dedicated to its IRO business. In addition, the requirement that IROs have a telephone system as well as appropriate personnel reasonably available by telephone at least 40 hours per week is a requirement under existing §12.207, and all IROs should be in compliance.

§12.208. Confidentiality.

Comment: A commenter states that if a patient believes his or her rights to confidentiality have been violated, there are provisions in the HIPAA federal legislation for reporting a violation to federal authorities, who are experienced in handling violations under this code. Commenters also request that an officer, director, or owner of an IRO seeking to comply with this provision declare and assert to TDI that the IRO works on a best-effort basis to ensure that all its electronic systems comply with HIPAA for handling electronic records. Further, in the event that a patient believes that there has been a HIPAA violation and reports the violation to federal authorities, the IRO will work with federal authorities to address the violation. Commenters state that this clarification is necessary in the event that TDI regulators were to interpret this provision of HB 2645 as a requirement that TDI enforce federal regulations. The commenter states that in practical terms, TDI would refer any patient who asked to the federal authorities charged with enforcing HIPAA violations, and from that point, the IRO would have to attempt to show that HIPAA standards were being enforced.

Agency Response: TDI declines to make the suggested change. HB 2645 amends Insurance Code §4202.002(c) to require compliance with the Health Insurance Portability and Accountability Act of 1996. TDI asserts that an IRO is required to comply with Texas regulations, in addition to the federal requirements involving confidentiality. TDI will continue to investigate any violations of state or federal laws by an IRO to ensure compliance with the requirements to protect confidentiality.

§12.403. Fee Amounts.

Comment: Commenters state that at the July 15, 2010, rule proposal public hearing, TDI staff stated that the decision to not recommend a fee increase at that time was not made lightly, noting that they were aware that fees had not been increased since 1997. At that meeting, TDI staff's justification was that "significant concern from stakeholders that raising the fees would act as a disincentive to enrollees, injured employees, and providers to seek a review on a denied service and would increase the total cost to the system for health care." To date, thousands of cases have gone through the IRO review process. That fact alone seems to alleviate the concerns stated by TDI staff four years ago. It is clear that people continue to seek IRO reviews.

A commenter states that the proposed rules threaten the future of the IRO business in Texas and could lead to the closure of IROs. The commenter states that no profession has the same pay rate today as it did 17 years ago. The commenter states that costs increase and so should compensation. A commenter provides three economic indicators as good alternatives for providing a reasonable fee increase. The first indicator is the Bureau of Labor Statistics consumer price index inflation calculator, which shows that the buying power of $460 in 1997 would equal $680.49 today and the buying power of $650 in 1997 would equal $961.57 today. The second indicator is Social Security Administration's cost-of-living adjustments, which show automatic percentage increases by year, totaling 43.4% since 1997. The third indicator is the Centers for Disease Control and Prevention's National Center for Health Statistics, which tracks medical consumer price index indicators. The commenter explains that the consumer price index for medical care components shows an

increase in the cost of medical care and physician services. The commenter states that comparing the numbers for 2000 to 2012 shows a 66% increase under medical care services and a 42% increase under physician services. The commenter states proposed rule §12.401(b) provides that "fees for independent review must be determined by TDI and shall reflect in general the market value of services rendered." The commenter adds that, given the provided indicators and the rule's specificity to reflecting the market value of services rendered, the fees that IROs are paid should go up. The commenter states the proposed rules place new mandates on an IRO's medical director, who will require increased compensation for the increased work requirements.

A commenter states TDI's website contains a Texas Medical Association (TMA) posting stating that an increase in the IRO fee will discourage applicants for the IRO process. The commenter explains that TMA represents the medical community and an applicant for the IRO process is the doctor or the patient, but the patient must ask for the IRO through his treating doctor. The commenter states there is no inhibiting effect to the potential requesting patient caused by the IRO fee. The commenter states that the inhibiting effect of the current unadjusted fee creates an inhibition on the IRO to recruit and maintain its reviewer panel, many who are members of TMA. The commenter urges TDI to tell TMA that neither the patient nor the requesting health care provider pays the IRO fee. Rather, the carrier or URA pays the IRO fee.

A commenter states that, in the majority of cases, the insurance carrier or its URA pays the IRO fee and not the patient or the treating practitioner. The commenter explains the patient or practitioner in retrospective workers' compensation cases pays the IRO when the IRO's review upholds the carrier's denial of services. The commenter states between 2013 and 2014, out of 100 cases received by its IRO, only one was a retrospective workers' compensation case and its IRO disagreed with the denial. The commenter questions TMA's concept that this discourages all IRO applications and states if it does, then the system does not work; but the system has worked.

A commenter states that for 10 years, TDI has repeatedly announced that it is reviewing the fees paid to IROs but there is no proposal for a fee increase. The commenter adds that many Texas IROs have difficulty finding reviewers to conduct the work necessary to perform an IRO within existing fee structures. The commenter states that TDI acknowledges the proposed rules will impose new costs on IROs. The commenter asks why TDI did not propose an increase in fees paid to IROs at this time. The commenter states most IROs are micro businesses, with fewer than five employees and only $2600 a month in revenues. Even with a substantial fee increase, the commenter doubts there could be sufficient revenue to pay for the increased duties demanded in the new proposed rules. The commenter states that IROs are requesting a fee increase to cover new regulatory costs and because, for 15 years, there has been no cost-of-business increase. The commenter states that TDI's cost evaluation should be based on surveys of costs of operating IROs, and that physicians should be surveyed to determine if they would work on audits for $69 an hour. The commenter further states that TDI should develop information on how much the computer systems required by HB 2645 will cost. This is relevant to TDI's decision not to increase fees.

A commenter submitted analyses showing that if cost-of-living and cost-of-business increases are considered, costs that the Administrative Procedures Act and all Texas agencies are required to follow, fees would increase to $950. The commenter states that HB 2645 will substantially increase the cost of operating an IRO. The commenter explains computer systems and software custom designed to meet TDI rules and regulations are expensive, perhaps running as much as $20,000, or IROs may incur up to $1,000 a month for the servers that are accessed by the computers in each office. The commenter states HB 2645 now requires that IROs process some cases in less than five days, which is very expensive and requires paying reviewers more. The commenter states with the expansion of the number of specialties now required by TDI, the cost of paying reviewers has increased, and in some case doubled. The commenter refers to analyses and requests that the commissioner or the Inspector General ask TDI department staff experienced in finance to review the costs of these new regulations and to set new fees, or that TDI retain an independent consultant to look at the issue.

A commenter states stakeholders requested a fee increase four years ago. The commenter states that the cost of living has gone up, the cost of postage has nearly doubled, and the cost of gasoline has tripled. The commenter states that the current fee amount restricts IRO's ability to pay reviewers. The commenter adds that reviewers and potential reviewers decline review requests because the fee is not high enough. The commenter states that by not increasing the IRO fee, the whole program is jeopardized and Texas can become the leader in the demise of IROs, as opposed to 17 years ago, when it was the leader in establishing them.

Agency Response: TDI declines to increase the current fee amounts paid to IROs at this time. TDI requested details at all IRO public meetings on how IRO fees impacted IRO business and why increases were needed. TDI did not receive specific information on the operating costs of IROs to support a change to the current fee structure. TDI asserts that although these rules potentially increase costs, they are nevertheless necessary to implement HB 2645, make other changes necessary for clarity and effective implementation of Insurance Code Chapter 4202, and improve the regulatory framework for IROs. TDI has determined that the benefit of requiring medical directors to review and approve review criteria and perform quality assurance audits of at least 25 percent of all decisions and assignments outweighs the fact that it may be burdensome or add cost.

Existing §12.401(b) provides that fees for independent review must be determined by TDI and should reflect, in general, the market value of services. TDI sought but did not receive specific information about the current market value of performing independent reviews, and determined that the current fee amounts reflect, in general, the current market value of these services when compared to other states. TDI reviewed other states' processes and fee methodologies. The review indicated that Texas charges a higher fee for regular reviews performed by a doctor of medicine or doctor of osteopathy. TDI determined that other states' processes are similar in concept, but no other state was identical to Texas. California contracts with one or more IROs to conduct a review. California permits the administrative director of an IRO to establish a reasonable, per-case reimbursement schedule to pay costs of IRO reviews and the cost of administrating the IRO system. These costs may vary depending on the type of medical condition under review and other relevant factors. California Labor Code §4610.6(l). In 2014, the cost for a regular review performed by a MD or DO in California was $550.00, and for regular reviews performed by a reviewer other than a MD or DO the cost was $475.00. 8 California Code of Regulations §9792.10.8. Tennessee and North Carolina have

external review programs that do not apply to workers' compensation cases. However, these states do have separate appeals processes for workers' compensation cases. For example, Tennessee charges $250 for the utilization review appeal for the administration of the appeals process. Tennessee Code Annotated 50-6-204(j)(5). North Carolina permits independent review organizations to submit proposals for the commissioner to determine if the organization will be selected to conduct external reviews. North Carolina General Statutes 58-50-94. Wisconsin's independent review process permits IROs to establish reasonable fees by submitting fee schedules to the commissioner for approval. 632.835(4)(ap). Wisconsin Statutes. Washington developed a maximum fee schedule for independent reviews in 2006 that IROs are required to use. Revised Code of Washington 43.70.235(8). Similar to Texas IROs, Washington IROs have a fee schedule that remains unchanged. TDI remains diligent in the regulation of IROs and may revisit the fee structure in the future.

TDI clarifies that the commenter is referencing a Workcompcentral article dated August 8, 2014, titled "TDI Posts Informal Draft of Revised IRO Rules" that summarized TMA's comment about TDI's informal draft IRO rules. TDI clarifies that the proposed rules do not expand the number of specialties. However, §12.202(d)(3) provides, in part, that an IRO may obtain verification from an applicable specialty board to comply with the requirement of retaining credentialing and recredentialing information, such as current board certification available for review at TDI's request. TDI complied with Government Code §2001.024(a)(5)(B), which requires TDI to include a note about the probable economic cost to persons required to comply with the rule. TDI clarifies that the computer system costs are a result of legislative enactment of HB 2645 and not a result of the proposal, enforcement, or administration of this adoption. TDI declines to retain a consultant to review the issue of fees paid to IROs for independent review.

Comment: Two commenters state that current IRO fees are more than adequate. The commenters recommend lowering IRO fees. The commenters state that there are 41 IROs approved to operate in Texas and that access to dispute resolution is adequate for the needs of the Texas workers' compensation system. A commenter references the "13th edition of Workers Compensation Research Institute (WCRI), Monitoring the Impact of Reforms and Recession in Texas: CompScope Benchmarks" and states that unusually high fees in Texas for independent review contribute to the high medical cost containment expenses and high disparity cost compared to other states. A commenter states that raising the current IRO fee would unnecessarily increase workers' compensation costs for Texas employers while departing from recent legislative and regulatory progress in curbing unnecessary costs.

A commenter states in nonnetwork workers' compensation retrospective medical necessity disputes, it is the party requesting the independent review that must initially pay the IRO fees. The commenter explains if the requesting party prevails at the IRO level, the responding party must reimburse the IRO payment. The commenter explains that in situations where either the health care provider or facility requests the independent review but does not prevail, the health care provider or facility is responsible for the IRO fees. The commenter adds that increasing the IRO reimbursement rates could adversely impact health care providers and facilities without helping the injured worker or the Texas employer. A commenter states that increased fees would have a significant impact on workers' compensation insurance carriers who are required to pay the IRO fee, win or lose, when the dispute involves health care rendered within a health care network or health care that requires preauthorization.

A commenter includes an analysis of the cost impact increased fees would have using present day tier fee values of $961.57 and $680.49, respectively, as submitted by IROs at the rule proposal public hearing, and IRO case review data obtained from a TDI through an open records request. The commenter states that, depending on the number of IRO case reviews completed, the cost impact would range from an increase of $1,004,323.34 to $631,158.49 per calendar year for tier one and tier two fees. The commenter referred to the rule proposal public hearing on December 15, 2014, and states that in a nonnetwork workers' compensation retrospective case, to say that doctors and health care providers would not be impacted by an increase in IRO fees is contrary to the IRO outcome numbers in records produced by TDI from the open records request.

The commenter states that, according to the data obtained from TDI by an open records request, doctors and health care providers were the nonprevailing party in the majority of nonnetwork workers' compensation retrospective review disputes. The commenter states that in 2012 and 2013 health care providers failed to prevail in 1,445 and 938 disputes, respectively. The commenter states that if IRO fees are raised to the level IROs referenced in their testimony, doctors, other health care providers, and insurance carriers would pay significantly more for IRO retrospective reviews. The commenter states if doctors and health care providers view an increase in IRO fees as a financial barrier to pursuing medical dispute resolution and do not request an IRO case review, they may stop treating injured employees due to their inability to access an affordable medical dispute resolution process.

Three commenters state the fee for an independent review in California is $195 and the fee for an independent review in Tennessee is $224. A commenter states that California and Tennessee have processes in place similar to Texas' IRO process and both have lower fees than Texas. The commenter states that California uses a process called independent medical review (IMR) to resolve disputes about the medical treatment of injured employees. The commenter states that the Division of Workers' Compensation is required to contract with one or more independent medical review organizations (IMROs) to conduct IMR on its behalf, and the costs of an IMR are paid by employers. The commenter states that IMRs are based on the nature of the medical treatment dispute and the number of medical professionals needed to resolve the dispute, and are significantly lower than the cost to resolve a dispute through litigation. Two commenters state that California's reimbursement rate for a standard IMR involving nonpharmacy-only claims is $420, while the reimbursement rate for pharmacy-only claims is $390. The commenter states that the fee is calculated as amount charged per utilization review request assignment that potentially has from one to five determinations associated with the request. The average fee charged by utilization review organizations and peer review organizations during 2012 ranged from $99 to a high of $5,110.

The commenter states that Tennessee uses a process called utilization review appeal to resolve disputes about the medical treatment of injured employees. The commenter states that Tennessee contracts with an outside entity, an IRO, to review appeals and issue a decisions about the medical necessity of disputed health care. The commenter states that an employer or insurance carrier pays the $250 utilization appeal fee. The com-

menter states that the majority of other workers' compensation jurisdictions use one or more processes to resolve medical necessity disputes that may include independent medical examination, a review by the state's workers' compensation regulatory agency, mediation, and administrative hearings to determine appropriateness or medical necessity of treatment. The commenter adds that Wisconsin uses tiebreak medical examinations paid for by the insurance carrier. The commenter adds that Florida uses an administrative hearing review process. The commenter adds that North Carolina uses an informal dispute resolution and limited intervention process to resolve medical disputes. The commenter states that California, Tennessee, and Texas are the only states that use an IRO process for the resolution of workers' compensation medical necessity disputes. The commenter states that some jurisdictions use an IRO-like process for group health medical necessity disputes.

A commenter states that a new fee of $1,500 for IRO reviews associated with life-threatening medical conditions is unnecessary for Texas workers' compensation claims since preauthorization is not required for health care associated with life-threatening medical conditions.

Agency Response: TDI declines to decrease the current fee amounts paid to IROs at this time. TDI requested details at all IRO public meetings on how IRO fees impacted IRO business and why increases were needed. TDI did not receive specific information on the operating costs of IROs to support a change to the current fee structure. IROs currently charge fee amounts on a two-tier payment system based on specialty classifications. Texas Administrative Code §12.403 provides that tier one fees are $650.00 and tier two fees are $460.00. TDI reviewed other states processes and fee methodologies, and determined that Texas allows a higher fee for regular reviews performed by a doctor of medicine or doctor of osteopathy.

TDI agrees, in part, that other jurisdictions use one or more processes to resolve medical necessity disputes. Some jurisdictions have different processes for workers' compensation and group health medical necessity disputes. As discussed earlier in responses to the comment requesting fees be increased, TDI determined that other states' processes are similar in concept but no other state was identical to Texas. TDI asserts that there is no statutory requirement that TDI establish a separate fee for life-threatening cases. TDI remains diligent in the regulation of IROs and may revisit the fee structure in the future.

§12.404. Payment of Fees.

Comment: A commenter recommends amending proposed §12.404(a) to clarify that an IRO may not bill the utilization review agent or payor until the notice of determination is transmitted. The commenter states it is common practice for an IRO to send an invoice to a utilization review agent or payor before the independent review is completed or the notice of determination is transmitted. The commenter states that premature billing can result in the issuance of inappropriate payments when a request for independent review is later withdrawn or reassigned. The commenter suggests requiring IROs to bill utilization review agents or payors, as appropriate, directly for fees for independent review on or after the date the notice of determination required by §12.206 of this chapter is transmitted.

Agency Response: TDI declines to make the suggested change. Title 28 TAC §133.308(q) requires the payor to remit payment within 15 days after the receipt of an invoice from an IRO. If the commenter has concerns about premature billing or the issuance of inappropriate payments, the commenter can file a complaint, and TDI will consider whether the IRO has violated the Insurance Code, Labor Code, or TDI-DWC rules. Further, TDI has general authority to assess administrative penalties and does not need a specific penalty it can assess an IRO for recovery of overpayments made by a carrier or URA.

§12.406. Application and Renewal of Certificate of Registration Fees.

Comment: Two commenters express concern that increasing the fees TDI charges, while also creating more work for IROs at the existing fee amounts, will lead to fewer IROs in Texas. Two commenters express concern that fewer IROs will lead to a rise in health care costs because disputes will be settled in the courtroom and not through the IRO process.

Agency Response: TDI clarifies that proposed §12.406 provides an increase from $800 to $1000 for an IROs original application for a certificate of registration, and that this better reflects TDI's cost of regulating IROs. TDI clarifies that the net cost of renewal for an IRO will remain the same. The change from $200 to $400 in proposed §12.406 was necessary because renewals are every two years instead of every year.

NAMES OF THOSE COMMENTING FOR AND AGAINST THE PROPOSAL.

For: Texas Occupational Therapy Association; American Insurance Association; and the Insurance Council of Texas.

For with changes: Property Casualty Insurers and Texas Mutual Insurance Company

Neither for nor against, with recommended changes: One individual; Envoy Medical Systems, LP; URAC; the State Office of Risk Management; Texas Medical Association; Medtronic Inc.; and the Office of Injured Employee Counsel.

Against: Two individuals and AAIRO.

SUBCHAPTER A. GENERAL PROVISIONS

28 TAC §§12.1, 12.3 - 12.6

STATUTORY AUTHORITY. TDI adopts the amendments under Insurance Code §§4202.002, 4202.003, 4202.004, 4202.005, 4202.007, 4202.008, 4202.013, and 36.001. Insurance Code §4202.002(a) provides that the commissioner must promulgate standards and rules for the certification, selection, and operation of IROs to perform independent review. Insurance Code §4202.002(b) provides that the standards must ensure the qualifications and independence of each reviewer, the fairness of the procedures used by an IRO in making review determinations, and the confidentiality of medical records transmitted to an IRO.

Insurance Code §4202.003 provides that the standards adopted under Insurance Code §4202.002 must require each IRO to make the IRO's determination with respect to life-threatening conditions and non-life-threatening within the time limits in Insurance Code §4202.003.

Insurance Code §4202.004 requires an organization to submit an application in the form required by the commissioner. Insurance Code §4202.004(a) requires the IRO application form to require a description of the procedures used by the applicant to verify physician and provider credentials, including the computer processes, electronic databases, and records, if any, used and the software used by the credentialing manager for managing those processes, databases, and records. Insurance Code §4202.004(d) provides that the commissioner require each offi-

cer of the applicant and each owner or shareholder of the applicant or, if the purchaser is publicly held, each owner or shareholder described by subsection (a)(1), to submit a complete and legible set of fingerprints to TDI for the purpose of obtaining criminal history record information from DPS and the FBI. It also requires TDI to conduct a criminal history check of each applicant using information provided under this section, and made available to TDI by DPS, the FBI, and any other criminal justice agency under Government Code Chapter 411. Insurance Code §4202.004(e), in part, requires that an application for certification for review of health care services requires an IRO accredited by an organization described in Insurance Code §4202.004(b) to provide TDI with evidence of the accreditation. It also requires the commissioner to consider the evidence if the accrediting organization publishes and makes available to the commissioner the organization's requirements for and methods used in the accreditation process, and authorizes an IRO applicant that is accredited by an organization to request that TDI expedite the application process. Insurance Code §4202.004(f) authorizes a certified IRO that becomes accredited by an organization described by subsection (b) to provide evidence of that accreditation to TDI and requires that the evidence be maintained in TDI's file related to the IRO's certification. Insurance Code §4202.004(g) requires an IRO to apply for renewal of its certification of registration every two years.

Insurance Code §4202.005(c) requires IROs to submit information about a material change to the IRO on a form adopted by the commissioner no later than the 30th day after the date the material change occurs. It also requires the IRO, if the material change is a relocation of the IRO, to inform TDI that the location is available for inspection before the date of the relocation by TDI, and that an officer attend the inspection on TDI's request. Insurance Code §4202.007 requires the commissioner to provide ongoing oversight of the IRO to ensure continued compliance with Insurance Code Chapter 4202 and 28 TAC Chapter 12. Insurance Code §4202.008 prohibits an IRO from being a subsidiary of, or in any way owned or controlled by, a payor or a trade or professional association of payors. Insurance Code §4202.013 requires an IRO to maintain its primary office in this state. Section 36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

§12.1. Statutory Basis.

This chapter implements Insurance Code Chapter 4202.

§12.3. Effect of Chapter.

This chapter governs the performance of appropriate statutory and regulatory functions and is not to be construed as limiting the exercise of statutory authority by the commissioner of insurance.

§12.4. Applicability.

(a) All independent review organizations (IROs) performing independent reviews of adverse determinations made by utilization review agents, health insurance carriers, health maintenance organizations, and managed care entities, must comply with this chapter. IROs performing independent reviews of adverse determinations made by certified workers' compensation health care networks and workers' compensation insurance carriers must comply with this chapter, subject to §12.6 of this subchapter.

(b) This chapter is effective on July 7, 2015. Unless otherwise provided, this chapter applies to all requests for independent review filed with the department on or after July 7, 2015. All independent reviews filed with the department before July 7, 2015, will be subject to the rules in effect at the time the independent review was filed with the department.

§12.5. Definitions.

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

(1) Adverse determination--A determination by a utilization review agent made on behalf of any payor that the health care services provided or proposed to be provided to a patient are not medically necessary or appropriate, or are experimental or investigational.

(2) Affiliate--A person who, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with the person specified.

(3) Best evidence--Evidence based on:

(A) randomized clinical trials;

(B) if randomized clinical trials are not available, cohort studies or case-control studies;

(C) if subparagraphs (A) and (B)of this paragraph are not available, case-series; or

(D) if subparagraphs (A), (B), and (C) of this paragraph are not available, expert opinion.

(4) Biographical affidavit--National Association of Insurance Commissioners biographical affidavit to be used as an attachment to the IRO application form.

(5) Case-control studies--A retrospective evaluation of two groups of patients with different outcomes to determine which specific interventions the patients received.

(6) Case Series--An evaluation of a series of patients with a particular outcome, without the use of a control group.

(7) Cohort studies--A prospective evaluation of two groups of patients with only one group of patients receiving a specific intervention(s).

(8) Commissioner--The commissioner of insurance or designee.

(9) Control--The power to direct, or cause the direction of, the management and policies of a person, other than power that results from an official position with or corporate office held by the person. The power may be possessed directly or indirectly by any means, including through the ownership of voting securities or by contract, other than a commercial contract for goods or nonmanagement services. A person controls another if the person possesses the power described above with regard to the other person. The commissioner presumes control to exist if any person, directly or indirectly, or with members of the person's immediate family, owns, controls, or holds the power to vote, or if any person other than a corporate officer or director of a person holds proxies representing 10 percent or more of the voting securities or authority of any other person. A person may rebut the presumption by showing that control does not exist in fact. The commissioner may determine that control exists in fact, despite the absence of a presumption to that effect, where a person exercises, either alone or under an agreement with one or more persons, such a controlling influence over the management or policies of an IRO as to make it necessary or appropriate in the public interest that the person be deemed to control the IRO.

(10) Department--Texas Department of Insurance.

(11) Dentist--A licensed doctor of dentistry holding either a D.D.S. or a D.M.D. degree.

(12) Evidence-based medicine--The use of current, best quality scientific and medical evidence formulated from credible scientific studies, including peer-reviewed medical literature and other current scientifically based texts, and treatment and practice guidelines in making decisions about the care of individual patients.

(13) Evidence-based standards--The conscientious, explicit, and judicious use of evidence-based medicine and the current best evidence based on the overall systematic review of the research in making decisions about the care of individual patients.

(14) Experimental or investigational--A service or device for which there is early, developing scientific, or clinical evidence demonstrating the potential efficacy of the treatment, service, or device, but not yet broadly accepted as the prevailing standard of care.

(15) Expert opinion--A belief or an interpretation by a specialist with experience in a specific area about the scientific evidence on a particular service, intervention, or therapy.

(16) Health benefit plan--A plan of benefits that defines the coverage provisions for health care offered or provided by any organization, public or private, other than health insurance.

(17) Health care provider or provider--A person, corporation, facility, or institution that is:

(A) licensed by a state to provide or otherwise lawfully providing health care services; and

(B) eligible for independent reimbursement for those services.

(18) Health insurance policy--An insurance policy, including a policy written by a corporation subject to Insurance Code Chapter 842, that provides coverage for medical or surgical expenses incurred as a result of accident or sickness.

(19) Independent review--A system for final administrative review by a designated IRO of an adverse determination regarding the medical necessity and appropriateness or the experimental or investigational nature of health care services.

(20) Independent review organization or IRO--An entity that is granted a certificate of registration by the commissioner to conduct independent reviews under the authority of Insurance Code Chapter 4202. An IRO must have the capacity for independent review of all specialty classifications and subspecialties contained in the two-tiered structure of specialty classifications set out in §12.402 of this chapter.

(21) Independent review plan--The review criteria and review procedures.

(22) IRO application form--A form for an original application for, renewal of, or reporting a material change to a certificate of registration as an IRO in this state.

(23) Legal holiday--A holiday:

(A) as provided in Government Code §662.003(a), includes New Year's Day; Martin Luther King, Jr. Day; Presidents' Day; Memorial Day; Independence Day; Labor Day; Veterans Day; Thanksgiving Day; and Christmas Day; and

(B) as provided in §102.3(b) of this title.

(24) Life-threatening condition--A disease or condition for which the likelihood of death is probable unless the course of the disease or condition is interrupted.

(25) Medical and scientific evidence--Evidence found in the following sources:

(A) peer-reviewed scientific studies published in or accepted for publication by medical journals that meet nationally recognized requirements for scientific manuscripts, and that submit most of their published articles for review by experts who are not part of the editorial staff;

(B) peer-reviewed medical literature, including literature relating to therapies reviewed and approved by a qualified institutional review board, biomedical compendia, and other medical literature that meet the criteria of the National Institute of Health's National Library of Medicine for indexing in Index Medicus (Medline) and Elsevier Science Ltd. for indexing in Excerpt--Medicus (EMBASE);

(C) medical journals recognized by the Secretary of Health and Human Services, under Section 1861(t)(2) of the federal Social Security Act;

(D) the following standard reference compendia:

(i) the American Hospital Formulary Service Drug Information;

(ii) Drug Facts and Comparisons, current edition as published by Lippincott Williams & Wilkins;

(iii) the American Dental Association Accepted Dental Therapeutics; and

(iv) the United States Pharmacopoeia--Drug Information;

(E) findings, studies, or research conducted by or under the auspices of federal government agencies and nationally recognized federal research institutes including:

(i) the federal Agency for Healthcare Research and Quality;

(ii) the National Institutes of Health;

(iii) the National Cancer Institute;

(iv) the National Academy of Sciences;

(v) the Centers for Medicare & Medicaid Services;

(vi) the federal Food and Drug Administration; and

(vii) any national board recognized by the National Institutes of Health for the purpose of evaluating the medical value of health care services;

(F) peer-reviewed abstracts accepted for presentation at major medical association meetings;

(G) for independent review of adverse determinations of health care provided under Labor Code Title 5, the treatment guidelines, treatment protocols, and pharmacy closed formulary as provided in applicable orders issued or rules adopted by the TDI-DWC under Labor Code §408.028 and §413.011, including Chapter 134 of this title and Chapter 137 of this title; or

(H) any other medical or scientific evidence that is comparable to the sources listed in subparagraphs (A) - (F) of this paragraph.

(26) Nurse--A registered or professional nurse, a licensed vocational nurse, or a licensed practical nurse.

(27) Patient--The enrollee or an eligible dependent of the enrollee under a health benefit plan or health insurance policy, or an

injured employee entitled to receive workers' compensation benefits under Labor Code Title 5.

(28) Payor--

(A) an insurer that writes health insurance policies;

(B) a preferred provider organization, health maintenance organization, or self-insurance plan; or

(C) any other person or entity that provides, offers to provide, or administers hospital, outpatient, medical, or other health benefits, including workers' compensation benefits as provided under Insurance Code §4201.054, to persons treated by a health care provider in this state under a policy, plan, or contract.

(29) Person--An individual, corporation, partnership, association, joint-stock company, trust, unincorporated organization, any similar entity, or any combination acting in concert.

(30) Physical address--Location of the IRO's primary office where personnel are reasonably available by telephone at least 40 hours per week during normal business hours in both Central and Mountain time zones to discuss or respond to requests for independent review.

(31) Physician--A licensed doctor of medicine or a doctor of osteopathy.

(32) Primary office--The place where an IRO maintains its physical address in Texas, and where its books and records about independent reviews assigned by the department are maintained and accessible.

(33) Provider of record--The physician or other health care provider that has primary responsibility for the care, treatment, and services rendered or requested on behalf of the patient; or the physician or health care provider that has rendered or has been requested to provide the care, treatment, or services to the patient. This definition includes any health care facility where treatment is rendered on an inpatient or outpatient basis.

(34) Randomized clinical trial--A controlled, prospective study of patients who have been randomized into an experimental group and a control group at the beginning of the study with only the experimental group of patients receiving a specific intervention, which includes study of the groups for variables and anticipated outcomes over time.

(35) Review criteria--The written policies, medical protocols, previous decisions, and guidelines used by the IRO to make decisions about the medical necessity or appropriateness of a treatment, procedure, or service or the experimental or investigational nature of a treatment, procedure, or service.

(36) TDI-DWC--The Texas Department of Insurance, Division of Workers' Compensation.

(37) Utilization review agent--A person holding a certificate under Insurance Code Chapter 4201.

(38) Working day--A weekday that is not a legal holiday.

§12.6. Independent Review of Adverse Determinations of Health Care Provided Under Labor Code Title 5 or Insurance Code Chapter 1305.

(a) Review of the medical necessity or appropriateness of a health care service provided under Labor Code Chapter 408 or Chapter 413 must be conducted under this chapter in the same manner as reviews of utilization review decisions by health maintenance organizations.

(b) Notwithstanding subsection (a) of this section, for independent review of adverse determinations of health care provided under Labor Code Title 5 or Insurance Code Chapter 1305:

(1) IROs and personnel conducting independent review must comply with Labor Code Title 5 and applicable TDI-DWC rules;

(2) in the event of a conflict between this chapter and the Labor Code, the Labor Code controls; and

(3) in the event of a conflict between this chapter and TDI-DWC rules, TDI-DWC rules control.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Sara Waitt
General Counsel
Texas Department of Insurance
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For further information, please call: (512) 676-6584

SUBCHAPTER B. CERTIFICATE OF REGISTRATION FOR INDEPENDENT REVIEW ORGANIZATIONS

28 TAC §§12.101 - 12.111

STATUTORY AUTHORITY. TDI adopts the amendments and new section under Insurance Code §§4202.002, 4202.003, 4202.004, 4202.005, 4202.007, 4202.008, 4202.013, and 36.001. Insurance Code §4202.002(a) provides that the commissioner must promulgate standards and rules for the certification, selection, and operation of IROs to perform independent review. Insurance Code §4202.002(b) provides that the standards must ensure the qualifications and independence of each reviewer, the fairness of the procedures used by an IRO in making review determinations, and the confidentiality of medical records transmitted to an IRO.

Insurance Code §4202.003 provides that the standards adopted under Insurance Code §4202.002 must require each IRO to make the IRO's determination with respect to life-threatening conditions and non-life-threatening within the time limits in Insurance Code §4202.003.

Insurance Code §4202.004 requires an organization to submit an application in the form required by the commissioner. Insurance Code §4202.004(a) requires the IRO application form to require a description of the procedures used by the applicant to verify physician and provider credentials, including the computer processes, electronic databases, and records, if any, used and the software used by the credentialing manager for managing those processes, databases, and records. Insurance Code §4202.004(d) provides that the commissioner require each officer of the applicant and each owner or shareholder of the applicant or, if the purchaser is publicly held, each owner or shareholder described by subsection (a)(1), to submit a complete and legible set of fingerprints to TDI for the purpose of obtaining criminal history record information from DPS and the FBI. It also requires TDI to conduct a criminal history check of each appli-

cant using information provided under this section, and made available to TDI by DPS, the FBI, and any other criminal justice agency under Government Code Chapter 411. Insurance Code §4202.004(e), in part, requires that an application for certification for review of health care services requires an IRO accredited by an organization described in Insurance Code §4202.004(b) to provide TDI with evidence of the accreditation. It also requires the commissioner to consider the evidence if the accrediting organization publishes and makes available to the commissioner the organization's requirements for and methods used in the accreditation process, and authorizes an IRO applicant that is accredited by an organization to request that TDI expedite the application process. Insurance Code §4202.004(f) authorizes a certified IRO that becomes accredited by an organization described by subsection (b) to provide evidence of that accreditation to TDI and requires that the evidence be maintained in TDI's file related to the IRO's certification. Insurance Code §4202.004(g) requires an IRO to apply for renewal of its certification of registration every two years.

Insurance Code §4202.005(c) requires IROs to submit information about a material change to the IRO on a form adopted by the commissioner no later than the 30th day after the date the material change occurs. It also requires the IRO, if the material change is a relocation of the IRO, to inform TDI that the location is available for inspection before the date of the relocation by TDI, and that an officer attend the inspection on TDI's request. Insurance Code §4202.007 requires the commissioner to provide ongoing oversight of the IRO to ensure continued compliance with Insurance Code Chapter 4202 and 28 TAC Chapter 12. Insurance Code §4202.008 prohibits an IRO from being a subsidiary of, or in any way owned or controlled by, a payor or a trade or professional association of payors. Insurance Code §4202.013 requires an IRO to maintain its primary office in this state. Section 36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

§12.101. Certificate of Registration for Independent Review.

An application for a certificate of registration and for renewal of a certificate of registration as an IRO and associated fees must be filed with the Texas Department of Insurance at the following address: Texas Department of Insurance, Mail Code 103-6A, P.O. Box 149104, Austin, Texas 78714-9104.

§12.102. IRO Application Form.

(a) Applicants must submit the IRO application form for an original application for, renewal of, and reporting a material change in an IRO application form for a certificate of registration as an IRO in this state in the format prescribed by the department.

(b) The commissioner adopts the biographical affidavit by reference to be used as an attachment to the IRO application form.

(c) The forms are available at www.tdi.texas.gov/forms. Applicants may also obtain the forms from the Texas Department of Insurance, Mail Code 103-6A, P.O. Box 149104, Austin, Texas 78714-9104.

§12.103. Information Required in Original Application for Certificate of Registration.

The IRO application form requires information that is necessary for the commissioner to determine whether an applicant is qualified for a certificate of registration as an IRO under Insurance Code §4202.004, including:

(1) a summary of the independent review plan that meets the requirements of §12.201 of this chapter, which must include:

(A) a summary description of review criteria and review procedures to be used to determine medical necessity or appropriateness of health care;

(B) a summary description of review criteria and review procedures to be used to determine the experimental or investigational nature of health care;

(C) a certification signed by the IRO's medical director that the review criteria and review procedures to be applied in review determinations are established with input from appropriate health care providers and approved by physicians under §12.201(3) of this chapter;

(D) procedures ensuring that the information regarding the reviewing physicians and providers is updated under §12.111(a) of this chapter to ensure the independence of each health care provider or physician making review determinations; and

(E) a summary description of criteria and review procedures to be used by the medical director to conduct quality assurance audits under §12.202(c)(2) of this chapter.

(2) copies of policies and procedures that ensure that all applicable state and federal laws to protect the confidentiality of medical records and personal information are followed. These procedures must comply with §12.208 of this chapter;

(3) a certification, signed by an officer, director, or owner of the IRO, that the IRO and any party that performs an IRO function through contracts and subcontracts will comply with Insurance Code Chapter 4202 and this chapter. The certification must include a statement that the IRO is responsible for ensuring that all contracted and subcontracted functions are performed according to Insurance Code Chapter 4202 and this chapter, subject to the IRO's oversight and monitoring, and that the IRO retains ultimate responsibility for compliance;

(4) a description of personnel and their credentials and a completed profile for each physician and provider, as described in §12.202 of this chapter that must include:

(A) the credentialing and recredentialing procedures used by the IRO applicant to verify physician and provider credentials and the computer processes, electronic databases, and records, if any, used to make the verification; and

(B) the credentialing software used by the applicant for managing the processes, databases, and records described in subparagraph (A) of this paragraph;

(5) a description of hours of operation and how the IRO may be contacted after hours and during weekends and holidays, as set out in §12.207 of this chapter;

(6) a description of the applicant's use of communications, records, and computer processes to manage the independent review process;

(7) a description and evidence of accreditation from a nationally recognized accrediting organization, if any, that imposes requirements for accreditation that are the same as, substantially similar to, or more stringent than the department's requirements for a certificate of registration. Evidence of accreditation will be maintained in the department's file for the IRO applicant, and the applicant may request expedited approval of the certificate of registration with evidence of accreditation from a nationally recognized accrediting organization;

(8) the organizational information, documents, and all amendments that must include:

(A) written evidence that the applicant is incorporated in this state, which may include a copy of the Certificate of Formation from the Texas Secretary of State;

(B) for an applicant that is publicly held, the name, address, and Federal Employer Identification Number (EIN) of each stockholder or owner of more than 5 percent of any stock or options;

(C) a chart showing the internal organizational structure of the applicant's management and administrative staff;

(D) a chart showing contractual arrangements of the applicant, including all contracts between the applicant and any person and all subcontracts with other persons to perform any business or daily functions of an IRO; and

(E) copies of the contract and subcontract with any person who will perform IRO functions on behalf of the applicant. All contracts and subcontracts must include at a minimum:

(i) a provision that the contracted or subcontracted party will comply with §12.208 of this chapter;

(ii) a provision that the applicant is responsible for ensuring that all contracted and subcontracted functions are performed under Insurance Code Chapter 4202 and this chapter, subject to the applicant's oversight and monitoring;

(iii) a provision that the applicant retains ultimate responsibility for compliance; and

(iv) a provision that, on request, the contracted party will provide the applicant with data necessary for the applicant to comply with department requests for information about IRO functions;

(9) the name of any holder of bonds or notes of the applicant that exceed $100,000;

(10) the name, address, EIN, and type of business of each corporation or other organization that the applicant controls or is affiliated with and the nature and extent of the affiliation or control, and a chart or list clearly identifying the relationships between the applicant and any affiliates;

(11) biographical information about officers, directors, and executives, including information requested in the biographical affidavit as required in §12.102(b) of this chapter:

(A) the applicant must submit a complete set of fingerprints for each director, officer, and executive of the applicant and for each owner or shareholder of the applicant, or if the applicant is publicly held, each owner or shareholder of more than 5 percent of any of the applicant's stock or options as described by Insurance Code §4202.004(a)(1), in compliance with §1.503 and §1.504 of this title;

(B) the applicant must submit the name and biographical information for each director, officer, and executive of the applicant and of any entity listed under paragraph (10) of this section and a description of any relationship the named individual has that represents revenue equal to or greater than 5 percent of that individual's total annual revenue or which represents a holding or investment worth $100,000 or more in any of the following entities:

(i) a health benefit plan;

(ii) a health maintenance organization;

(iii) an insurer;

(iv) a utilization review agent;

(v) a nonprofit health corporation;

(vi) a payor;

(vii) a health care provider;

(viii) another IRO; or

(ix) a group representing any of the entities described by clauses (i) - (viii) of this subparagraph.

(C) the applicant must identify any relationship between the applicant and any affiliate or other organization in which an officer, director, or employee of the applicant holds a 5 percent or more interest;

(D) the applicant must submit a list of any currently outstanding loans or contracts to provide services between the applicant, affiliates, or any other person relating to any functions performed by or on behalf of the applicant;

(12) documentation from the comptroller demonstrating the applicant's good standing and right to transact business in this state;

(13) for an application for a certificate of registration or renewal of a certificate of registration as an IRO in this state made on or after July 7, 2015, a sworn statement from an officer of the organization that:

(A) the applicant's primary office included on the IRO application form is located and maintained at a physical address in this state. As a condition of holding a certificate of registration to conduct the business of independent review in this state, an IRO must locate and maintain its primary office at a physical address in this state;

(B) the primary office is equipped with a computer system capable of:

(i) processing requests for independent review; and

(ii) accessing all electronic records related to the review and the independent review process;

(C) all records are maintained electronically and will be made available to the department on request;

(D) in the case of an office located in a residence, the working office must be located in a room set aside for independent review business purposes and in a manner to ensure confidentiality; and

(E) medical records are maintained according to §12.208 of this chapter;

(14) the percentage of the applicant's revenues that are anticipated to be derived from independent reviews conducted; and

(15) a disclosure of any enforcement actions related to the provision of medical care or conducting of medical reviews taken against a person subject to the fingerprint requirements under §1.503 and §1.504 of this title.

§12.104. Review of Original Application.

The original application process is as follows:

(1) Original application process. Within 60 days after receipt of a complete original application, the department will process the application and grant or deny an original certificate of registration. The department will send a certificate of registration to an entity that is granted a certificate of registration. The applicant may waive the time limit described in this paragraph.

(2) Omissions or deficiencies.

(A) The department will send the applicant written notice of any omissions or deficiencies in the original application.

(B) The applicant must correct the omissions or deficiencies in the application within 15 days of the date of the department's latest notice of omissions or deficiencies. The applicant may request additional time, not to exceed 30 days, in writing, to correct the omissions or deficiencies. In the request, the applicant must include sufficient detail for the commissioner to determine whether there is good cause to grant additional time for the applicant to correct the omissions or deficiencies. The decision to grant or deny a request for additional time is at the discretion of the commissioner.

(C) If the applicant fails to correct the omissions or deficiencies within 15 days, or 45 days if the applicant requested and was granted the maximum amount of additional time, the department will close the application as incomplete. The application fee is not refundable.

(3) The department will maintain a charter file that will contain the application, notices of omissions or deficiencies, responses, and any written materials generated by any person that were considered by the department in evaluating the application.

§12.105. Revisions During Review Process.

Revisions made by the applicant during the review of the application must either be submitted electronically in the manner specified by the department in correspondence with the applicant or sent by mail addressed to: Texas Department of Insurance, Mail Code 103-6A, P.O. Box 149104, Austin, Texas 78714-9104. If a page is revised, the revised page submitted by the applicant must contain the changed item or information red-lined.

§12.106. Examinations.

(a) The commissioner may conduct an on-site examination at the applicant's primary office as a requirement of applying for a certificate of registration.

(b) The commissioner may conduct examinations of an IRO as often as the commissioner deems necessary to determine compliance with Insurance Code Chapter 4202 and this chapter, including on renewal of the certificate of registration.

(c) The following documents must be available for review during an examination at the primary office of the IRO located within this state:

(1) the information required in §12.103 of this chapter;

(2) credentialing files;

(3) case decisions files;

(4) a list of personnel who are available at the IRO's primary office 40 hours a week during normal business hours in both Central and Mountain time zones;

(5) a list of directors, officers, and executives and owners or shareholders, or if the IRO is publicly held, owners or shareholders of more than 5 percent of any of the IRO's stock or options as described by Insurance Code §4202.004(a)(1);

(6) a chart showing the internal organizational structure of the IRO management and administrative staff;

(7) a chart showing the contractual relationships and arrangements of the IRO, as described in §12.103 of this chapter; and

(8) any other documents related to the operation of the IRO.

(d) The owner and IRO staff, including the CEO, medical director, and operations staff, must be available at the IRO's primary office during the on-site examination to answer all questions regarding the IRO's operations, produce documents, and demonstrate to the examiner the operations of the IRO.

§12.107. Withdrawal of an Original Application Before Granting a Certificate of Registration and Subsequent Renewal Applications.

(a) On written notice to the department, an applicant may request withdrawal of an application from consideration by the department.

(b) On the department's receipt of a request to withdraw an application under this section, the application will be withdrawn from consideration. Subsequent applications by the same applicant must be new submissions in their entirety.

§12.108. Renewal of Certificate of Registration.

(a) Every two years, the commissioner will renew the certificate of registration of each organization that meets the standards as an IRO.

(b) An IRO must apply for renewal of its certificate of registration every two years, no later than the anniversary date of the issuance of the registration. The IRO application form must be used for this purpose. The IRO application form may be obtained from the department's website and from the address listed in §12.102(c) of this chapter. The completed IRO application form, renewal fee, and a certification that no material changes exist that have not already been filed with the department must be submitted to the department at the address listed in §12.101 of this chapter.

(c) An IRO may continue to operate under its certificate of registration after a completed application form and renewal fee have been received by the department and until the renewal is finally denied or granted by the department. However, independent reviews will not be assigned to an IRO during the 30 days before the anniversary date of the issuance of the IRO's certificate of registration unless a completed renewal application form and the application fee have been received by the department.

(d) If a completed renewal application form is not received before the anniversary date of the year in which the certificate of registration must be renewed, the certificate of registration will automatically expire and the IRO must complete and submit a new application for certificate of registration.

(e) Until the certificate of registration renewal application process is complete or the certificate of registration expires, an IRO must:

(1) continue to perform its duties in compliance with Insurance Code Chapter 4202, the Labor Code, and department and TDI-DWC rules, including maintenance and retention of medical records and patient-specific information under §12.208 of this chapter; and

(2) in regard to reviews of the medical necessity of a health care service provided under Labor Code Title 5 or Insurance Code Chapter 1305, make responses to requests for letters of clarification under §133.308 of this title.

§12.109. Appeal of Denial of Application or Renewal.

If an original or renewal application is denied under this chapter, the applicant or registrant may appeal the denial under the provisions of Chapter 1, Subchapter A of this title and Government Code, Chapter 2001.

§12.110. Effect of Sale or Transfer of Ownership of an Independent Review Organization.

(a) An IRO must notify the department of an agreement to sell or transfer the ownership of the IRO, or shares in the IRO, no later than 60 days before the date of the sale or transfer of ownership. The IRO must use the IRO application form. The IRO must file the notification with the department at the following address: Texas Department of Insurance, Mail Code 103-6A, P.O. Box 149104, Austin, Texas

78714-9104. The IRO must submit the following information with the notification:

(1) name of the purchaser and, in compliance with §1.503 and §1.504 of this title, a complete and legible set of fingerprints for each officer of the purchaser and for each owner or shareholder of the purchaser, or if the purchaser is publicly held, each owner or shareholder of more than 5 percent of any of the purchaser's stock or options as described by Insurance Code §4202.004(a)(1), and any additional information necessary to comply with Insurance Code §4202.004(d); and

(2) any material changes including, but not limited to, policies and procedures, physical address, personnel, or operating locations with the notice of intent to sell or transfer ownership.

(b) The IRO may complete the sale or transfer of ownership only after the department has sent written confirmation that the requirements under Insurance Code Chapter 4202 and this chapter have been satisfied.

(c) An IRO must continue to perform all duties before the date the sale or transfer of ownership of the IRO is finalized. Notification of the impending sale of an IRO does not negate the IRO's obligation to continue to perform its duties in compliance with Insurance Code Chapters 1305 and 4202, Labor Code Title 5, and applicable department and TDI-DWC rules.

§12.111. Regulatory Requirements Subsequent to a Certificate of Registration.

(a) The IRO must report any material changes to the information required in the IRO application form required by §12.103 and §12.108 of this chapter, including changes relating to physicians and providers performing independent review, no later than the 30th day after the date on which the change takes effect.

(b) If the material change is a relocation of the primary office:

(1) the organization must inform the department that the location is available for inspection by the department at least 30 days before the date of the relocation;

(2) on request of the department, an officer must attend the inspection; and

(3) if the inspection is a result of a sale under §12.110 of this chapter, the inspection may include verification that the IRO complies with the requirements in §12.103(11) of this chapter.

(c) The IRO is exempt from compliance with subsection (a) of this section in the event that a contracted specialist IRO reviewer is unavailable for review on a specific case, and subsequent immediate contracting with a new specialist IRO reviewer is necessary to complete independent review on a specific case within the time frames set out in this chapter.

(d) The IRO must notify the department within 10 days of any contracts entered into under subsection (c) of this section, and must include in the notification a complete explanation of the circumstances necessitating the new contracts.

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 April 23, 2015.

TRD-201501401

Sara Waitt
General Counsel
Texas Department of Insurance
Effective date: July 7, 2015
Proposal publication date: November 28, 2014
For further information, please call: (512) 676-6584

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SUBCHAPTER C. GENERAL STANDARDS OF INDEPENDENT REVIEW

28 TAC §§12.201 - 12.208

STATUTORY AUTHORITY. TDI adopts the amendments under Insurance Code §§4202.002, 4202.003, 4202.004, 4202.005, 4202.007, 4202.008, 4202.013, and 36.001. Insurance Code §4202.002(a) provides that the commissioner must promulgate standards and rules for the certification, selection, and operation of IROs to perform independent review. Insurance Code §4202.002(b) provides that the standards must ensure the qualifications and independence of each reviewer, the fairness of the procedures used by an IRO in making review determinations, and the confidentiality of medical records transmitted to an IRO.

Insurance Code §4202.003 provides that the standards adopted under Insurance Code §4202.002 must require each IRO to make the IRO's determination with respect to life-threatening conditions and non-life-threatening within the time limits in Insurance Code §4202.003.

Insurance Code §4202.004 requires an organization to submit an application in the form required by the commissioner. Insurance Code §4202.004(a) requires the IRO application form to require a description of the procedures used by the applicant to verify physician and provider credentials, including the computer processes, electronic databases, and records, if any, used and the software used by the credentialing manager for managing those processes, databases, and records. Insurance Code §4202.004(d) provides that the commissioner require each officer of the applicant and each owner or shareholder of the applicant or, if the purchaser is publicly held, each owner or shareholder described by subsection (a)(1), to submit a complete and legible set of fingerprints to TDI for the purpose of obtaining criminal history record information from DPS and the FBI. It also requires TDI to conduct a criminal history check of each applicant using information provided under this section, and made available to TDI by DPS, the FBI, and any other criminal justice agency under Government Code Chapter 411. Insurance Code §4202.004(e), in part, requires that an application for certification for review of health care services requires an IRO accredited by an organization described in Insurance Code §4202.004(b) to provide TDI with evidence of the accreditation. It also requires the commissioner to consider the evidence if the accrediting organization publishes and makes available to the commissioner the organization's requirements for and methods used in the accreditation process, and authorizes an IRO applicant that is accredited by an organization to request that TDI expedite the application process. Insurance Code §4202.004(f) authorizes a certified IRO that becomes accredited by an organization described by subsection (b) to provide evidence of that accreditation to TDI and requires that the evidence be maintained in TDI's file related to the IRO's certification. Insurance Code §4202.004(g) requires an IRO to apply for renewal of its certification of registration every two years.

Insurance Code §4202.005(c) requires IROs to submit information about a material change to the IRO on a form adopted by the commissioner no later than the 30th day after the date the material change occurs. It also requires the IRO, if the material change is a relocation of the IRO, to inform TDI that the location is available for inspection before the date of the relocation by TDI, and that an officer attend the inspection on TDI's request. Insurance Code §4202.007 requires the commissioner to provide ongoing oversight of the IRO to ensure continued compliance with Insurance Code Chapter 4202 and 28 TAC Chapter 12. Insurance Code §4202.008 prohibits an IRO from being a subsidiary of, or in any way owned or controlled by, a payor or a trade or professional association of payors. Insurance Code §4202.013 requires an IRO to maintain its primary office in this state. Section 36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

§12.201. Independent Review Plan.

Independent review must be conducted under an independent review plan that is consistent with standards developed with input from appropriate health care providers, and reviewed and approved by the IRO's medical director. The independent review plan must include the following components:

(1) a description of the elements of review that the IRO provides;

(2) written procedures for:

(A) notification of the IRO's determinations provided to the patient or a representative of the patient, the patient's provider of record, and the utilization review agent, under §12.206 of this chapter;

(B) review, including:

(i) any form used during the review process;

(ii) time frames that must be met during the review;

(C) accessing appropriate specialty review;

(D) contacting and receiving information from health care providers under §12.205 of this chapter;

(3) required use of written medically acceptable review criteria that are:

(A) based on medical and scientific evidence and use evidence-based standards, or if evidence is not available, generally accepted standards of medical practice recognized in the medical community;

(B) established and periodically evaluated and updated with appropriate involvement from physicians, including practicing physicians, and other health care providers;

(C) objective, clinically valid, compatible with established principles of health care, and flexible enough to allow for deviations from the norms when justified on a case-by-case basis;

(D) developed based on consideration of the treatment guidelines, treatment protocols, and the pharmacy closed formulary as provided in orders issued or rules adopted by TDI-DWC, including Chapter 134 and Chapter 137 of this title for health care provided under Labor Code Title 5;

(E) used only as a tool in the review process; and

(F) available for review, inspection, and copying as necessary by the commissioner or the commissioner's designated representative so the commissioner can carry out the commissioner's lawful duties under the Insurance Code;

(4) independent review determinations that:

(A) use review procedures that are established and periodically evaluated and updated with appropriate involvement from physicians, including practicing physicians, and other health care providers;

(B) are made with medically accepted review criteria, taking into account the special circumstances of each case that may require a deviation from the norm; and

(C) are made by physicians, dentists, or other health care providers, as appropriate.

§12.202. Personnel and Credentialing.

(a) Personnel employed by or under contract with the IRO to perform independent reviews must be appropriately trained, qualified, and, if applicable, currently licensed, registered, or certified. These personnel must be currently involved in an active practice. An exception to the active practice requirement is the medical director of the IRO. Personnel who obtain information directly from a physician, dentist, or other health care provider, either orally or in writing, and who are not physicians or dentists, must be nurses, physician assistants, or health care providers qualified to provide the service requested by the provider. This provision must not be interpreted to require such qualifications for personnel who perform clerical or administrative tasks.

(1) Personnel conducting independent reviews for health services must hold an unrestricted license, an administrative license, or otherwise be authorized to provide the same or similar specialty health services by a licensing agency in the United States.

(2) Personnel conducting independent reviews for workers' compensation health care services must hold an unrestricted license, an administrative license, or otherwise be authorized to provide the same or similar specialty workers' compensation health care services by a licensing agency in this state.

(b) The IRO is required to provide to the commissioner:

(1) the name, type, license number, state of licensure, date of contract, and minimum qualifications of the personnel either employed or under contract to perform the independent review; and

(2) written procedures used to determine whether physicians or other health care providers used by the IRO are licensed, qualified, in good standing, and appropriately trained.

(c) An IRO must be under the direction of a medical director who is a physician currently licensed and in good standing to practice medicine by a state licensing agency in the United States. The medical director functions must include, but are not limited to, conducting:

(1) annual review and approval of review criteria;

(2) annual quality assurance audits of at least 25 percent of all decisions to ensure appropriate reviews are conducted, and to provide quality assurance reports to the department when requested; and

(3) annual quality assurance audits of at least 25 percent of all assignments to ensure appropriate reviewers are assigned to cases, and to provide quality assurance reports to the department when requested.

(d) The IRO must maintain credentialing and recredentialing files of personnel who are either employed or under contract to perform independent reviews. At a minimum, the IRO must keep the following

credentialing and recredentialing information current and available for review by the department and TDI-DWC on request:

(1) verification obtained from the applicable state licensing board that licensure, certification, or registration is in effect at the time of the credentialing decision;

(2) active practice in effect at the time of the credentialing decision;

(3) board certification, if applicable. The IRO may obtain verification from the American Board of Medical Specialties Compendium, the American Osteopathic Association, the American Medical Association MasterFile, or an applicable specialty board. The certification must be in effect at the time of the credentialing decision; and

(4) any sanctions or revocations by any state licensing agencies in the United States or the U.S. Department of Health and Human Services (HHS) in effect at the time of the credentialing decision. The IRO must verify sanctions or revocations with state licensing agencies, TDI-DWC, and the HHS Office of Inspector General.

(e) Notwithstanding subsections (c) and (d) of this section, a physician, dentist, or other person who performs independent review whose license has been revoked by any state licensing agency in the United States is not eligible to direct or conduct independent review.

(f) Notwithstanding subsection (c) of this section, an IRO that performs independent review of a health care service provided under Labor Code Title 5 or Insurance Code Chapter 1305 must comply with the licensing and professional specialty requirements for personnel performing independent review as provided by Labor Code §§408.0043 - 408.0045 and 413.031; Insurance Code §1305.355; and Chapters 133 and 180 of this title.

(g) The IRO must require physicians and other providers who conduct independent reviews to sign and date the certification of independence and qualifications of the reviewer in the format prescribed by the department. The certification of independence and qualifications of the reviewer includes certification that the physician or other provider who conducts the independent review:

(1) holds an unrestricted license, certification, or registration and lists the relevant states, license numbers, and expiration dates;

(2) has no sanctions or revocations of the reviewer's license, certification, or registration by any state licensing agency in the United States or HHS;

(3) currently practices and lists the states;

(4) has no previous knowledge of or participation in the case before it is assigned to the reviewer;

(5) has no disqualifying associations, including business or personal relationships, with any involved parties in the case;

(6) does not have admitting privileges or ownership interest in, and is not a member of the board of directors, advisor to the board of directors, or officer of the health care facilities where care was provided or is recommended to be provided;

(7) does not have a contract with or an ownership interest in the utilization review agent, insurer, health maintenance organization, other managed care entity, payor, or any other party to the case and is not a member of the board or advisor to the board of directors or an officer for any of the above referenced entities; and

(8) performed the review without bias for or against the utilization review agent, the insurer, health maintenance organization, other managed care entity, payor, or any other party to this case.

(h) The information required in this section must be available for examination and review by the department and TDI-DWC personnel on request.

(i) The IRO must require those physicians and other providers who conduct independent reviews to notify the IRO of any changes in the information in subsection (d) of this section.

§12.203. Conflicts of Interest Prohibited.

A person is not eligible for a certificate of registration under this chapter if any payor, or trade or professional association of payors, has any ownership interest in or control over the person or if the person has any ownership interest in or control over a payor. The department will have the discretion to determine whether any other conflicts exist.

§12.204. Prohibitions of Certain Activities and Relationships of Independent Review Organizations and Individuals or Entities Associated with Independent Review Organizations.

(a) An IRO must not set or impose any notice or other review procedures that are contrary to the requirements of the health insurance policy or health benefit plan unless those requirements are set out in this chapter or Texas law.

(b) An IRO may not permit or provide compensation or anything of value to its physicians or providers that would affect, directly or indirectly, an independent review decision.

(c) An IRO may not operate out of the same office or other facility as another IRO.

(1) This prohibition extends to the shared use by IROs of the resources and staff that comprise an office, including office space, telephone and fax lines, electronic equipment, supplies, and clerical staff.

(2) This prohibition does not extend to the use of subcontractor services or personnel employed by or under contract with the IRO to perform independent review.

(d) An individual who serves as an officer, director, manager, executive, or supervisor of an IRO may not serve as an officer, director, manager, executive, supervisor, employee, agent, or independent contractor of another IRO.

(e) An individual or entity may not own more than one IRO.

(f) An individual may not own stock in more than one IRO.

(g) An individual may not serve on the board of more than one IRO.

(h) An individual who has served on the board of an IRO that has had its certificate of registration revoked for cause may not serve on the board of another IRO earlier than the fifth anniversary of the date the revocation occurred.

§12.205. Independent Review Organization Contact with and Receipt of Information from Health Care Providers and Patients.

(a) A health care provider may designate one or more individuals as the initial contact or contacts for IROs seeking routine information or data. In no event will the designation of an individual or individuals as the initial contact prevent an IRO or medical director from also contacting a health care provider or others in his or her employ where a review might otherwise be unreasonably delayed, or where the designated individual is unable to provide the necessary information or data requested by the IRO.

(b) An IRO may not engage in unnecessary or unreasonably repetitive contacts with the health care provider or patient and must base the frequency of contacts or reviews on the severity or complexity of the patient's condition or on necessary treatment and discharge planning activity.

(c) In addition to pertinent files containing medical and personal information, the utilization review agent or the health insurance carrier, health maintenance organization, managed care entity, or other payor requesting the independent review is responsible for timely delivering to and ensuring receipt by the IRO of any written narrative supplied by the patient in compliance with Insurance Code Chapter 4201 and Chapters 19 and 133 of this title. However, in instances of a life-threatening condition, the IRO must contact the patient or patient's representative, and provider directly.

(d) An IRO must notify the department if, within three working days of receipt of the independent review assignment, the IRO has not received the pertinent files containing medical and personal information from the requesting utilization review agent or the health insurance carrier, health maintenance organization, managed care entity, or other payor.

(e) An IRO must reimburse health care providers for the reasonable costs of providing medical information in writing, including copying and transmitting any patient records or other documents requested by the IRO. A health care provider's charge for providing medical information to an IRO must not exceed the cost of copying set by TDI-DWC rules at §134.120 of this title for records, and may not include any costs that are otherwise recouped as a part of the charge for health care. The utilization review agent, health insurance carrier, health maintenance organization, managed care entity, or other payor requesting the review must pay these unreimbursed costs to the health care provider.

(f) Nothing in this section prohibits a patient, the patient's representative, or a provider of record from submitting pertinent records to an IRO conducting independent review.

(g) When conducting independent review, the IRO must request and maintain any information necessary to review the adverse determination not already provided by the utilization review agent, health insurance carrier, health maintenance organization, managed care entity, or other payor. This information may include identifying information about the patient, the benefit plan, the treating health care provider, or facilities rendering care. It may also include clinical information regarding the diagnoses of the patient and the medical history of the patient relevant to the diagnoses, the patient's prognosis, or the treatment plan prescribed by the treating health care provider along with the provider's justification for the treatment plan.

(h) The IRO is required to share all clinical and demographic information on individual patients among its various divisions to avoid duplication of requests for information from patients or providers.

§12.206. Notice of Determinations Made by Independent Review Organizations.

(a) An IRO must notify the patient or patient's representative, the patient's provider of record, the utilization review agent, the payor, and the department of a determination made in an independent review.

(b) The notification required by this section must be mailed or otherwise transmitted no later than the earlier of:

(1) The 15th day after the date the IRO receives the information necessary to make a determination; or

(2) the 20th day after the date the IRO receives the request for the independent review.

(c) In the case of a life-threatening condition, the notification must be by telephone, and followed by facsimile, email, or other method of transmission no later than the earlier of:

(1) the third day after the date the IRO receives the information necessary to make a determination; or with respect to:

(2) a review of a health care service provided to a person eligible for workers' compensation medical benefits, the eighth day after the date the IRO receives the request that the determination be made; or

(3) a review of health care service other than a service described by paragraph (2) of this subsection, the third day after the date the IRO receives the request that the determination be made.

(d) Notification of determination by the IRO is required to include at a minimum:

(1) a listing of all recipients of the notification of determination as described in subsection (a) of this section, identifying for each:

(A) the name; and

(B) as applicable to the manner of transmission used to issue the notification of determination to the recipient:

(i) mailing address;

(ii) facsimile number; or

(iii) email address;

(2) the date of the original notice of the decision, and if amended for any reason, the date of the amended notification of decision;

(3) the independent review case number assigned by the department;

(4) the name of the patient;

(5) a statement about whether the type of coverage is health insurance, workers' compensation, or workers' compensation health care network;

(6) a statement about whether the context of the review is preauthorization, concurrent utilization review, or retrospective utilization review of health care services;

(7) the name and certificate of registration number of the IRO;

(8) a description of the services in dispute;

(9) a complete list of the information provided to the IRO for review, including dates of service and document dates, where applicable;

(10) a description of the qualifications of the reviewing physician or provider;

(11) a statement that the review was performed without bias for or against any party to the dispute and that the reviewing physician or provider has certified that no known conflicts of interest exist between the reviewer and:

(A) the patient;

(B) the patient's employer, if applicable;

(C) the insurer;

(D) the utilization review agent;

(E) any of the treating physicians or providers; or

(F) any of the physicians or providers who reviewed the case for determination before its referral to the IRO, and that the review was performed without bias for or against any party to the dispute;

(12) a statement that the independent review was performed by a health care provider licensed to practice in Texas, if required by applicable law and of the appropriate professional specialty;

(13) a statement that there is no known conflict of interest between the reviewer, the IRO, and any officer or employee of the IRO with:

(A) the patient;

(B) the provider requesting independent review;

(C) the provider of record;

(D) the utilization review agent;

(E) the payor; and

(F) the certified workers' compensation health care network, if applicable;

(14) a summary of the patient's clinical history;

(15) the review outcome, clearly stating whether medical necessity or appropriateness exists for each of the health care services in dispute and whether the health care services in dispute are experimental or investigational, as applicable;

(16) a determination of the prevailing party, if applicable;

(17) the analysis and explanation of the decision, including the clinical bases, findings, and conclusions used to support the decision;

(18) a description and the source of the review criteria used to make the determination;

(19) a certification by the IRO of the date the decision was sent to all recipients of the notification of determination as required in subsection (a) of this section by U.S. Postal Service or otherwise transmitted in the manner indicated on the form;

(20) for independent reviews of health care services provided under Labor Code Title 5 or Insurance Code Chapter 1305, any information required by §133.308 of this title; and

(21) notice of applicable appeal rights under Insurance Code Chapter 1305 and Labor Code Title 5, and instructions concerning requesting such appeal.

(e) Example templates for the notification of determination regarding health and workers' compensation cases are on the department's website at tdi.texas.gov/forms.

§12.207. Independent Review Organization Telephone Access.

(a) An IRO must have appropriate personnel reasonably available by telephone at least 40 hours per week during normal business hours in both Central and Mountain time zones.

(b) An IRO must have a dedicated telephone system capable of accepting or recording or providing instructions to incoming callers related to independent review during other-than-normal business hours, and must respond to calls no later than one working day from the date the call was received.

§12.208. Confidentiality.

(a) An IRO must preserve the confidentiality of individual medical records, personal information, and any proprietary information provided by payors. Personal information includes name, address, telephone number, social security number, and financial information.

(b) An IRO is prohibited from publicly disclosing patient information protected by the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. Section 1320d et seq.), or transmitting the information to a subcontractor involved in the independent review process that has not signed an agreement similar to the business associate agreement required by regulations adopted under the Health Insurance Portability and Accountability Act of 1996.

(c) An IRO may not disclose or publish individual medical records or other confidential information about a patient without the prior written consent of the patient or as otherwise provided by law, including the Health Insurance Portability and Accountability Act of 1996, if applicable. An IRO may provide confidential information to a provider who is under contract with the IRO for the sole purpose of performing or assisting with independent review. Information provided to a provider who is under contract to perform a review must remain confidential.

(d) The IRO may not publish data identifying a particular payor, physician, or provider, including any quality review studies or performance tracking data, without prior written consent of the involved payor, physician, or provider. This prohibition does not apply to internal systems or reports used by the IRO.

(e) All payor, patient, physician, and provider data must be maintained by the IRO in a confidential manner that prevents unauthorized disclosure to third parties. Nothing in this chapter allows an IRO to take actions that violate state or federal statutes or regulations concerning confidentiality of patient records.

(f) To ensure confidentiality, an IRO must, when contacting a utilization review agent, a physician's or provider's office, or a hospital, provide its certificate of registration number and the caller's name and professional qualifications to the provider or the provider's named independent review representative.

(g) The IRO's procedures must specify that specific information exchanged for the purpose of conducting a review will be considered confidential, be used by the IRO solely for the purposes of independent review, and may be shared by the IRO only with a provider who is under contract with the IRO to perform an independent review. The IRO's plan must specify the procedures in place to ensure confidentiality and must acknowledge that the IRO agrees to abide by any federal and state laws governing the issue of confidentiality. Summary data that does not provide sufficient information to allow identification of individual patients, providers, payors, or utilization review agents is not confidential.

(h) Medical records and patient-specific information must be maintained by the IRO in a secure area with access limited to essential personnel only. IROs must transmit and store records in compliance with the Health Insurance Portability and Accountability Act of 1996.

(i) Information generated and obtained by the IRO in the course of the review must be retained for at least four years. This requirement is not negated by the suspension or surrender of the IRO's certificate of registration or the failure to renew the certificate of registration.

(j) Destruction of documents in the custody of the IRO that contain confidential patient information or payor, physician, or provider financial data must be by a method that ensures complete destruction of the information when the organization determines that the information is no longer needed.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Sara Waitt
General Counsel
Texas Department of Insurance
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Proposal publication date: November 28, 2014
For further information, please call: (512) 676-6584

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SUBCHAPTER D. ENFORCEMENT OF INDEPENDENT REVIEW STANDARDS

28 TAC §§12.301 - 12.303

STATUTORY AUTHORITY. TDI adopts the amendments under Insurance Code §§4202.002, 4202.003, 4202.004, 4202.005, 4202.007, 4202.008, 4202.013, and 36.001. Insurance Code §4202.002(a) provides that the commissioner must promulgate standards and rules for the certification, selection, and operation of IROs to perform independent review. Insurance Code §4202.002(b) provides that the standards must ensure the qualifications and independence of each reviewer, the fairness of the procedures used by an IRO in making review determinations, and the confidentiality of medical records transmitted to an IRO.

Insurance Code §4202.003 provides that the standards adopted under Insurance Code §4202.002 must require each IRO to make the IRO's determination with respect to life-threatening conditions and non-life-threatening within the time limits in Insurance Code §4202.003.

Insurance Code §4202.004 requires an organization to submit an application in the form required by the commissioner. Insurance Code §4202.004(a) requires the IRO application form to require a description of the procedures used by the applicant to verify physician and provider credentials, including the computer processes, electronic databases, and records, if any, used and the software used by the credentialing manager for managing those processes, databases, and records. Insurance Code §4202.004(d) provides that the commissioner require each officer of the applicant and each owner or shareholder of the applicant or, if the purchaser is publicly held, each owner or shareholder described by subsection (a)(1), to submit a complete and legible set of fingerprints to TDI for the purpose of obtaining criminal history record information from DPS and the FBI. It also requires TDI to conduct a criminal history check of each applicant using information provided under this section, and made available to TDI by DPS, the FBI, and any other criminal justice agency under Government Code Chapter 411. Insurance Code §4202.004(e), in part, requires that an application for certification for review of health care services requires an IRO accredited by an organization described in Insurance Code §4202.004(b) to provide TDI with evidence of the accreditation. It also requires the commissioner to consider the evidence if the accrediting organization publishes and makes available to the commissioner the organization's requirements for and methods used in the accreditation process, and authorizes an IRO applicant that is accredited by an organization to request that TDI expedite the application process. Insurance Code §4202.004(f) authorizes a certified IRO that becomes accredited by an organization described by subsection (b) to provide evidence of that accreditation to TDI and requires that the evidence be maintained in TDI's file related to the IRO's certification. Insurance Code §4202.004(g) requires an IRO to apply for renewal of its certification of registration every two years.

Insurance Code §4202.005(c) requires IROs to submit information about a material change to the IRO on a form adopted by the commissioner no later than the 30th day after the date the material change occurs. It also requires the IRO, if the material change is a relocation of the IRO, to inform TDI that the location is available for inspection before the date of the relocation by TDI, and that an officer attend the inspection on TDI's request. Insurance Code §4202.007 requires the commissioner to provide ongoing oversight of the IRO to ensure continued compliance with Insurance Code Chapter 4202 and 28 TAC Chapter 12. Insurance Code §4202.008 prohibits an IRO from being a subsidiary of, or in any way owned or controlled by, a payor or a trade or professional association of payors. Insurance Code §4202.013 requires an IRO to maintain its primary office in this state. Section 36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

§12.301. Complaints, Oversight, and Information.

(a) Complaints against an IRO must be processed under the department's established procedures for investigation and resolution of complaints.

(b) As part of its oversight of IROs, the department will conduct compliance audits to ensure that IROs are complying with Insurance Code Chapters 1305 and 4202 and the rules and standards in this chapter.

(c) The department may use the authority of Insurance Code §38.001 to make inquiries of any IRO.

(d) This chapter does not limit the ability of the commissioner of workers' compensation or TDI-DWC to make inquiries, conduct audits, or receive and investigate complaints against IROs or personnel employed by or under contract with IROs to perform independent review to determine compliance with or violations of Labor Code Title 5 or applicable TDI-DWC rules.

§12.302. Administrative Violations.

(a) If the department believes that any person conducting independent review is in violation of Insurance Code Chapters 1305 or 4202; any provision of Labor Code Chapters 408, 409, or 413; or this chapter or Chapters 19, 133, 134, 140, or 180 of this title, respectively, the department will notify the IRO of the alleged violation and may compel the production of any and all documents or other information necessary to determine whether or not a violation has taken place.

(b) The department or TDI-DWC may initiate appropriate proceedings under this chapter or Labor Code Title 5 and TDI-DWC rules.

(c) Proceedings under this chapter are contested cases for the purpose of Government Code Chapter 2001.

(d) If the commissioner determines that an IRO or a person conducting independent reviews has violated or is violating any provision of Insurance Code Chapter 4202 or this chapter, the commissioner may:

(1) impose sanctions under Insurance Code Chapter 82;

(2) issue a cease and desist order under Insurance Code Chapter 83; and

(3) assess administrative penalties under Insurance Code Chapter 84.

(e) If the IRO has violated or is violating any provisions of the Insurance Code other than Chapter 4202, or applicable rules of the department, sanctions may be imposed under Insurance Code Chapters 82, 83, or 84.

(f) The commission of fraudulent or deceptive acts or omissions in obtaining, attempting to obtain, or using a certificate of registration or designation as an IRO is a violation of Insurance Code Chapter 4202.

(g) If the commissioner determines that an IRO or a person conducting independent review has violated or is violating any provision of Labor Code Title 5 or rules adopted under Labor Code Title 5, the commissioner may impose sanctions or penalties under Labor Code Title 5.

(h) This chapter does not limit the ability of the commissioner of workers' compensation or TDI-DWC to make inquiries, conduct audits, receive and investigate complaints, and take all actions permitted by the Labor Code against an IRO or personnel employed by or under contract with an IRO to perform independent review to determine compliance with Labor Code Title 5 and applicable TDI-DWC rules.

§12.303. Surrender of Certificate of Registration.

(a) Under Insurance Code §4202.002(c)(2)(B) an IRO that enters into an agreed order with the department that includes surrendering its certificate of registration, must surrender the organization's certificate of registration immediately on the request of the department.

(b) Independent reviews will not be assigned to an IRO during a surrender of the IRO's certificate of registration.

(c) Surrender of an IRO's certificate of registration does not negate the requirement in §12.208(i) of this subchapter that an IRO must retain information generated and obtained by the IRO in the course of a review for at least four years or the obligation to complete all independent reviews assigned to the IRO before its the surrender of the certificate of registration.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Sara Waitt
General Counsel
Texas Department of Insurance
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SUBCHAPTER E. FEES AND PAYMENT

28 TAC §§12.401 - 12.406

STATUTORY AUTHORITY. TDI adopts the amendments under Insurance Code §§4202.002, 4202.003, 4202.004, 4202.005, 4202.007, 4202.008, 4202.013, and 36.001. Insurance Code §4202.002(a) provides that the commissioner must promulgate standards and rules for the certification, selection, and operation of IROs to perform independent review. Insurance Code §4202.002(b) provides that the standards must ensure the qualifications and independence of each reviewer, the fairness of the procedures used by an IRO in making review determinations, and the confidentiality of medical records transmitted to an IRO.

Insurance Code §4202.003 provides that the standards adopted under Insurance Code §4202.002 must require each IRO to make the IRO's determination with respect to life-threatening conditions and non-life-threatening within the time limits in Insurance Code §4202.003.

Insurance Code §4202.004 requires an organization to submit an application in the form required by the commissioner. Insurance Code §4202.004(a) requires the IRO application form to require a description of the procedures used by the applicant to verify physician and provider credentials, including the computer processes, electronic databases, and records, if any, used and the software used by the credentialing manager for managing those processes, databases, and records. Insurance Code §4202.004(d) provides that the commissioner require each officer of the applicant and each owner or shareholder of the applicant or, if the purchaser is publicly held, each owner or shareholder described by subsection (a)(1), to submit a complete and legible set of fingerprints to TDI for the purpose of obtaining criminal history record information from DPS and the FBI. It also requires TDI to conduct a criminal history check of each applicant using information provided under this section, and made available to TDI by DPS, the FBI, and any other criminal justice agency under Government Code Chapter 411. Insurance Code §4202.004(e), in part, requires that an application for certification for review of health care services requires an IRO accredited by an organization described in Insurance Code §4202.004(b) to provide TDI with evidence of the accreditation. It also requires the commissioner to consider the evidence if the accrediting organization publishes and makes available to the commissioner the organization's requirements for and methods used in the accreditation process, and authorizes an IRO applicant that is accredited by an organization to request that TDI expedite the application process. Insurance Code §4202.004(f) authorizes a certified IRO that becomes accredited by an organization described by subsection (b) to provide evidence of that accreditation to TDI and requires that the evidence be maintained in TDI's file related to the IRO's certification. Insurance Code §4202.004(g) requires an IRO to apply for renewal of its certification of registration every two years.

Insurance Code §4202.005(c) requires IROs to submit information about a material change to the IRO on a form adopted by the commissioner no later than the 30th day after the date the material change occurs. It also requires the IRO, if the material change is a relocation of the IRO, to inform TDI that the location is available for inspection before the date of the relocation by TDI, and that an officer attend the inspection on TDI's request. Insurance Code §4202.007 requires the commissioner to provide ongoing oversight of the IRO to ensure continued compliance with Insurance Code Chapter 4202 and 28 TAC Chapter 12. Insurance Code §4202.008 prohibits an IRO from being a subsidiary of, or in any way owned or controlled by, a payor or a trade or professional association of payors. Insurance Code §4202.013 requires an IRO to maintain its primary office in this state. Section 36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

§12.401. Fees.

(a) The commissioner will establish, administer, and enforce the application and renewal of certificate of registration fees under this

section in amounts not greater than necessary to cover the cost of administration of this chapter.

(b) Fees for independent review will be determined by the commissioner, and will reflect in general the market value of services rendered.

§12.402. Classification of Specialty.

Fees for independent review will be based on a two-tiered structure of specialty classifications as follows:

(1) Tier one fees will be for independent review of medical or surgical care rendered by a doctor of medicine or doctor of osteopathy.

(2) Tier two fees will be for independent review of health care services rendered in the specialties of podiatry, optometry, dental, audiology, speech-language pathology, master social work, dietetics, professional counseling, psychology, occupational therapy, physical therapy, marriage and family therapy, chiropractic, and chemical dependency counseling, and any of their subspecialties.

§12.403. Fee Amounts.

(a) Fees to be paid to IROs by utilization review agents and other payors for each independent review are as follows:

(1) tier one: $650; and

(2) tier two: $460.

(b) The IRO fees specified in subsection (a) of this section include an amended notification of decision if the department determines the initial notification of decision is incomplete. The amended notification of decision must be filed with the department no later than five working days from the IRO's receipt of notice from the department that the initial notification of decision is incomplete.

§12.404. Payment of Fees.

(a) IROs must bill utilization review agents or payors, as appropriate, directly for fees for independent review.

(b) IROs may also bill utilization review agents or payors, as appropriate, for copy expenses related to reviews as set out in §12.205 of this chapter.

(c) Utilization review agents or payors, as appropriate, must pay IROs directly within 15 days of receipt of invoice. For workers' compensation network and nonnetwork disputes, the IRO fees must be paid under §133.308 of this title.

(d) Utilization review agents may recover from the payors the costs associated with the independent review.

§12.405. Failure To Pay Invoice.

Failure by utilization review agents or payors, as appropriate, to pay invoices from an IRO within 15 days of receipt is a violation of §12.404(c) of this subchapter and subject to enforcement action and penalty under §12.302 of this chapter.

§12.406. Application and Renewal of Certificate of Registration Fees.

The fee to be paid to the department for the original application for a certificate of registration as an IRO is $1000. The fee for renewal of a certificate of registration is $400. There is no fee for reporting a material change to a certificate of registration as an IRO.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Sara Waitt
General Counsel
Texas Department of Insurance
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For further information, please call: (512) 676-6584

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SUBCHAPTER F. RANDOM ASSIGNMENT OF INDEPENDENT REVIEW ORGANIZATIONS

28 TAC §12.501, §12.502

STATUTORY AUTHORITY. TDI adopts the amendments under Insurance Code §§4202.002, 4202.003, 4202.004, 4202.005, 4202.007, 4202.008, 4202.013, and 36.001. Insurance Code §4202.002(a) provides that the commissioner must promulgate standards and rules for the certification, selection, and operation of IROs to perform independent review. Insurance Code §4202.002(b) provides that the standards must ensure the qualifications and independence of each reviewer, the fairness of the procedures used by an IRO in making review determinations, and the confidentiality of medical records transmitted to an IRO.

Insurance Code §4202.003 provides that the standards adopted under Insurance Code §4202.002 must require each IRO to make the IRO's determination with respect to life-threatening conditions and non-life-threatening within the time limits in Insurance Code §4202.003.

Insurance Code §4202.004 requires an organization to submit an application in the form required by the commissioner. Insurance Code §4202.004(a) requires the IRO application form to require a description of the procedures used by the applicant to verify physician and provider credentials, including the computer processes, electronic databases, and records, if any, used and the software used by the credentialing manager for managing those processes, databases, and records. Insurance Code §4202.004(d) provides that the commissioner require each officer of the applicant and each owner or shareholder of the applicant or, if the purchaser is publicly held, each owner or shareholder described by subsection (a)(1), to submit a complete and legible set of fingerprints to TDI for the purpose of obtaining criminal history record information from DPS and the FBI. It also requires TDI to conduct a criminal history check of each applicant using information provided under this section, and made available to TDI by DPS, the FBI, and any other criminal justice agency under Government Code Chapter 411. Insurance Code §4202.004(e), in part, requires that an application for certification for review of health care services requires an IRO accredited by an organization described in Insurance Code §4202.004(b) to provide TDI with evidence of the accreditation. It also requires the commissioner to consider the evidence if the accrediting organization publishes and makes available to the commissioner the organization's requirements for and methods used in the accreditation process, and authorizes an IRO applicant that is accredited by an organization to request that TDI expedite the application process. Insurance Code §4202.004(f) authorizes a certified IRO that becomes accredited by an organization described by subsection (b) to provide evidence of that accreditation to TDI and requires that the evidence be maintained in TDI's file related to the IRO's certification. Insurance Code

§4202.004(g) requires an IRO to apply for renewal of its certification of registration every two years.

Insurance Code §4202.005(c) requires IROs to submit information about a material change to the IRO on a form adopted by the commissioner no later than the 30th day after the date the material change occurs. It also requires the IRO, if the material change is a relocation of the IRO, to inform TDI that the location is available for inspection before the date of the relocation by TDI, and that an officer attend the inspection on TDI's request. Insurance Code §4202.007 requires the commissioner to provide ongoing oversight of the IRO to ensure continued compliance with Insurance Code Chapter 4202 and 28 TAC Chapter 12. Insurance Code §4202.008 prohibits an IRO from being a subsidiary of, or in any way owned or controlled by, a payor or a trade or professional association of payors. Insurance Code §4202.013 requires an IRO to maintain its primary office in this state. Section 36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

§12.501. Requests for Independent Review.

Requests for independent review must be made to the department on behalf of the patient by the utilization review agent under Insurance Code Chapter 4201, Subchapter I and Chapter 19, Subchapters R and U of this title; Chapter 10 of this title; Chapter 133 of this title; Chapter 134 of this title; or by a health insurance carrier, health maintenance organization, or managed care entity under Civil Practice and Remedies Code §88.003(c).

§12.502. Random Assignment.

(a) The department will randomly assign each request for independent review to an IRO and will notify the utilization review agent and the health insurance carrier, health maintenance organization, managed care entity, or other payor requesting the independent review, the IRO, the patient or a representative of the patient, and the provider of record of the assignment.

(b) The department will screen payors and utilization review agents for potential conflicts of interest with the IRO before making an assignment to the IRO. The IRO must screen its physicians and other providers conducting independent review for potential conflicts of interest. The department has the discretion to determine whether conflicts exist.

(c) IROs will be added to the list from which random assignments for independent reviews are made in order of the date of issuance of the certificate of registration by the department.

(d) The department will randomly assign IROs chronologically from the list of IROs, with ultimate assignment to the first in line with no apparent conflicts of interest.

(e) Assignment of an independent review to an IRO moves the IRO receiving the assignment to the bottom of the assignment list.

(f) Independent reviews will not be assigned:

(1) to an IRO during the 30 days before the anniversary date of the issuance of the IRO's certificate of registration unless the completed application for renewal of its certificate of registration and the application fee have been received by the department; or

(2) during the time that an IRO has surrendered its certificate of registration under §12.303 of this chapter and Insurance Code §4202.002(c)(2)(B).

(g) Nonselection for presence of conflicts of interest does not move the IRO to the bottom of the assignment list. The IRO retains its chronological position until selected for independent review.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Sara Waitt
General Counsel
Texas Department of Insurance
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For further information, please call: (512) 676-6584

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 58. OYSTERS, SHRIMP, AND FINFISH

SUBCHAPTER B. STATEWIDE SHRIMP FISHERY PROCLAMATION

31 TAC §§58.162 - 58.165

The Texas Parks and Wildlife Commission in a duly noticed meeting on March 26, 2015 adopted amendments to §§58.162 - 58.165, concerning the Statewide Shrimp Fishery Proclamation, without changes to the proposed text as published in the February 20, 2015, issue of the *Texas Register* (40 TexReg 798).

The amendments extend the lawful shrimping hours for commercial (bay and bait) and recreational shrimping in inside waters during the spring and increase the bag limit for bay shrimping during the spring season.

Under current rule, the lawful shrimping hours for recreational and commercial shrimping during the Spring season in inside waters are from 30 minutes before sunrise until 2:00 p.m., and the daily bag limit is 200 pounds for bait shrimping and 600 pounds for bay shrimping. The amendments extend the lawful shrimping hours for all shrimping until 30 minutes after sunset and increase the daily bag limit for bay shrimpers to 800 pounds of shrimp per day.

Shrimp are a critical part of healthy coastal ecosystems in Texas. They are a food source for game fish that support an economically significant sport fishery and are the basis for an important commercial fishery. In 1985 the Texas Legislature delegated to the Texas Parks and Wildlife Commission (Commission) the authority to manage the shrimp fishery in Texas, directing the department to achieve optimum yield, defined as the amount of shrimp that the fishery will produce on a continuing basis to achieve the maximum economic benefits as modified by relevant social or ecological factors. The 1989 Shrimp Fisheries Management Plan documented the fact that increased fishing effort was resulting in the harvest of more and more shrimp at smaller and

smaller sizes, creating legitimate concern for the long-term sustainability of shrimp stocks. To begin addressing the problem, the department worked with the regulated community and the 74th Texas Legislature to establish a limited entry and license buyback program for the commercial bay and bait shrimp fishery, which was established in 1995. Since then, the voluntary license buyback program has retired approximately 75% of the original licenses and has been a crucial component in protecting the fishery from overharvest.

In 2000, the Commission adopted rules to address the documented growth overfishing of shrimp stocks. Growth overfishing occurs when the total yield or mean size decreases with increasing effort; in other words, shrimp were being caught before they could grow to a sufficiently large size. The resulting reduction in the number of adult shrimp entering the spawning group in the Gulf of Mexico was a threat to the sustainability of the shrimp fishery, and failure to reverse those trends would have resulted in serious biological problems in both the commercial shrimp industry and on the recreational fishing and tourism industries. The rules adopted in 2000 (in concert with the license buyback program) have been proven effective in reversing the growth overfishing of shrimp stocks.

At the August 2014 meeting of the Commission, members of the shrimping community asked the Commission to investigate the possibility of liberalizing shrimping regulations, requesting a number of changes. In response, the department held a total of seven scoping meetings at points along the Texas coast in order to directly communicate with the shrimping community and listen to their concerns and suggestions. The two most frequently heard suggestions were to extend shrimping hours and increase bag limits in inside waters. The department concurs that these changes can be implemented without posing risk to the shrimp fishery or bycatch species. Department data indicate that for Spring season landings, 73% of bay shrimpers land 200 pounds of shrimp or less per day, and 80% of the bait shrimp landings are 100 pounds or less. Based on these data, the department concludes that the extension of lawful shrimping hours and the increase in the daily bag limit will not result in harvest sufficient to negatively impact shrimp stocks or the gulf migration and should not adversely affect bycatch species.

The amendments will function by extending the lawful shrimping hours for all shrimping until 30 minutes after sunset and by increasing the daily bag limit for bay shrimping to 800 pounds of shrimp per day.

Summary of Public Comment.

The department received 78 comments opposing adoption of the proposed amendments. Of those comments, 49 articulated a specific reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

Fourteen commenters opposed adoption and stated that the proposed amendments would increase bycatch (mortality of nontarget species). The department disagrees with the comments and responds that although some increase in bycatch can be expected as a result of increased effort, department data indicate it will be insignificant at the population scale for any species. No changes were made as a result of the comments.

Twelve commenters opposed adoption and stated either that shrimp populations cannot sustain additional harvest or there are not enough shrimp to justify the increase in bag limit/extension of fishing hours. The department disagrees with the comments and responds that the extension of shrimping hours and increase in bag limit, based on historical harvest and effort data trends, will not result in overfishing of shrimp or negative reproduction impacts. No changes were made as a result of the comments.

Seven commenters opposed adoption and stated that the proposed amendments will result in harm to other species that depend on shrimp as a food source. The department disagrees with the comments and responds that current effort and harvest trends indicate that extending the shrimping hours and increasing the bag limits will not result in impacts to shrimp-dependent species. No changes were made as a result of the comments.

Four commenters opposed adoption and stated that shrimping should be prohibited in all bay systems. The department disagrees with the comments and responds that under Parks and Wildlife Code, Chapter 77, the department is required to conduct a continuous research program involving all aspects of the shrimp fishery and to implement a shrimp management plan before promulgating rules governing shrimping. The department's data generated from the continuous research program indicate that a managed harvest of shrimp resources can be provided in the bay fishery without endangering shrimp populations. No changes were made as a result of the comments.

Three commenters opposed adoption and stated that the proposed amendments would "ruin the bays." The department disagrees with the comments and responds that the department is charged with protecting and conserving coastal resources and bases management decisions on the best available science and data. On that basis, the department believes that the rules as adopted will not result in negative impacts to bay ecosystems. No changes were made as a result of the comments.

Three commenters opposed adoption and stated that shrimping hours and bag limits should be reduced. The department disagrees with the comments and responds that there is no biological reason to reduce shrimping hours or bag limits. No changes were made as a result of the comments.

Two commenters opposed adoption and stated that the department's justification for the rules was based on bad science. The department disagrees with the comments and responds that the department maintains a robust, year-round data collection and analysis effort that employs the best available science in determining the need for and extent of management actions; however, the department will continue to monitor populations. No changes were made as a result of the comments.

Two commenters opposed adoption and stated that the proposed amendments would have the effect of negating the benefits of the department's license buyback program. The department disagrees with the comments and responds that the purpose of the license buyback program is to protect the fishery from overharvest. Department data indicate that overharvest is not occurring and will not occur as a result of the rules as adopted. No changes were made as a result of the comments.

Two commenters opposed adoption and stated that extending the legal shrimping hours would encourage people to commit violations. The department disagrees with the comment and responds that the rule as adopted is not intended to encourage anyone to violate and that department law enforcement personnel will enforce the new legal shrimping hours just as vigorously as the previous regulations. No changes were made as a result of the comments.

The Texas Shrimp Association commented in opposition to the portion of the proposed amendments that extend lawful shrimping hours.

The Matagorda County Commissioners Court commented in support of the proposed amendments.

Statutory Authority

The amendments are adopted under Parks and Wildlife Code, Chapter 77, which provides the Commission with authority to regulate the catching, possession, purchase, and sale of shrimp.

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 April 24, 2015.

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Ann Bright
General Counsel
Texas Parks and Wildlife Department
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For further information, please call: (512) 389-4775

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 15. DRIVER LICENSE RULES
SUBCHAPTER C. EXAMINATION REQUIREMENTS

37 TAC §15.62

The Texas Department of Public Safety (the department) adopts amendments to §15.62, concerning Additional Requirements. The amendments are adopted without changes to the proposed text as published in the February 27, 2015, issue of the *Texas Register* (40 TexReg 905) and will not be republished.

These amendments are intended to clarify the requirements for completion of the Impact Texas Teen Drivers (ITTD) program for all applicants that complete an approved parent taught or minor and adult driver education course, regardless of age.

No comments were received regarding the adoption of these amendments.

These amendments are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Texas Transportation Code, §§521.142, 521.1601, 521.165, and 521.205.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TRD-201501394
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
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For further information, please call: (512) 424-5848

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SUBCHAPTER K. INTERAGENCY AGREEMENTS

37 TAC §15.171

The Texas Department of Public Safety (the department) adopts amendments to §15.171, concerning Identifying Document for Offenders/Memorandum of Understanding. The amendments are adopted without changes to the proposed text as published in the February 27, 2015, issue of the *Texas Register* (40 TexReg 906) and will not be republished.

The adopted amendment is intended to delete the attached graphic from the rule. Figure: 37 TAC §15.171(c) represents a previous version of the memorandum of understanding with the Texas Department of Criminal Justice (TDCJ) and Texas Department of State Health Services (DSHS) for the issuance of personal identification certificates to inmates preparing for release. As stated in the rule, the current version of the memorandum of understanding is filed with the department, TDCJ, and DSHS and may be reviewed during regular business hours.

No comments were received regarding the adoption of these amendments.

These amendments are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Texas Government Code, §501.0165.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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D. Phillip Adkins
General Counsel
Texas Department of Public Safety
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PART 11. TEXAS JUVENILE JUSTICE DEPARTMENT

CHAPTER 380. RULES FOR STATE-OPERATED PROGRAMS AND FACILITIES
SUBCHAPTER B. TREATMENT
DIVISION 2. PROGRAMMING FOR YOUTH WITH SPECIALIZED TREATMENT NEEDS

37 TAC §380.8787

The Texas Juvenile Justice Department (TJJD) adopts amendments to §380.8787, relating to Sex Offender Risk Assessment, without changes to the proposed text as published in the January 23, 2015, issue of the *Texas Register* (40 TexReg 371).

The justification for these amendments is the availability of up-to-date rules that more accurately reflect TJJD's current organizational structure and practices.

The amended subsection (c) clarifies that the sex offender risk assessment used by TJJD is a validated instrument.

The amended subsection (d) clarifies that there is no requirement for staff to be certified in administering the risk assessment instrument. Staff must be trained by a qualified trainer, but there is no certification process for those who are trained.

TJJD did not receive any public comments on the proposal.

The amended section is adopted under Texas Human Resources Code §242.003, which authorizes TJJD to adopt rules appropriate to the proper accomplishment of its functions and to adopt rules for governing TJJD schools, facilities, and programs. The section is also adopted under Texas Code of Criminal Procedure §62.053, which requires TJJD to determine a youth's level of risk to the community using the sex offender screening tool developed or selected under §62.007 and assign to the person a numeric risk level of one, two, or three. The section is also adopted under Texas Code of Criminal Procedure §62.007, which allows TJJD to override a risk level under certain circumstances.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TRD-201501422
Jill Mata
General Counsel
Texas Juvenile Justice Department
Effective date: May 15, 2015
Proposal publication date: January 23, 2015
For further information, please call: (512) 490-7014

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 §195.61, concerning Method of Payment for Parole Supervision and Administrative Fees. This review is conducted pursuant to Texas Government Code §2001.039, which requires rule review every four years.

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-201501472
Sharon Howell
General Counsel
Texas Department of Criminal Justice
Filed: April 28, 2015

♦ ♦ ♦

Employees Retirement System of Texas

Title 34, Part 4

The Employees Retirement System of Texas will review and consider whether to re-adopt, re-adopt with amendments, or repeal 34 Texas Administrative Code Chapter 61, Terms and Phrases, in accordance with Chapter 815 of the Texas Government Code. This review is done pursuant to Texas Government Code §2001.039.

The Board will assess whether the reason(s) for adopting or re-adopting this chapter continues to exist. Each section of the chapter will be reviewed to determine whether it is obsolete, reflects current legal and policy considerations, reflects current general provisions in the governance of the Board, and/or whether it is in compliance with Chapter 2001 of the Texas Government Code (Administrative Procedure Act).

Comments on the review may be submitted in writing within 30 days following the publication of this rule review in the *Texas Register* to Paula A. Jones, General Counsel and Chief Compliance Officer, Employees Retirement System of Texas, P.O. Box 13207, Austin, Texas 78711-3207 or you may email Ms. Jones at *paula.jones@ers.state.tx.us.* The deadline for receiving comments is Monday, June 8, 2015, at 10:00 a.m. Any proposed changes to the sections of this chapter as a result of the review will be published in the Proposed Rules section of the *Texas Register* and will be open for an additional 30-day public comment period prior to final adoption of any repeal, amendment, or new section.

TRD-201501415
Paula A. Jones
General Counsel and Chief Compliance Officer
Employees Retirement System of Texas
Filed: April 24, 2015

♦ ♦ ♦

The Employees Retirement System of Texas will review and consider whether to re-adopt, re-adopt with amendments, or repeal 34 Texas Administrative Code Chapter 63, Board of Trustees, in accordance with Chapter 815 of the Texas Government Code. This review is done pursuant to Texas Government Code §2001.039.

The Board will assess whether the reason(s) for adopting or re-adopting this chapter continues to exist. Each section of the chapter will be reviewed to determine whether it is obsolete, reflects current legal and policy considerations, reflects current general provisions in the governance of the Board, and/or whether it is in compliance with Chapter 2001 of the Texas Government Code (Administrative Procedure Act).

Comments on the review may be submitted in writing within 30 days following the publication of this rule review in the *Texas Register* to Paula A. Jones, General Counsel and Chief Compliance Officer, Employees Retirement System of Texas, P.O. Box 13207, Austin, Texas 78711-3207 or you may email Ms. Jones at *paula.jones@ers.state.tx.us.* The deadline for receiving comments is Monday, June 8, 2015, at 10:00 a.m. Any proposed changes to the sections of this chapter as a result of the review will be published in the Proposed Rules section of the *Texas Register* and will be open for an additional 30-day public comment period prior to final adoption of any repeal, amendment, or or new section.

TRD-201501416
Paula A. Jones
General Counsel and Chief Compliance Officer
Employees Retirement System of Texas
Filed: April 24, 2015

♦ ♦ ♦

The Employees Retirement System of Texas will review and consider whether to re-adopt, re-adopt with amendments, or repeal 34 Texas Administrative Code Chapter 65, Executive Director, in accordance with Chapter 815 of the Texas Government Code. This review is done pursuant to Texas Government Code §2001.039.

The Board will assess whether the reason(s) for adopting or re-adopting this chapter continues to exist. Each section of the chapter will be

reviewed to determine whether it is obsolete, reflects current legal and policy considerations, reflects current general provisions in the governance of the Board, and/or whether it is in compliance with Chapter 2001 of the Texas Government Code (Administrative Procedure Act).

Comments on the review may be submitted in writing within 30 days following the publication of this rule review in the *Texas Register* to Paula A. Jones, General Counsel and Chief Compliance Officer, Employees Retirement System of Texas, P.O. Box 13207, Austin, Texas 78711-3207 or you may email Ms. Jones at *paula.jones@ers.state.tx.us*. The deadline for receiving comments is Monday, June 8, 2015, at 10:00 a.m. Any proposed changes to the sections of this chapter as a result of the review will be published in the Proposed Rules section of the *Texas Register* and will be open for an additional 30-day public comment period prior to final adoption of any repeal, amendment, or or new section.

TRD-201501417
Paula A. Jones
General Counsel and Chief Compliance Officer
Employees Retirement System of Texas
Filed: April 24, 2015

♦ ♦ ♦

The Employees Retirement System of Texas will review and consider whether to re-adopt, re-adopt with amendments, or repeal 34 Texas Administrative Code Chapter 67, Hearings on Disputed Claims, in accordance with Chapter 815, Texas Government Code, and Chapter 1551, Texas Insurance Code. This review is done pursuant to Texas Government Code §2001.039.

The Board will assess whether the reason(s) for adopting or re-adopting this chapter continues to exist. Each section of the chapter will be reviewed to determine whether it is obsolete, reflects current legal and policy considerations, reflects current general provisions in the governance of the Board, and/or whether it is in compliance with Chapter 2001 of the Texas Government Code (Administrative Procedure Act).

Comments on the review may be submitted in writing within 30 days following the publication of this rule review in the *Texas Register* to Paula A. Jones, General Counsel and Chief Compliance Officer, Employees Retirement System of Texas, P.O. Box 13207, Austin, Texas 78711-3207 or you may email Ms. Jones at *paula.jones@ers.state.tx.us*. The deadline for receiving comments is Monday, June 8, 2015, at 10:00 a.m. Any proposed changes to the sections of this chapter as a result of the review will be published in the Proposed Rules section of the *Texas Register* and will be open for an additional 30-day public comment period prior to final adoption of any repeal, amendment, or new section.

TRD-201501418
Paula A. Jones
General Counsel and Chief Compliance Officer
Employees Retirement System of Texas
Filed: April 24, 2015

♦ ♦ ♦

The Employees Retirement System of Texas will review and consider whether to re-adopt, re-adopt with amendments, or repeal 34 Texas Administrative Code Chapter 85, Flexible Benefits, in accordance with Chapter 1551 of the Texas Insurance Code. This review is done pursuant to Texas Government Code §2001.039.

The Board will assess whether the reason(s) for adopting or re-adopting this chapter continues to exist. Each section of the chapter will be reviewed to determine whether it is obsolete, reflects current legal and policy considerations, reflects current general provisions in the governance of the Board, and/or whether it is in compliance with Chapter 2001 of the Texas Government Code (Administrative Procedure Act).

Comments on the review may be submitted in writing within 30 days following the publication of this rule review in the *Texas Register* to Paula A. Jones, General Counsel and Chief Compliance Officer, Employees Retirement System of Texas, P.O. Box 13207, Austin, Texas 78711-3207 or you may email Ms. Jones at *paula.jones@ers.state.tx.us*. The deadline for receiving comments is Monday, June 8, 2015, at 10:00 a.m. Any proposed changes to the sections of this chapter as a result of the review will be published in the Proposed Rules section of the *Texas Register* and will be open for an additional 30-day public comment period prior to final adoption of any repeal, amendment, or new section.

TRD-201501419
Paula A. Jones
General Counsel and Chief Compliance Officer
Employees Retirement System of Texas
Filed: April 24, 2015

♦ ♦ ♦

Adopted Rule Reviews

Department of Information Resources

Title 1, Part 10

The Texas Department of Information Resources (department or DIR) has completed its review of 1 Texas Administrative Code (TAC) Chapter 202, concerning Information Security Standards, pursuant to the Texas Government Code, §2001.039. DIR proposed the review of Chapter 202 in the September 6, 2013, issue of the *Texas Register* (38 TexReg 5907).

As a result of the rule review, the department repeals and adopts amendments to Chapter 202. The department published the amended chapter in the November 7, 2014, issue of the *Texas Register* (39 TexReg 8642-8648). The Board adopted the amended chapter on February 18, 2015, and the adoption notice was published in the March 13, 2015, issue of the *Texas Register* (40 TexReg 1360-1365).

DIR received comments related to the review of Chapter 202. The following is a summary of the public comments received and the corresponding responses.

Comment on §202.1(11): One commenter from a state agency recommended removing the word "virtually" since destruction in IT implies destroying something so that it is technologically infeasible to recover data.

Agency Response to Comment on §202.1(11): The department accepts the suggested modification and will replace the word "virtually" with the suggested phrase "technologically infeasible."

Comment on §202.1(11): One commenter from a state agency recommended adding a definition of "sanitization" since destruction implies physical act, as opposed to "sanitization" which implies a logical act (e.g.: overwriting).

Agency Response to Comment on §202.1(11): The phrase "sanitization" is not used within the rule. Thus the department will not include the suggested definition in the rule.

Comment on §202.1(22): One commenter from a state agency suggested changing the definition of an information system to accommodate a standalone device.

Agency Response to Comment on §202.1(22): For purposes of Chapter 202, a standalone device is an "Information Resource". Interconnected Information Resources comprise a system. The suggested change is not accepted.

Comment on §202.1(26): One commenter from a state agency asked whether the rule is setting a statewide data classification scheme.

Agency Response to Comment on §202.1(26): The inclusion of definitions for High, Moderate, and Low Impact Information Resources is to provide agencies and institutions of higher education a standard set of terms for assessing the criticality of an information resource. It is not designed to set a statewide data classification scheme.

Comment on §202.1(26): One commenter from a state agency questioned the definition of a Mission Critical Information Resource as it relates to High Impact Information Resources.

Agency Response to Comment on §202.1(26): Due to the confusion and ambiguity created by the term Mission Critical Information Resources, the department removed the definition of this term.

Comment on §202.20(1): One commenter from a state agency recommended being less prescriptive on the title and suggested the alternate wording: "designate an agency executive information security head who has the experience, explicit authority, and the duty to administer...and if this agency is a part of a "System", this individual would have a reporting relationship to the head of the System-level information security head."

Agency Response to Comment on §202.20(1): The department considered this comment and will not make a modification to the rule.

Comment on §202.21(a): A department employee found the word "that" repeated and recommended striking one instance.

Agency Response to Comment on §202.21(a): The department concurs with the recommendation and will strike the second instance of the word "that". The same change will be made to §202.71(a).

Comment on §202.21(b)(9): One commenter from a state agency stated this "new requirement will have a staffing resource impact on agency information security offices for establishing new processes; therefore, time is needed for compliance." The commenter recommended adding the phrase, "implementation will be on a risk-based phased approach."

Agency Response to Comment on §202.21(b)(9): The department considered this comment and modified the rule to read "coordinating the review of data security requirements, specifications, and, if applicable, third-party risk assessment of any new computer applications or services that receive, maintain, and/or share confidential data." The department feels that having the International Organization for Standardization (ISO) coordinate the review allows for the workload to be better distributed. The same change will be made to §202.71(b)(9).

Comment on §202.21(b)(10): One commenter from a state agency stated the "in place" reference equates to security findings being fixed prior to purchase. This could be problematic with time to market needs and the ability to address all security issues prior to purchase. The commenter recommended modifying the language as "security requirements be identified and risk mitigation plans be developed and contractually agreed and obligated prior to the purchase...."

Agency Response to Comment on §202.21(b)(10): The department concurs with the recommendation and will modify the language with the suggested wording above. The same change will be made to §202.71(b)(10).

Comment on §202.21(b)(10): With the striking of the definition of a Mission Critical Information Resource, in response to a comment received, department staff commented the use of mission critical in this rule could be confusing.

Agency Response to Comment on §202.21(b)(10): The department concurs with the recommendation and will delete the phrase Mission Critical. The same change will be made to §202.71(b)(10).

Comment on §202.21(b)(10): One commenter from a state agency stated the proposed rule doesn't take into account new technologies that are not on the market yet, nor does it address emerging threats. The commenter further stated a risk based approach is better suited to state agency environments.

Agency Response to Comment on §202.21(b)(10): The department believes the comments are addressed by the deletion of the phrase Mission Critical, resulting from the previous comment.

Comment on §202.22: One commenter from a state agency recommended adding "In consultation with the agency Information Resource Manager (IRM) and ISO" to the rule.

Agency Response to Comment on §202.22: The department concurs with the recommendation and will add the suggested language. The same change will be made to §202.72.

Comment on §202.22(2)(D): One commenter from a state agency stated custodians providing security training could be difficult, because their skills vary. The commenter further recommended "custodians reinforce employee information security training with the agency's information security requirements and practices...."

Agency Response to Comment on §202.22(2)(D): The department considered this comment and will not make a modification to the rule.

Comment on §202.23(b)(1)(A): One commenter from a state agency stated the rule never actually requires that the information in the reports be reported to the department.

Agency Response to Comment on §202.23(b)(1)(A): The department considered this comment and modified the section to reflect explicit reporting responsibilities. The same change will be made to §202.73(b)(1)(A).

Comment on §202.23(b)(1)(A): One commenter from a state agency recommended adding "at a minimum..." to the reporting requirements of the immediate supervisor and ISO.

Agency Response to Comment on §202.23(b)(1)(A): The department considered this comment but feels it is best for the ISO at each agency to establish their internal process for handling incidents.

Comment on §202.23(b)(1)(A): One commenter from a state agency recommended the term "department" be identified with the Department of Information Resources' CISO office, where applicable.

Agency Response to Comment on §202.23(b)(1)(A): The term department is defined in §202.1(10) as the Department of Information Resources. Changes were made throughout the rule to ensure "department" was capitalized consistently.

Comment on §202.23(b)(1)(A): An employee of the department recommended defining more explicitly the types of criminal violations that must be reported to the department.

Agency Response to Comment on §202.23(b)(1)(A): The department concurs with the recommendation and will modify the language to specify only violations of criminal law that stem from state or federal information security or privacy laws must be reported. The same change will be made to §202.73(b)(1)(A).

Comment on §202.24(b)(3): Several commenters from state agencies stated the language indicated a formal, face-to-face training, which

may be cost prohibitive in large organizations. One commenter from a state agency recommended modifying the rule to include "a new employee program which provides security awareness and informs new employees...."

Agency Response to Comment on §202.24(b)(3): The department concurs with the comments and will make the following modification to the rule: strike the reference to new employee orientation and add "during onboarding process." This should allow agencies the freedom to provide security awareness training in multiple formats. The same change will be made to §202.74(b)(3).

Comment on §202.25(3) and (4): Several state agencies commented that day-to-day details of reviewing risk assessments and vulnerability reports should be the responsibility of the ISO, not the agency head. One commenter suggested the language be modified to: "(3) Risk assessment results, vulnerability reports, and similar information shall be documented and presented to the Information Security Officer or his or her designee(s). (4) Approval of the security risk acceptance, transference, or mitigation decision shall be the responsibility of: (i) The Information Security Officer or his or her designee(s) for systems identified with a Low or Moderate residual risk. (ii) The state agency head or his or her designated representative(s) for systems identified with a High residual risk."

Agency Response to Comment on §202.25(3) and (4): The department concurs with the comments and will make the following modification to the rule: "(3) Risk assessment results, vulnerability reports, and similar information shall be documented and presented to the Information Security Officer or his or her designated representative(s). (4) Approval of the security risk acceptance, transference, or mitigation decision shall be the responsibility of: (A) the information security officer or his or her designee(s), in coordination with the information owner, for systems identified with a Low or Moderate residual risk. (B) The state agency head for all systems identified with a residual High risk." The same change will be made to §202.75(3) and (4).

Comment on §202.26(a): An employee of the department recommended making the location of the catalog less prescriptive, so that it can be placed on a protected site.

Agency Response to Comment on §202.26(a): The department concurs with the recommendation and will modify the language to reflect the suggestion. The same change will be made to §202.76(a).

Comment on §202.26(a): One commenter from a state agency stated the rule was too prescriptive and would need to be vetted by a committee that has agency representation. The commenter further recommended this be removed because each agency should determine mandatory requirements based upon the mission of the individual agency.

Agency Response to Comment on §202.26(a): The department has considered this comment, but finds the rulemaking process the appropriate place to establish statewide standards.

Comment on §202.26(c): Two commenters from state agencies stated the inclusion of this portion of the rule would be costly to state agencies and also recommended DIR continue to provide this service without a cost to the agencies.

Agency Response to Comment on §202.26(c): The department has considered this comment, but believes the rule complies with requirements of Texas Government Code §2054.133. The department will continue to provide scanning and assessment services, as funds are available.

Comment on §202.26(d)(1): One commenter from a state agency stated the rule was too prescriptive and the agency should decide which controls are applicable.

Agency Response to Comment on §202.26(d)(1): The department has considered this comment, but finds the rulemaking process the appropriate place to establish statewide standards.

Comment on §202.26(d)(1): One commenter from a state agency stated the rule was too prescriptive. The agency should determine the timeframe of compliance with new standards on a system-by-system approach based on the system's environment, complexity, cost, resources, and impact.

Agency Response to Comment on §202.26(d)(1): The department has considered this comment, but is phasing controls in over the next two years to accommodate agency planning.

Comment on §202.26(d)(4): One commenter from a state agency stated the rule was too prescriptive. The agency should determine the timeframe of compliance with new standards on a system-by-system approach based on the system's environment, complexity, cost, resources, and impact.

Agency Response to Comment on §202.26(d)(4): The department has considered this comment, but finds the timeline appropriate for agencies to either establish a method to implement the requirement or document an exception.

Comment on §202.26(e)(3): One commenter from a public institution of higher education commented the "and" connecting items (1) - (3) made the institution identify a federal requirement for each more stringent control it wanted to implement.

Agency Response to Comment on §202.26(e)(3): The department concurs with the comments and will make the following modification to the rule: (1) contain at least the applicable standards issued by the department; or (2) are consistent with applicable federal law, policies and guidelines issued under state rule, industry standards, best practices, or deemed necessary to adequately protect the information held by the agency. The same change will be made to §202.76(e)(3).

Relating to the review of Chapter 202, DIR finds that the reasons for adopting the chapter continue to exist and readopts with amendments the rules.

The department's review of 1 TAC Chapter 202 is concluded.

TRD-201501429
Martin H. Zelinsky
General Counsel
Department of Information Resources
Filed: April 27, 2015

♦ ♦ ♦

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: 31 TAC §675.23(e)(1)

TLLRWDCC §675.23—IMPORTATION FORM

TEXAS LOW-LEVEL RADIOACTIVE WASTE DISPOSAL COMPACT COMMISSION

APPLICATION FOR IMPORTATION OF NON-PARTY LOW-LEVEL RADIOACTIVE WASTE (NOTE: PURSUANT TO TEXAS HEALTH AND SAFETY CODE, §401.207(j), THIS PETITION MUST BE COMPLETED BY APPROPRIATE REPRESENTATIVES OF THE DEPARTMENT OF DEFENSE OR THE GENERATOR OF THE WASTE UNLESS THE GENERATOR IS A SMALL QUANTITY GENERATOR AS DEFINED IN 31 TAC §675.20(19), IN WHICH CASE THE PETITION MAY BE SUBMITTED BY AN APPROPRIATELY LICENSED BROKER) (Article III, Sec. 3.05(7) of the Compact)

I. **Applicant Information:**

Entity Name: _____

Contact Person, Title: _____

Phone: _____

Email: _____

Website: [address] _____

Business Address: _____

_____

_____

Mailing Address: _____

_____

_____

_____

_____

☐ Generator

☐ Broker

- o Licensed Waste Processor
- o Licensed Waste Collector

☐ Department of Defense

II. Generator Type:

☐ Industrial

☐ Academic/Research

☐ Medical

☐ Utility

☐ Government

*Is waste from a "small quantity generator"?

☐ Yes

☐ No

Import applications will generally only be granted in single fiscal-year increments. If you are seeking a term that would extend beyond the end of the current fiscal year, please explain the unusual circumstances that would justify a deviation from this general rule?

_____

_____

_____

_____

_____

III. Description of waste proposed for importation:

☐ Waste Volume (Cubic Feet):_____

Waste Radioactivity (Curies):_____

Compact and/or unaffiliated state, territory, possession, or district of the United States where the waste was generated (please list):

_____

_____

_____

_____

_____

Waste Description:

_____

Waste Classification:

Class A,

Class B, and/or

Class C

Waste Form

☐ Stable

☐ Unstable

Does the proposed waste consist solely of sealed sources?

☐ No, the waste contains no sealed sources.

☐ Yes. If the waste proposed for importation contains, but is not completely comprised of sealed sources, please explain the nature of the waste:

_____

_____

IV. Compliance

Does Applicant have any unresolved violation(s), complaint(s), unpaid fee(s), or past due report(s) with the Texas Low-Level Radioactive Waste Disposal Compact Commission?

☐ No.

☐ Yes. Please explain and attach applicable documents.

☐

Does Applicant have any unresolved violation(s), complaint(s), unpaid fee(s), or past due reports associated with radioactive waste receipt, storage, handling, management, processing, or transportation pending with any other regulatory agency with jurisdiction to regulate radioactive material including, without limitation, the Texas Commission on Environmental Quality (TCEQ)?

☐ No.

☐ Yes. Please explain and attach applicable documents.

V. Certifications

Applicant hereby certifies the following:

The information provided herein is complete, accurate, and correct.

The waste proposed for importation is not waste of international origin.

The low-level radioactive waste for which this Import Application is submitted will be packaged and shipped in accordance with applicable state and federal regulations and is acceptable for disposal at the Compact Facility.

The person submitting this Import Application is authorized by the Applicant to commit Applicant to each and every obligation and condition set forth herein and in the Agreement for Importation of Non-Party Compact Waste. A copy of a written document containing such authorization must be attached to this Import Application.

Applicant has delivered to the specified disposal facility and TCEQ a copy of this Application for Importation of Compact Waste (along with any supplement or amendment thereto).

VI. Authorized Signatory:

_____

Print or type name

_____

Signature

_____

Title

_____

Date

VII. ATTACHMENTS:

(Attachments should include all applicable licenses, authorizations, and other materials needed or are useful to fully explain the Import Application.)

Figure: 31 TAC §675.23(e)(2)

ANNEX B

TERM SHEET

(Minimum terms that must be addressed in any Waste Importation Agreement offered to the Texas Low-Level Radioactive Waste Disposal Compact Commission in connection with an Application to Import Waste).

A. The proposed beginning and ending dates.

B. Compliance with all applicable federal and state laws and rules including, without limitation, §8.03 of the Compact as compiled in Texas Health and Safety Code (THSC), Chapter 403.

C. Liability for applicants' own acts, omissions, conduct, and relationships in accordance with applicable law.

D. Acknowledgement that the Commission under any circumstances may amend or revoke the agreement with prior notice and that under emergency circumstances the Commission may suspend authorization to import with such notice as it is able to give under the circumstances.

E. Agreement shall not be assignable or transferable to any other person.

F. Agreement is subject to receipt by the Compact Facility Operator and the Commission of written certification from the Texas Commission on Environmental Quality (TCEQ) prior to the acceptance of Generator's Non-Party Compact Waste that the waste to be imported is authorized for disposal under the Compact Facility license.

G. A description of the characteristics of the waste proposed for importation including (but not limited to) volume, type, physical form, total radioactivity, and radionuclide-specific activities.

H. A representation by the applicant that it has disclosed:

(1) The existence of unresolved violations pending against the applicant with any other regulatory agency with jurisdiction to regulate radioactive material.

(2) The existence of any unresolved violation(s), complaint(s), unpaid fee(s), or past due report(s) that the applicant has with the Commission.

(3) The existence of any unresolved violation(s), complaint(s), unpaid fee(s), or past due reports that the applicant has with any other regulatory body, including, without limitation, the TCEQ.

I. An acknowledgement that a misrepresentation with respect to an item listed in H may result in the cancellation of the agreement.

J. The obligation to report immediately to the Commission any allegation of the violation of any law, rule, or regulation related to the storage, shipment, or treatment of any form of radioactive material.

K. A provision acknowledging the right of the Commission to audit or cause to be audited compliance with the agreement.

L. Agreement to comply to the extent applicable with the rules related to commingling adopted by the TCEQ in coordination with the Commission pursuant to THSC, §401.207(k).

M. An affirmation that no waste of international origin shall ever be included in the materials to be imported to the Compact Facility.

N. Any other matter required by 31 TAC §675.23 to be included in the agreement.

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

Texas Department of Agriculture

2015 Establishing Nutrition Education Grant Program Request for Applications

The Texas Department of Agriculture (TDA) is accepting applications for the **Establishing the 3E's Grant Program (E3E)** from organizations that are in good standing with the Texas Comptroller's Office to incorporate nutrition education into their programs for children.

The Texas Department of Agriculture (TDA) is authorized by §12.0027 of the Texas Agriculture Code and §38.026 of the Education Code to administer the 3E's Grant Program (3E's) to promote better health and nutrition programs and prevent obesity among children in this state. Additionally, through §33.028 of the Texas Human Resources Code, the Texas legislature has appropriated funding to TDA to provide grants for organizations that are in good standing with the Texas Comptroller of Public Accounts to incorporate nutrition education into programs for children. The objective of the program is to increase awareness of the importance of good nutrition, especially for children, and to encourage children's health and well-being through education, exercise and eating right. TDA's 3E's Grant Program consists of two program categories:

1. Establishing the 3E's Grant Program (E3E) - a program that incentivizes nutrition education programs in any childcare institution or community organization; and

2. Expanding the 3E's Grant Program (X3E) - a program that rewards nutrition education programs in public schools only.

Eligibility

To be eligible for E3E funds, an applying organization must be in good standing with TDA and must:

1. Be an organization that:

a. participates in early childhood education, including:

i. the CACFP as administered by TDA;

ii. a Head Start Program, as defined in 42 USC 9801 et seq., and 45 CFR Parts 1301-1311; or

iii. another early childhood education program; and

b. certifies that it will use awarded funds to provide nutrition education to children between the ages of three and five years old; or

2. Be a community or faith-based initiative that:

a. provides recreational, social, volunteer, leadership, mentoring, or developmental programs; and

b. certifies that it will use awarded funds to provide nutrition education to children younger than 19 years of age.

Funding Parameters

Selected projects will receive funding on a cost reimbursement basis. Funds will not be advanced to grantees. Selected applicants must have the financial capacity to pay all costs up-front.

Awards are subject to the availability of funds. If no funds are appropriated or collected for this program, applicants will be informed accordingly.

Applicants may seek up to $7,500 per campus for expenses related to implementation of the nutrition education program proposed in the application. Organizations that have more than one campus or location should submit only one application. Total funding awarded to a single parent or sponsoring organization may be limited to $25,000. Other restrictions or funding limitations may also be considered during the award process.

Application Requirements and Deadline

Application and information can be downloaded from TDA's website at: *www.texasagriculture.gov* under the Grants & Services Tab.

LATE APPLICATIONS WILL NOT BE ACCEPTED. Applicants may not supplement or amend the application after the deadline. Handwritten applications and/or narratives will not be accepted. Any portion of the application received after the deadline will not be considered or included in the review process.

One complete application packet, including the project narrative and signed application, **must be received by TDA before close of business (5:00 p.m. CST) on Thursday, June 4, 2015.** It is the applicant's responsibility to ensure the timely delivery of all required materials.

Preferred:

Electronic Versions:

Email: *Grants@TexasAgriculture.gov*

The Proposal may be sent to TDA at either of the following addresses:

By U.S. Mail:

Texas Department of Agriculture

Trade & Business Development - Grants

P.O. Box 12847

Austin, Texas 78711

By Overnight or Hand Delivery

Texas Department of Agriculture

Trade & Business Development - Grants

1700 North Congress, 11th Floor

Austin, Texas 78701

For questions regarding submission of the proposal and/or TDA requirements, please contact TDA's Grants Office, at (512) 463-6616 or by email at *Grants@TexasAgriculture.gov.*

Texas Public Information Act. Once submitted, all applications shall be deemed to be the property of the TDA and are subject to the Texas Public Information Act, Texas Government Code, Chapter 552.

TRD-201501465

Jessica Escobar
Assistant General Counsel
Texas Department of Agriculture
Filed: April 27, 2015

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National Organic Certification Cost Share Reimbursement Request for Application

Statement of Purpose:

Pursuant to Texas Agriculture Code, §12.002 and §91.009, the Texas Department of Agriculture (TDA) hereby requests applications for the National Organic Certification Cost Share Program designed to assist Texas producers with the cost of organic certification.

Program Authority:

The National Organic Certification Cost Share program (NOCCSP) is authorized under §10606(d)(1) of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 7901 note), as amended by §10004(c) of the Agriculture Act of 2014 (2014 Farm Bill; Pub. L. 113-79).

Eligibility:

Applicants must be a Texas-based business that produces organic crops. Operations must possess current USDA organic certification to be eligible to receive reimbursements. This means operations either must have successfully received their initial USDA organic certification from a USDA-accredited certifying agent, or must have incurred expenses related to the renewal of their USDA organic certification from a USDA-accredited certifying agent between October 1, 2014, and September 30, 2015. Operations with suspended or revoked certifications are ineligible for reimbursement. The applicable National Organic Program (NOP) regulations and resources for certification are available on the NOP website at *www.ams.usda.gov/nop*.

Organic producers (crops, wild crops, and/or livestock) and/or handlers are eligible to participate in the NOCCSP.

Funding Parameters:

Applications must be complete and have all required documentation to be considered. Applications missing documentation or otherwise deemed incomplete will not be considered for funding until sufficient information has been received by TDA. Information not received by the application deadline will not be considered.

Payments are limited to 75% (seventy-five percent) of an individual producer's certification costs, up to a maximum of $750 (seven hundred and fifty dollars) per certificate or category of certification, per year. Eligible operations may receive one reimbursement per year per certificate or category of certification (if one certificate includes multiple categories). Each certificate may be reimbursed separately. Likewise, each category of certification may be reimbursed separately.

Application Requirements and Deadline:

Applications will be accepted beginning May 2015, and must be submitted on the form provided by TDA. The application (GTBD-167) is available on TDA's website at *www.TexasAgriculture.gov,* or available upon request from TDA by calling (512) 463-6695.

The application packet must be **received by TDA before close of business (5:00 p.m. CST) on Friday, October 30, 2015.** It is the applicant's responsibility to submit all materials necessary early enough to ensure timely delivery. Applications may be submitted electronically, hand-delivered or mailed. Late or incomplete applications will not be accepted.

Electronic submission of applications is preferred, and should be sent via email to:

Grants@TexasAgriculture.gov.

Hard copy submissions are permitted, and may be sent to TDA at either of the following addresses:

By U.S. Mail:

Texas Department of Agriculture

Trade & Business Development - Grants

P.O. Box 12847

Austin, Texas 78711

By Overnight or Hand Delivery:

Texas Department of Agriculture

Trade & Business Development - Grants

1700 North Congress, 11th Floor

Austin, Texas 78701

For questions regarding submission of the proposal and/or TDA requirements, please contact TDA's Grants Office, at (512) 463-6695 or by email at *Grants@TexasAgriculture.gov.*

Texas Public Information Act: Once submitted, all proposals shall be deemed to be the property of the TDA and are subject to the Texas Public Information Act, Texas Government Code, Chapter 552 (PIA).

TRD-201501464
Jessica Escobar
Assistant General Counsel
Texas Department of Agriculture
Filed: April 27, 2015

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Department of Assistive and Rehabilitative Services

Notice of Public Hearings and Opportunity for Public Comment

This is a notice of public hearings and an opportunity to submit public comments concerning new rules and repeals to:

- 40 TAC §101.517, relating to Duration (of the Early Childhood Intervention (ECI) Advisory Committee), because federal regulations require the continued existence of this committee; and

- 40 TAC Chapter 108 Subchapter P, relating to Contract Requirements, §§108.1601 - 108.1625, which is being repealed because the requirements in this subchapter are being renumbered and moved to newly created Title 1 TAC Chapter 392, Purchase of Goods and Services for Specific Health and Human Services Commission Programs, relating to Subchapter B, Early Childhood Intervention (ECI) Services.

The proposed new rules and repeals may be obtained by contacting the DARS Division for Early Childhood Intervention Services at (512) 424-6754.

The public hearings will be held at the below locations to collect testimony from interested parties:

May 26, 2015

10:00 a.m. - 12:00 p.m.

Austin

ITT Building

6330 Highway 290 East

Theory Room 10

Austin, Texas 78723

May 26, 2015

3:00 p.m. - 5:00 p.m.

Georgetown

Georgetown Public Library

Conference Room

402 W. 8th Street

Georgetown, Texas 78626

Written comments on the proposed rule repeals of 40 TAC §101.517, relating to Duration [of the Early Childhood Intervention (ECI) Advisory Committee], and 40 TAC Chapter 108 Subchapter P, relating to Contract Requirements, §§108.1601 - 108.1625, may be submitted electronically or sent by postal mail to:

Texas Department of Assistive Rehabilitative Services

Center for Policy and External Relations, Mail Code 1411

4800 North Lamar Blvd.

Austin, Texas 78751-2399

E-mail: DARSrules@dars.state.tx.us

Written comments on the proposed new rules of 1 TAC Chapter 392, Purchase of Goods and Services for Specific Health and Human Services Commission Programs, relating to Subchapter B, Early Childhood Intervention (ECI) Services, may be submitted electronically or sent by postal mail to:

Ryan Hecker, Special Counsel

Health and Human Services Commission, MC-1017

4900 North Lamar Boulevard

Austin, Texas 78751

Fax: (512) 730-7497

E-mail: ryan.hecker@hhsc.state.tx.us

All comments must be received by 5:00 p.m. May 26, 2015.

Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services should contact the DARS Inquiries Line at 1-800-628-5115. Requests for accommodations should be made five business days before the date of the hearing.

For questions, compliments or complaints call the DARS Inquiries Line: 1-800-628-5115

TRD-201501479
Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
Filed: April 28, 2015

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Office of the Attorney General

Texas Water Code and Texas Health & Safety Code Settlement Notice (City of Seagoville, Texas)

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Water Code. Before the State may settle a judicial enforcement action under the Texas Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code.

Case Title and Court: *City of Seagoville, Texas, and the State of Texas v. Kathleen M. Waller, as Personal Representative of the Estate of Jerry Waller,* No. 2013-PRO1542-1-A; in the Probate Court No. 1 of Tarrant County, Texas.

Nature of Defendant's Operations: Defendant is the Estate of Jerry Wayne Waller, who was the President of TIRETEX, Inc., which operated a tire reclamation and recycling facility at 305 W. Simonds Road, Seagoville, Texas, where more than 300,000 tires had stockpiled over a period of about fifteen years without authorization. The facility became a breeding ground for mosquitos and other pests, and multiple Texas public health and environmental protection laws, including the Texas Solid Waste Disposal Act, have allegedly been violated.

Proposed Agreed Final Judgment: The proposed Agreed Final Judgment assesses against Defendant civil penalties in the amount of $2,774,000, to be equally divided between the City of Seagoville and the State; and attorney's fees in the amount of $6,000 for the City of Seagoville, and $2,500 for the State.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment should be reviewed. Requests for copies of the judgment, and written comments on the proposed settlement, should be directed to Craig J. Pritzlaff, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, MC 066, Austin, Texas 78711-2548, phone (512) 463-2012, facsimile (512) 320-0911. Written comments must be received within 30 days of publication of this notice to be considered.

TRD-201501413
Amanda Crawford
General Counsel
Office of the Attorney General
Filed: April 24, 2015

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Texas Water Code and Texas Health & Safety Code Settlement Notice (Harris County, Texas)

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Water Code and the Texas Health & Safety Code. Before the State may settle a judicial enforcement action under the Texas Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Texas Water Code and the Texas Health & Safety Code.

Case Title and Court: *Harris County, Texas and the State of Texas, acting on behalf of the Texas Commission on Environmental Quality v. Ponce Services, Inc.; Reynaldo Ponce, Individually, and d/b/a Ponce Waste Services and further d/b/a Ponce's Tree Pruning & Removal; Gloria Ponce, Individually; Juan Ponce, Individually, and d/b/a Ponce*

Waste Services, Cause No. 2012-53423, in the 113th Judicial District Court, Harris County, Texas.

Nature of Defendants' Operations: The case involves an unauthorized municipal solid waste ("MSW") facility located at 6710 Breen Drive and the unauthorized processing of MSW at 5329 Breen Drive, Houston, Harris County, Texas. The defendants are alleged to have caused, suffered, allowed, or permitted the storage, processing, removal, or disposal of MSW. The activities are alleged to have occurred without authorization from the Texas Commission on Environmental Quality.

Proposed Agreed Judgment: The Agreed Final Judgment includes an injunction against defendants to cease and desist any and all processing and disposal of MSW, as well as the acceptance of any and all MSW for storage, anywhere within the State of Texas, unless authorized by the TCEQ. The proposed agreed judgment assesses civil penalties against Ponce Services, Inc., Reynaldo Ponce, and Juan Ponce in the amount of $45,100, divided equally between the State and Harris County. The Defendants Ponce Services, Inc., Reynaldo Ponce, and Juan Ponce will pay attorney's fees to the State of Texas in the amount of $3,900 and also pay attorney's fees to Harris County in the amount of $4,055.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment and Permanent Injunction should be reviewed. Requests for copies of the judgment, and written comments on the proposed settlement, should be directed to Mark Steinbach, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548 (MC-066), Austin, Texas 78711-2548, (512) 475-4019, facsimile (512) 320-0911. Written comments must be received within 30 days of publication of this notice to be considered.

TRD-201501412
Amanda Crawford
General Counsel
Office of the Attorney General
Filed: April 24, 2015

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Comptroller of Public Accounts

Notice of Loan Fund Availability and Request for Applications

Pursuant to: (1) the LoanSTAR (Saving Taxes and Resources) Revolving Loan Program of the Texas State Energy Plan ("SEP") in accordance with the Energy Policy and Conservation Act (42 U.S.C. 6321, *et seq.),* as amended by the Energy Conservation and Production Act (42 U.S.C. 6326, *et seq.);* (2) the Oil Overcharge Restitutionary Act, Chapter 2305 of the Texas Government Code; and (3) Title 34, Texas Administrative Code, Chapter 19, Subchapter D Loan Program for Energy Retrofits; the Texas Comptroller of Public Accounts ("Comptroller") and the State Energy Conservation Office ("SECO") announces its Notice of Loan Fund Availability and Request for Applications RFA #BE-G14-2015 ("NOLFA/RFA") and invites applications from eligible interested governmental entities for loan assistance to perform building energy efficiency and retrofit activities.

PROGRAM SUMMARY: The Texas LoanSTAR Revolving Loan Program finances energy-related cost-reduction retrofits for eligible public sector institutions. Low interest rate loans are provided to assist those institutions in financing their energy-related cost-reduction efforts. The program's revolving loan mechanism allows loan recipients to repay loans through the stream of energy cost savings realized from the projects.

ELIGIBILITY CRITERIA: Eligible public sector institutions include the following: (1) any state department, commission, board, office, institution, facility, or other agency; (2) a public junior college or community college; (3) an institution of higher education as defined in §61.003 of the Texas Education Code; (4) units of local government including a county, city, town, a public or non-profit hospital or health care facility; (5) a public school; or (6) a political subdivision of the state.

Issuing Office: For all inquiries concerning this NOLFA/RFA, please contact Jason C. Frizzell, Assistant General Counsel, Contracts, Texas Comptroller of Public Accounts, at: 111 E. 17th St., Room 201, Austin, Texas 78774, via phone at (512) 305-8673, or by email at *contracts@cpa.texas.gov.* The NOLFA/RFA Application Packet and a sample loan agreement will be available electronically on the *Electronic State Business Daily* ("ESBD") at *http://esbd.cpa.state.tx.us* and on the SECO website at *http://www.seco.cpa.state.tx.us/funding/* on Friday, May 8, 2015, after 10:00 a.m. Central Time ("CT").

Questions: All written questions must be received in the Issuing Office not later than 2:00 p.m. CT on May 29, 2015. Prospective applicants are encouraged to send Questions via email to *contracts@cpa.texas.gov* or fax to (512) 463-3669 to ensure timely receipt. On or about Friday, June 5, 2015, or as soon thereafter as practical, Comptroller expects to post responses to the questions received by the deadline on the ESBD and the SECO website referenced above. Late questions will not be considered under any circumstances.

Closing Date: Applications must be delivered in the Issuing Office no later than 2:00 p.m. CT, on Monday, June 22, 2015. Late applications will not be considered under any circumstances. Applicants shall be solely responsible for verifying timely receipt of applications in the Issuing Office.

Evaluation CRITERIA: Loan Applications will be evaluated under the general criteria outlined in the Application Packet. Comptroller reserves the right to accept or reject any or all applications submitted. Comptroller is not obligated to execute a loan agreement on the basis of this NOLFA/RFA. Comptroller shall not pay for any costs incurred by any entity in responding to this NOLFA/RFA. Comptroller and SECO may request additional information at any time if deemed necessary for further evaluation.

Schedule of Events: The anticipated schedule of events pertaining to this NOLFA/RFA is as follows: Issuance of NOLFA/RFA - Friday, May 8, 2015, after 10:00 a.m. CT; Questions Due - May 29, 2015 2:00 p.m. CT; Official Responses to Questions posted - June 5, 2015, or as soon thereafter as practical; Applications Due - Monday, June 22, 2015, 2:00 p.m. CT; Loan Agreement Execution - as soon as practical.

TRD-201501504
Jason C. Frizzell
Assistant General Counsel
Comptroller of Public Accounts
Filed: April 29, 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 and §303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 05/04/15 - 05/10/15 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 05/04/15 - 05/10/15 is 18% for Commercial over $250,000.

[1] Credit for personal, family or household use.

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

TRD-201501474
Leslie Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: April 28, 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 **June 8, 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 **June 8, 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: Abubaker Yusuf dba AY TEX PETROLEUM dba Texaco Station; DOCKET NUMBER: 2015-0032-PST-E; IDENTIFIER: RN102339405; 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: $3,375; ENFORCEMENT COORDINATOR: John Fennell, (512) 239-2616; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: Chevron Phillips Chemical Company LP; DOCKET NUMBER: 2014-1850-AIR-E; IDENTIFIER: RN102200482; LOCATION: Brazoria, Brazoria County; TYPE OF FACILITY: chemical plant; RULES VIOLATED: 30 TAC §116.115(b)(2)(F) and (c) and §122.143(4), Texas Health and Safety Code, §382.085(b), Federal Operating Permit Number O2710, Special Terms and Conditions Number 13, and New Source Review Permit Number 19718, Special Conditions Number 1, by failing to comply with maximum allowable emissions rates; PENALTY: $3,975; ENFORCEMENT COORDINATOR: Jessica Schildwachter, (512) 239-2617; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(3) COMPANY: Chris M. Humphreys; DOCKET NUMBER: 2015-0576-WOC-E; IDENTIFIER: RN103611901; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: landscape irrigation services; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: $175; ENFORCEMENT COORDINATOR: Rachel Bekowies, (512) 239-2608; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(4) COMPANY: City of Brazoria; DOCKET NUMBER: 2015-0254-MWD-E; IDENTIFIER: RN101613552; LOCATION: Brazoria, Brazoria 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 WQ0014581001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limits; PENALTY: $2,500; ENFORCEMENT COORDINATOR: Gregory Zychowski, (512) 239-3158; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(5) COMPANY: City of Huxley; DOCKET NUMBER: 2015-0129-MWD-E; IDENTIFIER: RN101612109; LOCATION: Shelbyville, Shelby County; TYPE OF FACILITY: wastewater treatment plant; RULES VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0013932001, Effluent Limitations and Monitoring Requirements Numbers 1 and 2, by failing to comply with permitted effluent limits; PENALTY: $4,875; Supplemental Environmental Project offset amount of $1,950 and Supplemental Environmental Project offset amount of $1,950; ENFORCEMENT COORDINATOR: Larry Butler, (512) 239-2543; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(6) COMPANY: City of Lawn; DOCKET NUMBER: 2015-0016-PWS-E; IDENTIFIER: RN101406916; LOCATION: Lawn, Taylor County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.271(b) and §290.274(a) and (c), by failing to mail or directly deliver one copy of the Consumer Confidence Report (CCR) to each bill paying customer by July 1st for each year, by failing to submit a copy of the annual CCR and certification that the CCR has been distributed to the customers of the facility and that the information in the CCR is correct and consistent with compliance monitoring data to the TCEQ for year 2013; 30 TAC §290.122(c)(2)(A) and (f), by failing to provide public notification or submit a copy of the public notification to the executive director regarding the failure to submit a Surface Water Monthly Operating Report for June 2014 and July 2014, by failing to conduct routine coliform monitoring during the months of February 2014 and August 2014, by failing to conduct repeat coliform monitoring during the month of January 2014, and by failing to submit the results of quarterly sampling to the executive director for volatile organic chemical contaminants and Stage 1 Disinfectant Byproducts for the first and second quarters of 2013; PENALTY: $800; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 403-4077; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(7) COMPANY: City of Manvel; DOCKET NUMBER: 2014-1770-MWD-E; IDENTIFIER: RN101612232; LOCATION: Manvel, Brazoria County; TYPE OF FACILITY: wastewater treatment plant; RULES VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0013872001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limits; PENALTY: $3,175; ENFORCEMENT COORDINATOR: Gregory Zychowski, (512) 239-3158; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(8) COMPANY: DERRICK OIL AND SUPPLY, INCORPORATED OF PORT ARTHUR, TEXAS; DOCKET NUMBER: 2015-0052-PST-E; IDENTIFIER: RN102130580; LOCATION: Port Arthur, Jefferson County; TYPE OF FACILITY: gasoline and diesel fuel dispensing facility; RULES VIOLATED: 30 TAC §334.75(a) and §334.129(a) and TWC, §26.039, by failing to contain and immediately clean up spills or overfills of petroleum product from aboveground storage tanks that are greater than 25 gallons; PENALTY: $7,875; ENFORCEMENT COORDINATOR: Thomas Greimel, (512) 239-5690; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(9) COMPANY: Gardner Glass Products, Incorporated; DOCKET NUMBER: 2015-0055-AIR-E; IDENTIFIER: RN100242973; LOCATION: Huntsville, Walker County; TYPE OF FACILITY: mirror manufacturing plant; RULES VIOLATED: 30 TAC §116.115(c) and §122.143(4), Texas Health and Safety Code, §382.085(b), New Source Review Permit Number 18495, Special Conditions Number 5C(1), and Federal Operating Permit Number O3448, Special Terms and Conditions Number 3, by failing to comply with the natural gas usage; and 30 TAC §335.323 and TWC, §5.702, by failing to pay administrative penalty and/or any associated late fees for TCEQ Financial Administration Account Number 23503756 due for Fiscal Year 2015; PENALTY: $46,875; ENFORCEMENT COORDINATOR: Jennifer Nguyen, (512) 239-6160; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(10) COMPANY: J.J. SPENCER TRANSPORT II, L.P.; DOCKET NUMBER: 2015-0112-PST-E; IDENTIFIER: RN102389657; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: common carrier; RULES VIOLATED: 30 TAC §334.5(b)(1)(A) and TWC, §26.3467(d), by failing to deposit a regulated substance into a regulated underground storage tank system that was covered by a valid, current TCEQ delivery certificate; PENALTY: $1,231; ENFORCEMENT COORDINATOR: Steven Van Landingham, (512) 239-5717; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(11) COMPANY: Jady A. Gilbert; DOCKET NUMBER: 2014-1740-MLM-E; IDENTIFIER: RN107729741; LOCATION: Snyder, Scurry County; TYPE OF FACILITY: unauthorized disposal site; RULES VIOLATED: 30 TAC §330.15(c), by failing to not cause, suffer, allow, or permit the unauthorized disposal of municipal solid waste; and 30 TAC §111.201 and Texas Health and Safety Code, §382.085(b), by failing to not cause, suffer, allow, or permit outdoor burning within the state; PENALTY: $3,356; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(12) COMPANY: Jaime Duran, Jr.; DOCKET NUMBER: 2015-0577-WOC-E; IDENTIFIER: RN107843534; LOCATION: El Paso, El Paso County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: $175; ENFORCEMENT COORDINATOR: Rachel Bekowies, (512) 239-2608; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

(13) COMPANY: Kingsbridge Municipal Utility District; DOCKET NUMBER: 2015-0047-PWS-E; IDENTIFIER: RN102684727; LOCATION: Sugar Land, Fort Bend County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to comply with the maximum contaminant level (MCL) of 0.060 milligrams per liter (mg/L) for haloacetic acids, based on the locational running annual average; 30 TAC §290.115(f)(1) and THSC, §341.0315(c), by failing to comply with the MCL of 0.080 mg/L for total trihalomethanes, based on the locational running annual average; and 30 TAC §290.117(c)(2)(B) and (i)(1), by failing to collect lead and copper tap samples at the required twenty sample sites, have the samples analyzed at an approved laboratory, and submit the results to the executive director for the 2014 monitoring period; PENALTY: $945; ENFORCEMENT COORDINATOR: Larry Butler, (512) 239-2543; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(14) COMPANY: Mayer Construction, LLC; DOCKET NUMBER: 2014-1657-WQ-E; IDENTIFIER: RN105067276; LOCATION: Azle, Tarrant County; TYPE OF FACILITY: aggregate production operation; RULE VIOLATED: 30 TAC §342.25(d), by failing to renew the aggregate production operation registration annually as regulated activities continued; PENALTY: $5,000; ENFORCEMENT COORDINATOR: Gregory Zychowski, (512) 239-3158; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (903) 535-5100.

(15) COMPANY: Pilgrim's Pride Corporation; DOCKET NUMBER: 2014-1560-MLM-E; IDENTIFIER: RN102178597 (Facility 1) and RN107933368 (Facility 2); LOCATION: Nacogdoches, Nacogdoches County; TYPE OF FACILITY: Chicken Hatchery (Facility 1) and Poultry Feedmill (Facility 2); RULES VIOLATED: 30 TAC §305.125(1) and TCEQ Permit Number WQ0004970000, Monitoring Requirements Number 2.b, by failing to meet the requirements of 30 TAC Chapter 25, Environmental Testing Laboratory Accreditation and Certification at Facility 1; 30 TAC §305.125(1) and §319.11(d) and TCEQ Permit Number WQ0004970000, Monitoring Requirements Number 5, by failing to accurately calibrate all automatic flow measuring or recording devices and all totalizing meters for measuring flows by a trained person at Facility 1 start-up and as often thereafter as necessary to ensure accuracy, but not less often than annually; 30 TAC §305.125(1) and §305.126(b) and TCEQ Permit Number WQ0004970000, Permit Conditions Number 2.e, by failing to obtain authorization from the TCEQ prior to a modification to Facility 1; 30 TAC §305.125(1) and TCEQ Permit Number WQ0004970000, Special Provisions, Section H, by failing to conduct the annual soil sampling from the root zone of the land application area for Facility 1 and submit the results to the TCEQ Beaumont Regional Office and the Enforcement Division by September 30, 2013; 30 TAC §305.125(1) and TCEQ Permit Number WQ0004970000, Special Provisions, Section B, by failing to submit the annual total kjeldahl nitrogen and maximum organic loading results for 2012 for Facility 1 to the TCEQ Beaumont Office, Water Quality Assessment Team, and the Enforcement Division by September 30, 2013; 30 TAC §305.125(1) and TCEQ Permit Number WQ0004970000, Special Provisions, Section M, by failing to submit the irrigation log for Facility 1 to the TCEQ Beaumont Regional Office and the Enforcement Division by September 30, 2013; and 30 TAC §335.2(a), by failing to obtain a permit to process, store, and dispose of industrial solid waste at Facility 2; PENALTY: $15,077; ENFORCEMENT COORDINATOR: Had Darling, (512) 239-2520; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(16) COMPANY: Roha Enterprises, Incorporated dba GK Mart; DOCKET NUMBER: 2012-2170-PST-E; IDENTIFIER: RN102277324; LOCATION: Temple, Bell 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: $3,750; ENFORCEMENT COORDINATOR: Michael Meyer, (512) 239-4492; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(17) COMPANY: Shannon S. Salsman; DOCKET NUMBER: 2015-0155-WOC-E; IDENTIFIER: RN107854416; LOCATION: Quinlan, Hunt County; TYPE OF FACILITY: wastewater treatment plant; RULES VIOLATED: TWC, §26.0301(c) and §37.003 and 30 TAC §30.5(a) and §30.331(b), by failing to obtain the required occupational license prior to performing process control duties in the treatment of wastewater; PENALTY: $861; ENFORCEMENT COORDINATOR: Alejandro Laje, (512) 239-2547; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(18) COMPANY: Star Transport, L.L.C. (aka LDR Transport, L.L.C.); DOCKET NUMBER: 2015-0244-PST-E; IDENTIFIER: RN107747123; LOCATION: Houston, Harris County; TYPE OF FACILITY: common carrier; RULES VIOLATED: 30 TAC §334.5(b)(1)(A) and TWC, §26.3467(d), by failing to deposit a regulated substance into a regulated underground storage tank system that was covered by a valid, current TCEQ delivery certificate; PENALTY: $1,350; ENFORCEMENT COORDINATOR: John Fennell, (512) 239-2616; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(19) COMPANY: Sung Hee Kang dba Times Market Number 11; DOCKET NUMBER: 2014-1814-PST-E; IDENTIFIER: RN102463569; LOCATION: Corpus Christi, Nueces County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.49(c)(2)(C) and (4)(C), and §334.54(c)(1) and TWC, §26.3475(d), by failing to inspect the impressed current cathodic protection system at least once every 60 days to ensure that the rectifier and other system components are operating properly and by failing to have the cathodic protection system inspected and tested for operability and adequacy of protection at a frequency of at least once every three years; 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of the petroleum underground storage tanks (USTs); 30 TAC §334.50(b)(1)(A) and §334.54(c)(2) and TWC, §26.3475(c)(1), by failing to monitor the USTs for releases at a frequency of at least once every month; and 30 TAC §334.7(d)(3) and §334.54(e)(2), by failing to notify the agency of any change or additional information regarding the USTs within 30 days of the occurrence of the change or addition; PENALTY: $12,214; ENFORCEMENT COORDINATOR: Thomas Greimel, (512) 239-5690; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(20) COMPANY: Texas Health Presbyterian Hospital Dallas; DOCKET NUMBER: 2014-1896-WQ-E; IDENTIFIER: RN102209616; LOCATION: Dallas, Dallas County; TYPE OF FACILITY: hospital; RULE VIOLATED: TWC, §26.121(a)(1), by failing to prevent the unauthorized discharge of wastewater into or adjacent to water in the state; PENALTY: $7,500; ENFORCEMENT COORDINATOR: Raymond Mejia, (512) 239-5460; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(21) COMPANY: Westwood Water Supply Corporation; DOCKET NUMBER: 2014-1539-MWD-E; IDENTIFIER: RN101610210; LOCATION: Jasper, Jasper 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 (TPDES) Permit Number WQ0011337001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limits; and 30 TAC §305.125(1) and §319.4, and TPDES Permit Number WQ0011337001, Monitoring and Reporting Requirement Requirements Number 1, by failing to collect and analyze quarterly effluent samples for *Escherichia coli;* PENALTY: $8,438; ENFORCEMENT COORDINATOR: Greg Zychowski, (512) 239-3158; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

TRD-201501477
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: April 28, 2015

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Enforcement Orders

An agreed order was entered regarding Highland Homes - San Antonio, Ltd., Docket No. 2014-0946-WQ-E on April 16, 2015 assessing $1,301 in administrative penalties with $260 deferred.

Information concerning any aspect of this order may be obtained by contacting Had Darling, Enforcement Coordinator at (512) 239-2520, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Mike L. Louden, Docket No. 2014-0980-PWS-E on April 16, 2015 assessing $3,542 in administrative penalties with $708 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 College Station, Docket No. 2014-1320-PST-E on April 16, 2015 assessing $2,813 in administrative penalties with $562 deferred.

Information concerning any aspect of this order may be obtained by contacting Allyson Plantz, Enforcement Coordinator at (512) 239-4593, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Texas Department of Transportation, Docket No. 2014-1354-PST-E on April 16, 2015 assessing $7,500 in administrative penalties with $1,500 deferred.

Information concerning any aspect of this order may be obtained by contacting John Duncan, Enforcement Coordinator at (512) 239-2720, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Kenneth Mowles dba Captain Ken's RV Park, Docket No. 2014-1397-PWS-E on April 16, 2015 assessing $550 in administrative penalties with $110 deferred.

Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (210) 403-4077, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Coastal Concrete and Shell Inc., Docket No. 2014-1403-AIR-E on April 16, 2015 assessing $938 in administrative penalties with $187 deferred.

Information concerning any aspect of this order may be obtained by contacting Raime Hayes-Falero, Enforcement Coordinator at (713) 767-3567, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Mount Houston Road Municipal Utility District, Docket No. 2014-1416-MWD-E on April 16, 2015 assessing $1,437 in administrative penalties with $287 deferred.

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.

An agreed order was entered regarding Doris L. Lemley dba Lemley RV Park, Docket No. 2014-1420-PWS-E on April 16, 2015 assessing $700 in administrative penalties with $140 deferred.

Information concerning any aspect of this order may be obtained by contacting Epifanio Villareal, Enforcement Coordinator at (361) 825-3425, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Enterprise Products Operating LLC, Docket No. 2014-1421-IWD-E on April 16, 2015 assessing $7,400 in administrative penalties with $1,480 deferred.

Information concerning any aspect of this order may be obtained by contacting Alejandro Laje, Enforcement Coordinator at (512) 239-2547, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Donald R. Cole dba Harmony Water System, Docket No. 2014-1468-MLM-E on April 16, 2015 assessing $866 in administrative penalties with $173 deferred.

Information concerning any aspect of this order may be obtained by contacting Katy Montgomery, Enforcement Coordinator at (210) 403-4016, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding YES COMMUNITIES, INC. dba Northwest Pines Mobile Home Community, Docket No. 2014-1500-PWS-E on April 16, 2015 assessing $100 in administrative penalties with $20 deferred.

Information concerning any aspect of this order may be obtained by contacting Epifanio Villareal, Enforcement Coordinator at (361) 825-3425, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Bonifacio Martinez dba Martinez Used Cars, Docket No. 2014-1511-AIR-E on April 16, 2015 assessing $750 in administrative penalties with $150 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 City of Diboll, Docket No. 2014-1559-PWS-E on April 16, 2015 assessing $736 in administrative penalties with $147 deferred.

Information concerning any aspect of this order may be obtained by contacting Katie Hargrove, Enforcement Coordinator at (512) 239-2569, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Eduardo Villegas dba Power Unit Builders and Handling Tools Repair, Docket No. 2014-1582-AIR-E on April 16, 2015 assessing $1,312 in administrative penalties with $262 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 Maverick County, Docket No. 2014-1592-PWS-E on April 16, 2015 assessing $1,015 in administrative penalties with $203 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 CALLAHAN COUNTY WATER SUPPLY CORPORATION, Docket No. 2014-1597-PWS-E on April 16, 2015 assessing $213 in administrative penalties with $213 deferred.

Information concerning any aspect of this order may be obtained by contacting James 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 City of Gregory, Docket No. 2014-1610-PWS-E on April 16, 2015 assessing $525 in administrative penalties with $105 deferred.

Information concerning any aspect of this order may be obtained by contacting Katie Hargrove, Enforcement Coordinator at (512) 239-2569, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Pampa Regional Medical Center, Docket No. 2014-1635-PST-E on April 16, 2015 assessing $3,375 in administrative penalties with $675 deferred.

Information concerning any aspect of this order may be obtained by contacting Keith Frank, Enforcement Coordinator at (512) 239-1203, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding The University of Texas Southwestern Medical Center dba Zale Lipshy University Hospital, Docket No. 2014-1680-PST-E on April 16, 2015 assessing $3,000 in administrative penalties with $600 deferred.

Information concerning any aspect of this order may be obtained by contacting Allyson Plantz, Enforcement Coordinator at (512) 239-4593, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding FIKES WHOLESALE, INC. dba CEFCO CONVENIENCE STORES and dba Taylor Food Mart 2016, Docket No. 2014-1692-PST-E on April 16, 2015 assessing $2,813 in administrative penalties with $562 deferred.

Information concerning any aspect of this order may be obtained by contacting Abigail Lindsey, Enforcement Coordinator at (512) 239-2576, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Big Wells, Docket No. 2014-1702-PWS-E on April 16, 2015 assessing $643 in administrative penalties with $128 deferred.

Information concerning any aspect of this order may be obtained by contacting Jennifer Graves, Enforcement Coordinator at (956) 430-6023, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Dallam-Hartley Counties Hospital District dba Coon Memorial Hospital, Docket No. 2014-1712-PST-E on April 16, 2015 assessing $4,500 in administrative penalties with $900 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Boyett, Enforcement Coordinator at (512) 239-2503, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Glen Rose, Docket No. 2014-1717-PWS-E on April 16, 2015 assessing $740 in administrative penalties with $148 deferred.

Information concerning any aspect of this order may be obtained by contacting Katy Montgomery, Enforcement Coordinator at (210) 403-4016, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Cari Stancik and Kurk B. Stancik dba K CS, Docket No. 2014-1756-PWS-E on April 16, 2015 assessing $505 in administrative penalties with $101 deferred.

Information concerning any aspect of this order may be obtained by contacting Jim Fisher, Enforcement Coordinator at (512) 239-2537, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding LAKE LIVINGSTON HEIGHTS WATER SUPPLY CORPORATION, Docket No. 2014-1763-PWS-E on April 16, 2015 assessing $315 in administrative penalties with $63 deferred.

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.

An agreed order was entered regarding MAXEY ENERGY COMPANY dba Max E Mart 3, Docket No. 2014-1803-PST-E on April 16, 2015 assessing $2,438 in administrative penalties with $487 deferred.

Information concerning any aspect of this order may be obtained by contacting Thomas Greimel, Enforcement Coordinator at (512) 239-5690, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SUNNY'S RED BLUFF, INC. dba Phillips 66, Docket No. 2014-1815-PST-E on April 16, 2015 assessing $4,500 in administrative penalties with $900 deferred.

Information concerning any aspect of this order may be obtained by contacting Steven Van Landingham, Enforcement Coordinator at (512) 239-5717, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Buc, Inc. dba Double Six Conoco, Docket No. 2014-1818-PST-E on April 16, 2015 assessing $6,750 in administrative penalties with $1,350 deferred.

Information concerning any aspect of this order may be obtained by contacting Holly Kneisley, Enforcement Coordinator at (817) 588-5856, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding VINTAGE WASHES, LTD. dba Vintage Car Wash & Lube, Docket No. 2014-1856-PST-E on April 16, 2015 assessing $3,375 in administrative penalties with $675 deferred.

Information concerning any aspect of this order may be obtained by contacting Keith Frank, Enforcement Coordinator at (512) 239-1203, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Sadiqa Trading Corporation dba Food Barn, Docket No. 2014-1868-PST-E on April 16, 2015 assessing $2,438 in administrative penalties with $487 deferred.

Information concerning any aspect of this order may be obtained by contacting Holly Kneisley, Enforcement Coordinator at (817) 588-5856, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Asherton, Docket No. 2014-1874-PWS-E on April 16, 2015 assessing $747 in administrative penalties with $149 deferred.

Information concerning any aspect of this order may be obtained by contacting Epifanio Villareal, Enforcement Coordinator at (361) 825-3425, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Trenton Todd Kincanon dba Golden Spread Septic Tank Pumping, Docket No. 2015-0149-OSS-E on April 16, 2015 assessing $175 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jill Russell, Enforcement Coordinator at (512) 239-4564, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Michael L. Moffitt, Docket No. 2015-0167-LII-E on April 16, 2015 assessing $175 in administrative penalties.

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.

A field citation was entered regarding Heriberto Gallegos, Jr., Docket No. 2015-0168-LII-E on April 16, 2015 assessing $175 in administrative penalties.

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.

A field citation was entered regarding J. J. Fox Construction, Inc., Docket No. 2015-0169-WQ-E on April 16, 2015 assessing $875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jill Russell, Enforcement Coordinator at (512) 239-4564, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Bre-Lene Logistics LLC dba Lubbock Executive Airpark, Docket No. 2015-0227-PST-E on April 16, 2015 assessing $1,750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Keith Frank, Enforcement Coordinator at (512) 239-1203, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

Texas Commission on Environmental Quality

Enforcement Orders

An agreed order was entered regarding City of Portland, Docket No. 2012-1472-MWD-E on April 21, 2015 assessing $36,000 in administrative penalties with $7,200 deferred.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (817) 588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Woodridge Limited Partnership, Docket No. 2013-0313-MWD-E on April 21, 2015 assessing $9,000 in administrative penalties with $5,400 deferred.

Information concerning any aspect of this order may be obtained by contacting Jason Fraley, Enforcement Coordinator at (512) 239-2552, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Kyle and Aqua Operations, Inc., Docket No. 2013-0498-MWD-E on April 27, 2015 assessing $37,488 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Meaghan Bailey, 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 SOUTH FORT WORTH RV RANCH, L.L.C., Docket No. 2013-0649-MWD-E on April 21, 2015 assessing $6,750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Heather Brister, Enforcement Coordinator at (817) 588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Dahopa Oil Company, Inc. dba Roundup 5, Docket No. 2013-1934-PST-E on April 21, 2015 assessing $15,628 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Michael Vitris, 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 SKJ Empire Investments, LLC dba 7 Mile Express, Docket No. 2013-1975-PST-E on April 21, 2015 assessing $38,832 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Elizabeth Carroll 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 Parkside at Mayfield Ranch, Ltd. and HMR HOLDINGS, INC., Docket No. 2013-2197-EAQ-E on April 21, 2015 assessing $11,250 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.

An agreed order was entered regarding Exide Technologies, Docket No. 2013-2207-IHW-E on April 21, 2015 assessing $2,451,984 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lena Roberts, 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 Riviera Water Control & Improvement District, Docket No. 2014-0249-MWD-E on April 21, 2015 assessing $7,475 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Raymond Mejia, Enforcement Coordinator at (512) 239-5460, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Apache Corporation, Docket No. 2014-0495-AIR-E on April 21, 2015 assessing $25,071 in administrative penalties with $5,014 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 PASO DEL NORTE READY-MIX, INC., Docket No. 2014-0504-MLM-E on April 21, 2015 assessing $10,464 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jess Robinson, 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 Linde Gas North America LLC, Docket No. 2014-0612-AIR-E on April 21, 2015 assessing $12,080 in administrative penalties with $2,416 deferred.

Information concerning any aspect of this order may be obtained by contacting Raime Hayes-Falero, Enforcement Coordinator at (713) 767-3567, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding NEW MZ ENTERPRISES INC. dba Pantry Food & Gas, Docket No. 2014-0812-PST-E on April 21, 2015 assessing $13,230 in administrative penalties with $2,646 deferred.

Information concerning any aspect of this order may be obtained by contacting James Baldwin, Enforcement Coordinator at (512) 239-1337, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding E.I. du Pont de Nemours and Company, Docket No. 2014-0835-AIR-E on April 21, 2015 assessing $114,863 in administrative penalties with $22,972 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 KAAPA Aqua Ventures Alliance, LLC, Docket No. 2014-0875-IWD-E on April 21, 2015 assessing $9,446 in administrative penalties with $1,889 deferred.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (817) 588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Texas Department of Transportation, Docket No. 2014-0919-PST-E on April 21, 2015 assessing $8,625 in administrative penalties with $1,725 deferred.

Information concerning any aspect of this order may be obtained by contacting James Baldwin, Enforcement Coordinator at (512) 239-1337, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding J&S Water Company, L.L.C., Docket No. 2014-0955-PWS-E on April 21, 2015 assessing $550 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lisa Westbrook, Enforcement Coordinator at (512) 239-1160, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Equistar Chemicals, LP, Docket No. 2014-1003-AIR-E on April 21, 2015 assessing $7,912 in administrative penalties with $1,582 deferred.

Information concerning any aspect of this order may be obtained by contacting Raime Hayes-Falero, Enforcement Coordinator at (713) 767-3567, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Bloomington Independent School District, Docket No. 2014-1007-PWS-E on April 21, 2015 assessing $1,029 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 MarkWest Javelina Company, L.L.C., Docket No. 2014-1040-IWD-E on April 21, 2015 assessing $23,550 in administrative penalties with $4,710 deferred.

Information concerning any aspect of this order may be obtained by contacting Greg Zychowski, Enforcement Coordinator at (512) 239-3158, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Miguel Lozada dba DV8 Auto Sport, Docket No. 2014-1069-AIR-E on April 21, 2015 assessing $3,937 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Colleen Lenahan, 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 MOMO HOLDING COMPANY, INC. dba Fast Trak, Docket No. 2014-1134-PST-E on April 21, 2015 assessing $28,011 in administrative penalties with $5,602 deferred.

Information concerning any aspect of this order may be obtained by contacting John Fennell, Enforcement Coordinator at (512) 239-2616, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Petroleum Products, Inc. dba Charlies 1, Docket No. 2014-1138-PST-E on April 21, 2015 assessing $14,101 in administrative penalties with $2,820 deferred.

Information concerning any aspect of this order may be obtained by contacting Allyson Plantz, Enforcement Coordinator at (512) 239-4593, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Murad Maknojia dba Aggies Food Store, Docket No. 2014-1190-PST-E on April 21, 2015 assessing $24,100 in administrative penalties with $4,820 deferred.

Information concerning any aspect of this order may be obtained by contacting Tiffany Maurer, Enforcement Coordinator at (512) 239-2696, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding LANGHAM CREEK MACHINE WORKS, INC., Docket No. 2014-1263-PWS-E on April 21, 2015 assessing $1,659 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jill Russell, Enforcement Coordinator at (512) 239-4564, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Lcy Elastomers LP, Docket No. 2014-1267-AIR-E on April 21, 2015 assessing $29,340 in administrative penalties with $5,868 deferred.

Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator at (512) 239-0577, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Wellington, Docket No. 2014-1297-PWS-E on April 21, 2015 assessing $2,000 in administrative penalties with $2,000 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 City of Pflugerville, Docket No. 2014-1300-MWD-E on April 21, 2015 assessing $21,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Greg Zychowski, Enforcement Coordinator at (512) 239-3158, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding The Praxis Companies, LLC, Docket No. 2014-1336-AIR-E on April 21, 2015 assessing $9,150 in administrative penalties with $1,830 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.

A default order was entered regarding Mike Watson and Robbie Watson dba Mike & Robbie Watson Dairy, Docket No. 2014-1363-AGR-E on April 21, 2015 assessing $1,687 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Ryan Rutledge, 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 HERITAGE FINANCIAL GROUP, INC., Docket No. 2014-1404-PWS-E on April 21, 2015 assessing $1,245 in administrative penalties.

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.

TRD-201501502
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: April 29, 2015

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Notice of Application and Opportunity to Request a Public Meeting for a Municipal Solid Waste Facility Registration Application Number 40282

Application. City of Weimar, 106 East Main Street, Weimar, Texas 78962, has applied to the Texas Commission on Environmental Quality (TCEQ) for proposed Registration No. 40282, for a municipal solid waste Type V transfer station. The facility, City of Weimar MSW Transfer Station, is located at 801 East St. Charles

Street, Weimar, Texas 78962, in Colorado County. The Applicant is requesting authorization to process municipal solid waste which includes transfer of municipal solid waste, putrescible waste, rubbish, yard waste, commercial solid waste, class 2 industrial wastes, class 3 industrial wastes, and construction or demolition waste. The proposed registration will enable the City of Weimar Transfer Station to increase waste acceptance rate and operating hours compared to the existing facility. The registration application is available for viewing and copying at the City of Weimar MSW Transfer Station, 801 East St. Charles Street, Weimar, Texas 78962, and may be viewed online at http://www.weimartexas.org/index.php?tag=news_events. The following link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice:https://www.tceq.texas.gov/assets/public/hb610/index.html?lat=29.69823&lng=-96.775002&zoom=12&type=r. For exact location, refer to application.

Public Comment/Public Meeting. Written public comments or written requests for a public meeting must be submitted to the Office of Chief Clerk at the address included in the information section below. If a public meeting is held, comments may be made orally at the meeting or submitted in writing by the close of the public meeting. A public meeting will be held by the executive director if requested by a member of the legislature who represents the general area where the development is to be located, or if there is a substantial public interest in the proposed development. The purpose of the public meeting is for the public to provide input for consideration by the commission, and for the applicant and the commission staff to provide information to the public. A public meeting is not a contested case hearing. The executive director will review and consider public comments and written requests for a public meeting submitted during the comment period. The comment period shall begin on the date this notice is published and end 60 calendar days after this notice is published. The comment period shall be extended to the close of any public meeting. The executive director is not required to file a response to comments.

Executive Director Action. The executive director shall, after review of an application for registration, determine if the application will be approved or denied in whole or in part. If the executive director acts on an application, the chief clerk shall mail or otherwise transmit notice of the action and an explanation of the opportunity to file a motion to overturn the executive director's decision. The chief clerk shall mail this notice to the owner and operator, the public interest counsel, to adjacent landowners as shown on the required land ownership map and landowners list, and to other persons who timely filed public comment in response to public notice.

Not all persons on the mailing list for this notice will receive the notice letter from the Office of the Chief Clerk.

Information. Written public comments or requests to be placed on the permanent mailing list for this application should be submitted to the Office of the Chief Clerk mail code MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087 or electronically submitted to http://www14.tceq.texas.gov/epic/eComment/. If you choose to communicate with the TCEQ electronically, please be aware that your e-mail address, like your physical mailing address, will become part of the agency's public record. For information about this application or the registration process, individual members of the general public may call the TCEQ Public Education Program at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at http://www.tceq.texas.gov/. Further information may also be obtained from City of Weimar at the address stated above or by calling Dolores Stoever, City Secretary, at (979) 725-8554.

TRD-201501500

Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: April 29, 2015

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Notice of District Petition

Notices issued April 15, 2015 and April 24, 2015.

TCEQ Internal Control No. D-10092014-009; San Leon Municipal Utility District of Galveston County (District) filed an application with the Texas Commission on Environmental Quality (TCEQ) requesting approval for the acquisition of authority to dispose of waste and control storm water as provided in Texas Water Code (TWC) §51.331 and §51.332. These additional powers, as described in TWC §51.331, allow a water control and improvement district to collect, transport, process, dispose, and control all domestic, industrial, or communal wastes, whether fluids, solids, or composites and to gather, conduct, divert, and control local storm water or other local harmful excesses of water. The District, containing approximately 5,050 acres, is located in eastern Galveston County along the western side of Galveston Bay and north of Dickinson Bay. The District was created and organized by HB 1082, Acts of the 59th Legislature, Regular Session, 1965, as a water control and improvement district according to the terms and provisions of Section 59, Article XVI of the Texas Constitution. Acts of the 62nd Legislature, Regular Session, 1971, added to the principal powers granted to and exercised by water control and improvement districts the authority to dispose of waste and control storm water, TWC §51.331 and §51.332. Application material states that: (1) many of the District's residents do not have curb side solid waste collection; (2) there is a high volume of solid waste collection truck traffic; (3) there is unauthorized dumping of solid waste in commercial receptacles, in residential receptacles, and/or in empty common area lots; and (4) residents are currently paying up to $40 per month for curb side solid waste pickup. According to additional submitted application material, a preliminary investigation has been made by the District to determine the cost of monthly residential solid waste pickup service, and, from information available at this time, it is estimated to be in the range of $12 to $16 per month.

TCEQ Internal Control No. D-03132015-013; Woodhull Family Partners, (Petitioner) filed a petition for creation of Southeast Williamson County Municipal Utility District No. 1 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Texas Constitution; Chapters 49 and 54 of the Texas Water Code; Title 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioner is the owner of a majority in value of the land to be included in the proposed District; (2) there are no lienholders on the property to be included in the proposed District; (3) the proposed District will contain approximately 301.507 acres located within Williamson County, Texas; and (4) all of the land within the proposed District is within the corporate limits of the City of Georgetown, Texas, and no portion of the land within the proposed district is within the corporate limits of extraterritorial jurisdiction of any other city, town or village in Texas. By District Consent Resolution, dated September 23, 2014, the City of Georgetown, Texas, gave its consent to the creation of the proposed District, pursuant to Texas Water Code §54.016 and authorized the Petitioner to initiate proceedings to create this political subdivision within its jurisdiction. The petition further states that the proposed District will: (1) construct, acquire, maintain, and operate a waterworks and sanitary sewer system for commercial and domestic purposes; (2) construct, acquire, maintain and operate works, improvements, facilities, plants, equipment and appliances helpful or necessary

to provide more adequate drainage for the proposed District; (3) control, abate, and amend local storm waters or other harmful excesses of waters; (4) design, construct, and finance road improvements, all as more particularly described in an engineer's report filed simultaneously with the filing of this Petition; and (5) construct, acquire, improve, maintain and operate additional facilities, systems, plants, and enterprises as shall be consonant with the purposes for which the proposed District is created. Application material indicates the proposed District will also construct, acquire, maintain, and operate parks and recreational facilities. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioner, from such information available at this time, that the cost of said project will be approximately $36,650,000 ($28,285,000 for utility, plus $2,690,000 for recreational, plus $5,675,000 for road).

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.texas.gov/comm_exec/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at www.tceq.texas.gov.

TRD-201501501
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: April 29, 2015

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Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ 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 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 **June 8, 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 A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on June 8, 2015.** Comments may also be sent by facsimile machine to the attorney at (512) 239 3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, TWC, §7.075 provides that comments on an AO shall be submitted to the commission in **writing.**

(1) COMPANY: City of Pearland; DOCKET NUMBER: 2013-1816-MWD-E; TCEQ ID NUMBER: RN101920007; LOCATION: approximately 1,000 feet north of McHard Road, approximately 1.25 miles west of the intersection of McHard Road and State Highway 288, Brazoria County; TYPE OF FACILITY: domestic wastewater treatment facility; RULES VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0010134008, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limits; PENALTY: $22,500; Supplemental Environmental Project offset amount of $22,500 applied to The Trust of Public Land's Galveston Bay Natural Area Acquisition and Conservation Program; STAFF ATTORNEY: Jim Sallans, Litigation Division, MC 175, (512) 239-2053; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(2) COMPANY: City of Wolfe City; DOCKET NUMBER: 2012-0044-MWD-E; TCEQ ID NUMBER: RN102896255; LOCATION: adjacent to Oyster Creek, approximately 0.3 mile east of State Highway 34 and 0.5 mile south of Wolfe City, Hunt County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1) and (5), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010383001, Operational Requirements Number 1, by failing to properly operate and maintain all facilities and systems of treatment and control; 30 TAC §305.125(1), and TPDES Permit Number WQ0010383001, Monitoring and Reporting Requirements Number 7(c), by failing to submit a non-compliance notification to the executive director when a permit limit is exceeded by more than 40%; TWC, §26.121(a)(1), 30 TAC §305.125(1), and TPDES Permit Number WQ0010383001, Effluent Limitations and Monitoring Requirements Numbers 1 and 3, by failing to comply with permitted effluent limits; TWC, §26.121(a)(1), 30 TAC §305.125(1), and TPDES Permit Number WQ0010383001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limits; and 30 TAC §305.125(1) and (17) and TPDES Permit Number WQ0010383001, Sludge Provisions, by failing to submit the annual sludge report for the monitoring period ending July 31,

2011 by September 30, 2011; PENALTY: $29,575; Supplemental Environmental Project offset amount of $29,575 applied to Installation of Aerators in Lagoon One; STAFF ATTORNEY: Joel Cordero, Litigation Division, MC 175, (512) 239-0672; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: Donald Mayo, Sr. d/b/a Donald Mayo Texaco; DOCKET NUMBER: 2013-1629-PST-E; TCEQ ID NUMBER: RN101732576; LOCATION: 4916 Kelley Street, Houston, Harris County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1), 30 TAC §334.50(b)(1)(A), and TCEQ AO Docket Number 2011-0706-PST-E, Ordering Provision Number 2.b.i., by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $33,750; STAFF ATTORNEY: Jennifer Cook, Litigation Division, MC 175, (512) 239-1873; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(4) COMPANY: Lion Elastomers LLC f/k/a Ashland Elastomers LLC; DOCKET NUMBER: 2014-1485-AIR-E; TCEQ ID NUMBER: RN100224799; LOCATION: 1615 Main Street, Port Neches, Jefferson County; TYPE OF FACILITY: rubber manufacturing plant; RULES VIOLATED: Texas Health and Safety Code, §382.085(b), 30 TAC §116.115(b)(2)(F) and (c) and §122.143(4), and Federal Operating Permit Number O1224, Special Terms and Conditions Number 13, and New Source Review Permit Number 9908, Special Conditions Number 1, by failing to prevent unauthorized emissions; PENALTY: $7,500; STAFF ATTORNEY: Elizabeth Lieberknecht, Litigation Division, MC 175, (512) 239-0620; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(5) COMPANY: NORTH BENGAL, INC. d/b/a Dry Clean Super Center; DOCKET NUMBER: 2014-1497-DCL-E; TCEQ ID NUMBER: RN104091012; LOCATION: 1301 North Main Street, Euless, Tarrant County; TYPE OF FACILITY: dry cleaning facility; RULES VIOLATED: Texas Health and Safety Code, §374.102 and 30 TAC §337.11(e), by failing to renew the facility's registration by completing and submitting the required registration form to the TCEQ for a dry cleaning and/or drop station facility; 30 TAC §337.20(e)(3)(A), by failing to install a dike or other secondary containment structure around each dry cleaning unit and around each storage area for dry cleaning solvents, dry cleaning waste, or dry cleaning wastewater; 30 TAC §337.20(e)(5)(A), by failing to keep the secondary containment area free of all materials or objects that would diminish its capacity to contain a leak, spill or release; 30 TAC §337.20(e)(6), by failing to visually inspect each installed secondary containment structure weekly to ensure that the structure is not damaged; 30 TAC §337.11(d)(3), by failing to ensure that a valid, current agency registration certificate is displayed at the facility and posted in a public area where the certificate is clearly visible; 30 TAC §337.70(b), by failing to maintain dry cleaner records for a minimum of five years; and TWC, §5.702 and 30 TAC §337.14(a), by failing to pay outstanding dry cleaner fees for TCEQ Financial Account Number 24003065; PENALTY: $2,422; STAFF ATTORNEY: Tracy Chandler, Litigation Division, MC 175, (512) 239-0629; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(6) COMPANY: SAHAD INVESTMENTS, INC. dba Riverside Market; DOCKET NUMBER: 2014-1169-PST-E; TCEQ ID NUMBER: RN102028925; LOCATION: 491 South Main Street, Boerne, Kendall County; TYPE OF FACILITY: underground storage tank system and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.72, by failing to report a suspected release within 24 hours of discovery; and 30 TAC §334.74, by failing to investigate a suspected release within 30 days of discovery; PENALTY: $12,600; STAFF ATTORNEY: Ryan Rutledge, Litigation Division, MC 175, (512) 239-0630; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(7) COMPANY: SOUTHERN MANUFACTURING CO., L.L.C.; DOCKET NUMBER: 2013-2026-AIR-E; TCEQ ID NUMBER: RN100218957; LOCATION: 6287 Gulfway Drive, Groves, Jefferson County; TYPE OF FACILITY: fiberglass manufacturing plant; RULES VIOLATED: Texas Health and Safety Code (THSC), §382.085(b), 30 TAC §§122.143(4), 122.145(2)(B), and 122.146, and Federal Operating Permit Number O2880, General Terms and Conditions, by failing to certify compliance with the terms and conditions of the Operating Permit for at least each twelve-month period following initial permit issuance and by failing to submit a semi-annual deviation report no later than 30 days after the reporting period; TWC, §5.702 and THSC, §370.008, by failing to pay toxic release inventory reporting fees and/or any associated late fees for TCEQ Financial Administration Account Number 0501945 for Reporting Year 2009; PENALTY: $12,000; STAFF ATTORNEY: Jess Robinson, Litigation Division, MC 175, (512) 239-0455; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(8) COMPANY: United States Department of the Air Force; DOCKET NUMBER: 2013-2072-WQ-E; TCEQ ID NUMBER: RN100212356; LOCATION: Air Force Plant 4, Lockheed Martin Facility, 1 Lockheed Boulevard, Fort Worth, Tarrant County; TYPE OF FACILITY: federal superfund groundwater remediation site and stormwater system; RULES VIOLATED: TWC, §26.121(a) and Texas Pollutant Discharge Elimination System Stormwater Multi-Sector General Permit Number TXR05M673 Part II Sections B.5. and B.6. and Part III Sections A.1.a., A.4., B.1.b., E.1.a.2., and E.2.c., by failing to prevent an unauthorized discharge of contaminated groundwater into or adjacent to water in the state; PENALTY: $4,583.75; STAFF ATTORNEY: Jim Sallans, Litigation Division, MC 175, (512) 239-2053; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(9) COMPANY: WEST PARK BUSINESS INC d/b/a Gator Stop 4; DOCKET NUMBER: 2014-1346-PST-E; TCEQ ID NUMBER: RN101818201; LOCATION: 716 Magnolia Avenue, Port Neches, Jefferson County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.602(a)(4) and §334.603(b)(2), by failing to provide signed and dated written verification in the form of a list of all Class C operators who have been trained for the station; 30 TAC §334.42(i), by failing to inspect sumps, manways, overspill containers or catchment basins at least once every 60 days to assure that their sides, bottoms, and any penetration points are maintained liquid tight and free of debris and liquid; 30 TAC §115.245(6), by failing to submit the Stage II vapor recovery system test results to the appropriate TCEQ Regional office within 10 working days of the completion of tests; Texas Health and Safety Code (THSC), §382.085(b) and 30 TAC §115.248(1), by failing to ensure that at least one Station representative received training in the operation and maintenance of the Stage II vapor recovery system and each current employee receives in-house Stage II vapor recovery training regarding the purpose and correct operation of the Stage II equipment; THSC, §382.085(b) and 30 TAC §115.244(1), by failing to conduct daily inspections of the Stage II vapor recovery system; TWC, §26.3475(a) and 30 TAC §334.50(b)(2), by failing to provide release detection for the pressurized piping associated with the USTs; PENALTY: $13,890;

STAFF ATTORNEY: Jacquelyn Boutwell, Litigation Division, MC 175, (512) 239-5846; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

TRD-201501480
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: April 28, 2015

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Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075 this notice of the proposed order and the opportunity to comment is 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 **June 8, 2015.** The commission will consider any written comments received and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO 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 DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on June 8, 2015.** Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075 provides that comments on the DOs shall be submitted to the commission in **writing.**

(1) COMPANY: Cecil Ford, and Cecil Ford as Trustee of The Ford Family Trust, d/b/a Alta Vista Mobile Home Park; DOCKET NUMBER: 2013-0815-MLM-E; TCEQ ID NUMBER: RN105874556; LOCATION: at the intersection of County Road 517 and Private Road 1628, Stephenville, Erath County; TYPE OF FACILITY: public water system; RULES VIOLATED: Texas Health and Safety Code (THSC), §341.033(d) and 30 TAC §290.109(c)(2)(A)(ii) and §290.122(c)(2)(A), by failing to collect routine distribution water samples for coliform analysis and by failing to provide public notification to the persons served by the facility of the failure; 30 TAC §290.106(e) and §290.107(e), by failing to report to the executive director the results of triennial monitoring for metals, minerals, synthetic organic contaminants, and volatile organic contaminants; 30 TAC §290.106(e), by failing to report to the executive director the results of annual nitrate/nitrate monitoring results; 30 TAC §290.110(e)(4)(A) and (f)(3), by failing to submit Disinfectant Level Quarterly Operating Report to the executive director each quarter by the tenth day of the month following the end of the quarter; TWC, §5.702 and 30 TAC §290.51(b), by failing to pay all Public Health Services fees for Fiscal Years 2011 and 2012, including any associated late fees, interest and penalties, for TCEQ Financial Administration Account Number 90720055; 30 TAC §290.46(q)(1) and (2), by failing to issue a boil water notification to customers of the facility within 24 hours of a low pressure occurrence and a free chlorine disinfectant residual below 0.2 milligrams per liter (mg/L) using the prescribed notification format as specified in 30 TAC §290.47(e); THSC, §341.033(a) and 30 TAC §290.46(e)(4)(A), by failing to operate the facility under the direct supervision of a water works operator who holds a minimum of a Class "D" or higher license; 30 TAC §290.42(b)(1) and (e)(3), by failing to provide disinfection facilities for the groundwater supply to ensure microbiological control and distribution protection; THSC, §341.0315(c) and 30 TAC §290.46(d)(2)(A) and §290.110(b)(4), by failing to operate the disinfection equipment to maintain a disinfectant residual of at least 0.2 mg/L of free chlorine throughout the distribution system at all times; 30 TAC §290.41(c)(3)(J), by failing to provide the well with a concrete sealing block that extends a minimum of three feet from the exterior well casing in all directions, with a minimum thickness of six inches and sloped to drain away at not less than 0.25 inches per foot; 30 TAC §290.41(c)(3)(K), by failing to seal the wellhead with a gasket or sealing compound and provide a well casing vent with an opening that is covered with a 16-mesh or finer corrosion resistant screen, facing downward, elevated, and located as to minimize the drawing of contaminants into the well; 30 TAC §290.41(c)(1)(F), by failing to obtain a sanitary control easement that covers the land within 150 feet of Well Number 1 (G0720055A); 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 §290.42(l), by failing to compile and maintain a thorough up-to-date plant operations manual for operator review and reference at the facility; 30 TAC §290.41(c)(3)(M), by failing to provide a suitable sampling cock on the discharge pipe of the well prior to any treatment; 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the facility and its equipment; 30 TAC §290.46(f)(2), (3)(A)(i)(III), (ii)(III), and (D)(ii), by failing to provide facility records to commission personnel at the time of the investigation; 30 TAC §290.46(t), by failing to post a legible sign at the facility's production, treatment, and storage facilities that contains the name of the facility and emergency telephone numbers where a responsible official can be contacted; 30 TAC §290.110(c)(4)(A), by failing to monitor the disinfectant residual at representative locations throughout the distribution system at least once every seven days; 30 TAC §290.46(n)(3), by failing to provide copies of well completion data; 30 TAC §290.43(d)(2), by failing to provide easily readable pressure release devices on the three pressure tanks; 30 TAC §290.41(c)(3)(O) and §290.43(e), by failing to enclose the well with an intruder-resistant fence with a lockable gate or a locked and ventilated well house; 30 TAC §290.44(d)(4), by failing to provide accurate metering devices at each service connection to provide water usage data; 30 TAC §290.41(c)(3)(N), by failing to provide a flow measuring device for each well to measure production yields and provide for the accumulation of water production data; 30 TAC §290.46(n)(2), by failing to maintain an accurate and up-to-date map of the distribution system so that valves and mains can be easily located during emergencies; THSC, §341.0315(c) and 30 TAC

§290.45(b)(1)(A)(ii), by failing to provide a minimum pressure tank capacity of 50 gallons per connection; TWC, §11.1272(c) and 30 TAC §288.20(a) and §288.30(5)(B), by failing to adopt a drought contingency plan which includes all elements for municipal use by a retail public water supplier; PENALTY: $9,711; STAFF ATTORNEY: Jim Sallans, Litigation Division, MC 175, (512) 239-2053; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: E & A MATERIALS, INC.; DOCKET NUMBER: 2014-1137-MLM-E; TCEQ ID NUMBER: RN107582637; LOCATION: 7600 State Highway 16 South, Graham, Young County; TYPE OF FACILITY: crushed limestone quarry; RULES VIOLATED: TWC, §11.081 and §11.121 and 30 TAC §297.11, by failing to obtain a permit from the commission prior to appropriating any state water or beginning construction of any work designed for the storage, taking, or diversion of water; and 40 Code of Federal Regulations §122.26(c) and 30 TAC §281.25(a)(4), by failing to obtain authorization under the Texas Pollutant Discharge Elimination System (TPDES) General Permit (GP) Number TXR05000 to discharge storm water associated with industrial activities or coverage under a No Exposure Certification for Storm Water Discharges Associated with Industrial Activity under TPDES GP Number TXR05000; PENALTY: $2,750; STAFF ATTORNEY: David Terry, Litigation Division, MC 175, (512) 239-0619; REGIONAL OFFICE: Abilene Regional Office, 1977 Industrial Blvd., Abilene, Texas 79602-7833.

(3) COMPANY: Kyle Freeman; DOCKET NUMBER: 2014-0520-MLM-E; TCEQ ID NUMBER: RN106672165; LOCATION: 1525 South Broadway Street, Joshua, Johnson County; TYPE OF FACILITY: public water system (PWS); RULES VIOLATED: 30 TAC §288.20(a) and §288.30(5)(B), by failing to adopt a drought contingency plan which includes all elements for municipal use by a retail public water supplier; 30 TAC §290.46(e)(4)(A) and Texas Health and Safety Code (THSC), §341.033(a), by failing to operate the facility under the direct supervision of a water works operator who holds a minimum of a Class "D" or higher license; 30 TAC §290.41(c)(3)(A) and §290.46(n)(3), by failing to submit well completion data to the executive director for review and approval prior to placing the wells into service and failed to provide copies of well completion data upon request, 30 TAC §290.43(c)(4), by failing to provide all water storage tanks with a liquid level indicator located at the tank site; 30 TAC §290.45(b)(1)(F)(iv) and THSC, §341.0315(c), by failing to provide a pressure tank capacity of 20 gallons per connection; 30 TAC §290.46(d)(2)(A) and §290.110(b)(4), and THSC, §341.0315(c), by failing to maintain a disinfectant residual of at least 0.20 milligrams per liter of free chlorine throughout the distribution system at all times; 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 PWS will use to comply with the monitoring requirements; 30 TAC §290.42(l), by failing to compile and maintain a thorough and up-to-date plant operations manual for operator review and reference; 30 TAC §290.46(f)(2), (3)(A)(i)(III), and (ii)(III), by failing to provide facility records to commission personnel at the time of the investigation; 30 TAC §290.110(c)(4)(A), by failing to monitor the disinfectant residual at representative locations throughout the distribution system at least once every seven days; 30 TAC §290.46(n)(2), by failing to maintain an accurate and up-to-date map of the distribution system so that valves and mains can be easily located during emergencies; 30 TAC §290.46(i), by failing to adopt an adequate plumbing ordinance, regulations, or service agreement with provisions for proper enforcement to ensure that neither cross-connections nor other unacceptable plumbing practices are permitted; 30 TAC §290.41(c)(3)(M), by failing to provide a suitable sampling cock on the discharge pipe of the well prior to any treatment; 30 TAC §§290.41(c)(3)(O), 290.42(m), and 290.43(e), by failing to provide an intruder-resistant fence with a lockable gate or a locked and ventilated well house; 30 TAC §290.42(e)(2), by failing to disinfect groundwater prior to distribution or storage; 30 TAC §290.39(e)(1) and (h)(1) and THSC, §341.035, 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; 30 TAC §290.41(c)(3)(N), by failing to provide a flow measuring device for each well to measure production yields and provide for the accumulation of water production data; 30 TAC §290.41(c)(1)(F), by failing to obtain sanitary control easements that cover the land within 150 feet of the facility's two wells; 30 TAC §290.42(j), by failing to use an approved chemical or media for the disinfection of potable water that conforms to American National Standards Institute/National Sanitation Foundation standards; 30 TAC §290.46(t), by failing to post a legible sign at the facility's production, treatment and storage facilities that contains the name of the facility and emergency telephone numbers where a responsible official can be contacted; 30 TAC §290.46(l), by failing to flush all dead-end mains at monthly intervals; 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the facility and its equipment; 30 TAC §290.41(c)(3)(J), by failing to provide the well with a concrete sealing block that extends a minimum of three feet from the exterior well casing in all directions, with a minimum thickness of six inches and sloped to drain away at not less than 0.25 inches per foot; 30 TAC §290.41(c)(3)(B), by failing to extend the well casing a minimum of 18 inches above the elevation of the finished floor of the pump house or natural ground surface; and 30 TAC §290.43(c), by failing to provide a ground storage tank that is designed, fabricated, erected, tested, and disinfected in strict accordance with American Water Works Association standards; PENALTY: $6,046; STAFF ATTORNEY: Jacquelyn Boutwell, Litigation Division, MC 175, (512) 239-5846; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: Lecure Donald d/b/a A-Original Tire Man; DOCKET NUMBER: 2014-0503-MSW-E; TCEQ ID NUMBER: RN106823826; LOCATION: 206 Gilmer Street, Killeen, Bell County; TYPE OF FACILITY: tire service facility; RULES VIOLATED: 30 TAC §328.56(b) and §330.9(a), by failing to prevent the unauthorized transportation and disposal of municipal solid waste; PENALTY: $11,812; STAFF ATTORNEY: David A. Terry, Litigation Division, MC 175, (512) 239-0619; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(5) COMPANY: Ted Booher and Rapid Marine Fuels, LLC d/b/a Rapid Environmental Services; DOCKET NUMBER: 2013-1309-MLM-E; TCEQ ID NUMBER: RN106642580; LOCATION: 17007 Wildhorse Pass, Marion, Bexar County; TYPE OF FACILITY: unauthorized used oil/used oil filter storage and transfer facility; RULES VIOLATED: 30 TAC §§324.4(2)(C)(i), 324.11(2), and 328.24(a) and (b), by failing to register prior to conducting used oil and used oil filter activities at the facility; 40 Code of Federal Regulations (CFR) §279.44(a) and 30 TAC §324.4(2)(C)(ii) and §324.11, by failing to determine whether the total halogen content of used oil being stored at the facility is above or below 1,000 parts per million; 40 CFR §279.45(d) and (f) and 30 TAC §324.4(2)(C)(ii) and §324.22(d)(3), by failing to equip containers and above-ground storage tanks (ASTs) used to store used oil with a secondary containment system; 40 CFR §279.45(g) and 30 TAC §324.4(2)(C)(ii) and §324.11, by failing to label or mark clearly all containers and ASTs used to store used oil with the words "Used Oil"; 40 CFR §279.45(h) and 30 TAC §324.11, by failing to perform a

cleanup upon detection of a release of used oil; 40 CFR §279.46(a) and 30 TAC §§324.4(2)(C)(ii), 324.11, and 328.25(a) and (b), by failing to keep records of each used oil and used oil filter shipment accepted for transport and delivered to another used oil transporter or to a used oil burner, processor/re-refiner, or disposal facility; and 30 TAC §330.15(a), (1), (2), and (3), by failing to prevent the unauthorized collection, storage, transportation, processing, or disposal of municipal solid waste; PENALTY: $5,500; STAFF ATTORNEY: David A. Terry, Litigation Division, MC 175, (512) 239-0619; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(6) COMPANY: Wayne H. Lanier, Jr. d/b/a Wayne Lanier Rental Lures Icehouse; DOCKET NUMBER: 2014-1055-PWS-E; TCEQ ID NUMBER: RN105810170; LOCATION: 12715 Farm-to-Market Road 830 near Willis, Montgomery County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.106(e), by failing to provide the results of annual nitrate sampling to the executive director; and 30 TAC §290.122(c)(2)(A) and (f) by failing to post public notification and submit a copy of the public notification to the executive director regarding the failure to provide nitrate sampling results; Texas Health and Safety Code, §341.033(d) and 30 TAC §290.109(c)(2)(A)(i), by failing to collect routine distribution water samples for coliform analysis; and 30 TAC §290.122(c)(2)(A) and (f), by failing to post public notification and submit a copy of the public notification to the executive director regarding the failure to conduct routine coliform monitoring; 30 TAC §290.106(e), by failing to provide the results of the triennial mineral and metal sampling results to the executive director; and 30 TAC §290.122(c)(2)(A) and (f), by failing to post public notification and submit a copy of the public notification to the executive director regarding the failure to provide mineral and metal sampling results; 30 TAC §290.106(c)(6) and (e), by failing to collect annual nitrate samples and provide the results to the executive director; 30 TAC §290.122(c)(2)(A) and (f), by failing to post public notification and submit a copy of the public notification to the executive director regarding the failure to conduct coliform monitoring; and TWC, §5.702 and 30 TAC §290.51(a)(6), by failing to pay Public Health Service fees and associated late fees for TCEQ Financial Administration Account Number 91700797; PENALTY: $2,286; STAFF ATTORNEY: Colleen Lenahan, Litigation Division, MC 175, (512) 239-6909; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-201501481
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: April 28, 2015

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Notice of Water Quality Applications

The following notices were issued on April 23, 2015.

INFORMATION SECTION

The following do not require publication in a newspaper. Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin Texas 78711-3087 WITHIN (30) DAYS OF THE ISSUED DATE OF THE NOTICE.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO 28 has applied to the Texas Commission on Environmental Quality (TCEQ) for a minor amendment to the Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014362001 to authorize the addition of an Interim II phase at a daily average flow not to exceed 0.8 million gallon per day (MGD). The existing permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 900,000 gallons per day. The facility is located at 3455 1/2 Elrod Road, on the west side of Elrod Road, 2,500 feet north of the intersection of Elrod Road and Morton Road, in Harris County, Texas 77449.

TRD-201501499
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: April 29, 2015

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Update to the Water Quality Management Plan

The Texas Commission on Environmental Quality (TCEQ or commission) requests comments from the public on the draft April 2015 Update to the Water Quality Management Plan (WQMP) for the State of Texas.

Download the draft April 2015 WQMP Update at *http://www.tceq.texas.gov/permitting/wqmp/WQmanagement_comment.html* or view a printed copy at the TCEQ Library, Building A, 12100 Park 35 Circle, Austin, Texas.

The WQMP is developed and promulgated in accordance with the requirements of Federal Clean Water Act, §208. The draft update includes projected effluent limits of specific domestic dischargers, which may be useful for planning in future permit actions. The draft update may also contain service area populations for listed wastewater treatment facilities, designated management agency information, and total maximum daily load (TMDL) revisions.

Once the commission certifies a WQMP update, it is submitted to the United States Environmental Protection Agency (EPA) for approval. For some Texas Pollutant Discharge Elimination System (TPDES) permits, the EPA's approval of a corresponding WQMP update is a necessary precondition to TPDES permit issuance by the commission.

Deadline

All comments must be received at the TCEQ no later than **5:00 p.m. on June 8, 2015.**

How to Submit Comments

Comments must be submitted in writing to:

Nancy Vignali Texas Commission on Environmental Quality Water Quality Division, MC 150 P.O. Box 13087 Austin, Texas 78711-3087

Comments may also be faxed to (512) 239-4420, but must be followed up with written comments by mail within three working days of the fax date or by the comment deadline, whichever is sooner.

For further information, or questions, please contact Ms. Vignali at (512) 239-1303 or by email at *Nancy.Vignali@tceq.texas.gov.*

TRD-201501478
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: April 28, 2015

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Texas Facilities Commission

Request for Proposals #303-6-20486-A

The Texas Facilities Commission (TFC), on behalf of the Texas Department of Criminal Justice (TDCJ), announces the issuance of Request

for Proposals (RFP) #303-6-20486-A. TFC seeks a five (5) or ten (10) year lease of approximately 12,784 square feet of office space in Corpus Christi, Nueces County, Texas.

The deadline for questions is May 20, 2015, and the deadline for proposals is May 29, 2015, at 3:00 p.m. The award date is June 17, 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=117145.*

TRD-201501494
Kay Molina
General Counsel
Texas Facilities Commission
Filed: April 28, 2015

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Request for Proposals #303-6-20491-A

The Texas Facilities Commission (TFC), on behalf of the Department of Aging and Disability Services (DADS) and the Health and Human Services Commission (HHSC), announces the issuance of Request for Proposals (RFP) #303-6-20491-A. TFC seeks a five (5) or ten (10) year lease of approximately 22,414 square feet of office space in Austin, Texas.

The deadline for questions is May 20, 2015 and the deadline for proposals is June 1, 2015 at 3:00 p.m. The award date is July 15, 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=117175.*

TRD-201501510
Kay Molina
General Counsel
Texas Facilities Commission
Filed: April 29, 2015

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Request for Proposals #303-6-20492

The Texas Facilities Commission (TFC), on behalf of the Health and Human Services Commission (HHSC), announces the issuance of Request for Proposals (RFP) #303-6-20492. TFC seeks a five (5) or ten (10) year lease of approximately 15,015 square feet of office space in Laredo, Webb County, Texas.

The deadline for questions is May 18, 2015, and the deadline for proposals is May 28, 2015, at 3:00 p.m. The award date is July 15, 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=117051.*

TRD-201501407
Kay Molina
General Counsel
Texas Facilities Commission
Filed: April 24, 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 February 27, 2015, through April 27, 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, May 1, 2015. The public comment period for this project will close at 5:00 p.m. on Monday, June 1, 2015.

FEDERAL AGENCY ACTIONS:

Applicant: Enterprise Products Operating LLC

Location: The project is located adjacent to the Port Arthur Canal, approximately 0.7 mile east of the intersection of State Highway 93 and Dorsey Street, in Port Arthur, Jefferson County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Port Acres, Texas.

LATITUDE & LONGITUDE (NAD 83):

Latitude: 29.916111° North; Longitude: 94.011388° West

Project Description: The applicant proposes to construct a 265-foot-diameter farm tank and erect a containment levee within an existing tank farm for an expansion project. The levee will be placed around the perimeter of the project boundary and will connect to the existing containment levee onsite. The area within the proposed levee will be graded and a base layer of fill added on prior to construction of the farm tank and levee. An area adjacent to the proposed expansion will be used for temporary workspace. In total, 0.70 acre of permanent impacts for tank and levee construction and 2.43 acres of temporary workspace board mat impacts are proposed for the project.

CMP Project No: 15-1353-F1

Type of Application: USACE permit application #SWG-2015-00045. This application will be reviewed pursuant to §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).

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-201501498
Anne L. Idsal
Chief Clerk
General Land Office
Filed: April 29, 2015

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Texas Health and Human Services Commission

Public Notice - State Plan Amendment 15-016

The Texas Health and Human Services Commission announces its intent to submit transmittal number 15-016 to the Texas State Plan for Medical Assistance under Title XIX of the Social Security Act.

The purpose of this amendment is to remove the exclusion of Medicaid reimbursement for inpatient services provided by a tuberculosis (TB) institution. The proposed change would allow the state's only TB inpatient hospital to participate in Medicaid. The proposed amendment is effective December 6, 2015.

The proposed amendment is estimated to result in an additional expenditure of $31,496 for federal fiscal year (FFY) 2016, consisting of $13,502 in federal funds and $17,994 in state general revenue. For FFY 2017, the estimated expenditure is $39,651 consisting of $22,597 in federal funds and $17,054 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 email 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-201501506
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: April 29, 2015

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Texas Higher Education Coordinating Board

Request for Qualifications Financial Audit Services

RFQ Number **781-6-14410**

The Texas Higher Education Coordinating Board (THECB) is seeking requests for qualifications from qualified respondents to enter into a Contract to perform Financial Audits, in accordance with the requirements contained in the Request for Qualifications (RFQ).

Pursuant to Texas Government Code, Chapter 2254, Subchapter A, the THECB is issuing an RFQ from qualified independent persons or firms to perform a financial audit for State Fiscal Year 2015.

Scope of Work:

This audit shall include the exhibits, statements, and schedules as required by the general purpose financial statements, combining statements, and other schedules as required by the State Comptroller of Public Accounts guidelines for financial reporting for the THECB for the State Fiscal Years designated by THECB. The audits are to be performed in accordance with Generally Accepted Government Auditing Standards issued by the Comptroller General of the United States pronouncements issued by the Government Accounting Standards Board (GASB) including GASB Statements 34, 61, 54, 7, 65, and any other authoritative pronouncements which may be deemed applicable. In order to perform the audits of the general purpose financial statements, the auditor shall be required to understand the THECB's internal control policies and procedures and evaluate the effectiveness of the entity's internal control. The audit shall include a review of internal accounting, administrative, and financial management systems controls, as well as tests of significant assertions related to the financial statements. Tests shall be performed at the transaction level for compliance with standards, laws, and regulations. Any reportable condition shall be reported in accordance with Government Auditing Standards. Financial Audit shall include auditing of the stand-alone financial statements which include the THECB-administered college student loan programs and the remainder of the organization. Respondent shall demonstrate the capability to perform the audits in accordance with generally accepted government auditing standards.

Mandatory Criteria

Responses shall not be considered for further evaluation unless there is compliance with all of the following criteria. The respondent:

(1) Must be an independent auditor properly licensed for public practice in Texas.

(2) Must meet the independence standards of Government Auditing Standards, Comptroller General of the United States, Government Accountability Office (GAO).

(3) Must be knowledgeable of Government Auditing Standards and U.S. generally accepted accounting principles.

(4) Must not have a record of substandard work and have passed their most recent Peer Review satisfactorily.

(5) Professional credentials relevant to the scope of work (such as CPA, CISA, CIA, CFE, CGAP).

(6) Supervisors should have four to six years audit experience and the audit team members must have at least two years of experience in auditing and accounting, or other related areas.

(7) Must submit a response that complies with the requirements of the request for qualifications.

RFQ documentation may be obtained by contacting:

Texas Higher Education Coordinating Board

P.O. Box 12788

Austin, Texas 78711-2788

(512) 427-6142

Theresa.lopez@thecb.state.tx.us

RFQ documentation is also located on the THECB's website at:

www.thecb.state.tx.us/Agency Info

And The Electronic state Business Daily

http://esbd.cpa.state.tx.us/

Proposers should check both websites often to ensure they have the most current information.

Deadline for proposal submission is 3:00 p.m. CT on May 29, 2015.

TRD-201501485
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Filed: April 28, 2015

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Texas Department of Housing and Community Affairs

Housing Trust Fund Contract for Deed Conversion Program Assistance Grants 2015 Notice of Funding Availability

I. Source of Housing Trust Funds.

The Housing Trust Fund (HTF) was established by the 72nd Legislature, Senate Bill 546, Texas Government Code §2306.201, to provide assistance to low- and very low-income households to finance, acquire, rehabilitate and develop decent, safe and sanitary housing. Funding sources include appropriations or transfers made to the fund, unencumbered fund balances, and public or private gifts, grants, or donations.

II. Notice of Funding Availability (NOFA).

The Texas Department of Housing and Community Affairs (the "Department") announces the availability of $383,000 in funding through the Department's Reservation System for the HTF Contract for Deed Conversion Program (CFDC). There are two types of CFDC Program Assistance Grants that support eligible nonprofit organizations and units of local government in helping eligible colonia households to convert their contracts for deed (CFD) to warranty deeds. If an administrator assists a household with converting their CFD **without** any TDHCA HOME Investment Partnership Program funds, the administrator will receive a $3,500 Assistance Grant upon closing (Option 1). Under Option 1, additional grant funds exist to assist eligible households to pay off remaining unpaid contract for deed balances of up to $20,000 and to rehabilitate the house to meet Texas Minimum Construction Standards. If an administrator assists a household with converting their CFD **and** with making additional housing improvement **with** TDHCA HOME Investment Partnership Program funds, the administrator will receive a $6,500 Assistance Grant upon closing and commencement of construction (Option 2). All eligible households must reside in a colonia within 150 miles of the Texas-Mexico border and earn 60% or less of the applicable Area Median Family Income.

III. Application Deadline and Availability.

The HTF Contract for Deed Conversion Program Assistance Grants NOFA is posted on the Department's website: *http://www.tdhca.state.tx.us/nofa.htm.*

Questions regarding the NOFA may be addressed to Glynis Laing at (512) 936-7800 or *htf@tdhca.state.tx.us.*

TRD-201501396
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Filed: April 23, 2015

♦ ♦ ♦

Texas Department of Insurance

FY 2015 Research Agenda for the Workers' Compensation Research and Evaluation Group at the Texas Department of Insurance

The commissioner of insurance considers the proposed Fiscal Year (FY) 2015 Research Agenda for the Workers' Compensation Research and Evaluation Group (REG) at the Texas Department of Insurance. Labor Code §405.0025 authorizes the REG to conduct professional studies and research related to the delivery of benefits; litigation and controversy related to workers' compensation; insurance rates and ratemaking procedures; rehabilitation and reemployment of injured employees; the quality and cost of medical benefits; employer participation in the workers' compensation system; employment health and safety issues; and other matters relevant to the cost, quality, and operational effectiveness of the workers' compensation system.

Insurance Code §1305.502 requires the REG to develop and issue an annual informational report card that identifies and compares, on an objective basis, the quality, costs, health care provider availability, and other analogous factors of workers' compensation health care networks operating under the workers' compensation system of this state with each other and with medical care provided outside of networks. Labor Code §405.0026 requires the REG to prepare and publish annually in the *Texas Register* a proposed workers' compensation research agenda for the commissioner's review and approval.

In September 2014, the REG posted an informal request for suggestions for its FY 2015 research agenda on the TDI website to get input from stakeholders and the general public. The REG also asked legislative offices for input.

After considering the four responses to the informal request for suggestions, TDI published a proposed research agenda in the November 28, 2014, issue of the *Texas Register* (39 TexReg 9390) for public review and comment. TDI received five comments from four commenters and no hearing requests.

Comment:

A commenter supports the adoption of the proposed FY 2015 research agenda.

Agency Response:

TDI appreciates the supportive comment.

Comment:

A commenter suggests research on the commenter's perception that designated doctors are reluctant to issue maximum medical improvement (MMI) findings in cases where the treating doctor plans future medical treatments. The commenter states that perhaps a more expansive understanding of MMI introduced by the Texas Department of Insurance, Division of Workers' Compensation (Division), which would explain the divergence from the American Medical Association Guides, Official Disability Guidelines Treatment in Workers' Comp (ODG), and the Medical Disability Advisor parameters. If not, the commenter suggests a research opportunity to review randomly selected designated doctor evaluation reports as related to the designated doctor's conceptual understanding of MMI.

Agency Response:

TDI appreciates the comment and recognizes the value of such a project. TDI would need to conduct a data call or survey to collect information for the project. There are approximately 850 designated doctors in the Texas Workers' Compensation system, so collecting data for even a randomized selection of a representative sample would require resources that are not included in the current research budget. TDI declines to add a research project on designated doctor evaluation

reports and how they relate to the designated doctor's conceptual understanding of maximum medical improvement.

Comment:

A commenter would like the REG to research how often implantable devices and items are billed separately from the hospital bill, the types of implants being billed (as an aggregate, by the hospital and separately), and what system medical costs are associated with implantable devices and items as an aggregate, as billed by hospitals and as billed separately. As part of the study, the commenter requests that the REG review and report on the frequency of refills for implanted pain pumps and the system medical costs associated with refills.

Agency Response:

TDI appreciates the comment and will consider the feasibility of such a study in a future research agenda. Because the requested analysis would require an additional agenda item that is not included in the current research budget, TDI cannot include it in the FY 2015 research agenda.

Comment:

A commenter wants to add to FY 2015 research agenda item 3. The commenter states the REG should compare the health care provided by a health care provider when treating an injured worker through a workers' compensation health care network to when the health care provider treats an injured worker outside of a workers' compensation health care network. The commenter states the research should compare injured workers with the same International Classification of Diseases (ICD-9) codes and the treatment should be identified with current procedural terminology (CPT) codes to determine if there are different treatments being provided based on network or non-network status.

The commenter states the REG should examine the issues adjudicated by contested case hearing (CCH) officers and determine the percentage of cases resolved in favor of the carrier and the percentage resolved in favor of the injured employee. The commenter states the REG should also determine how many employees were able to get doctors to testify on their behalf or write detailed reports showing how the on-the-job injury caused the condition that the employee is claiming as part of his or her workers' compensation injury among the cases that were resolved in favor of the injured employee.

The commenter states the REG should examine the number of on-the-job injuries covered by workers' compensation insurance in FY 2012 and total the number of PLN 1 and PLN 11 forms in those cases. The commenter states the REG should do the same for 2013 and 2014 to see if the number of denials are increasing, remaining the same, or decreasing in light of the decision in *Texas Mutual Ins. Co v. Ruttiger,* 381 S.W.3d 430 (Tex. 2012).

Agency Response:

TDI appreciates the comment. The 2014 Workers' Compensation Report Card compares the health care provided by a network provider with the care provided by a nonnetwork provider. Medical cost, utilization of care, and administrative access to care measures were calculated using the Division's medical billing and payment database, a collection of approximately 100 medical data elements including charges, payments, and CPT and ICD-9 codes for each injured employee. The FY 2015 research agenda item 3 currently addresses access to medical care in the workers' compensation system, including an initial analysis of access to medical care through TDI-certified Workers' Compensation Health Care Networks. This does not cover issues adjudicated by CCH officers or comparing the number of on-the-job injuries covered by workers' compensation and the total number of PLN1 and PLN11 forms. This comparison would require TDI to adopt an additional agenda item that is not included in the current research budget. TDI respectfully declines to add the requested study to the FY 2015 research agenda, but will consider the feasibility of such a study in a future research agenda.

Comment:

A commenter states that pharmacy benefit managers, more than adjusters, are denying approval or requiring preauthorization and medical necessity letters even for Y drugs. This is happening with antidepressants, which ODG supports for post-traumatic stress disorder and depression. The commenter requests that we track the costs of these demands and delays on the system. Examples of costs include delayed access to medications, which delays recovery and requires extra weeks of temporary income benefits; labor costs resulting from extra phone calls by doctors, adjusters, and pharmacies; and time for doctors to write letters and their staff to deal with the extra work. Most of the time the pharmacy benefit manager approves the medications, but not until as much as a four week delay.

Agency Response:

TDI appreciates the comment and recognizes the value of such a project. Currently, the Division tracks the prescription costs of N drugs and other drugs and the costs and utilizations by drug groups (see *Impact of the Texas Closed Formulary August 2014 - http://www.tdi.texas.gov/reports/wcreg/documents/Pharma-aug2014.pdf)*. TDI would need to conduct a data call or survey to collect sufficient information on the costs of delayed access to medications and extra weeks of temporary income benefits; labor costs of phone calls by doctors, adjusters, and pharmacists; and time for doctors to write letters and deal with the extra work. Collecting data for even a randomized sample would require resources that are not included in the current research budget.

TDI declines to add this project to the FY 2015 research agenda, but will consider the commenter's suggestion for inclusion in future agendas.

The commissioner adopts the following FY 2015 Research Agenda for the Workers' Compensation Research and Evaluation Group at the Texas Department of Insurance:

1. Completion and publication of the ninth edition of the Workers' Compensation Health Care Network Report Card.

2. The annual update of medical costs and utilization in the Texas workers' compensation system.

3. An analysis of injured employee access to medical care provided under the workers' compensation system, including an initial analysis of access to medical care through TDI-certified workers' compensation health care networks.

4. The annual update of return-to-work outcomes for injured employees, including an examination of injured Texas employees' initial and sustained return-to-work rates and wage-recovery rates.

5. An updated analysis of the impact of the pharmacy closed formulary on the utilization and costs patterns in pharmacy prescriptions for new and legacy claims.

The commissioner approves and adopts the FY 2015 Research Agenda for the Workers' Compensation Research and Evaluation Group at the Texas Department of Insurance, as specified above, effective immediately.

TRD-201501505

Sara Waitt
General Counsel
Texas Department of Insurance
Filed: April 29, 2015

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Lamar State College - Port Arthur

Request for Proposal for Enrollment Management/Student Services Consultant

Lamar State College - Port Arthur is currently accepting proposals for an Enrollment Management Consultant with the contract/services to begin June 1, 2015. Proposals are being solicited and will be received until 2:00 p.m. on May 22, 2015, by Lamar State College - Port Arthur, 1501 Procter Street, Port Arthur, Texas 77640 or by mail to P.O. Box 310, Port Arthur, Texas 77641. Information for the Request for Proposals (RFP) and the format required is available on the Electronic State Business Daily (ESBD). Questions regarding this RFP or services requested will be accepted in email form only. For additional information prior to submitting a proposal or to submit questions regarding the proposal requirements, please contact Allison Wright, Purchasing Manager, (409) 984-6117, verretar@lamarpa.edu.

Lamar State College - Port Arthur reserves the right to reject any and all proposals, to waive informalities, to reject nonconforming or conditional proposals, and to proceed otherwise when in the best interest of Lamar State College - Port Arthur.

TRD-201501406
Dr. Betty Reynard
President
Lamar State College - Port Arthur
Filed: April 23, 2015

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Texas Lottery Commission

Instant Game Number 1689 "Lucky Bucks"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1689 is "LUCKY BUCKS". The play style is "key number match".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1689 shall be $1.00 per Ticket.

1.2 Definitions in Instant Game No. 1689.

A. Display Printing - That area of the Instant Game Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Ticket.

C. Play Symbol - The printed data under the latex on the front of the Instant Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, HORSESHOE SYMBOL, $1.00, $2.00, $4.00, $5.00, $10.00, $20.00, $50.00, $100 and $3,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1689 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
HORSESHOE SYMBOL	DBL
$1.00	ONE$
$2.00	TWO$
$4.00	FOUR$
$5.00	FIVE$
$10.00	TEN$
$20.00	TWENTY
$50.00	FIFTY
$100	ONE HUND
$3,000	THR THOU

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, $4.00, $5.00, $10.00 or $20.00.

G. Mid-Tier Prize - A prize of $50.00 or $100.

H. High-Tier Prize - A prize of $3,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1689), 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: 1689-0000001-001.

K. Pack - A Pack of "LUCKY BUCKS" 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 "LUCKY BUCKS" Instant Game No. 1689 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 "LUCKY BUCKS" Instant Game is determined once the latex on the Ticket is scratched off to expose 11 (eleven) Play Symbols. If the player matches any of YOUR NUMBERS Play Symbols to the WINNING NUMBER Play Symbol, the player wins the prize for that number. If a player reveals a "HORSESHOE" Play Symbol, the player wins DOUBLE the prize for that symbol. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game Ticket, all of the following requirements must be met:

1. Exactly 11 (eleven) 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 11 (eleven) 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 11 (eleven) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 11 (eleven) 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 YOUR NUMBERS Play Symbols on a Ticket.

D. No matching non-winning Prize Symbols unless restricted by other parameters, play action or prize structure.

E. A non-winning Prize Symbol will never be the same as a winning Prize Symbol.

F. The "HORSESHOE" (doubler) Play Symbol will only appear as dictated by the prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim a "LUCKY BUCKS" Instant Game prize of $1.00, $2.00, $4.00, $5.00, $10.00, $20.00, $50.00 or $100, a claimant shall sign the back of the Ticket in the space designated on the Ticket and present the winning Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $50.00 or $100 Ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "LUCKY BUCKS" Instant Game prize of $3,000, the claimant must sign the winning Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and

shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "LUCKY BUCKS" 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 "LUCKY BUCKS" 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 "LUCKY BUCKS" 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 11,040,000 Tickets in the Instant Game No. 1689. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1689 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$1	1,104,000	10.00
$2	772,800	14.29
$4	276,000	40.00
$5	73,600	150.00
$10	73,600	150.00
$20	45,080	244.90
$50	12,650	872.73
$100	966	11,428.57
$3,000	46	240,000.00

*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 4.68. 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. 1689 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. 1689, 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-201501492
Bob Biard
General Counsel
Texas Lottery Commission
Filed: April 28, 2015

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Instant Game Number 1690 "Cash Frenzy"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1690 is "CASH FRENZY." The play style is "key number match."

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1690 shall be $5.00 per Ticket.

1.2 Definitions in Instant Game No. 1690.

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: 01, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 2X SYMBOL, 3X SYMBOL, $5.00, $10.00, $15.00, $20.00, $50.00, $100, $250, $500, $1,000 and $100,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1690 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
04	FOR
05	FIV
06	SIX
07	SVN
08	EGT
09	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
24	TWFR
25	TWFV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
41	FRON
42	FRTO
43	FRTH
44	FRFR
45	FRFV
46	FRSX
47	FRSV
48	FRET
49	FRNI

50	FFTY
2X SYMBOL	DOUBLE
3X SYMBOL	TRIPLE
$5.00	FIVE$
$10.00	TEN$
$15.00	FIFTN
$20.00	TWENTY
$50.00	FIFTY
$100	ONE HUND
$250	TWO FTY
$500	FIV HUN
$1,000	ONE THOU
$100,000	100 THOU

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 $5.00, $10.00, $15.00 or $20.00.

G. Mid-Tier Prize - A prize of $50.00, $100, $250 or $500.

H. High-Tier Prize - A prize of $1,000 or $100,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1690), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 075 within each Pack. The format will be: 1690-0000001-001.

K. Pack - A Pack of "CASH FRENZY" Instant Game Tickets contains 075 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket 001 will be shown on the front of the Pack; the back of Ticket 075 will be revealed on the back of the Pack. All Packs will be tightly shrink-wrapped. There will be no breaks between the Tickets in a Pack. Every other book will reverse i.e., reverse order will be: the back of Ticket 001 will be shown on the front of the Pack and the front of Ticket 075 will be shown on the back of the Pack.

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 "CASH FRENZY" Instant Game No. 1690 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 "CASH FRENZY" Instant Game is determined once the latex on the Ticket is scratched off to expose 45 (forty-five) Play Symbols. If a player matches any of YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the PRIZE for that number. If a player reveals a "2X" Play Symbol, the player wins DOUBLE the PRIZE for that symbol. If a player reveals a "3X" Play Symbol, the player wins TRIPLE the PRIZE for that symbol. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game Ticket, all of the following requirements must be met:

1. Exactly 45 (forty-five) Play Symbols must appear under the Latex Overprint on the front portion of the Ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The Ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Ticket;

8. The Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Ticket must not be counterfeit in whole or in part;

10. The Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Ticket must not have been stolen, nor appear on any list of omitted Tickets or non-activated Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Ticket must be complete and not miscut and have exactly 45 (forty-five) Play Symbols under the Latex Overprint on the front

portion of the Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the Ticket;

14. The Serial Number of an apparent winning Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Tickets, and a Ticket with that Serial Number shall not have been paid previously;

15. The Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 45 (forty-five) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 45 (forty-five) Play Symbols on the Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Ticket. In the event a defective Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Ticket with another unplayed Ticket in that Instant Game (or a Ticket of equivalent sales price from any other current 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 within a Pack will not have matching patterns of either Play Symbols or Prize Symbols.

B. A Ticket will win as indicated by the prize structure.

C. A Ticket can win up to twenty (20) times.

D. On winning and Non-Winning Tickets, the top cash prizes of $100,000 and $1,000 will each appear at least once, except on Tickets winning twenty (20) times.

E. No matching non-winning YOUR NUMBERS Play Symbols on a Ticket.

F. Non-winning Prize Symbols will not match a winning Prize Symbol on a Ticket.

G. Tickets winning more than one (1) time will use as many WINNING NUMBERS Play Symbols as possible to create matches, unless restricted by other parameters, play action or prize structure.

H. No matching WINNING NUMBERS Play Symbols will appear on a Ticket.

I. YOUR NUMBERS Play Symbols will never equal the corresponding Prize Symbol (i.e., 5 and $5, 10 and $10, 15 and $15, 20 and $20, 50 and $50).

J. On all Tickets, a Prize Symbol will not appear more than four (4) times except as required by the prize structure to create multiple wins.

K. On Non-Winning Tickets, a WINNING NUMBERS Play Symbol will never match a YOUR NUMBERS Play Symbol.

L. The "2X" (DOUBLE) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.

M. The "2X" (DOUBLE) Play Symbol will win DOUBLE the PRIZE for that Play Symbol and will win as per the prize structure.

N. The "2X" (DOUBLE) Play Symbol will never appear more than once on a Ticket.

O. The "2X" (DOUBLE) Play Symbol will never appear on a Non-Winning Ticket.

P. The "3X" (TRIPLE) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.

Q. The "3X" (TRIPLE) Play Symbol will win TRIPLE the PRIZE for that Play Symbol and will win as per the prize structure.

R. The "3X" (TRIPLE) Play Symbol will never appear more than once on a Ticket.

S. The "3X" (TRIPLE) Play Symbol will never appear on a Non-Winning Ticket.

2.3 Procedure for Claiming Prizes.

A. To claim a "CASH FRENZY" Instant Game prize of $5.00, $10.00, $15.00, $20.00, $50.00, $100, $250 or $500, a claimant shall sign the back of the Ticket in the space designated on the Ticket and present the winning Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $50.00, $100, $250 or $500 Ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "CASH FRENZY" Instant Game prize of $1,000 or $100,000, the claimant must sign the winning Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "CASH FRENZY" Instant Game prize, the claimant must sign the winning Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. A sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "CASH FRENZY" 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 "CASH FRENZY" 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 8,280,000 Tickets in the Instant Game No. 1690. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1690 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$5	956,800	8.65
$10	533,600	15.52
$15	220,800	37.50
$20	184,000	45.00
$50	83,720	98.90
$100	37,490	220.86
$250	3,335	2,482.76
$500	2,714	3,050.85
$1,000	115	72,000.00
$100,000	8	1,035,000.00

*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 4.09. 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. 1690 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. 1690, 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-201501493
Bob Biard
General Counsel
Texas Lottery Commission
Filed: April 28, 2015

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Texas Parks and Wildlife Department

Notice of Proposed Real Estate Transaction

Land Acquisition

Cochran County, Texas

Yoakum Dunes Preserve

In a meeting on May 21, 2015 the Texas Parks and Wildlife Commission (the Commission) will consider authorizing the acquisition of approximately 357.5 acres of land in Cochran County as an addition to The Yoakum Dunes Preserve. At this meeting, the public will have an opportunity to comment on the proposed transaction before the Commission takes action. The meeting will start at 9:00 a.m. at the Texas Parks and Wildlife Department Headquarters, 4200 Smith School Road, Austin, Texas 78744. Prior to the meeting, public comment may be submitted to Corky Kuhlmann, Land Conservation, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744 or by email at corky.kuhlmann@tpwd.texas.gov or through the TPWD web site at tpwd.texas.gov.

TRD-201501507
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Filed: April 29, 2015

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Permian Basin Workforce Development Board

Request for Proposals - Workforce Services

The Permian Basin Workforce Development Board announces the release of a Request for Proposals (RFP) for workforce services effective May 7, 2015. Eligible respondents may be public, private-for-profit, private not-for-profit entities, or a professional employer organization (PEO) model. The purpose of the RFP is to select a contractor to manage and operate Workforce Solutions Permian Basin's workforce programs for low-income adults, dislocated workers, youth, the universal population of job seekers, and employers. Services are delivered in the 17 counties of the Permian Basin: Andrews, Borden, Crane, Dawson, Ector, Gaines, Glasscock, Howard, Loving, Martin, Midland, Pecos, Reeves, Terrell, Upton, Ward, and Winkler.

An RFP packet may be obtained beginning May 7, 2015 by contacting:

Permian Basin Workforce Development Board

P.O. Box 61947, Midland, Texas 79711

(432) 563-5239

Fax: (432) 561-8785

info@workforcepb.org

The deadline for submitting a proposal is June 25, 2015 at 4:00 p.m. Central Daylight Savings Time. A bidders' conference will be held May 28, 2015 at the Atmos Energy Community Room located at 2304 Loop 40, Midland, Texas 79706.

TRD-201501508
Gail Dickenson
Chief Operating Officer
Permian Basin Workforce Development Board
Filed: April 29, 2015

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Public Utility Commission of Texas

Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas (commission) received an application on April 20, 2015, to amend a state-issued certificate of franchise authority, pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Time Warner Cable for Amendment to its State-Issued Certificate of Franchise Authority; Project Number 44664.

The requested amendment is to expand the service area footprint to include the unincorporated areas excluding any federal properties in the counties of Dallas, Ellis, Kaufman, Kinney, Llano, Milam and Tarrant, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All inquiries should reference Project Number 44664.

TRD-201501393
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 22, 2015

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Notice of Application for Approval of Accounting Entries Associated with the Purchase and Sale of Facilities

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application filed on April 22, 2015, for approval of accounting entries associated with the purchase and sale of facilities.

Docket Style and Number: Joint Application of Southwestern Public Service Company and Oncor Electric Delivery Company LLC for Approval of Accounting Entries Associated with the Purchase and Sale of Facilities, and for True-Up of the Gain-on-Sale; Docket No. 44671.

The Application: Southwestern Public Service Company (SPS) and Oncor Electric Delivery Company, LLC (Oncor) filed the above-referenced application for approval of accounting entries associated with sale of certain transmission assets from SPS to Oncor. SPS seeks (1) approval to reverse the previous write-down of net book value to $0 for the Andrews County Line and instead to record a net book value of approximately $2.2 million for the line of regulatory accounting purposes; (2) SPS seeks approval of SPS's calculation of the portion of the final pre-tax gain on sale from the Sharyland Transaction and the Oncor Transaction to be provided to SPS's Texas retail customers, assuming the Oncor Transaction closes; and (3) Oncor seeks approval to record the net book value of the Andrew County Line at approximately $2.2 million for purposes of a future interim TCOS filings.

Persons wishing to comment on the action sought should contact the commission by mail at Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. 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. 44671.

TRD-201501495
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 28, 2015

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Notice of Application for Sale, Transfer, or Merger

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on April 17, 2015, pursuant to the Texas Water Code.

Docket Style and Number: Application of Ni America Texas, LLC and Ni Pacolet Milliken Utilities, LLC for Sale, Transfer, or Merger of Facilities and Certificate Rights in Johnson and Wise Counties, Docket Number 44656.

The Application: Ni America Texas, LLC (Ni America Texas) and Ni Pacolet Milliken Utilities, LLC (Ni Pacolet) (collectively, Applicants) filed an application for sale, transfer, or merger of facilities and certificate of convenience and necessity rights in Johnson and Wise Counties. Specifically, Ni America Texas seeks approval to sell facilities and transfer its water Certificate of Convenience and Necessity No. 11922 to Ni Pacolet. The total area being requested in Johnson County includes approximately 640 acres and serves 202 customers in the Shaded Lane Estates subdivision. The total area being requested in Wise County includes approximately 5,120 acres and services 829 customers in the Chisholm Hills, Coyote Ridge, Hills of Oliver Creek, Sage Brush Estates, Skyview Ranch, Windmill Trails, and Rio Rancho Estates subdivisions.

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 44656.

TRD-201501411
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 24, 2015

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Notice of Application for Sale, Transfer, or Merger

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on April 20, 2015, pursuant to the Texas Water Code.

Docket Style and Number: Application of Interim-La Ventana, LLC d/b/a La Ventana Water Company and Southwest Liquids, Inc. for Sale, Transfer, or Merger of Facilities and Certificate Rights in Hays County, Docket Number 44657.

The Application: Interim-La Ventana, LLC d/b/a La Ventana Water Company (La Ventana) and Southwest Liquids, Inc. (Southwest) filed an application for approval of the sale, transfer, or merger of facilities and certificate rights in Hays County, Texas. Specifically, Southwest seeks approval to acquire all of the water system assets of La Ventana held under water Certificate of Convenience and Necessity (CCN) No. 12920. Upon approval of the application CCN No. 12920 will transfer to Southwest.

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 44657.

TRD-201501398
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 23, 2015

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Notice of Application for Sale, Transfer, or Merger

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on April 21, 2015, pursuant to the Texas Water Code.

Docket Style and Number: Application of 439 Water Supply Corporation and Bell County Water Control and Improvement District No. 3 for Sale, Transfer, or Merger of Facilities and Certificate Rights in Bell County, Docket Number 44665.

The Application: 439 Water Supply Corporation and Bell County Water Control and Improvement District No. 3 (WCID No. 3) filed an application for sale, transfer, or merger of facilities and certificate of convenience and necessity rights in Bell County. Specifically, WCID seeks commission approval to acquire an approximately 108.108 acre portion of 439 WSC's Certificate of Convenience and Necessity No. 10001 service area, with associated facilities, which serves 22 customers.

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 44665.

TRD-201501471
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 27, 2015

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Notice of Application to Amend a Certificate of Convenience and Necessity for a Proposed Transmission Line

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on April 24, 2015, to amend a certificate of convenience and necessity (CCN) for a proposed transmission line in Grimes, Harris, and Waller Counties, Texas.

Docket Style and Number: Application of CenterPoint Energy Houston Electric, LLC to Amend a Certificate of Convenience and Necessity for a 345-kV Transmission Line in Grimes, Harris and Waller Counties, SOAH Docket Number 473-15-3595; PUC Docket Number 44547.

The Application: CenterPoint Energy Houston Electric, LLC (CenterPoint Energy) filed an application to amend a CCN for a proposed 345-kV transmission designated as the Brazos Valley Connection Transmission Line Project. The facilities include construction of a new double-circuit 345-kV transmission line extending from the existing 345-kV Zenith Substation located in Harris County to the existing 345-kV Gibbons Creek Substation located in Grimes County. The proposed date to energize facilities is February 1, 2018. The proposed transmission line project is a component of the larger Houston Import Project.

The total estimated cost for the project ranges from approximately $275,596,000 to $383,464,000 depending on the route chosen. The proposed transmission line is estimated to be approximately 59.5 to 77.7 miles in length. The proposed project is presented with 32 alternate routes. Any of the routes or route segments presented in the application could, however, be approved by the commission.

The Electric Reliability Council of Texas (ERCOT) has deemed the project critical to reliability. Pursuant to P.U.C. Substantive Rule §25.101(b)(3)(D), applications for transmission lines which have been deemed critical to reliability by ERCOT shall be considered on an expedited basis. The commission shall issue a final order in this docket before the 181st day after the date the application is filed with the commission, unless good cause is shown for extending that period.

Persons wishing to intervene or comment on the action sought should contact the commission by mail at Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. The deadline for intervention in this proceeding is June 8, 2015. 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 SOAH Docket Number 473-15-3595; PUC Docket Number 44547.

TRD-201501496
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 28, 2015

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Notice of Application to Amend a Certificate of Convenience and Necessity for a Proposed Transmission Line

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on April 24, 2015, to amend a certificate of convenience and necessity (CCN) for a transmission line

in Brazos, Freestone, Grimes, Leon, Limestone, Madison and Robertson Counties, Texas.

Docket Style and Number: Application of Cross Texas Transmission, LLC to Amend its Certificate of Convenience and Necessity for the Limestone to Gibbons Creek 345-kV Transmission Line in Brazos, Freestone, Grimes, Leon, Limestone, Madison and Robertson Counties, SOAH Docket Number 473-15-3596; PUC Docket Number 44649.

The Application: Cross Texas Transmission, LLC filed an application to amend a CCN for a proposed 345-kV transmission designated as the Limestone to Gibbons Creek 345-kV Transmission Line Project. The facilities include construction of a new double-circuit 345-kV transmission line from the existing Limestone Substation owned by CenterPoint Energy Houston Electric, LLC located in Limestone County, to the existing Gibbons Creek Substation owned by Texas Municipal Power Agency, located in Grimes County. The proposed date to energize facilities is March 20, 2018. The proposed transmission line project is a component of the larger Houston Import Project.

The total estimated cost for the project ranges from approximately $208 million to $256 million depending on the route chosen. The proposed project is presented with 64 alternative routes and is estimated to be approximately 67 to 81 miles in length. Any of the routes or route segments presented in the application could, however, be approved by the commission.

The Electric Reliability Council of Texas (ERCOT) has deemed the project critical to reliability. Pursuant to P.U.C. Substantive Rule §25.101(b)(3)(D), applications for transmission lines which have been deemed critical to reliability by ERCOT shall be considered on an expedited basis. The commission must issue a final order in this docket before the 181st day after the date the application is filed with the commission, unless good cause is shown for extending that period.

Persons wishing to intervene or comment on the action sought should contact the commission by mail at Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. The deadline for intervention in this proceeding is June 8, 2015. 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 SOAH Docket Number 473-15-3596 and PUC Docket Number 44649.

TRD-201501497
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 28, 2015

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Notice of Application to Amend a Certificate of Convenience and Necessity for Two Proposed Generating Units

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) an application on April 20, 2015, to amend its certificate of convenience and necessity for a 20 megawatt (MW) solar photovoltaic generation project.

Docket Style and Number: Application of El Paso Electric Company to Amend its Certificate of Convenience and Necessity for a 20 Megawatt Solar Photovoltaic Generation Project at Fort Bliss in El Paso County, Docket Number 44637.

The Application: El Paso Electric Company (EPE) filed an application to amend its certificate of convenience and necessity (CCN) for a 20 megawatt solar photovoltaic generation project to be constructed on land within Fort Bliss Army Post to be designated as the Fort Bliss Solar Facility. The land will be contributed to EPE by Fort Bliss at no monetary cost to EPE. Fort Bliss is one of the largest military bases in the country and is EPE's largest customer in El Paso County. Because the project is located on Army land, it will help the Army reach federally-mandated energy goals as well as serve the interests of the community.

The proposed project is a 20 MW ground-mounted solar photovoltaic generating system. The project will be a single-axis tracking system, which allows the photovoltaic panels to rotate around on axis to follow the sun as it moves across the sky over the course of a day. The project is expected to generate 59,983 MWh in the first full year of operation. The estimated cash capital cost for the project is approximately $42.1 million. In addition, allowance for funds used during construction are estimated to be $1.6 million, and interconnection costs are estimated to be $3.0 million. EPE requests an order granting EPE's request no later than November 30, 2015.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. The deadline for intervention in this proceeding is June 4, 2015. 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 44637.

TRD-201501397
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 23, 2015

♦ ♦ ♦

Notice of Application to Amend 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 to amend a sewer certificate of convenience and necessity (CCN) in Bell County, Texas.

Docket Style and Number: Application of the City of Belton to Amend a Certificate of Convenience and Necessity; Docket Number 44646.

The Application: The City of Belton seeks to amend its CCN No. 20444 to expand its service area to allow for proposed future developments as shown in the attached 2015 Wastewater Master Plan. The proposed area is primarily dependent on On-Site Sewage Facilities and will not fully support the anticipated future growth along the IH-35 Corridor and areas west of the City of Belton.

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 44646.

TRD-201501392
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 22, 2015

♦ ♦ ♦

Notice of Petition for Amendment to Water Certificate of Convenience and Necessity by Expedited Release

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) on April 21, 2015, of a petition to amend certificates of convenience and necessity by expedited release in Denton County.

Docket Style and Number: Petition of SLF IV - 114 Assemblage, L.P. to Amend SUETRAK USA COMPANY, INC.'s Certificates of Convenience and Necessity in Denton County by Expedited Release, Docket Number 44666.

The Application: On April 21, 2015, SLF IV - 114 Assemblage, L.P. filed with the commission an application for expedited release from SUETRAK USA COMPANY's water certificate of convenience and necessity (CCN) No. 11916 and sewer CCN No. 20629, pursuant to code Texas Water Code §13.254(a-5) and P.U.C. Subst. R. 24.113(r).

Persons wishing to comment on the action sought should contact the commission no later than May 22, 2015, by mail at Public Utility Commission of Texas, 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 telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 44666.

TRD-201501408
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 24, 2015

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Notice of Petition for Amendment to Water Certificate of Convenience and Necessity by Expedited Release

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) on April 21, 2015, of a petition to amend certificates of convenience and necessity by expedited release in Denton County.

Docket Style and Number: Petition of SLF IV - 114 Assemblage, L.P. to Amend Aqua Texas, Inc.'s Certificates of Convenience and Necessity in Denton County by Expedited Release, Docket Number 44667.

The Application: On April 21, 2015, SLF IV - 114 Assemblage, L.P. filed with the commission an application for expedited release from Aqua Texas Inc.'s water certificate of convenience and necessity (CCN) No. 13201, pursuant to code Texas Water Code §13.254(a-5) and P.U.C. Substantive Rule §24.113(r).

Persons wishing to comment on the action sought should contact the commission no later than May 22, 2015, by mail at Public Utility Commission of Texas, 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 Number 44667.

TRD-201501409
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 24, 2015

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Notice of Petition for Amendment to Water Certificate of Convenience and Necessity by Expedited Release

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) on April 21, 2015, of a petition to amend certificates of convenience and necessity by expedited release in Denton County.

Docket Style and Number: Petition of SLF IV - 114 Assemblage, L.P. to Amend Aqua Texas, Inc.'s Certificates of Convenience and Necessity in Denton County by Expedited Release, Docket Number 44668.

The Application: On April 21, 2015, SLF IV - 114 Assemblage, L.P. filed with the commission an application for expedited release from Aqua Texas Inc.'s sewer certificate of convenience and necessity (CCN) No. 21059, pursuant to code Texas Water Code §13.254(a-5) and P.U.C. Substantive Rule §24.113(r).

Persons wishing to comment on the action sought should contact the commission no later than May 22, 2015, by mail at Public Utility Commission of Texas, 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 Number 44668.

TRD-201501410
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 24, 2015

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Notice of Petition to Cancel a Water Certificate of Convenience and Necessity

Notice is given to the public of a petition filed with the Public Utility Commission of Texas (commission) to cancel a water certificate of convenience and necessity (CCN) in Harris County.

Docket Style and Number: Petition by the City of Houston to Cancel Bellewood Water Supply Corporation's Certificate of Convenience and Necessity in Harris County, Docket Number 44669.

The Application: The City of Houston filed with the commission a petition to cancel Bellewood Water Supply Corporation's (Bellewood WSC's) water certificate of convenience and necessity (CCN) No. 12476 in Harris County. Bellewood WSC forfeited its corporate charge in 2009. The City of Houston stated that it has no ownership interest in Bellewood WSC but began providing water service to 20 existing connections in 2009.

Persons wishing to intervene or comment on the action sought should contact the commission by mail at Public Utility Commission of Texas, 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 telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 44669.

TRD-201501457
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 27, 2015

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Texas Department of Transportation

Public Hearing Notice - Statewide Transportation Improvement Program

The Texas Department of Transportation (department) will hold a public hearing on Tuesday, June 2, 2015, at 10:00 a.m. at 200 East Riverside Drive, Room 1A-2, in Austin, Texas 78704 to receive public comments on the May 2015 Quarterly Revisions to the Statewide Transportation Improvement Program (STIP) for FY 2015-2018.

The STIP reflects the federally funded transportation projects in the FY 2015-2018 Transportation Improvement Programs (TIPs) for each Metropolitan Planning Organization (MPO) in the state. The STIP includes both state and federally funded projects for the nonattainment areas of Beaumont, Dallas-Fort Worth, El Paso, and Houston. The STIP also contains information on federally funded projects in rural areas that are not included in any MPO area, and other statewide programs as listed.

Title 23, United States Code, §134 and §135 require each designated MPO and the state, respectively, to develop a TIP and STIP as a condition to securing federal funds for transportation projects under Title 23 or the Federal Transit Act (49 USC §5301, et seq.). Section 134 requires an MPO to develop its TIP in cooperation with the state and affected public transit operators and to provide an opportunity for interested parties to participate in the development of the program. Section 135 requires the state to develop a STIP for all areas of the state in cooperation with the designated MPOs and, with respect to non-metropolitan areas, in consultation with affected local officials, and further requires an opportunity for participation by interested parties as well as approval by the Governor or the Governor's designee.

A copy of the proposed May 2015 Quarterly Revisions to the FY 2015-2018 STIP will be available for review, at the time the notice of hearing is published, at each of the department's district offices, at the department's Transportation Planning and Programming Division offices located in Building 118, Second Floor, 118 East Riverside Drive, Austin, Texas 78704 or (512) 486-5033, and on the department's website at: *http://www.txdot.gov/government/programs/stips.html.*

Persons wishing to speak at the hearing may register in advance by notifying Lori Morel, Transportation Planning and Programming Division, at (512) 486-5033 not later than Monday, June 1, 2015, or they may register at the hearing location beginning at 9:00 a.m. on the day of the hearing. Speakers will be taken in the order registered. Any interested person may appear and offer comments or testimony, either orally or in writing; however, questioning of witnesses will be reserved exclusively to the presiding authority as may be necessary to ensure a complete record. While any persons with pertinent comments or testimony will be granted an opportunity to present them during the course of the hearing, the presiding authority reserves the right to restrict testimony in terms of time or repetitive content. Groups, organizations, or associations should be represented by only one speaker. Speakers are requested to refrain from repeating previously presented testimony. Persons with disabilities who have special communication or accommodation needs or who plan to attend the hearing may contact the Transportation Planning and Programming Division, at 118 East Riverside Drive, Austin, Texas 78704-1205, (512) 486-5053. Requests should be made no later than Monday, June 1, 2015. Every reasonable effort will be made to accommodate the needs.

Interested parties who are unable to attend the hearing may submit comments regarding the proposed May 2015 Quarterly Revisions to the FY 2015-2018 STIP to James W. Koch, P.E., Director of Transportation Planning and Programming, P.O. Box 149217, Austin, Texas 78714-9217. In order to be considered, all written comments must be received at the Transportation Planning and Programming office by 4:00 p.m. on Monday, June 8, 2015.

TRD-201501470
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: April 27, 2015

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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