

---

# TEXAS REGISTER

Volume 33 Number 16

April 18, 2008

Pages 3079 - 3350

---



Cody Cooper  
11th 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*.

*Texas Register*, (ISSN 0362-4781, USPS 120-090), is published weekly (52 times per year) for \$211.00 (\$311.00 for first class mail delivery) by LexisNexis Matthew Bender & Co., Inc., 1275 Broadway, Albany, N.Y. 12204-2694.

Material in the *Texas Register* is the property of the State of Texas. However, it may be copied, reproduced, or republished by any person without permission of the *Texas Register* director, provided no such republication shall bear the legend *Texas Register* or "Official" without the written permission of the director.

The *Texas Register* is published under the Government Code, Title 10, Chapter 2002. Periodicals Postage Paid at Albany, N.Y. and at additional mailing offices.

**POSTMASTER:** Send address changes to the *Texas Register*, 136 Carlin Rd., Conklin, N.Y. 13748-1531.

# TEXAS REGISTER

a section of the  
Office of the Secretary of State  
P.O. Box 13824  
Austin, TX 78711-3824  
(512) 463-5561  
FAX (512) 463-5569

<http://www.sos.state.tx.us>  
[register@sos.state.tx.us](mailto:register@sos.state.tx.us)

**Secretary of State –**  
Phil Wilson

**Director –**  
Dan Procter

**Staff**  
Leti Benavides  
Dana Blanton  
Kris Hogan  
Belinda Kirk  
Roberta Knight  
Jill S. Ledbetter  
Juanita Ledesma  
Preeti Marasini

# IN THIS ISSUE

## **ATTORNEY GENERAL**

Request for Opinions .....	3085
Opinions .....	3085

## **TEXAS ETHICS COMMISSION**

Ethics Advisory Opinion.....	3087
------------------------------	------

## **EMERGENCY RULES**

### **TEXAS DEPARTMENT OF AGRICULTURE**

#### **QUARANTINES AND NOXIOUS AND INVASIVE PLANTS**

4 TAC §§19.410 - 19.413 .....	3089
4 TAC §§19.500 - 19.508 .....	3090

## **PROPOSED RULES**

### **TEXAS HEALTH AND HUMAN SERVICES COMMISSION**

#### **REIMBURSEMENT RATES**

1 TAC §355.8061, §355.8069.....	3095
---------------------------------	------

### **TEXAS DEPARTMENT OF LICENSING AND REGULATION**

#### **INDUSTRIALIZED HOUSING AND BUILDINGS**

16 TAC §70.100, §70.101 .....	3097
-------------------------------	------

#### **BARBERS**

16 TAC §82.72.....	3106
--------------------	------

### **TEXAS EDUCATION AGENCY**

#### **SCHOOL DISTRICTS**

19 TAC §61.1037.....	3107
----------------------	------

#### **CURRICULUM REQUIREMENTS**

19 TAC §74.30.....	3109
19 TAC §74.36.....	3110

#### **EDUCATIONAL PROGRAMS**

19 TAC §102.1101 .....	3113
------------------------	------

#### **BUDGETING, ACCOUNTING, AND AUDITING**

19 TAC §109.41.....	3114
---------------------	------

#### **TEXAS ESSENTIAL KNOWLEDGE AND SKILLS FOR ENGLISH LANGUAGE ARTS AND READING**

19 TAC §§110.1, 110.10 - 110.16.....	3116
19 TAC §§110.17 - 110.21.....	3133
19 TAC §§110.30 - 110.34, 110.41.....	3142
19 TAC §110.25, §110.26.....	3155

### **TEXAS DEPARTMENT OF INSURANCE**

#### **CORPORATE AND FINANCIAL REGULATION**

28 TAC §§7.8, 7.15, 7.27, 7.71 .....	3159
28 TAC §7.613.....	3159
28 TAC §7.1012.....	3160
28 TAC §§7.1701 - 7.1711.....	3160

### **TEXAS PARKS AND WILDLIFE DEPARTMENT**

#### **FINANCE**

31 TAC §53.17.....	3161
31 TAC §53.30.....	3161

#### **FISHERIES**

31 TAC §§57.251 - 57.253, 57.258, 57.259 .....	3164
--	------

#### **WILDLIFE**

31 TAC §§65.191, 65.193, 65.194.....	3167
--------------------------------------	------

### **DEPARTMENT OF AGING AND DISABILITY SERVICES**

#### **NURSING FACILITY REQUIREMENTS FOR LICENSURE AND MEDICAID CERTIFICATION**

40 TAC §19.101.....	3172
40 TAC §19.1210.....	3179
40 TAC §19.1212.....	3179
40 TAC §19.1911, §19.1926.....	3180
40 TAC §19.2302, §19.2326.....	3181
40 TAC §§19.2401, 19.2403, 19.2407, 19.2413.....	3183
40 TAC §§19.2402 - 19.2404, 19.2407 - 19.2410, 19.2413.....	3185
40 TAC §19.2500.....	3186
40 TAC §§19.2609, 19.2611, 19.2615.....	3188
40 TAC §19.413.....	3189

#### **MEDICAID HOSPICE PROGRAM**

40 TAC §30.14.....	3192
40 TAC §30.60, §30.62.....	3192
40 TAC §30.92.....	3193

#### **USE OF GENERAL REVENUE FOR SERVICES EXCEEDING THE INDIVIDUAL COST LIMIT OF A WAIVER PROGRAM**

40 TAC §40.1.....	3194
-------------------	------

#### **MEDICAID WAIVER PROGRAM FOR PEOPLE WHO ARE DEAF BLIND WITH MULTIPLE DISABILITIES**

40 TAC §42.5, §42.6.....	3196
--------------------------	------

#### **MEDICAID WAIVER PROGRAM FOR PEOPLE WHO ARE DEAF-BLIND WITH MULTIPLE DISABILITIES**

40 TAC §42.12.....	3199
--------------------	------

#### **CONTRACTING TO PROVIDE ASSISTED LIVING AND RESIDENTIAL CARE SERVICES**

40 TAC §46.13.....	3199	40 TAC §§93.1 - 93.4 .....	3252
CONTRACTING TO PROVIDE ASSISTED LIVING AND RESIDENTIAL CARE SERVICES		40 TAC §§93.11 - 93.13.....	3252
40 TAC §46.21.....	3201	40 TAC §§93.21 - 93.23 .....	3252
40 TAC §46.41, §46.45.....	3202	40 TAC §§93.31 - 93.34 .....	3253
COMMUNITY CARE FOR AGED AND DISABLED		40 TAC §§93.41 - 93.48 .....	3253
40 TAC §48.2103, §48.2106.....	3204	40 TAC §§93.61 - 93.63 .....	3253
40 TAC §48.2123.....	3206	MISCELLANEOUS	
COMMUNITY CARE FOR AGED AND DISABLED		40 TAC §100.1, §100.3.....	3254
40 TAC §48.6003, §48.6006.....	3208	<b>WITHDRAWN RULES</b>	
40 TAC §48.6099.....	3210	<b>TEXAS DEPARTMENT OF AGRICULTURE</b>	
40 TAC §§48.6021, 48.6022, 48.6078.....	3210	QUARANTINES AND NOXIOUS AND INVASIVE PLANTS	
§1915(c) CONSOLIDATED WAIVER PROGRAM		4 TAC §§19.500 - 19.508 .....	3257
40 TAC §§50.4, 50.10, 50.16.....	3213	<b>TEXAS EDUCATION AGENCY</b>	
40 TAC §50.48, §50.50.....	3216	BUDGETING, ACCOUNTING, AND AUDITING	
40 TAC §50.28.....	3216	19 TAC §109.41.....	3257
MEDICALLY DEPENDENT CHILDREN PROGRAM		<b>DEPARTMENT OF STATE HEALTH SERVICES</b>	
40 TAC §51.103.....	3217	TDMHMR AND FACILITY RESPONSIBILITIES	
MEDICALLY DEPENDENT CHILDREN PROGRAM		25 TAC §417.307.....	3257
40 TAC §51.203.....	3219	<b>ADOPTED RULES</b>	
40 TAC §51.239.....	3220	<b>TEXAS HEALTH AND HUMAN SERVICES COMMISSION</b>	
40 TAC §51.409.....	3220	MEDICAID ELIGIBILITY	
CONTRACTING TO PROVIDE PROGRAMS OF ALL-INCLUSIVE CARE FOR THE ELDERLY (PACE)		1 TAC §358.432, §358.444.....	3259
40 TAC §60.16.....	3221	<b>TEXAS DEPARTMENT OF AGRICULTURE</b>	
AREA AGENCY ON AGING ADMINISTRATIVE REQUIREMENTS		QUARANTINES AND NOXIOUS AND INVASIVE PLANTS	
40 TAC §§83.1, 83.2, 83.11 .....	3222	4 TAC §§19.410 - 19.413 .....	3260
GENERAL SERVICE REQUIREMENTS		<b>TEXAS EDUCATION AGENCY</b>	
40 TAC §§84.1 - 84.3, 84.5 - 84.9, 84.11, 84.13, 84.15, 84.17, 84.19, 84.21, 84.23 .....	3223	SCHOOL DISTRICTS	
IMPLEMENTATION OF THE OLDER AMERICANS ACT		19 TAC §61.1010.....	3261
40 TAC §85.2.....	3226	CURRICULUM REQUIREMENTS	
40 TAC §§85.201, 85.202, 85.208.....	3228	19 TAC §74.35.....	3261
40 TAC §§85.301 - 85.310 .....	3233	FOUNDATION SCHOOL PROGRAM	
40 TAC §85.401.....	3245	19 TAC §105.1014.....	3262
LICENSING STANDARDS FOR ASSISTED LIVING FACILITIES		STUDENT ATTENDANCE	
40 TAC §92.801.....	3248	19 TAC §129.22.....	3263
EMPLOYEE MISCONDUCT REGISTRY (EMR)		19 TAC §129.1025.....	3263
40 TAC §§93.1 - 93.9 .....	3250	HEARINGS AND APPEALS	
		19 TAC §157.41.....	3264

**TEXAS BOARD OF PROFESSIONAL ENGINEERS**

**ORGANIZATION AND ADMINISTRATION**

22 TAC §131.81 .....3265

**COMPLIANCE AND PROFESSIONALISM**

22 TAC §137.31 .....3265

22 TAC §137.33 .....3266

22 TAC §137.35 .....3266

22 TAC §137.37 .....3267

**ENFORCEMENT**

22 TAC §139.35 .....3267

**TEXAS STATE BOARD OF EXAMINERS OF PROFESSIONAL COUNSELORS**

**PROFESSIONAL COUNSELORS**

22 TAC §§681.1 - 681.16 .....3271

22 TAC §681.31 .....3271

22 TAC §§681.41 - 681.52 .....3271

22 TAC §§681.71 - 681.73 .....3273

22 TAC §§681.81 - 681.83 .....3273

22 TAC §§681.91 - 681.93 .....3273

22 TAC §§681.101 - 681.103 .....3273

22 TAC §681.102 .....3274

22 TAC §§681.111 - 681.113 .....3274

22 TAC §§681.121, 681.123 - 681.127 .....3274

22 TAC §681.122 .....3274

22 TAC §§681.141, 681.142, 681.144 - 681.147 .....3274

22 TAC §681.143 .....3275

22 TAC §§681.161, 681.162, 681.164 - 681.171 .....3275

22 TAC §§681.181, 681.182, 681.184 .....3276

22 TAC §681.183 .....3276

22 TAC §§681.201 - 681.204 .....3276

**TEXAS BOARD OF PROFESSIONAL GEOSCIENTISTS**

**TEXAS BOARD OF PROFESSIONAL GEOSCIENTISTS**

22 TAC §850.63 .....3277

**DEPARTMENT OF STATE HEALTH SERVICES**

**POISON CONTROL CENTERS**

25 TAC §5.51, §5.52 .....3277

**MATERNAL AND INFANT HEALTH SERVICES**

25 TAC §§37.531 - 37.538 .....3278

**FOOD AND DRUG**

25 TAC §§229.172, 229.176 - 229.178 .....3278

**TDMHMR AND FACILITY RESPONSIBILITIES**

25 TAC §§417.301 - 417.311, 417.313 - 417.316 .....3293

25 TAC §§417.301 - 417.306, 417.308 .....3293

**TEXAS DEPARTMENT OF INSURANCE**

**CORPORATE AND FINANCIAL REGULATION**

28 TAC §7.18 .....3293

**TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

**EDWARDS AQUIFER**

30 TAC §§213.9, 213.13, 213.14 .....3298

30 TAC §§213.26 - 213.28 .....3298

**TEXAS PARKS AND WILDLIFE DEPARTMENT**

**FINANCE**

31 TAC §53.7 .....3299

**WILDLIFE**

31 TAC §65.375 .....3299

**COMPTROLLER OF PUBLIC ACCOUNTS**

**TEXAS PROCUREMENT AND SUPPORT SERVICES**

34 TAC §20.52 .....3300

**DEPARTMENT OF AGING AND DISABILITY SERVICES**

**NURSING FACILITY REQUIREMENTS FOR LICENSURE AND MEDICAID CERTIFICATION**

40 TAC §19.2614 .....3301

**RULE REVIEW**

**Proposed Rule Reviews**

General Land Office .....3303

Texas Department of Licensing and Regulation .....3303

**TABLES AND GRAPHICS**

.....3307

**IN ADDITION**

**Office of the Attorney General**

Settlement of a Claim for Natural Resource Damages .....3323

Settlement of an Environmental Enforcement Claim .....3323

**Brazos Valley Council of Governments**

Notice of Release of Request for Quote for Child Care Provider Training Services .....3323

**Coastal Coordination Council**

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program .....3324

**Comptroller of Public Accounts**

Notice of Request for Proposals .....3324

**Office of Consumer Credit Commissioner**

Notice of Rate Ceilings.....3325

**Texas Education Agency**

Request for Applications Concerning Early College High School Professional Development Training, School Years 2008-2009 and 2009-2010 .....3325

**Texas Commission on Environmental Quality**

Agreed Orders.....3326

Notice of Request for Public Comment and Notice of a Public Meeting for an Implementation Plan to Address Low Dissolved Oxygen in the Lake O’ the Pines Watershed.....3329

Notice of Request for a Public Comment and Notice of a Public Meeting for One Total Maximum Daily Load .....3329

Notice of Request for a Public Comment on One Total Maximum Daily Load .....3330

Notice of Water Quality Applications.....3330

**Texas Ethics Commission**

List of Late Filers.....3331

**General Land Office**

Notice of Approval of Coastal Boundary Survey .....3331

**Texas Health and Human Services Commission**

Public Notice .....3332

**Department of State Health Services**

Licensing Actions for Radioactive Materials .....3332

**Texas Department of Insurance**

Third Party Administrator Applications .....3336

**Texas Department of Licensing and Regulation**

Public Notice - Updated Criminal Conviction Guidelines .....3336

**Texas Lottery Commission**

Instant Game Number 1005 "Bonus Break the Bank" .....3336

**Texas Parks and Wildlife Department**

Notice of Proposed Real Estate Transaction and Opportunity for Comment .....3341

Notice of Proposed Real Estate Transaction and Opportunity for Comment .....3342

Notice of Proposed Real Estate Transaction and Opportunity for Comment .....3342

Notice of Proposed Real Estate Transaction and Opportunity for Comment .....3342

**Texas Department of Public Safety**

Request for Qualifications - 405-IT8-0472 - IT Optimization Assistance in the Development of an IT Strategy and Implementation Roadmap .....3342

**Public Utility Commission of Texas**

Announcement of Application for an Amendment to a State-Issued Certificate of Franchise Authority .....3343

Announcement of Application for an Amendment to a State-Issued Certificate of Franchise Authority .....3344

Notice of Amended Application for Waiver from Requirements..3344

Notice of Application for Amendment to Certificated Service Area Boundary .....3344

Notice of Application for Sale, Transfer, or Merger .....3344

Notice of Application for Service Area Exception Within Wilson County, Texas.....3345

Notice of Application for Service Provider Certificate of Operating Authority.....3345

Notice of Application for Service Provider Certificate of Operating Authority.....3345

Notice of Application for Service Provider Certificate of Operating Authority.....3345

Notice of Application for Service Provider Certificate of Operating Authority.....3346

Notice of Application for Waiver from Requirements.....3346

Notice of Filing for Approval of the Provision of Non-Emergency 311 Service.....3346

Request for Proposals to Conduct Audits of Lifeline Providers Receiving Support from the Texas Universal Service Fund .....3346

**Stephen F. Austin State University**

Notice of Consultant Contract Amendment.....3347

**The Texas A&M University System**

Request for Qualifications.....3347

**Texas Department of Transportation**

Aviation Division - Addendum 1 Request for Proposal for Aviation Architectural/Engineering Design-Build Services.....3348

Aviation Division - Requests for Proposals for Professional Services .....3348

**University of North Texas Health Science Center**

Notice of Request for Information (RFI) for Outside Legal Services Related to Intellectual Property Matters .....3349

Notice of Request for Information (RFI) - Immigration Matters ..3350

# 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>.)

## Request for Opinions

**RQ-0691-GA**

### Requestor:

The Honorable Beverly Woolley  
Chair, Committee on Calendars  
Texas House of Representatives  
P.O. Box 2910  
Austin, Texas 78768-2910

Re: Whether the Texas Association of Appraisal Districts is a "governmental body" for purposes of chapter 552, Government Code, the Public Information Act (RQ-0691-GA)

### Briefs requested by May 5, 2008

**RQ-0692-GA**

### Requestor:

The Honorable Sid Miller  
Chair, Committee on Agriculture & Livestock  
Texas House of Representatives  
P.O. Box 2910  
Austin, Texas 78768-2910

Re: Whether a state university that charges its students a medical services fee, or its equivalent, may use a portion of that fee as a prepaid co-payment (RQ-0692-GA)

### Briefs requested by May 9, 2008

**RQ-0693-GA**

### Requestor:

Dr. Raymund A. Paredes  
Commissioner of Higher Education  
Texas Higher Education Coordinating Board  
Post Office Box 12788  
Austin, Texas 78711-2788

Re: Whether the Higher Education Coordinating Board's standard method of calculating high school grade point averages must be followed by independent school districts (RQ-0693-GA)

## Briefs requested by May 9, 2008

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

TRD-200801893  
Stacey Napier  
Deputy Attorney General  
Office of the Attorney General  
Filed: April 9, 2008



## Opinions

### Opinion No. GA-0611

The Honorable Wayne Smith  
Chair, Committee on County Affairs  
Texas House of Representatives  
Post Office Box 2910  
Austin, Texas 78768-2910

Re: Whether chapter 572, Government Code, relating to the filing of personal financial statements, is applicable to the board members of the Tobacco Settlement Permanent Trust Account Investment Advisory Committee (RQ-0626-GA)

## S U M M A R Y

Chapter 572, Texas Government Code, relating to the filing of financial statements, is not applicable to the board members of the Tobacco Settlement Permanent Trust Account Investment Advisory Committee.

### Opinion No. GA-0612

The Honorable Joe Driver  
Chair, Committee on Law Enforcement  
Texas House of Representatives  
Post Office Box 2910  
Austin, Texas 78768-2910

Re: Whether a municipality must pay a fire fighter or police officer for an appearance as a witness in a civil service hearing before a hearing examiner when the fire fighter or police officer is subpoenaed in his or her capacity as a fire fighter or police officer and testifies during time off (RQ-0633-GA)

**S U M M A R Y**

Under section 142.009 of the Local Government Code, a municipality is required to "pay a fire fighter or police officer for an appearance as a witness in a criminal or civil suit in which the municipality or political subdivision or government agency is a party in interest if the appearance: (1) is required; (2) is made on time off; and, (3) is made by the fire fighter or police officer in the capacity of a fire fighter or police officer." In section 142.009, the Legislature did not provide, however, that a municipality is required to pay a fire fighter or police officer for an appearance as a witness in a civil service hearing before a hearing examiner when the fire fighter or police officer is subpoenaed in his or her capacity as a fire fighter or police officer and testifies during time off.

**Opinion No. GA-0613**

Mr. Kenneth Magidson  
Harris County District Attorney  
1201 Franklin Street, Suite 600  
Houston, Texas 77002

Re: Authority of the Harris County Commissioners Court to lease or purchase a juvenile detention center in Colorado County and to use funds forfeited to the district attorney to pay for the transaction (RQ-0631-GA)

**S U M M A R Y**

Pursuant to Human Resources Code section 63.017(a), the Harris County Commissioners Court may purchase or lease a juvenile detention facility in another county. The Harris County District Attorney may not use asset forfeiture funds to help purchase the juvenile detention facility for the county, because providing a juvenile detention facility is not an official purpose of that office under Code of Criminal Procedure article 59.06(c)(1) and is therefore not an authorized use of those funds.

**Opinion No. GA-0614**

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

Re: Whether a proposed rule of the State Board for Educator Certification that relates to certification eligibility of persons with criminal convictions is "preempted" by section 21.060 of the Education Code (RQ-0634-GA)

**S U M M A R Y**

The list of criminal offenses that relate to the duties and responsibilities of the education profession in section 21.060, Education Code, is nonexclusive. As a result, we do not construe section 21.060 to preclude the State Board for Educator Certification (SBEC) from applying or amending its rules to include offenses it deems to be directly related to the education profession pursuant to section 53.025, Occupations Code, and that adds to the list of offenses enumerated in section 21.060. SBEC's authority to take action against a person for an offense listed in section 21.060 is discretionary.

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

TRD-200801892  
Stacey Napier  
Deputy Attorney General  
Office of the Attorney General  
Filed: April 9, 2008





# TEXAS ETHICS COMMISSION

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

## Ethics Advisory Opinion

**EAO-480.** The Texas Ethics Commission has been asked to consider whether an elected judge may use political contributions to compensate a court employee under the judge's supervision for lost vacation time and, if so, whether the judge may use personal funds for that purpose with the intent to seek reimbursement from political contributions. (AOR-543)

### SUMMARY

Title 15 of the Election Code does not prohibit an officeholder from using political contributions to compensate a county employee for vacation time that the employee was unable to take due to carrying out his or her county responsibilities on assignments connected with the activities of the officeholder's office. The officeholder may use personal funds to make the payment to compensate the employee for the lost vacation time and may seek reimbursement from political contributions provided that the expenditure from personal funds is reported as required by title 15 of the Election Code. If the judge is subject to the Judicial Campaign Fairness Act, the reimbursement at issue must be in compliance with the limits set by the Act. The court employee

may accept the compensation at issue under section 36.10(a)(2) of the Penal Code.

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; and (9) Chapter 39, Penal 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-200801884  
Natalia Luna Ashley  
General Counsel  
Texas Ethics Commission  
Filed: April 8, 2008



# EMERGENCY RULES

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

## TITLE 4. AGRICULTURE

### PART 1. TEXAS DEPARTMENT OF AGRICULTURE

#### CHAPTER 19. QUARANTINES AND NOXIOUS AND INVASIVE PLANTS

##### SUBCHAPTER U. ASIAN CITRUS PSYLLID QUARANTINE

###### 4 TAC §§19.410 - 19.413

The Texas Department of Agriculture (the department) adopts on an emergency basis new §§19.410 - 19.413, concerning a quarantine for the Asian citrus psyllid, *Diaphornia citri* Kuwayama. The Texas Government Code §2001.034, authorizes the department to adopt an emergency rule without prior notice or hearing if a federal law requires the department to adopt a rule on fewer than 30 days notice. The Animal and Plant Health Inspection Service (APHIS) agency of the United States Department of Agriculture (USDA) issued a Federal Order on November 2, 2007, titled "Expansion of the quarantines for citrus greening and Asian citrus psyllids," which quarantines 32 Texas counties for this psyllid insect pest. The Federal Order requires the department to establish a parallel quarantine by December 1, 2007; otherwise APHIS will quarantine the entire state of Texas to prevent the spread of the psyllid to other states. APHIS issued this order under the regulatory authority provided by §412(a) of the Plant Protection Act of June 20, 2000, as amended, 7 United States Code 7712(a).

The Asian citrus psyllid is a relatively new pest in Texas. A statewide survey conducted by the Texas A & M University scientists in 2006 - 2007 showed presence of this psyllid in 32 Texas counties. The psyllid causes damage to citrus crops primarily by transmitting the pathogen, which causes one of the most damaging diseases of citrus called citrus greening. This disease is not known to occur in Texas; however, it occurs in the state of Florida. To avoid APHIS's statewide quarantine, the department believes adoption of a quarantine for 32 counties on an emergency basis, is both necessary and appropriate. The emergency quarantine takes necessary steps to prevent the artificial spread of the psyllid both in the non-infested counties of Texas and into those states into which the Federal Order allows the psyllid host material to enter. Preventing artificial spread of the psyllid into non-infested counties of Texas would delay spread of citrus greening when and if the disease is found in Texas. Furthermore, preventing artificial spread of the psyllid becomes especially important since the disease can remain latent for several years and could be spread without detection.

New §19.410 defines the quarantined pest. New §19.411 designates the infested areas subjected to the quarantine. New

§19.412 lists the articles subject to the quarantine. New §19.413 prescribes requirements for movement of the quarantined articles from the quarantined area to a free (non-infested) area. An emergency rule adopted under §2001.034 may be effective for not longer than 120 days and may be renewed for not longer than 60 days. The department proposed adoption of this same emergency rule on a permanent basis in a separate submission. The department adopted this emergency quarantine for a period of 120 days beginning on November 29, 2007, published in the December 14, 2007, issue of the *Texas Register* (32 TexReg 9185) and now wishes to extend the effectiveness of the emergency quarantine to allow the permanent rule to become effective.

The new sections are adopted on an emergency basis under the Texas Agriculture Code, §71.001 and §71.002, which authorize the department to establish quarantines against in-state and out-of-state diseases, §71.004, which authorizes the department to establish emergency quarantines; §71.007 which authorizes the department to adopt rules as necessary to protect agricultural and horticultural interests, including rules to provide for specific treatment of quarantined articles; and the Texas Government Code §2001.034, which provides for the adoption of administrative rules on an emergency basis, without notice and comment.

###### §19.410. Quarantined Pest.

The quarantined pest is the Asian citrus psyllid, *Diaphornia citri* Kuwayama, in any living stage of development.

###### §19.411. Quarantined Areas.

The quarantined areas are:

(1) the states of Florida and Hawaii, the entire territory of Guam and the Commonwealth of Puerto Rico;

(2) the Texas counties of Aransas, Atascosa, Bee, Bexar, Brazoria, Brooks, Caldwell, Cameron, Dimmit, Duval, Harris, Hidalgo, Jim Hogg, Jim Wells, Kenedy, Kleberg, Live Oak, Matagorda, Maverick, McMullen, Nueces, Refugio, San Patricio, Starr, Uvalde, Val Verde, Victoria, Waller, Washington, Webb, Willacy, and Zapata; and

(3) any other area infested with the Asian citrus psyllid.

###### §19.412. Quarantined Articles.

All plants, budwood, cuttings, or other fresh or live plant parts except seed and fruit of species that are hosts of Asian citrus psyllid: *Aegle marmelos*, *Aeglopsis chevalieri*, *Afraegle gabonensis*, *Afraegle paniculata*, *Atalantia* spp., *Balsamocitrus dawei*, *Berbera* (=Murraya) *koenigii*, *Calodendrum capense*, *X Citrofortunella microcarpa*, *X Citroncirus webberi*, *Citropsis schweinfurthii*, *Citrus* spp., *Clausena anisum-olens*, *Clausena excavata*, *Clausena indica*, *Clausena lansium*, *Eremocitrus glauca*, *Eremocitrus hybrid*, *Fortunella* spp., *Limonia acidissima*, *Merrillia caloxylon*, *Microcitrus australasica*, *Microcitrus australis*, *Microcitrus papuana*, *X Microcitronella Sydney*, *Murraya* spp., *Naringi crenulata*, *Pamburus missionis*, *Poncirus trifoliata*,

*Severinia buxifolia, Swinglea glutinosa, Toddalia asiatica, Toddalia lanceolata, Triphasia trifolia, Vepris lanceolata, and Xanthoxylum fagara.*

§19.413. Restrictions.

(a) General. While fresh fruit is not a quarantined article, fruit moved from areas quarantined for the Asian citrus psyllid to citrus producing areas where the Asian citrus psyllid is not present (Alabama, American Samoa, Arizona, California, Louisiana, Northern Mariana Islands, Puerto Rico, Virgin Islands, and those areas of Texas not quarantined for the psyllid) must have been cleaned using normal packing-house procedures. Quarantined articles originating from quarantined areas are prohibited entry into or through free areas of Texas, except as provided in subsection (b) of this section.

(b) Exceptions. To be eligible to move from quarantined areas, quarantined articles must meet the following requirements.

(1) Requirements to move from quarantined areas of Texas to free areas of Texas.

(A) Quarantined articles must be treated using products approved by the United States Environmental Protection Agency (EPA) and the department for use in nurseries. Persons applying treatments must follow the product label, its applicable directions, and restrictions and precautions, including statements pertaining to Worker Protection Standards;

(B) All quarantined articles must be treated with a drench containing imidacloprid as the active ingredient within 30 days prior to shipping and also be treated with a foliar spray with a product containing either acetamiprid, chlorpyrifos, or fenpropathrin as the active ingredient within 10 days prior to movement. The drench and foliar spray must be applied at the rate designated for the Asian citrus psyllid on the product;

(C) In the case of fresh curry leaf (*Bergera (=Murraya) koenigii*) leaves intended for consumption, instead of the treatments specified in subparagraph (B) of this paragraph, the leaves must be treated prior to the movement in accordance with the Animal and Plant Health Inspection Service's (APHIS) treatment schedule T101-n-2 (methyl bromide fumigation treatment for external feeding insects on fresh herbs) at the times and rates specified in the treatment manual and safeguarded until export. This information can be found on page 5-2-28 of the treatment manual, located on line at: [http://www.aphis.usda.gov/import\\_export/plants/manuals/ports/downloads/treatment\\_pdf/05\\_02\\_t100schedules.pdf](http://www.aphis.usda.gov/import_export/plants/manuals/ports/downloads/treatment_pdf/05_02_t100schedules.pdf); and

(D) Any person engaged in the business of growing or handling quarantined articles must enter into a compliance agreement with the department if the quarantined articles are to be moved to free areas of Texas.

(2) Requirements to move from quarantined areas of Texas to other states.

(A) The quarantined articles may not be moved to Alabama, American Samoa, Arizona, California, Louisiana, Northern Mariana Islands, and the Virgin Islands of the United States.

(B) Businesses must enter into a compliance agreement with APHIS to move quarantined articles to states and territories other than those listed in subparagraph (A) of this paragraph.

(C) Compliance agreements may be arranged by contacting a local office of the Plant Protection and Quarantine (PPQ), APHIS in Texas or the Texas State Plant Health Director, PPQ-APHIS at 903 San Jacinto Blvd., Suite 270, Austin, Texas 78701.

This agency hereby certifies that the emergency adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 31, 2008.

TRD-200801690

Dolores Alvarado Hibbs

General Counsel

Texas Department of Agriculture

Effective Date: March 31, 2008

Expiration Date: April 24, 2008

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

◆ ◆ ◆  
SUBCHAPTER V. MEXICAN FRUIT FLY  
QUARANTINE

**4 TAC §§19.500 - 19.508**

The Texas Department of Agriculture (the department) adopts on an emergency basis new §§19.500 - 19.508, concerning a quarantine for the Mexican fruit fly, *Anastrepha ludens* (Loew). The department adopted this emergency quarantine originally on March 26, 2008, and is now withdrawing the original emergency quarantine and resubmitting the quarantine in order to amend the boundaries of the quarantine due to new detections of the Mexican fruit fly in Willacy County, Texas. The new sections are adopted on an emergency basis to prevent the spread of Mexican fruit fly and to facilitate its eradication. The new sections require application of treatments to achieve eradication and prescribe specific restrictions on the handling and movement of quarantined articles. In the January 29, 2008, issue of the *Federal Register*, the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture published an Interim Rule, which removed Willacy County from the list of counties quarantined for the Mexican fruit fly. Based on the trapping surveys conducted by the Texas Department of Agriculture (the department) and APHIS, it was determined that the Mexican fruit fly has been eradicated from Willacy County since the last fly in this county was detected on May 6, 2005. Nevertheless, continuation of a trapping survey at a lesser intensity is required to demonstrate absence of the flies to maintain the fly-free status of a county. During such a survey, four immature and/or unmated Mexican fruit flies were detected in Willacy County since February 28, 2008; however, their distribution pattern and the fly count were insufficient to meet the quarantine trigger. Nevertheless, the quarantine trigger was met on March 14, 2008, when a mated female of the Mexican fruit fly was trapped on a residential property near Raymondville, Willacy County. In addition, an unmated female of the Mexican fruit fly was trapped on March 25, near Raymondville, and a mated female was detected on March 27, near La Sara, in Willacy County. In addition, Mexican fruit fly larvae were detected at two residential properties in Raymondville on April 2 and April 3, 2008. The McPhail traps have been used in Texas over 20 years to survey for infestations of the Mexican fruit fly and certain other fruit fly species. Host plants of the Mexican fruit fly include citrus, stones fruits, avocados, mangoes, and apples.

The department believes that it is necessary to take this immediate action to maintain the fly-free status of the Willacy County and to prevent the spread of the Mexican fruit fly into other commercial citrus growing areas of Texas and other states, and adoption of this quarantine on an emergency basis is both

necessary and appropriate. The citrus industry in particular is in peril because without this emergency quarantine and treatment of the infestation, USDA would quarantine Willacy County and possibly the entire state of Texas and as a result, Texas could lose important export markets and would require regulatory treatments such as fumigation of all exported fruit. The emergency quarantine takes necessary steps to prevent the artificial spread of the quarantined pest and provides for its elimination, thus protecting the state's citrus crops, an agricultural industry important to the state of Texas. In addition to Willacy County, commercial citrus is also grown in Cameron and Hidalgo counties of Texas. Cameron and Hidalgo counties are currently quarantined for the Mexican fruit fly and export of citrus fruit from these counties is facilitated using procedures described in the Texas Rio Grande Valley Mexican Fruit Fly Protocol 2007-2008.

New §19.500 states the basis for the quarantine and defines the quarantined pest. New §19.501 establishes the duration of the quarantine. New §19.502 designates the infested areas subject to quarantine. New §19.503 lists the articles subject to the quarantine. New §19.504 provides restrictions on the movement of articles subject to the quarantine. New §19.505 provides requirements for monitoring and handling and treatment of regulated articles located within the quarantined area. New §19.506 provides consequences for failure to comply with quarantine restrictions. New §19.507 provides for the appeal of action taken for failure to comply with the quarantine restrictions or requirements. New §19.508 provides procedures for handling of discrepancies or other inconsistencies in textual descriptions in this subchapter with graphic representations. The department may propose adoption of this rule on a permanent basis in a separate submission.

The new sections are adopted on an emergency basis under the Texas Agriculture Code, §71.004, which authorizes the department to establish emergency quarantines; §71.007 which authorizes the department to adopt rules as necessary to protect agricultural and horticultural interests, including rules to provide for specific treatment of a grove or orchard or of infested or infected plants, plant products, or substances; §12.020 which authorizes the department to assess administrative penalties for violations of Chapter 71; and the Texas Government Code, §2001.034, which provides for the adoption of administrative rules on an emergency basis, without notice and comment.

§19.500. Basis for Quarantine - Dangerous Insect Pest or Plant Disease (Proscribed Biological Entity).

(a) The department finds that *Anastrepha ludens* (Loew), also known as the Mexican fruit fly, is at any stage of development a dangerous insect pest or plant disease that is not widely distributed in this state.

(b) Description of dangerous insect pest or plant disease. The Mexican fruit fly, scientific name *Anastrepha ludens* (Loew), is a dangerous pest of the numerous host plants listed in §19.503 of this title (relating to Articles Subject to the Quarantine). The fly oviposits in the fruit where the larvae subsequently hatch and begin feeding. The larvae, feeding inside the fruit, cause damage to the flesh of the fruit, making it unmarketable. The United States Department of Agriculture (USDA), as well as many states, consider the Mexican fruit fly to be a serious plant pest whose control and eventual eradication from quarantined areas is imperative.

(c) Unless otherwise expressly stated, the term "Mexican fruit fly" when used in this subchapter refers to any or all developmental

stages of the dangerous insect pest or a plant disease described in this section.

(d) The department is authorized by the Texas Agriculture Code, §71.002, to establish a quarantine against the dangerous insect pest or plant disease identified in this section.

§19.501. Duration of the Quarantine.

The quarantine established by this subchapter shall remain in effect until the dangerous insect pest or plant disease described in §19.500 of this title (relating to Basis for Quarantine - Dangerous Insect Pest or Plant Disease (Proscribed Biological Entity)) is eradicated. The Mexican fruit fly shall be considered eradicated from the quarantined area when no additional Mexican fruit flies are detected for a time period equal to three consecutive generations after the most recent detection. For the Mexican fruit fly, the number of days required to complete a reproductive cycle, one generation, is dependent upon temperature. Therefore, a day-degree model will be used to calculate the duration of each consecutive generation.

§19.502. Infested Geographical Areas Subject to the Quarantine.

(a) Quarantined infested areas.

(1) Quarantined infested areas (infested geographical areas subject to the quarantine) are those locations within this state in which the dangerous insect pest or plant disease is currently found, from which dissemination of the pest or disease is to be prevented, and in which the pest or disease is to be eradicated.

(2) The following areas are declared to be quarantined infested areas: The quarantined area is that portion of Willacy County, bounded by a line drawn as follows: Beginning at the intersection of FM 498 and FM 2845; then easterly along FM 498 to its intersection with FM 2099; then continuing northerly along FM 2099 to its intersection with FM 490; then continuing easterly along FM 490 to its intersection with Latitude 26.45360 and Longitude -97.69919; then continuing in a straight northerly imaginary line intersecting with CR 3796; then westerly along CR 3796 to its intersection with Santa Margarita Road; then continuing northerly along Santa Margarita Road to its intersection with Riggins Road; then continuing westerly along Riggins Road to its intersection with Cantu Road; then straight northwesterly along an imaginary line intersecting with Latitude 26.57423 and Longitude -97.70461; then westerly along a straight imaginary line to its intersection with the Willacy County line; then continuing southerly along the Willacy County line to its intersection with FM 490; then continuing easterly and southerly along the Willacy County line to its intersection with FM 1921; then continuing easterly along FM 1921 to its intersection with FM 2845; then southerly along FM 2845 to the point of beginning.

(3) A map of the quarantined area may be obtained by contacting USDA, 4909 East Grimes Street, Suite 103, Harlingen, Texas 78550, (956) 421-4041 or the department's Valley Regional Office, 900-B East Expressway 82, San Juan, Texas 78598, (956) 787-8866.

(b) Creating, modifying, or extending quarantined infested areas. When five or more males or unmated females of the Mexican fruit flies are trapped or otherwise discovered within a time period equal to one fly generation and within 3 miles of each other or a mated female or one larva or pupa is trapped or otherwise discovered, a quarantine area shall be established around the site where the fly was trapped or otherwise discovered. The area quarantined shall consist of an area of approximately 4.5-mile radius with the detection site at the center (roughly 81 square miles).

(c) Core areas. In addition to the quarantined area, one or more core areas may be established within each quarantined area around a

detection site. Each core area shall consist of an approximately 1.0 square mile area with a detection site at or near the center. Each approximately square-shaped core area is defined by four GPS readings for each corner of the core area. Core areas are subject to more extensive monitoring and handling requirements and the Mexican fruit fly host plants within the core area shall be treated by ground or aerial sprays as prescribed by the department or the USDA. Five core areas are currently in place for the Mexican fruit fly quarantine as described by the following GPS coordinates:

- (1) N 26.51363; N 26.49915; W 97.81825; W 97.80208;
  - (2) N 26.477374; N 26.49184; W 97.77788; W 97.76172;
  - (3) N 26.47720; N 26.46272; W 97.78599; W 97.76981;
  - (4) N 26.47735; N 26.46288; W 97.99621; W 97.98004;
- and
- (5) N 26.49185; N 26.47737; W 97.93953; W 97.92336.

(d) Core areas are shown on the map of the quarantined area referred to in subsection (a) of this section. Additional core areas, if any, shall be published in the In-Addition section of the *Texas Register* as they are established.

§19.503. Articles Subject to the Quarantine.

An article subject to the quarantine, or regulated article, is an item the handling of which is controlled, regulated, or restricted by Chapter 71 of the Texas Agriculture Code, this subchapter, and any department orders issued pursuant to these rules and Chapter 71, in order to prevent dissemination of the dangerous insect pest or plant disease to areas located outside a quarantined infested area or into a quarantined non-infested area. The following articles are subject to the quarantine.

- (1) The Mexican fruit fly;
- (2) the fruit, at any stage of development, of all of the following plants, listed by common name with genus and species in parentheses, when grown, harvested, processed, or otherwise handled within or transported through the quarantined area:
  - (A) Apple (*Malus domestica*);
  - (B) Apricot (*Prunus armeniaca*);
  - (C) Avocado (*Persea americana*);
  - (D) Calamondin orange (*X citrofortunella mitis*);
  - (E) Cherimoya (*Annona cherimola*);
  - (F) Citrus citron (*Citrus medica*);
  - (G) Custard apple (*Annona reticulata*);
  - (H) Grapefruit (*Citrus paradise*);
  - (I) Guava (*Pisidium guajava*);
  - (J) Japanese plum (*Prunus salicina*);
  - (K) Lemon (*Citrus limon* except Eureka, Lisbon, and

Vila Franca cultivars (smooth skinned sour lemon);

- (L) Lime (*Citrus aurantifolia*);
- (M) Mammy-Apple (*Mammea americana*);
- (N) Mandarin orange (tangerine) (*Citrus reticulata*);
- (O) Mango (*Mangifera indica*);
- (P) Nectarine (*Prunus persica*);
- (Q) Peach (*Prunus persica*);
- (R) Pear (*Pyrus communis*);

- (S) Plum (*Prunus americana*);
- (T) Pomogranate (*Punica granatum*);
- (U) Prune, Plum (*Prunus domestica*);
- (V) Pummelo (shaddock) (*Citrus maxima*);
- (W) Quince (*Cydonia oblonga*);
- (X) Rose apple (*Syzyglum jambos*) (*Eugenia jambos*);
- (Y) Sour orange (*Citrus aurantium*);
- (Z) Sapote (*Casimiroa* spp.);
- (AA) Sapota, Sapodilla (Sapotaceae);
- (BB) Sargentia, yellow chapote (*Sargentia greggi*);
- (CC) Soanish Plum, purple mombin or Ciruela (*Spondias* spp.);
- (DD) Sweet orange (*Citrus sinensis*);

(3) any other fruit capable of hosting, harboring, propagating, or disseminating the Mexican fruit fly;

(4) the producing plant if it has one or more fruits listed in paragraph (2) of this section attached to or growing from it; and

(5) any article, item, conveyance, or thing on or in which the Mexican fruit fly is actually found.

§19.504. Restrictions on Movement of Articles Subject to the Quarantine.

(a) In General.

(1) A regulated article originating within a quarantined infested area may not be moved outside the infested area except as otherwise provided by these rules.

(2) In order to prevent the movement of regulated articles, including the dangerous insect pest or plant disease, from a quarantined area into a non-quarantined area, as required by the Texas Agriculture Code, §71.005(a), a person that transports a regulated article through or within an infested area using a motor vehicle, railcar, or other conveyance capable of transporting the regulated article outside the infested area, is subject to the requirements of subsection (c) of this section.

(b) Conditions Under Which Regulated Articles May Be Moved Out of an Infested Area. Plants that are regulated articles shall not be moved outside the quarantined infested area with fruit attached. Detached fruit originating within a quarantined infested area may be moved outside the infested area if:

(1) the fruit is covered by a tarpaulin or other approved covering and taken directly to and segregated in an approved packing house or other approved treatment facility and fumigated as prescribed in the Texas Rio Grande Valley Mexican Fruit Fly Protocol 2007-2008, a copy of which may be obtained at the department's Valley Regional Office, 900-B East Expressway 82, San Juan, Texas 78598, (956) 787-8866, and the fruit is accompanied by a copy of all documentation of origin or treatment required by this subchapter or a compliance agreement with the department or USDA;

(2) the grower has entered into a compliance agreement with the department or the USDA, the fruit has been treated and is being handled in accordance with the requirements set forth in the compliance agreement (at the time these rules are published, a compliance agreement requires use of approved bait sprays at 10 to 12 day intervals, or a shorter or longer period upon receipt of written notice from the department or the USDA of the modified treatment interval, start-

ing at least 30 days before harvest and continued through the harvest period), and the fruit is accompanied by all documentation of origin or treatment required by this subchapter or a compliance agreement with the department or USDA; or

(3) the fruit is to be moved outside the quarantined area for juicing and the fruit is covered by a tarpaulin or other approved covering and accompanied by all documentation of origin or treatment required by this subchapter or a compliance agreement with the department or USDA.

(c) Requirements for Transporters of Regulated Articles Within or Through an Infested Area.

(1) A person who transports a regulated article within or through an infested area using a motor vehicle, railcar, other conveyance, or equipment capable of transporting the regulated article outside the infested area shall take the following precautions to ensure that the dangerous insect pest or plant disease is not disseminated outside the quarantined area and that non-infested regulated articles do not become infested by virtue of transport within or through the infested area: if carried in a part of the conveyance or equipment that is open to the outside environment, detached fruit must be covered by a tarpaulin, plastic sheet, or other covering sufficient to prevent the Mexican fruit fly from contacting the fruit; regulated articles other than detached fruit shall not be moved within or through the quarantined area unless handled in accordance with the provisions of a written notice issued by the department or the USDA or a written compliance agreement between the person and the department or the USDA .

(2) Regulated articles originating outside the quarantined area and transported through the quarantined area in an open part of a conveyance or piece of equipment and without an appropriate covering shall be treated the same under this subchapter as regulated articles originating in the quarantined area and shall be handled according to the procedures described in subsection (b) of this section and elsewhere in this subchapter.

§19.505. Monitoring and Eradication of the Dangerous Pest or Plant Disease.

(a) A regulated article located within a core area shall be monitored, handled, and treated by ground or aerial sprays, as prescribed in a written notice issued by the department or the USDA or as specified in a written compliance agreement between the owner or person in control of the regulated article or the property on which the regulated article is located.

(b) The owner or manager of an orchard, other commercial fruit operation, or nursery subject to quarantine requirements may be required to bear all treatment expenses.

(c) Homeowners located in the core areas who enter into a written compliance agreement with the department or the USDA shall not be required to pay treatment expenses for fruit or fruit trees grown, harvested, or found on their residential property, unless the fruit or fruit tree is transported to the residential property from an orchard, other commercial fruit operation, or nursery owned or operated by the homeowner or at which the homeowner is employed, at a time during which the quarantine is in effect.

(d) Unless otherwise specified in a written notice issued by the department or the USDA or in a written compliance agreement between the person and the department or the USDA, a wholesaler, fruit retailer, street fruit vendor, or flea market stall operator located within

the quarantined area shall cover or enclose detached fruit with air curtains, screens of appropriate mesh, plastic sheets, boxes without holes or other openings, or tarpaulins.

(e) A person who within the quarantined area is holding or displaying for sale or distribution a plant that is a regulated article shall ensure that each such plant is free from fruit at all times prior to sale or distribution.

§19.506. Consequences for Failure to Comply with Quarantine Restrictions.

A person who fails to comply with quarantine restrictions or requirements or a department order relating to the quarantine may be subject to administrative penalties not to exceed \$5,000 per occurrence, civil penalties not to exceed \$10,000 per occurrence, or criminal prosecution. Each day a violation occurs or continues may be considered a separate occurrence. Additionally, the department is authorized to seize and treat or destroy, or order to be treated or destroyed, any quarantined article that is found to be infested with the quarantined pest or, regardless whether infested or not, transported out of or through the quarantined area in violation of these rules. Treatment, destruction, storage, or other charges, including those incurred by the department, are chargeable to the owner of the quarantined article to be treated or destroyed.

§19.507. Appeal of Department Action Taken for Failure to Comply with Quarantine Restrictions.

An order under the quarantine may be appealed according to procedures set forth in the Texas Agriculture Code, §71.010.

§19.508. Conflicts Between Graphical Representations and Textual Descriptions; Other Inconsistencies.

(a) In the event that discrepancies exist between graphical representations and textual descriptions in this subchapter, the representation or description creating the larger geographical area or more stringent requirements regarding the handling or movement of quarantined articles shall control.

(b) The textual description of the insect pest or plant disease shall control over any graphical representation of the same.

(c) Where otherwise clear as to intent, the mistyping of a scientific or common name in this subchapter shall not be grounds for avoiding the requirements of this subchapter.

This agency hereby certifies that the emergency adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 4, 2008.

TRD-200801763

Dolores Alvarado Hibbs

General Counsel

Texas Department of Agriculture

Effective Date: April 4, 2008

Expiration Date: July 23, 2008

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

◆ ◆ ◆

# PROPOSED RULES

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

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

## TITLE 1. ADMINISTRATION

### PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

#### CHAPTER 355. REIMBURSEMENT RATES

##### SUBCHAPTER J. PURCHASED HEALTH SERVICES

##### DIVISION 4. MEDICAID HOSPITAL SERVICES

###### 1 TAC §355.8061, §355.8069

The Health and Human Services Commission (HHSC) proposes an amendment to §355.8061, concerning payment for hospital services and §355.8069, concerning supplemental payments to certain rural public hospitals, in Title 1 of the Texas Administrative Code (TAC), Part 15, Chapter 355, Subchapter J, Division 4, Medicaid Hospital Services.

###### Background and Justification

The purpose of these proposed amendments is to make changes to the Non-State-Owned Rural Public Hospital supplemental payment program (also known as the upper payment limit, or UPL, program for rural public hospitals). Specifically, the amendments propose to include outpatient services in the supplemental payment calculation for non-state-owned rural public hospitals and change the Medicaid charge deficit criteria from 1% to 0.5% for inpatient services for the rural public hospital UPL program.

As a result of these proposed amendments, the State will obtain additional federal revenue for non-state-owned rural public hospitals that participate in the Medicaid program. The state matching funds required to draw down federal dollars will be provided by the non-state-owned public rural hospitals.

###### Section-by-Section Summary

The proposed amendment to §355.8061 adds outpatient services in the supplemental payment calculation for non-state-owned rural public hospitals. Outpatient services are being added to the supplemental payment calculation for rural public hospitals since they are part of the Texas Medicaid safety net hospitals. This proposed amendment will support these hospitals in their mission to serve Medicaid recipients.

The proposed amendment to §355.8069 changes the Medicaid charge deficit criteria from 1% to 0.5% for inpatient services. Currently, certain rural public hospitals whose Medicaid deficit (the difference between Medicaid fee-for-service billed charges and total Medicaid payments) is at least 1% of the total Medicaid

deficit for all participating rural public hospitals provide the inter-governmental transfers (IGTs) for the rural public hospital UPL program. Changing the deficit criteria from 1% to 0.5% allows for an increase in the number of qualified providers who would provide intergovernmental transfers and, therefore, increases the amount of supplemental payments to eligible providers.

###### Fiscal Note

Thomas M. Suehs, Deputy Executive Commissioner for Financial Services, has determined that the proposed rules are not expected to increase state expenditures, but will increase the amount of federal matching funds to the State. During state fiscal year (SFY) 2008, HHSC estimates that the amendments to the rules will result in increased federal matching funds of \$5,733,810. HHSC estimates that the State will receive an estimated increase in federal matching funds of \$5,719,928 for SFY 2009 and \$5,718,824, per fiscal year, in subsequent years.

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

HHSC has determined that there is no adverse economic effect on small businesses or micro-businesses, or on businesses of any size, as a result of enforcing or administering the proposed rule amendment.

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

HHSC does not anticipate that there will be any economic cost to persons who are required to comply with this amendment. The amendment will not affect a local economy.

###### Public Benefit

Carolyn Pratt, Director of Rate Analysis, has determined that for the first five years the rules are in effect, the public benefit expected as a result of enforcing the proposed rule amendments is that non-state-owned rural public hospitals in the State of Texas will recover more of their cost of treating Medicaid patients.

###### Regulatory Analysis

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

###### Takings Impact Assessment

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist

in the absence of government action and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

#### Public Comment

Written comments on the proposal may be submitted to Lupita Villarreal by mail at HHSC Rate Analysis-Hospital Services, Mail Code H-400, P.O. Box 85200, Austin, TX 78708-5200, by fax to (512) 491-1998, or by e-mail to lupita.villarreal@hhsc.state.tx.us, within 30 days of publication of the proposal in the *Texas Register*.

#### Statutory Authority

The amendments are proposed under the Texas Government Code, §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; the Human Resources Code, §32.021 and the Texas Government Code, §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas, to administer Medicaid funds, and to adopt rules necessary for the proper and efficient operation of the Medicaid program; and the Texas Government Code, §531.021(b), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursements.

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

#### §355.8061. *Payment for Hospital Services.*

(a) The Health and Human Services Commission (commission) or its designated agent shall reimburse hospitals approved for participation in the Texas Medical Assistance Program for covered Title XIX hospital services provided to eligible Medicaid recipients. The Texas Title XIX State Plan for Medical Assistance provides for reimbursement of covered hospital services to be determined as specified in paragraphs (1) - (4) of this subsection.

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

(4) Notwithstanding other provisions of this chapter and subject to the availability of funds, supplemental payments will be made each state fiscal year in accordance with this paragraph to eligible hospitals that serve high volumes of Medicaid and uninsured patients.

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

(C) Notwithstanding the provisions of subparagraphs (A) and (B) of this paragraph, all hospitals that are eligible to receive funding under §355.8069 of this title (relating to Supplemental Payments to Certain Rural Public Hospitals) shall also be eligible to receive funding under this paragraph. Supplemental payments are available under this section for outpatient hospital services provided by certain rural public hospitals on or after September 1, 2007.

~~(D)~~ State funding for supplemental payments authorized under this paragraph will be limited to and obtained through intergovernmental transfers of local or hospital district funds. State funding for supplemental payments authorized under subparagraph (B) of this paragraph will be limited to and obtained through intergovernmental transfers of local governmental entity or hospital district funds or transfer of State General Revenue. The supplemental payments described in this subsection will be made in accordance with the applicable regulations regarding the Medicaid upper payment limit provisions codified at 42 C.F.R. §447.321.

~~(E)~~ The non-state owned or operated, publicly-owned hospital or hospital affiliated with a hospital district in a county listed in subparagraph (A) of this paragraph that incurs the greatest

amount of cost for providing services to Medicaid and uninsured patients will be eligible to receive supplemental payments. Any hospital eligible under subparagraph (B) of this paragraph will be eligible to receive supplemental payments. The supplemental payments authorized under this subsection are subject to the following limits:

(i) In each state fiscal year the amount of inpatient supplemental payments and outpatient supplement payments may not exceed the hospital's "hospital specific limit," as determined under §355.8065(f)(2)(E) of this chapter (relating to Reimbursement to Disproportionate Share Hospitals (DSH)) for DSH hospitals; and

(ii) The amount of outpatient supplemental payments and fee-for-service Medicaid outpatient payments the hospital receives in a state fiscal year may not exceed Medicaid billed charges for outpatient services provided by the hospital to fee-for-service Medicaid recipients in accordance with 42 C.F.R. §447.325.

~~(F)~~ An eligible hospital will receive quarterly supplemental payments. The quarterly payments will be limited to one-fourth of the difference between the hospital's Medicaid fee-for-service outpatient Medicaid payments received and 100% of Medicaid allowable outpatient hospital cost. Medicaid payments and cost will be based on a twelve consecutive-month period of fee-for-service claims data selected by HHSC.

~~(G)~~ For purposes of calculating the "hospital specific limit" under this paragraph, the "cost of services to uninsured patients" and "Medicaid shortfall," as defined by Texas Administrative Code §355.8065(b)(5) and (16) of this title, will be adjusted as follows:

(i) the amount of Medicaid payments (including inpatient and outpatient supplemental payments) that exceed Medicaid cost will be subtracted from the "Medicaid Shortfall."

(ii) The amount of the "Medicaid shortfall," as adjusted in accordance with clause (i) of this subparagraph, will be subtracted from the "cost of services to uninsured patients" to ensure that, during any state fiscal year, a hospital does not receive more in total Medicaid payments (inpatient and outpatient payments, graduate medical education payments, supplemental payments and disproportionate share hospital payments) than its cost of serving Medicaid patients and patients without health insurance.

(5) (No change.)

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

#### §355.8069. *Supplemental Payments to Certain Rural Public Hospitals.*

Notwithstanding other provisions of this subchapter and subject to the availability of funds, supplemental payments are available under this section for inpatient hospital services provided by certain rural public hospitals.

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

(4) Supplemental payments are made to two groups of rural public hospitals:

(A) Rural public hospitals that have a deficit between fee-for-service Medicaid billed charges and fee-for-service Medicaid payments (including supplemental payments) which is greater than 0.5 ~~one~~ percent of the total deficit between fee-for-service Medicaid billed charges and fee-for-service Medicaid payments (including supplemental payments) for all rural public hospitals. Medicaid billed charges and payments are based on a 12-consecutive-month period of fee-for-service claims data selected by HHSC.

(B) (No change.)



(5) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 3, 2008.

TRD-200801738

Steve Aragón

General Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: May 18, 2008

For further information, please call: (512) 424-6576



## TITLE 16. ECONOMIC REGULATION

### PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

#### CHAPTER 70. INDUSTRIALIZED HOUSING AND BUILDINGS

##### 16 TAC §70.100, §70.101

The Texas Department of Licensing and Regulation ("Department") proposes amendments to existing rules at 16 Texas Administrative Code, §70.100 and §70.101 regarding the industrialized housing and buildings (IHB) program. The purposes of the proposed amendments are to adopt more recent editions of the mandatory building codes in the IHB program and to make necessary amendments to the codes.

Section 70.100(a) is amended to set the effective date of adoption of later code editions as October 31, 2008. A reference is added to the specific location in the rules where the codes are amended. The rule is amended to adopt the 2008 National Electric Code (NEC), the 2006 International Building Code (IBC), the 2006 International Fuel Gas Code (IFGC), the 2006 International Plumbing Code (IPC), the 2006 International Mechanical Code (IMC), and the 2006 International Residential Code (IRC). Texas Occupations Code, §1202.152 requires the Industrialized Building Code Council to adopt later editions of the codes adopted by the statute if the Council determines that the use of these later code editions is in the public interest and consistent with the purposes of Texas Occupations Code, Chapter 1202.

Section 70.100(c) is amended to update the effective dates of adoption of past code editions. The amendment is proposed so that municipalities and other interested parties will know what code editions were met for buildings constructed prior to October 31, 2008.

Section 70.101(d) specifies amendments to the International Building Code (IBC) as adopted in §70.100. Section 70.101(d)(1) is amended to make the language consistent with other code amendments proposed. Section 70.101(d)(2) amends §101.1 of the IBC to add Texas Occupations Code, Chapter 1202 and 16 Texas Administrative Code, Chapter 70, as governing provisions for the Texas IHB program. The amendment clarifies that the statute and rules control in the event of any conflicts between the adopted codes and the statute and rules.

Section 70.101(d)(3) amends §101.4 of the IBC to clarify that the codes adopted in §101.4.8 as well as those adopted in §§101.4.1 through 101.4.7 are considered part of the IBC and to clarify that adopted amendments to those codes are part of the IBC.

Section 70.101(d)(4) amends §101.4 of the IBC by adding §101.4.8 to specify the International Existing Building Code as the applicable code for the repair, alteration or additions, and changes of occupancy of previously occupied non-permanent industrialized buildings. The revision is made to conform to the requirements of the existing rules for the IHB program.

Section 70.101(d)(5) amends §104.1 of the IBC to clarify that the term "building official" means either the TDLR Commission, the TDLR executive director, the Texas Industrialized Building Code Council, or the local building official in accordance with the powers and duties assigned to each in Texas Occupations Code, Chapter 1202.

Section 70.101(d)(6) amends §102.6 to add that existing industrialized buildings that bear an approved certification decal or insignia and that have not been altered or modified are considered to be in compliance with the current mandatory building codes. The revision is made to conform to the requirements of Texas Occupations Code, Chapter 1202.

Sections 70.101(d)(7) through 70.101(d)(10) amends §§110.1, 110.2, 110.3, and 110.4 of the IBC to clarify that the certificates of occupancy are issued by the local building official and that certificates of occupancy shall be issued or revoked in accordance with locally adopted rules and regulations.

Section 70.101(d)(11) amends §311.3 of the IBC to add equipment shelters as an example of the type of building that falls under occupancy group S-2. The change is made to assure that all equipment shelters are classified equally.

Section 70.101(d)(12) is amended to clarify that the Texas Accessibility Standards (TAS) apply to accessibility requirements in Texas and to delete the reference to a specific rule section in 16 Texas Administrative Code, Chapter 68. The deletion is necessary to assure that the IHB rules accurately reference the elimination of architectural barriers rules.

Section 70.101(d)(13) amends the referenced standards in chapter 35 of the IBC to assure compliance with the adoption of TAS in §70.101(d)(12), the adoption of the 2008 NEC in §70.100, and the adoption of the IEBC in §70.101(d)(4) of the IHB rules.

Section 70.101(e) specifies amendments to the IFGC as adopted in §70.100.

Section 70.101(e)(1) amends §101.1 of the IFGC to identify the code as the fuel gas code for the Texas IHB program.

Section 70.101(e)(2) amends §101.4 of the IFGC to add Texas Occupations Code, Chapter 1202 and 16 Texas Administrative Code, Chapter 70, as governing provisions for the Texas IHB program. The amendment clarifies that the statute and rules control in the event of any conflicts between the adopted codes and the statute and rules.

Section 70.101(e)(3) amends §102.7 of the IFGC to specify the International Existing Building Code (IEBC) as the applicable code for the repair, alteration or additions, and changes of occupancy of previously-occupied, non-permanent industrialized buildings. The revision is made to conform to the requirements of the existing rules for the IHB program.

Section 70.101(e)(4) amends §102.8 of the IFGC to clarify that adopted amendments to referenced codes are part of the IFGC.

Section 70.101(e)(5) amends the referenced standards in Chapter 8 of the IFGC to add code section 102.7 as a code referenced section for ICC Standard IEBC-06. This revision is necessary because the amendment to §70.101(e)(3) adopts the IEBC as the applicable code for the alterations of industrialized buildings and to conform to existing rules for the IHB program.

Section 70.101(f) amends the International Plumbing Code (IPC) as adopted in § 70.100.

Section 70.101(f)(1) amends §101.1 of the IPC to identify the code as the plumbing code for the Texas IHB program.

Section 70.101(f)(2) amends §101.3 of the IPC to add Texas Occupations Code, Chapter 1202 and 16 Texas Administrative Code, Chapter 70, as governing provisions for the Texas IHB program. The revision is made to clarify that the statute and rules control in the event of any conflicts between the adopted codes and the statute and rules.

Section 70.101(f)(3) amends §102.7 of the IPC to specify the International Existing Building Code (IEBC) as the applicable code for the repair, alteration or additions, and changes of occupancy of previously-occupied, non-permanent industrialized buildings. The revision is made to conform to the requirements of the existing rules for the IHB program.

Section 70.101(f)(4) amends §102.8 of the IPC to clarify that adopted amendments are part of the IPC.

Section 70.101(f)(5) amends the referenced standards in chapter 13 of the IPC to assure compliance with the adoption of the 2008 NEC in §70.100 and because the amendment to §70.101(f)(3) adopts the IEBC as the applicable code for the alterations of industrialized buildings and to conform to existing rules for the IHB program.

Section 70.101(g) amends the International Mechanical Code (IMC) as adopted in §70.100.

Section 70.101(g)(1) amends §101.1 of the IMC to identify the code as the mechanical code for the Texas IHB program.

Section 70.101(g)(2) amends §101.3 of the IMC to add Texas Occupations Code, Chapter 1202 and 16 Texas Administrative Code, Chapter 70, as governing provisions for the Texas IHB program. The revision is made to clarify that the statute and rules control in the event of conflicts between the adopted codes and the statute and rules.

Section 70.101(g)(3) amends §102.7 of the IMC to specify the International Existing Building Code (IEBC) as the applicable code for the repair, alteration or additions, and changes of occupancy of previously-occupied, non-permanent industrialized buildings. The revision is made to conform to the requirements of the existing rules for the IHB program.

Section 70.101(g)(4) amends §102.8 of the IMC to clarify that adopted amendments are part of the IMC.

Section 70.101(g)(5) amends Chapter 13 of the IMC to add code section 102.7 as a code referenced section for ICC Standard IEBC-06. The revisions are necessary because the amendment to §70.101(f)(3) adopts the IEBC as the applicable code for the alterations of industrialized buildings and to conform to existing rules for the IHB program.

Section 70.101(h) amends the International Residential Code (IRC) as adopted in §70.100.

Section 70.101(h)(1) amends §R101.1 of the IRC to identify the code as the residential code for one- and two-family dwellings for the Texas IHB program.

Section 70.101(h)(2) adds §R101.4 to the IRC to specify that the provisions of the NEC shall apply to the installation of electrical systems in residential buildings. This revision is necessary to assure compliance with the adoption of the 2008 NEC in §70.100.

Sections 70.101(h)(3) and §70.101(h)(4) amend §R202 of the IRC by adding a definition for "Glazing Area" and by amending the definition of "Townhouse." The addition of the definition for "Glazing Area" is necessary because the window to wall area ratios have been added to the prescriptive tables of Chapter 11 of the IRC. This change is necessary to satisfy the requirement of Texas Health and Safety Code, Chapter 388 that subsequent editions of energy codes be at least as stringent as the 2001 edition. The revision to the definition of "Townhouse" is necessary to be consistent with terminology commonly used in Texas.

Section 70.101(h)(5) amends §R301.2 of the IRC to add a requirement that if no criteria is established by the local authorities in accordance with this section, then the criteria shall be in accordance with the footnotes of Table R301.2(1). The revision is to clarify that climatic and design criteria shall be in accordance with the mandatory building code where there are no local authorities to set the criteria.

Section 70.101(h)(6) amends §R303.8 of the IRC to clarify that all dwellings in Texas meet the threshold requirements for required heating in accordance with the criteria set by the mandatory building codes.

Section 70.101(h)(7) amends §R317.1 of the IRC to add an exception that two-family dwellings divided by a property line through the structure shall be separated as required for townhouses. This revision is consistent with the revised definition of "Townhouse" in §70.101(h)(4).

Sections 70.101(h)(8) through 70.101(h)(22) are necessary to satisfy the "not less stringent" requirement when adopting subsequent editions of energy codes in accordance with Texas Health and Safety Code, Chapter 388.

Section 70.101(h)(8) amends §N1101.2.1 of the IRC by specifying a new table for the location of the warm humid counties for Texas.

Section 70.101(h)(9) adds §N1101.2.2 to the IRC to specify when compliance software tools may be used and which compliance software tools may be used to show compliance with the energy code.

Section 70.101(h)(10) amends Figure N1101.2 by replacing the map of Texas with the map of Texas shown in exhibit 1.

Section 70.101(h)(11) amends the IRC by deleting the climate zones for Texas from Table N1101.2 and adding climate zones and sub climate zones for Texas to Table N1101.2 as shown in exhibit 2.

Section 70.101(h)(12) amends the IRC by deleting the Texas counties from Table N1101.2.1 and adding a new Table N1101.2.2 Warm Humid Counties for Texas as shown in exhibit 3.

Section 70.101(h)(13) amends §N1101.7 of the IRC to allow alternative compliance in accordance with Texas Health and Safety Code, Chapter 388.

Section 70.101(h)(14) amends § N1102.1 of the IRC by allowing a reduction in the R-value of the roof insulation in certain cases. The revision increases the number who could use the "simplified prescriptive" approach without decreasing the energy efficiency requirements of the code.

Section 70.101(h)(15) amends the IRC by replacing Table N1102.1, Insulation and Fenestration Requirements by Component, with a new Table N1102.1 that shows insulation and fenestration requirements for Texas. The new table is shown in exhibit 4.

Section 70.101(h)(16) amends the IRC by replacing Table N1102.1.2 Equivalent U-Factors with a new Table N1102.1.2. The new table is shown in exhibit 5.

Section 70.101(h)(17) amends §N1102.3.2 of the IRC by requiring an area-weighted average solar heat gain coefficient (SHGC) of 0.40 or less in certain sub-climate zones.

Section 70.101(h)(18) amends §N1102.3.3 of the IRC to allow up to 1% of glazed fenestration to be exempt from the U-factor and SHGC requirements.

Section 70.101(h)(19) amends §N1102.3.5 of the IRC by deleting the first sentence of the code section.

Section 70.101(h)(20) amends §N1102.3.6 of the IRC by adding two exceptions. The first exception indicates that replacement fenestration may comply with the original construction documents and the second exception limits the area-weighted average SHGC to 0.40 in certain sub-climate zones.

Section 70.101(h)(21) adds to the IRC a prescriptive path for additions with new §N1102.3.7.

Section 70.101(h)(22) adds to the IRC new Table N1102.3.7, prescriptive envelope component criteria for additions and replacements. The new table is shown in exhibit 6.

Section 70.101(h)(23) deletes Part VIII, Electrical, Chapter 33 through 42 from the IRC. This revision is necessary as these chapters are based on the 2005 edition of the NEC, and the IHB program is adopting the 2008 edition of the NEC.

Section 70.101(h)(24) amends the referenced standards in chapter 43 of the IRC because the IHB program is adopting the 2008 NEC as shown in §70.100(a) and to document acceptable energy code software compliance tools that may be used in place of the prescriptive requirements of the code.

Section 70.101(i) amends the International Existing Building Code (IEBC) as adopted in § 70.101(d).

Section 70.101(i)(1) amends §101.1 of the IEBC to identify the code as the existing building code for the Texas IHB program.

Section 70.101(i)(2) amends the IEBC by replacing references to ICC A117.1 and chapter 11 of the IBC with the Texas Accessibility Standards (TAS). The revisions are made to clarify that compliance with TAS is required in Texas.

Section 70.101(i)(3) amends §101.4.1 of the IEBC to clarify that buildings constructed under previous editions of the mandatory building codes adopted by the Industrialized Building Code Council do not have to be brought up to the current mandatory building codes. This revision is to clarify the requirements of Texas Occupations Code, Chapter 1202.

Section 70.101(i)(4) amends the IEBC by deleting Chapter 11, Historic Buildings, as the Texas IHB program does not deal with historic buildings.

Section 70.101(i)(5) amends §1301.2 of the IEBC to clarify that additions, alterations or changes of occupancy of structures existing prior to the effective date of adoption of the current mandatory building codes shall comply with the provisions of the IEBC.

Section 70.101(i)(6) amends the referenced standards in Chapter 15 of the IEBC to assure compliance with the adoption of TAS in §70.101(i)(2) and the adoption of the 2008 NEC in §70.100.

Section 70.101(j) amends the International Energy Conservation Code (IECC) as adopted in §101.4 of the IBC.

Section 70.101(j)(1) amends §101.1 of the IECC to identify the code as the energy code for the Texas IHB program.

Sections 70.101(j)(2) through 70.101(j)(19) are necessary to satisfy the "not less stringent" requirement when adopting subsequent editions of energy codes in accordance with Texas Health and Safety Code, Chapter 388.

Section 70.101(j)(2) amends §103.1.1 of the IECC to allow alternative compliance in accordance with Texas Health and Safety Code, Chapter 388.

Section 70.101(j)(3) amends §202 of the IECC by adding a definition for "Glazing Area." The addition of the definition for "Glazing Area" is necessary because the window to wall area ratios have been added to the prescriptive tables of chapter 4 of the IECC.

Section 70.101(j)(4) amends §301.1 of the IECC by referencing separate figures and tables for energy zones for residential and commercial buildings.

Section 70.101(j)(5) adds new Figure 301.2, Texas Residential Climate Zones to the IECC.

Section 70.101(j)(6) amends Table 301.1 of the IECC by adding "Commercial Zones Only" next to the heading for Texas and by adding the Zone 2 moist counties for Texas to the table.

Section 70.101(j)(7) amends the IECC by adding Table 301.1(1), Residential Climate Zones and Sub-Climate Zones for Texas.

Section 70.101(j)(8) amends Table 301.2 of the IECC by adding "Commercial Buildings Only" next to the heading for Texas and by adding the zone 2 counties for Texas to the table.

Section 70.101(j)(9) amends the IECC by adding Table 301.2(1), Warm Humid Counties for Texas - Residential.

Section 70.101(j)(10) adds §401.2.1 to the IECC to specify when compliance software tools may be used and which compliance software tools may be used to show compliance with the energy code.

Section 70.101(j)(11) amends §402.1.1 of the IECC by allowing a reduction in the R-value of the roof insulation in certain cases. The revision increases the number who could use the "simplified prescriptive" approach without decreasing the energy efficiency requirements of the code.

Section 70.101(j)(12) amends the IECC by replacing Table 402.1.1, Insulation and Fenestration Requirements by Component, with a new Table 402.1.1 that shows insulation and fenestration requirements for Texas.

Section 70.101(j)(13) amends the IECC by replacing Table 402.1.3, Equivalent U-Factors, with a new Table 402.1.3.

Section 70.101(j)(14) amends §402.3.2 of the IECC by requiring an area-weighted average SHGC of 0.40 or less in certain sub-climate zones.

Section 70.101(j)(15) amends §402.3.3 of the IECC to allow up to 1% of glazed fenestration to be exempt from the U-factor and SHGC requirements.

Section 70.101(j)(16) amends §402.3.5 of the IECC by deleting the first sentence of the code section.

Section 70.101(j)(17) amends §402.3.6 of the IECC by adding two exceptions. The first exception indicates that replacement fenestration may comply with the original construction documents and the second exception limits the area-weighted average SHGC to 0.40 in certain sub-climate zones.

Section 70.101(j)(18) adds to the IECC a prescriptive path for additions with new §402.3.7.

Section 70.101(j)(19) adds to the IECC new Table 402.3.7, prescriptive envelope component criteria for additions and replacements.

Section 70.101(j)(20) adds §501.3, Compliance Software Tools, to the IECC to specify when compliance software tools and which compliance software tools may be used to show compliance with the energy code.

Section 70.101(j)(21) amends the referenced standards in chapter 6 of the IECC to document acceptable energy code software compliance tools that may be used in place of the prescriptive requirements of the code.

Section 70.101(k) specifies amendments to the ICC Electrical Code as adopted in §101.4 of the IBC.

Section 70.101(k)(1) amends §101.1 of the ICC Electrical Code to identify the code as the electrical code for the Texas IHB program.

Section 70.101(k)(2) amends §101.3 of the ICC Electrical Code to add Texas Occupations Code, Chapter 1202 and 16 Texas Administrative Code, Chapter 70, as governing provisions for the Texas IHB program. The revision is made to clarify that the statute and rules control in the event of conflicts between the adopted codes and the statute and rules.

Section 70.101(k)(3) amends §102.1.5 of the ICC Electrical Code to specify the International Existing Building Code (IEBC) as the applicable code for the repair, alteration or additions, and changes of occupancy of previously occupied non-permanent industrialized buildings. The revision is made to conform to the requirements of the existing rules for the IHB program.

Section 70.101(k)(4) amends §102.6 of the ICC Electrical Code to clarify that adopted amendments are part of the Electrical Code.

Section 70.101(k)(5) amends §1201.1.1 of the ICC Electrical Code to delete reference to the IRC. State law and revisions in §70.101(h) require electrical systems to comply with NFPA 70.

Section 70.101(k)(6) amends the referenced standards in chapter 13 of the ICC Electrical Code to assure compliance with the adoption of the 2008 NEC in §70.100 and the adoption of the IEBC in §70.101(d)(4) of the IHB rules and to conform to existing rules for the IHB program.

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 change in costs or revenue to the State or

Department from implementing and enforcing the rules. There will be no fiscal implications to local government.

Mr. Kuntz also has determined that for each year of the first five-year period the amendments are in effect, the public benefit will be that industrialized houses and buildings will be built to comply with more up-to-date building codes, which will further the protection of public health and safety. Additionally, some other states have adopted these more recent codes, so IHB manufacturers who do business in these other states will benefit from having the codes for the Texas IHB program consistent with codes adopted in other states.

Mr. Kuntz also has determined that for each year of the first five-year period the amendments are in effect, there will be some economic costs to persons required to comply with the amended rules as a result of the adoption of the 2008 edition of the National Electrical Code (NEC). In particular, IHB manufacturers will have some increased costs in complying with certain requirements of the 2008 NEC. The 2008 NEC requires all receptacles to be tamper resistant and requires arc fault circuit interrupters in additional areas. For industrialized houses, the Department estimates that in the first year the new code is effective the increased cost to comply with these requirements will be approximately \$150 to \$250 per house, depending on the square footage. In subsequent years, the Department anticipates that the increased cost will decline as manufacturers adjust their manufacturing processes to the new code requirements. The estimated additional cost will then decrease to \$50 to \$100 per house, depending on square footage. For commercial buildings, the Department estimates that there will be no significant increased costs to manufacturers to comply with the 2008 NEC. None of the other rule changes are expected to impose any significant costs on IHB manufacturers or builders or any other person required to comply with the rules. Mr. Kuntz has determined that there will not be any adverse economic effect on small and micro-businesses as a result of the proposed amendments. To the Department's knowledge, none of the manufacturers registered under the IHB program are small or micro-businesses. Therefore, it is not necessary to prepare an economic impact statement or regulatory flexibility analysis.

Comments on the proposal may be submitted to Caroline Jackson, Legal Assistant, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or facsimile (512) 475-3032, or electronically: [erule.comments@license.state.tx.us](mailto:erule.comments@license.state.tx.us). The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Occupations Code, Chapter 51, which authorizes the Department to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department, and Texas Occupations Code, Chapter 1202. In particular, §1202.101(a) directs the Commission to adopt rules as necessary to ensure compliance with the purposes of Chapter 1202 and provide for uniform enforcement of Chapter 1202. Section 1202.152 authorizes adoption of amended codes if the Industrialized Building Code Council determines that use of the amended code is in the public interest and consistent with the purposes of Chapter 1202.

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 proposal.

§70.100. *Mandatory Building Codes.*

(a) Effective October 31, 2008 [~~July 1, 2004~~] all industrialized housing and buildings, modules, and modular components, shall be constructed in accordance with the following codes as amended by §70.101:

(1) National Fire Protection Association--National Electrical Code, 2008 Edition [~~2002 Edition, including appendices~~];

(2) ~~the~~ [The] International Building Code, 2006 [~~2003~~] edition, including appendices C, F, and K [~~and F~~], published by the International Code Council;

(3) the International Fuel Gas Code, 2006 [~~2003~~] edition, published by the International Code Council;

(4) the International Plumbing Code, 2006 [~~2003~~] edition, including appendices C, E, F, and G, published by the International Code Council;

(5) the International Mechanical Code, 2006 [~~2003~~] edition, published by the International Code Council; and

(6) the International Residential Code, 2006 [~~2003~~] edition, including appendix K, published by the International Code Council.

(b) Other codes referenced in any of the mandatory building codes adopted in subsection (a) [~~of this section~~] shall be considered part of the requirements of these codes to the prescribed extent of each such reference.

(c) The effective dates of adoption of past editions of the mandatory building codes are as follows:

Figure: 16 TAC §70.100(c)

§70.101. *Amendments to Mandatory Building Codes.*

(a) The council shall consider and review all amendments to these codes which are approved and recommended by ICC, and if they are determined to be in the public interest, the amendments shall be effective 180 days following the date of the council's determination or at a later date as set by the council.

(b) Any amendment proposed by a local building official, and determined by the council following a public hearing to be essential to the health and safety of the public on a statewide basis, shall become effective 180 days following the date of the council's determination or at such a later date as set by the council.

(c) The National Electrical Code shall be amended as follows.

(1) Add to Article 310.1 the following statement: "Aluminum and copper-clad aluminum shall not be used for branch circuits in buildings classified as a residential occupancy; aluminum and copper-clad aluminum conductors, of size number 4 AWG or larger, may be used in branch circuits in buildings classified as occupancies other than residential."

(2) Add to Article 110.14 the following statement: "Aluminum and copper-clad aluminum conductors shall be terminated using approved compression-type crimp lugs with approved inhibitors."

(d) The International Building Code shall be amended as follows.

(1) Amend "Section 101.1 Title" to read as follows: [~~Revise §101.1 to read~~] "These regulations shall be known as the Building Code of the Texas Industrialized Housing and Buildings program, hereinafter referred to as 'this code.'"

(2) Amend "Section 101.3 Intent" to add the following: "Where conflicts occur between the provisions of this code and the provisions of Texas Occupations Code, Chapter 1202, Industrialized

Housing and Buildings, or the provisions of 16 Texas Administrative Code, Chapter 70, rules governing the Texas Industrialized Housing and Buildings program, the provisions of Texas Occupations Code, Chapter 1202 and 16 Texas Administrative Code, Chapter 70 shall control."

(3) Amend "Section 101.4 Referenced codes" to read as follows. "The other codes listed in Sections 101.4.1 through 101.4.8 and referenced elsewhere in this code shall be considered part of the requirements of this code to the prescribed extent of each such reference. Whenever amendments have been adopted to the referenced codes and standards, each reference to said code and standard shall be considered to reference the amendment as well. Any reference to NFPA 70 or the ICC Electrical Code shall mean the Electrical Code as adopted."

(4) Add "Section 101.4.8 Alterations" to read as follows: "The provisions of the International Existing Building Code shall apply to all matters governing the repair, alterations or additions, and changes of occupancy of existing previously occupied industrialized buildings that are designed to be transported from one commercial site to another commercial site."

(5) Amend "Section 104.1 General" to add the following: "The term building official as used in this code, or as used in the codes and standards referenced in this code, shall mean the Texas Commission of Licensing and Regulation, the executive director of the Texas Department of Licensing and Regulation, the Texas Industrialized Building Code Council, or the local building official in accordance with the powers and duties assigned to each in Texas Occupations Code, Chapter 1202, Industrialized Housing and Buildings."

(6) Amend "Section 102.6 Existing Structures" to add the following: "Existing industrialized buildings that bear an approved certification decal or insignia in accordance with the requirements of Texas Occupations Code, Chapter 1202 and 16 Texas Administrative Code, Chapter 70, and that have not been altered or modified, shall be considered to be in compliance with the current mandatory building code adopted by the Texas Industrialized Building Code Council."

(7) Amend "Section 110.1 Use and occupancy" by revising the first sentence to read as follows: "No building or structure shall be used or occupied, and no change in the existing occupancy classification of a building or structure or portion thereof, shall be made until the local building official has issued a certificate of occupancy in accordance with the locally adopted rules and regulations."

(8) Amend "Section 110.2 Certificate issued" as follows.

(A) Amend the first paragraph to read as follows: "The local building official shall issue a certificate of occupancy in accordance with the locally adopted rules and regulations."

(B) Delete item numbers 1 through 12.

(9) Amend "Section 110.3 Temporary occupancy" to read as follows: "The local building official shall issue a temporary certificate of occupancy in accordance with locally adopted rules and regulations."

(10) Amend "Section 110.4 Revocation" to read as follows: "The local building official may suspend or revoke a certificate of occupancy or completion issued under the provisions of this code in accordance with locally adopted rules and regulations."

(11) Amend "Section 311.3 Low-hazard storage, Group S-2" to add equipment shelters as an example of the type of building that falls under this occupancy group.

(12) [~~(2)~~] Delete Sections 1102 through 1110 and amend "Section 1101.2 Design" to read as follows: "Buildings and facilities

shall be designed and constructed to be accessible in accordance with this code and the *Texas Accessibility Standards (TAS)*. Wherever reference elsewhere in this code is made to ICC A117.1, ICC/ANSI A117.1, or ANSI A117.1, the *TAS* shall be substituted [~~Chapter 41 and replace with the Texas Accessibility Standards (TAS) of Texas Government Code, Chapter 469, Elimination of Architectural Barriers, dated April 1, 1994]. Buildings subject to the requirements of the Texas Accessibility Standards are described in Administrative Rules of the Texas Department of Licensing and Regulation, 16 Texas Administrative Code, Chapter 68.~~]; §68.21-]

(13) Amend "*Chapter 35, Referenced Standards*" as follows.

(A) Delete ICC/ANSI A117.1-03, Accessible and Usable Buildings and Facilities.

(B) Add TDLR, P.O. Box 12157, Austin, TX 78711 as a promulgating agency and add TAS, Texas Accessibility Standards as adopted under 16 Texas Administrative Code, Chapter 68, as the referenced standard, referenced in code sections 406.2.2, 907.9.1.4, 1007.6.5, 1010.1, 1010.6.5, 1010.9, 1011.3, 1101.2, 3001.3, 3409.6, 3409.8.2, and 3409.8.3.

(C) Add NFPA Standard 70-08, National Electrical Code, referenced in code section 101.4.

(D) Add ICC Standard IEBC-06, International Existing Building Code, referenced in code section 101.4.8.

~~{(3) Revise Chapter 35, Referenced Standards, as follows:}~~

~~{(A) Delete ICC/ANSI A117.1-98, Accessible and Usable Buildings and Facilities.}~~

~~{(B) Add Texas Accessibility Standards (TAS) dated April 1, 1994.}~~

~~{(4) Wherever reference elsewhere in the code is made to ICC/ANSI A177.1, the Texas Accessibility Standards (TAS) shall be substituted.}~~

~~{(5) Revise §101.2, Exception 2, to read "Existing buildings that are undergoing repair, alterations or additions and change of occupancy shall comply with the *International Existing Building Code*."}~~

(e) The *International Fuel Gas Code* shall be amended as follows. [Section 101.1 of the *International Fuel Gas Code* shall read as follows: "These regulations shall be known as the Fuel Gas Code of the Texas Industrialized Housing and Buildings program, hereinafter referred to as 'this code.'"]

(1) Amend "*Section 101.1 Title*" to read as follows: "These regulations shall be known as the Fuel Gas Code of the Texas Industrialized Housing and Building program, hereinafter referred to as 'this code.'"

(2) Amend "*Section 101.4 Intent*" to add the following: "Where conflicts occur between the provisions of this code and the provisions of Texas Occupations Code, Chapter 1202, Industrialized Housing and Buildings, or the provisions of 16 Texas Administrative Code, Chapter 70, rules governing the Texas Industrialized Housing and Buildings program, the provisions of Texas Occupations Code, Chapter 1202 and 16 Texas Administrative Code, Chapter 70 shall control."

(3) Amend "*Section 102.7 Moved buildings*" to read as follows: "The provisions of the *International Existing Building Code* shall apply to all matters governing the repair, alterations or additions, and changes of existing previously occupied industrialized buildings that

are designed to be transported from one commercial site to another commercial site."

(4) Amend "*Section 102.8 Referenced codes and standards*" to add the following. "Whenever amendments have been adopted to the referenced codes and standards, each reference to said code and standard shall be considered to reference the amendments as well."

(5) Amend "*Chapter 8 Referenced Standards*" to add code section 102.7 as a code referenced section for ICC Standard IEBC-06, *International Existing Building Code*.

(f) The *International Plumbing Code* shall be amended as follows. [Section 101.1 of the *International Plumbing Code* shall read as follows: "These regulations shall be known as the Plumbing Code of the Texas Industrialized Housing and Buildings program, hereinafter referred to as 'this code.'"]

(1) Amend "*Section 101.1 Title*" to read as follows: "These regulations shall be known as the Plumbing Code of the Texas Industrialized Housing and Buildings program, hereinafter referred to as 'this code.'"

(2) Amend "*Section 101.3 Intent*" to add the following: "Where conflicts occur between the provisions of this code and the provisions of Texas Occupations Code, Chapter 1202, Industrialized Housing and Buildings, or the provisions of 16 Texas Administrative Code, Chapter 70, rules governing the Texas Industrialized Housing and Buildings program, the provisions of Texas Occupations Code, Chapter 1202 and 16 Texas Administrative Code, Chapter 70 shall control."

(3) Amend "*Section 102.7 Moved buildings*" to read as follows: "The provisions of the *International Existing Building Code* shall apply to all matters governing the repair, alterations or additions, and changes of existing previously occupied industrialized buildings that are designed to be transported from one commercial site to another commercial site."

(4) Amend "*Section 102.8 Referenced codes and standards*" to add the following: "Whenever amendments have been adopted to the referenced codes and standards, each reference to said code and standard shall be considered to reference the amendments as well."

(5) Amend "*Chapter 13, Referenced Standards*" as follows.

(A) Delete NFPA Standard 70-05 and replace with NFPA Standard 70-08.

(B) Add code section 102.7 as a code referenced section for ICC Standard IEBC-06, *International Existing Building Code*.

(g) The *International Mechanical Code* shall be amended as follows. [Section 101.1 of the *International Mechanical Code* shall read as follows: "These regulations shall be known as the Mechanical Code of the Texas Industrialized Housing and Buildings program, hereinafter referred to as 'this code.'"]

(1) Amend "*Section 101.1 Title*" to read as follows: "These regulations shall be known as the Mechanical Code of Texas Industrialized Housing and Buildings program, hereinafter referred to as 'this code.'"

(2) Amend "*Section 101.3 Intent*" to add the following: "Where conflicts occur between the provisions of this code and the provisions of Texas Occupations Code, Chapter 1202, Industrialized Housing and Buildings, or the provisions of 16 Texas Administrative Code, Chapter 70, rules governing the Texas Industrialized Housing

and Buildings program, the provisions of Texas Occupations Code, Chapter 1202 and 16 Texas Administrative Code, Chapter 70 shall control."

(3) Amend "Section 102.7 Moved buildings" to read as follows: "The provisions of the International Existing Building Code shall apply to all matters governing the repair, alterations or additions, and changes of existing previously occupied industrialized buildings that are designed to be transported from one commercial site to another commercial site."

(4) Amend "Section 102.8 Referenced codes and standards" to add the following: "Whenever amendments have been adopted to the referenced codes and standards, each reference to said code and standard shall be considered to reference the amendments as well."

(5) Amend "Chapter 15 Referenced Standards" to add code section 102.7 as a code referenced section for ICC Standard IEBC-06 International Existing Building Code.

(h) The International Residential Code shall be amended as follows. [Section R101.1 of the International Residential Code shall read as follows: "These provisions shall be known as the Residential Code for One- and Two-Family Dwellings of the Texas Industrialized Housing and Buildings program, and shall be cited as such and will be referred to herein as 'this code.'"]

(1) Amend "Section R101.1 Title" to read as follows: "These provisions shall be known as the Residential Code for One- and Two-family Dwellings of the Texas Industrialized Housing and Buildings Program and shall be cited as such and will be referred to herein as 'this code.'"

(2) Add "Section R101.4 Referenced codes - Electrical" to read as follows: "The provisions of the National Electrical Code, NFPA 70, shall apply to the installation of electrical systems, including alterations, repairs, replacement, equipment, appliances, fixtures, fittings and appurtenances thereto."

(3) Amend "Section R202 Definitions" by adding the following definition: "GLAZING AREA. Total area of the glazed fenestration measured using the rough opening and includes the sash, curbing or other framing elements that enclose conditioned space. In walls bounding conditioned basements, the glazing area includes the area of all glazed fenestration assemblies. For doors where the daylight opening area is less than 50 percent of the door area, the glazing area is the daylight opening area. For all other doors, the glazing area is the rough opening area for the door including the door and the frame."

(4) Amend "Section R202 Definitions" by amending the definition of "Townhouse" as follows: "TOWNHOUSE. A single-family dwelling unit constructed in a group of attached units separated by property lines in which each unit extends from foundation to roof and with open space on at least two sides."

(5) Amend "Section R301.2 Climatic and geographic design criteria" to add the following: "If no criteria has been established, or if there is no local jurisdiction to set the criteria, then the criteria shall be in accordance with the requirements set in the footnotes of Table R301.2(1)."

(6) Amend "Section R303.8 Required heating" to read as follows: "Every dwelling unit shall be provided with heating facilities capable of maintaining a minimum room temperature of 68°F (20°C) at a point 3 feet (914 mm) above the floor and 2 feet (610 mm) from exterior walls in all habitable rooms at the design temperature. The installation of one or more portable space heaters shall not be used to achieve compliance with this section."

(7) Amend "Section R317.1 Two-family dwellings" by adding exception number 3 to read as follows: "3. Two-family dwelling units that are also divided by a property line through the structure shall be separated as required for townhouses."

(8) Amend "Section N1101.2.1 Warm humid counties" to read as follows: "Warm humid counties for Texas are listed in Table N1101.2.2 and are listed in Table N1101.2.1 for other locations."

(9) Add "Section N1101.2.2 Compliance software tools" to read as follows: "Software tools to demonstrate energy code compliance may be used if deemed acceptable by the code official or other authority having jurisdiction. The PNNL software program RESCheck may be used to demonstrate energy code compliance provided the code checked to is the 2003 IECC. The International Code Compliance Calculator (ICCC) from the Texas Energy System Laboratory may be used to demonstrate energy code compliance."

(10) Amend "Figure N1101.2 Climate Zones" by replacing the map of Texas with the map of Texas as shown in Exhibit 1. Figure: 16 TAC §70.101(h)(10)

(11) Delete climate zones for Texas from "Table N1101.2 Climate Zones by States and Counties" and add "Climate Zones and Sub Climate Zones for Texas" to Table N1101.2 as shown in Exhibit 2. Figure: 16 TAC §70.101(h)(11)

(12) Delete the Texas Counties from "Table N1101.2.1 Warm Humid Counties." Add "Table N1101.2.2 Warm Humid Counties for Texas" as shown in Exhibit 3. Figure: 16 TAC §70.101(h)(12)

(13) Amend "Section N1101.7 Above code programs" to read as follows: "A building certified by a national, state, or local accredited energy efficiency program and determined by the Energy Systems Laboratory to be in compliance with the energy efficiency requirements of Texas Health and Safety Code, Chapter 388 may be considered in compliance if deemed acceptable by the code official or other authority having jurisdiction."

(14) Amend "Section N1102.1 Insulation and fenestration criteria" by adding the following: "When compliance using Table 1102.1 is demonstrated with a ceiling R-value of R30 or less, no more than 33% of the total projected ceiling area may be of cathedral type construction (ceiling joist/rafter assembly) and the required insulation R-value may be reduced to a minimum of R22 insulation when the remaining ceiling area insulation is increased to R38."

(15) Replace "Table N1102.1 Insulation and Fenestration Requirements by Component" with new "Table N1102.1 Insulation and Fenestration Requirements by Component (Texas)" as shown in Exhibit 4. Figure: 16 TAC §70.101(h)(15)

(16) Replace "Table N1102.1.2 Equivalent U-Factors" with new "Table N1102.1.2 Equivalent U-Factors (Texas)" as shown in Exhibit 5. Figure: 16 TAC §70.101(h)(16)

(17) Amend "Section N1102.3.2 Glazed fenestration SHGC" by adding the following: "The maximum area-weighted average SHGC shall not exceed 0.40 in sub-climate zones 2.1, 2.2, 3.1, 3.2, and 3.3."

(18) Amend "Section N1102.3.3 Glazed fenestration exemption" to read as follows: "Up to 1 percent of glazed fenestration per dwelling unit shall be permitted to be exempt from U-factor and solar heat gain coefficient (SHGC) requirements in Section N1102.1."

(19) Amend "Section N1102.3.5 Thermally isolated sunroom U-factor" by deleting the first sentence.

(20) Amend "Section N1102.3.6 Replacement fenestration" by adding the following 2 exceptions.

(A) "1. Replacement fenestration units may comply with the original construction documents."

(B) "2. The area weighted average SHGC shall not exceed 0.40 in sub-climate zones 2.1, 2.2, 3.1, 3.2, and 3.3."

(21) Add "Section N1102.3.7 Prescriptive path for additions" to read as follows: "As an alternative for demonstrating compliance, additions with a conditioned floor area less than 500 square feet (46.5 m<sup>2</sup>) to existing single-family residential buildings and structures shall meet the prescriptive envelope component criteria in Table 1102.3.7 for the sub climate zone applicable to the location. The U-factor of each individual fenestration product (windows, doors and skylights) shall be used to calculate an area-weighted average fenestration product U-factor for the addition, which shall not exceed the applicable listed values in Table 1102.3.7. For additions, other than sunroom additions, the total area of fenestration products shall not exceed 40 percent of the gross wall and roof area of the addition. The R-values for opaque thermal envelope components shall be equal to or greater than the applicable listed values in Table 1102.3.7.

(A) Conditioned sunroom additions shall maintain thermal isolation and shall not be used as kitchens or sleeping rooms.

(B) In sub climate zones 2.1, 2.2, 3.1, 3.2 and 3.3, the area weighted average solar heat gain coefficient of all glazed fenestration products used in additions in accordance with this section shall not exceed 0.40."

(22) Add "Table N1102.3.7 Prescriptive Envelope Component Criteria, Additions to and Replacement Windows for Existing Detached One- and Two-family Dwellings" as shown in Exhibit 6. Figure: 16 TAC §70.101(h)(22)

(23) Delete "Part VIII-Electrical, Chapters 33 through 42."

(24) Amend "Chapter 43 Referenced Standards" as follows.

(A) Delete all references to NFPA Standard 70-05, including the section numbers referenced in the code.

(B) Add NFPA Standard 70-08, National Electrical Code, referenced in code section R101.4 as the referenced standard.

(C) Add PNNL/DOE, Pacific Northwest National Laboratory/Department of Energy, <http://www.energycodes.gov/> as a promulgating agency and add REScheck Version 4.1.1 or later, Residential Energy Compliance Software, as the referenced standard, referenced in code section N1101.2.2.

(D) Add Texas Energy System Laboratory, Energy Systems Laboratory, Room #214, Wisenbaker Engineering Research Center, Bizzell Street, 3581 TAMU, Texas A&M University, College Station, Texas 77843-3581 as a promulgating agency and add ICC, v2.0.8.1 or later, International Code Compliance Calculator, as the referenced standard, referenced in code section number N1101.2.2.

(i) The *International Existing Building Code* shall be amended as follows.

(1) Amend "Section 101.1 Title" to read as follows: "These regulations shall be known as the *Existing Building Code* of the Texas Industrialized Housing and Buildings Program, hereinafter referred to as 'this code.'"

(2) Add new "Section 101.9 Texas Accessibility Standards (TAS)" to read as follows: "Wherever reference elsewhere in this code is made to ICC A117.1, ICC/ANSI A117.1, or ANSI A117.1, the *Texas Accessibility Standards (TAS)* shall be substituted. Wherever reference in this code is made to chapter 11, or portions of chapter 11, of the International Building Code, the TAS shall be substituted.

(3) Amend "Section 101.4.1 Buildings not previously occupied" to read as follows: "A building or portion of a building that has not been previously occupied or used for its intended purpose in accordance with the laws in existence at the time of its completion shall comply with the provisions of the International Building Code or International Residential Code, as applicable, as adopted by the Texas Industrialized Building Code Council at the time of construction of the building."

(4) Delete "Chapter 11, Historic Buildings."

(5) Amend "Section 1301.2 Applicability" to read as follows: "Structures existing prior to October 31, 2008, in which there is work involving additions, alterations, or changes of occupancy shall be made to conform to the requirements of this chapter or the provisions of Chapters 4 through 12. The provisions of Sections 1301.2.1 through 1301.2.5 shall apply to existing occupancies that will continue to be, or are proposed to be, in Groups A, B, E, F, M, R, and S. These provisions shall not apply to buildings with occupancies in Group H or Group I."

(6) Amend "Chapter 15 Referenced Standards" as follows.

(A) Delete ICC/ANSI A117.1-03, *Accessible and Usable Buildings and Facilities*.

(B) Add TDLR, P.O. Box 12157, Austin, TX 78711 as a promulgating agency and add TAS, *Texas Accessibility Standards* as adopted under 16 Texas Administrative Code, Chapter 68, as the referenced standard, referenced in code sections 101.9, 308.6, 308.8.2, 308.8.3, 605.1, 605.1.2, and 605.1.3.

(C) Delete NFPA Standard 70-05 and replace with NFPA Standard 70-08.

{(1) Section 101.1 shall read as follows: "These regulations shall be known as the *Existing Building Code* of the Texas Industrialized Housing and Buildings program, hereinafter referred to as 'this code.'"}]

{(2) Revise Chapter 14, Referenced Standards, as follows:}

{(A) Delete ICC/ANSI A117.1-98, *Guidelines for Accessible and Usable Buildings and Facilities*.}

{(B) Add Texas Accessibility Standards (TAS) dated April 1, 1994.}

{(3) Wherever reference elsewhere in the code is made to ICC/ANSI A117.1, the Texas Accessibility Standards (TAS) shall be substituted.}

{(4) Wherever reference elsewhere in the code is made to chapter 11, or portions of chapter 11, of the *International Building Code*, the Texas Accessibility Standards (TAS) shall be substituted.}

{(5) Delete Chapter 10, Historic Buildings.}

{(6) Section 1201.2 shall read as follows: "Structures existing prior to July 1, 2004 in which there is work involving additions, alterations, or changes of occupancy shall be made to conform to the requirements of this chapter or the provisions of Chapters 4 through 9."}

(j) The *International Energy Conservation Code* shall be amended as follows.



(1) Amend "*Section 101.1 Title*" to read as follows: "This code shall be known as the International Energy Conservation Code of the Texas Industrialized Housing and Buildings Program, and shall be cited as such. It is referred to herein as 'this code.'"

(2) Delete "*Section 103.1.1 Above code programs*" and replace with "*Section 103.1.1 Alternative Compliance*" to read as follows: "A building certified by a national, state, or local accredited energy efficiency program and determined by the Energy Systems Laboratory to be in compliance with the energy efficiency requirements of Texas Health and Safety Code, Chapter 388 may be considered in compliance if deemed acceptable by the code official or other authority having jurisdiction."

(3) Amend "*Section 202 General Definitions*" by adding the following definition: "GLAZING AREA. Total area of the glazed fenestration measured using the rough opening and includes the sash, curbing or other framing elements that enclose conditioned space. In walls bounding conditioned basements, the glazing area includes the area of all glazed fenestration assemblies. For doors where the daylight opening area is less than 50 percent of the door area, the glazing area is the daylight opening area. For all other doors, the glazing area is the rough opening area for the door including the door and the frame."

(4) Amend "*Section 301.1 General*" to read as follows: "Climate zones from Figure 301.1 or Table 301.1 shall be used in determining the applicable requirements from Chapter 5. Climate zones from Figure 301.2, Table 301.1(1), or Table 301.2(1) shall be used in determining the applicable requirements from Chapter 4. Locations not in Table 301.1 (outside the US) or in Table 301.1(1) shall be assigned a climate zone based on Section 301.3."

(5) Amend the code by inserting "*Figure 301.2 Texas Residential Climate Zones*" immediately following Figure 301.1. Figure 301.2 is shown in Exhibit 1.

(6) Amend "Table 301.1 Climate Zones by State, County, and Territories" by adding "Commercial Zones Only" next to the heading for Texas and adding the Zone 2 moist counties to the table as shown in Exhibit 7.  
Figure: 16 TAC §70.101(j)(6)

(7) Add "*Table 301.1(1) Residential Climate Zones and Sub-Climate Zones for Texas*" as shown in Exhibit 8.  
Figure: 16 TAC §70.101(j)(7)

(8) Amend "*Table 301.2 Warm Humid Counties and Territories*" by adding "Commercial Buildings Only" next to the heading for Texas and by adding the zone 2 counties as shown in Exhibit 9.  
Figure: 16 TAC §70.101(j)(8)

(9) Add "*Table 301.2(1) Warm Humid Counties for Texas - Residential*" as shown in Exhibit 10.  
Figure: 16 TAC §70.101(j)(9)

(10) Add "*Section 401.2.1 Compliance software tools*" to read as follows: "Software tools to demonstrate energy code compliance may be used if deemed acceptable by the code official or other authority having jurisdiction. The software program REScheck may be used to demonstrate energy code compliance provided the code checked to is the 2003 IECC. The International Code Compliance Calculator (ICCC) from the Texas Energy System Laboratory may be used to demonstrate energy code compliance."

(11) Amend "*Section 402.1.1 Insulation and fenestration criteria*" by adding the following: "When compliance using Table 402.1.1 is demonstrated with a ceiling R-value of R30 or less, no more than 33% of the total projected ceiling area may be of cathedral type construction (ceiling joist/roof rafter assembly) and the required insu-

lation R-value may be reduced to a minimum of R22 insulation when the remaining ceiling area insulation is increased to R38."

(12) Replace "*Table 402.1.1 Insulation and Fenestration Requirements by Component*" with new "*Table 402.1.1 Insulation and Fenestration Requirements by Component (Texas)*" as shown in Exhibit 4.

(13) Replace "*Table 402.1.3 Equivalent U-Factors*" with new "*Table 402.1.3 Equivalent U-Factors (Texas)*" as shown in Exhibit 5.

(14) Amend "*Section 402.3.2 Glazed fenestration SHGC*" by adding the following: "The area-weighted average SHGC of all glazed fenestration products in the building shall not exceed 0.40 in climate zones 2.1, 2.2, 3.1, 3.2, and 3.3."

(15) Amend "*Section 402.3.3 Glazed fenestration exemption*" to read as follows: "Up to 1 percent of glazed fenestration per dwelling unit shall be permitted to be exempt from U-factor and SHGC requirements in Section 402.1.1."

(16) Amend "*Section 402.3.5 Thermally isolated sunroom U-factor*" by deleting the first sentence.

(17) Amend "*Section 402.3.6 Replacement fenestration*" by adding the following 2 exceptions.

(A) "1. Replacement fenestration units may comply with the original construction documents."

(B) "2. The area weighted average SHGC shall not exceed 0.40 in sub climate zones 2.1, 2.2, 3.1, 3.2, and 3.3."

(18) Add "*Section 402.3.7 Prescriptive path for additions*" to read as follows. "As an alternative for demonstrating compliance, additions with a conditioned floor area less than 500 square feet (46.5 m<sup>2</sup>) to existing single-family residential buildings and structures shall meet the prescriptive envelope component criteria in Table 402.3.7 for the sub climate zone applicable to the location. The U-factor of each individual fenestration product (windows, doors and skylights) shall be used to calculate an area-weighted average fenestration product U-factor for the addition, which shall not exceed the applicable listed values in Table 402.3.7. For additions, other than sunroom additions, the total area of fenestration products shall not exceed 40 percent of the gross wall and roof area of the addition. The R-values for opaque thermal envelope components shall be equal to or greater than the applicable listed values in Table 402.3.7.

(A) Conditioned sunroom additions shall maintain thermal isolation and shall not be used as kitchens or sleeping rooms.

(B) In sub climate zones 2.1, 2.2, 3.1, 3.2 and 3.3, the area weighted average solar heat gain coefficient of all glazed fenestration products used in additions in accordance with this section shall not exceed 0.40."

(19) Add "*Table 402.3.7 Prescriptive Envelope Component Criteria Additions to and Replacement Windows for Existing Detached One- and Two-Family Dwellings*" as shown in Exhibit 6.

(20) Add "*Section 501.3 Compliance software tools*" to read as follows. "Software tools used to demonstrate energy code compliance that are deemed acceptable by the code official may only utilize the energy chapter of the 2006 International Energy Conservation Code or the 2004 Edition of AHSRAE 90.1 Energy Standard for Buildings Except Low-rise Residential Buildings when code edition and/or standard selection is available. The PNNL software program COMcheck may be used to demonstrate energy code compliance."

(21) Amend "*Chapter 6 Referenced Standards*" as follows.

(A) Add PNNL/DOE, Pacific Northwest National Laboratory/Department of Energy, <http://www.energycodes.gov/> as a promulgating agency and add the following as referenced standards.

(i) REScheck Version 4.1.1 or later, Residential Energy Compliance Software, referenced in code section N1101.2.2.

(ii) COMcheck, Version 3.5.1 or later, Commercial Energy Compliance Software, referenced in code section 501.3.

(B) Add Texas Energy System Laboratory, Energy Systems Laboratory, Room #214, Wisenbaker Engineering Research Center, Bizzell Street, 3581 TAMU, Texas A&M University, College Station, Texas 77843-3581 as a promulgating agency and add ICC, v2.0.8.1 or later, International Code Compliance Calculator, referenced in code section number N1101.2.2 as the referenced standard.

(k) The *ICC Electrical Code* shall be amended as follows.

(1) Amend "*Section 101.1 Title*" to read as follows: "These regulations shall be known as the *Electrical Code-Administrative Provisions* of the Texas Industrialized Housing and Buildings Program, hereinafter referred to as 'this code.'"

(2) Amend "*Section 101.3 Intent*" to add the following: "Where conflicts occur between the provisions of this code and the provisions of Texas Occupations Code, Chapter 1202, Industrialized Housing and Buildings, or the provisions of 16 Texas Administrative Code, Chapter 70, rules governing the Texas Industrialized Housing and Buildings program, the provisions of Texas Occupations Code, Chapter 1202 and 16 Texas Administrative Code, Chapter 70 shall control."

(3) Amend "*Section 102.1.5 Moved buildings*" to read as follows: "The provisions of the *International Existing Building Code* shall apply to all matters governing the repair, alterations or additions, and changes of existing previously occupied industrialized buildings that are designed to be transported from one commercial site to another commercial site."

(4) Amend "*Section 102.6 Referenced codes and standards*" by adding the following: "Whenever amendments have been adopted to the referenced codes and standards, each reference to said code and standard shall be considered to reference the amendment as well."

(5) Amend "*Section 1201.1.1 Adoption*" to read as follows: "Electrical systems and equipment shall be designed and constructed in accordance with the NFPA 70 except as otherwise provided in this code."

(6) Revise "*Chapter 13 Referenced standards*" to read as follows.

(A) Add ICC standard IEBC-06, *International Existing Building Code*, referenced in code section 102.1.5.

(B) Delete NFPA Standard 70-05 and replace with NFPA Standard 70-08.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 7, 2008.

TRD-200801838

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Earliest possible date of adoption: May 18, 2008

For further information, please call: (512) 463-7348



## CHAPTER 82. BARBERS

### 16 TAC §82.72

The Texas Department of Licensing and Regulation ("Department") proposes amendments to an existing rule at 16 Texas Administrative Code ("TAC") Chapter 82, §82.72, regarding the responsibilities of barber schools.

The Department proposed amendments to 16 TAC §82.72 in the April 14, 2006, issue of the *Texas Register* (31 TexReg 3144), with no changes to subsection (g) regarding the responsibility of a barber school to furnish or ensure that each student is equipped with his or her own personal tools. However, due to an error in the agency's document submission of §82.72, the text for paragraphs (1) - (14) of subsection (g) was inadvertently omitted.

Section 82.72 was published and adopted in the July 28, 2006, issue of the *Texas Register* (31 TexReg 5947), with incomplete text of the rule in that it did not include paragraphs (1) - (14) of subsection (g), which is the list of specific tools that each student is to be furnished. This rule proposal will correct the error.

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 change in costs or revenue to the State or Department for implementing and enforcing the rule. There will be no fiscal implications to local government.

Mr. Kuntz also has determined that for each year of the first five-year period the amendments are in effect, the public benefit will be correct text of rules that clearly state the responsibilities of barber schools relative to the tools that barber schools must furnish or ensure that each student is equipped with.

There is no anticipated economic effect on small or micro-businesses or to persons who are required to comply with the rule as proposed. The agency has also determined that the proposed rule will have no adverse economic effect on small businesses, and therefore preparation of an economic impact statement and a regulatory flexibility analysis is not required.

Comments on the proposal may be submitted to Caroline Jackson, Legal Assistant, General Counsel's Office, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or facsimile (512) 475-3032, or electronically: [erule.comments@license.state.tx.us](mailto:erule.comments@license.state.tx.us). The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Occupations Code, Chapters 51, 1601, and 1603 which authorizes the Department 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, 1601, and 1603. No other statutes, articles, or codes are affected by the proposal.

§82.72. *Responsibilities of Barber Schools.*

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

(g) Within 30 days of enrollment, a barber school shall furnish to or ensure that each student is equipped with his or her own personal tools which must include the following:

- (1) one professional electric clipper of modern design;
- (2) one neck duster;
- (3) one barber shears;
- (4) one thinning shears;
- (5) one razor equipped with disposable blades;
- (6) three barber combs;
- (7) one styptic powder or liquid styptic;
- (8) one tool kit (carrying kit);
- (9) one hair styling brush;
- (10) one neck clip;
- (11) one can clipper oil;
- (12) two washable uniforms;
- (13) one hand held hair dryer; and
- (14) one T-edger or outliner.

(h) - (aa) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 7, 2008.

TRD-200801839

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Earliest possible date of adoption: May 18, 2008

For further information, please call: (512) 463-7348



## TITLE 19. EDUCATION

### PART 2. TEXAS EDUCATION AGENCY

#### CHAPTER 61. SCHOOL DISTRICTS

##### SUBCHAPTER CC. COMMISSIONER'S

##### RULES CONCERNING SCHOOL FACILITIES

###### 19 TAC §61.1037

The Texas Education Agency (TEA) proposes new §61.1037, concerning the Science Laboratory Grant Program. The proposed new section would implement the requirements of the Texas Education Code (TEC), §7.062, as added by House Bill 2237, 80th Texas Legislature, 2007, that charges the commissioner to adopt rules necessary to implement the Science Laboratory Grant Program.

House Bill 2237, 80th Texas Legislature, 2007, added §7.062 to the Texas Education Code. The Science Laboratory Grant Program is to provide competitive grants to school districts for the purpose of constructing or renovating high school science laboratories. To be eligible for a grant, a school district must demonstrate that the existing district science laboratories are

insufficient in number to comply with the curriculum requirements imposed for the recommended and advanced high school programs. The statute requires the commissioner to provide for ranking school districts that apply for grants on the basis of wealth per student and giving priority in the award of grants to districts with low wealth per student.

The proposed new 19 TAC §61.1037, Science Laboratory Grant Program, would implement the TEC, §7.062, by providing applicable definitions, establishing the application process, and describing prioritization and notice of award. The proposal would also specify details relating to data sources, payments, determination of need, eligible projects, deadlines and accountability, and required reports.

A school district must complete an application requesting funding under the Science Laboratory Grant Program. The application must contain a description of each high school campus for which funds are being requested, the campus's enrollment, the number of science laboratories on the campus, a certification that the existing laboratories are insufficient to comply with curriculum requirements, the number of laboratories to be constructed or renovated, and a timeline for the proposed construction or renovation projects.

A school district that participates in the Science Laboratory Grant Program must maintain contracting and financial records related to the construction project(s) for which it receives a grant so that the district can provide these records to the TEA on completion of the project(s).

Shirley Beaulieu, Associate Commissioner for Finance/Chief Financial Officer, has determined that for the first five-year period the new section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the new section. The administration of the proposed rule action does not have any costs beyond what the authorizing statute requires. The TEC, §7.062, allows for the funding of the Science Laboratory Grant Program only if there are surplus funds available from those appropriated for the Instructional Facilities Allotment and Existing Debt Allotment programs for the fiscal year, not to exceed \$20 million.

Ms. Beaulieu has determined that for each year of the first five years the new section is in effect the public benefit anticipated as a result of enforcing the new section would be the building and renovation of more high school science laboratories, which will result in more students having access to such laboratories. There is no anticipated economic cost to persons who are required to comply with the proposed new section.

There is no projected economic impact to small businesses or microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

The public comment period on the proposal begins April 18, 2008, and ends May 18, 2008. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to [rules@tea.state.tx.us](mailto:rules@tea.state.tx.us) or faxed to (512) 463-0028. All requests for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of the proposal has been published in the *Texas Register* on April 18, 2008.

The new section is proposed under the Texas Education Code, §7.062, as added by House Bill 2237, 80th Texas Legislature, 2007, which authorizes the commissioner to adopt rules necessary to implement the Science Laboratory Grant Program, including rules addressing eligibility, application procedures, and accountability for use of grant funds.

The new section implements the Texas Education Code, §7.062.

§61.1037. Science Laboratory Grant Program.

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

(1) Average daily attendance--The definition of this term is assigned in the Texas Education Code (TEC), §42.005(a).

(2) Construction project--A project consisting of the construction of a new free-standing building or the construction of a new addition to an existing building.

(3) Renovation project--A project consisting of the renovation of space that is not currently used as a science laboratory within an existing building that does not include the addition of any new space.

(4) High school campus--A campus that houses Grades 9-12. For purposes of this grant program, a school district that has a separate Grade 9 campus and a separate Grades 10-12 campus, or some similar division, shall combine the campuses on the application and submit as one campus. For purposes of this grant program, a district that has a campus that serves Grades 6-12, Kindergarten-Grade 12, or some similar range, shall identify only the number of students enrolled in Grades 9-12 on the application.

(5) Science laboratories--Rooms identified as combination science laboratories/classrooms per §61.1036(d)(5)(C)(iii) of this title (relating to School Facilities Standards for Construction on or after January 1, 2004), or identified as laboratories per §61.1036(d)(5)(C)(iv) of this title. To provide clarity in the exercise of the grant program governed by this section, rooms identified as laboratories per §61.1036(d)(5)(C)(iv) of this title shall be referred to as "stand-alone laboratories" within this section and within the grant application.

(6) Enrollment--The actual high school campus enrollment for the school year before the year in which a district submits an application for the science laboratory grant program.

(7) Support areas--For a construction project, support areas are limited to prep rooms, storage areas, and corridor access space. For a renovation project, support areas are limited to prep rooms and storage areas.

(b) Application process. A school district must complete an application to request funding under the science laboratory grant program. The application shall contain at a minimum the following:

(1) a description of each individual high school campus for which funds are being requested;

(2) the enrollment on each high school campus;

(3) the number of existing science laboratories on each high school campus;

(4) a certification that the existing district science laboratories are insufficient in number to comply with the curriculum requirements imposed for the recommended and advanced high school programs under TEC, §28.025(b-1)(1);

(5) the number of science laboratories to be constructed or renovated; and

(6) a timeline for each construction or renovation project proposed by the high school campus.

(c) Prioritization and notice of award. Upon close of the application cycle, all eligible applications shall be ranked in order of the district's property wealth per student in average daily attendance. Grants will be awarded beginning with the district with the lowest property wealth and continue until all available funds have been used. The commissioner of education shall award the full amount of the grant to which a district is entitled under this section, except that the commissioner may award less than the full amount to the last district for which any funds are available. By posting on the Texas Education Agency (TEA) website, the commissioner shall notify each district of the amount of grant awarded and its position in the rank order for the application cycle.

(d) Data sources.

(1) For purposes of determining prioritization, the projected average daily attendance as adopted by the legislature for appropriations purposes shall be used.

(2) For purposes of prioritization, the final property values certified by the comptroller of public accounts for the tax year preceding the year in which assistance is to begin shall be used. If final property values are unavailable, the most recent projection of property values shall be used.

(3) For purposes of prioritization, the commissioner may consider, before the deadline for receipt of applications for that fiscal year, adjustments to data values determined to be erroneous.

(e) Payments, determination of need, and eligible projects.

(1) Payment of the grant shall be made as soon as practicable after June 1 of each year. No payments shall be made until all initial submissions required by the application have been received and approved by the TEA division responsible for state funding.

(2) For a construction project, the grant amount shall be limited to not more than \$200 per square foot of the science laboratory to be constructed.

(A) For science laboratories identified as combination science laboratories/classrooms, the grant amount will be paid on the actual square footage plus reasonable support areas identified on the application not to exceed 2,050 square feet for each science laboratory/classroom.

(B) For science laboratories identified as stand-alone laboratories, the grant amount will be paid on the actual square footage plus reasonable support areas identified on the application not to exceed 1,550 square feet for each stand-alone science laboratory.

(3) For a renovation project, the grant amount shall be limited to not more than \$100 per square foot of the science laboratory to be renovated.

(A) For science laboratories identified as combination science laboratories/classrooms, the grant amount will be paid on the actual square footage plus reasonable support areas identified on the application not to exceed 1,640 square feet for each science laboratory/classroom.

(B) For science laboratories identified as stand-alone laboratories, the grant amount will be paid on the actual square footage plus reasonable support areas identified on the application not to exceed 1,240 square feet for each stand-alone science laboratory.

(4) The maximum number of science laboratories/classrooms eligible for funding for each campus under this grant program

is determined by subtracting the number of existing laboratories/classrooms on the campus from the number of laboratories/classrooms needed. The number of laboratories/classrooms needed on a campus is calculated using the formula "E x LC" where:

(A) "E" is the campus enrollment;

(B) "LC" is the laboratories/classrooms calculation factor, which is equal to 0.007353; and

(C) any resulting fractional number of laboratories/classrooms needed is rounded up to the next whole number.

(5) The maximum number of science stand-alone laboratories eligible for funding for each campus under this grant program is determined by subtracting the number of existing stand-alone laboratories on the campus from the number of stand-alone laboratories needed. The number of stand-alone laboratories needed on a campus is calculated using the formula "E x SAL" where:

(A) "E" is the campus enrollment;

(B) "SAL" is the stand-alone laboratories calculation factor, which is equal to 0.003676; and

(C) any resulting fractional number of stand-alone laboratories needed is rounded up to the next whole number.

(6) The following additional limitations and requirements apply to the science laboratory grant program.

(A) For the science laboratory grant program application cycle that occurs before August 31, 2008, for a project to be eligible for the grant program, a contract for construction or renovation cannot have been entered into by a school district before September 1, 2007.

(B) For science laboratory grant program application cycles that fall after August 31, 2008, for a project to be eligible for the grant program, a contract for construction or renovation cannot have been entered into by a school district at the time of the application deadline.

(C) Renovations to existing science laboratories/classrooms or to existing science stand-alone laboratories are not eligible for this grant program.

(D) Eligibility is limited to construction or renovation projects at high school campuses.

(E) All projects must comply with §61.1036 of this title (relating to School Facilities Standards for Construction on or after January 1, 2004).

(f) Deadlines and accountability.

(1) By January 15 of each fiscal year, the commissioner shall certify whether the amount appropriated for the fiscal year for purposes of TEC, Chapter 46, Subchapters A and B, exceeds the amount to which school districts are entitled under those subchapters for that fiscal year. The commissioner shall use the excess funds, in an amount not to exceed \$20 million, for the purpose of making grants under this section. The commissioner shall conduct an annual application cycle with a deadline of April 15 or the next working day after April 15 every year based on the availability of excess funds. A district may file an amendment to its initial application before the deadline; any amendment received after the deadline will not be considered.

(2) When all funds within an application cycle have been awarded, the remaining unfunded applications shall carry forward and be considered valid applications for the two application cycles immediately following the initial application except for those applications

withdrawn by the submitting districts before the end of the two following cycles. A district that subsequently proceeds with its construction or renovations projects in the absence of grant funds shall not have its application invalidated. An application that remains unfunded after three application cycles will expire and will not be eligible for consideration in future cycles.

(3) If no excess funds are available, the commissioner will not make awards, and all applications received on or before the April 15 deadline shall be considered valid applications for the following cycle except for those applications withdrawn by the submitting districts before the end of the following application cycle. A district that subsequently proceeds with its construction or renovation projects in the absence of grant funds shall not have its application invalidated.

(4) An application received after the deadline shall be considered a valid application for the following cycle unless withdrawn by the submitting district before the end of the following application cycle.

(5) Within one year of award of grant, the district must submit evidence in a form acceptable to the commissioner that a contract has been awarded for the construction or renovation projects identified in the application. Within two years of award of grant, the district must submit evidence in a form acceptable to the commissioner that all work has been completed for the construction or renovation projects identified in the application, with a final accounting of the costs incurred by the district for the projects. Failure to provide satisfactory evidence by any of the deadlines specified in this paragraph could be cause for the commissioner to cancel the district's grant and to recover the grant amount from other scheduled FSP payments due to the district.

(g) Reports required. The commissioner shall require such information and reports as are necessary to assure compliance with applicable laws.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 7, 2008.

TRD-200801828

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Earliest possible date of adoption: May 18, 2008

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



## CHAPTER 74. CURRICULUM REQUIREMENTS

### SUBCHAPTER C. OTHER PROVISIONS

#### 19 TAC §74.30

The State Board of Education (SBOE) proposes an amendment to §74.30, concerning identification of advanced courses. Section 74.30 identifies advanced courses as referred to in the Texas Education Code (TEC), §33.081, concerning extracurricular activities. The proposed amendment would modify the definition of advanced courses and align the rule with newly amended TEC, §33.081, which narrows the number of courses that may be exempt from "No Pass, No Play" requirements.

The 80th Texas Legislature passed Senate Bill (SB) 1517, amending the TEC, §33.081, to define and restrict the courses

that are exempt from the passing grade requirement for students to be eligible to participate in extracurricular activities. The TEC, §33.081, specifies that the courses that are exempt include all Advanced Placement and International Baccalaureate courses. Additional courses that are exempt include honors and dual credit courses in the subjects of English language arts, mathematics, science, social studies, economics, and languages other than English.

In accordance with the TEC, §33.081, the proposed amendment to 19 TAC §74.30 would change reference from "advanced" courses to "honors" courses throughout the rule, including the section title. The proposed amendment would place reference to College Board advanced placement courses and International Baccalaureate courses at the beginning of the section rather than repeating this language for each subject area that is listed in the rule. SB 1517 does not include fine arts in the list of honors and dual credit courses exempted; therefore, a modification is also proposed to language addressing fine arts courses. In addition, language would be added to address grade point average calculation of honors courses.

Sharon Jackson, Associate Commissioner for Standards and Programs, has determined that for the first five-year period the amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amendment.

Dr. Jackson has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amendment would include clarification regarding the courses that are exempt from the passing grade requirement for students to be eligible to participate in extracurricular activities. There is no anticipated economic cost to persons who are required to comply with the proposed amendment. In addition, there is no economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to [rules@tea.state.tx.us](mailto:rules@tea.state.tx.us) or faxed to (512) 463-0028. All requests for a public hearing on the proposed amendment submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of the proposal has been published in the *Texas Register*.

The amendment is proposed under the Texas Education Code, §33.081, which authorizes the SBOE by rule to limit participation in and practice for extracurricular activities during the school day and the school week.

The amendment implements the Texas Education Code, §33.081.

*§74.30. Identification of Honors [Advanced] Courses.*

(a) The following are identified as honors [advanced] classes as referred to in the Texas Education Code, §33.081(d)(1), [§33.081(e)], concerning extracurricular activities:

(1) all College Board advanced placement courses and International Baccalaureate courses in all disciplines;

(2) [(4)] English language arts: [all College Board advanced placement courses and International Baccalaureate courses in

the discipline, and] high school/college concurrent enrollment classes that are included in the "Community College General Academic Course Guide Manual (Part One)";

[(2) Fine arts: all College Board advanced placement courses and International Baccalaureate courses in the discipline; high school/college concurrent enrollment classes that are included in the "Community College General Academic Course Guide Manual (Part One)," Art IV, Dance IV (not to include drill team activities), Music IV, and Theatre IV;]

(3) Languages other than English: [all College Board advanced placement courses and International Baccalaureate courses in the discipline,] high school/college concurrent enrollment classes that are included in the "Community College General Academic Course Guide Manual (Part One)," and languages other than English courses Levels IV-VII;

(4) Mathematics: [all College Board advanced placement courses and International Baccalaureate courses in the discipline,] high school/college concurrent enrollment classes that are included in the "Community College General Academic Course Guide Manual (Part One)" and Precalculus;

(5) Science: [all College Board advanced placement courses and International Baccalaureate courses in the discipline,] high school/college concurrent enrollment classes that are included in the "Community College General Academic Course Guide Manual (Part One)"; and

(6) Social studies: Social Studies Advanced Studies, Economics Advanced Studies, [all College Board advanced placement courses and International Baccalaureate courses in the discipline,] and high school/college concurrent enrollment classes that are included in the "Community College General Academic Course Guide Manual (Part One)."

(b) Districts may identify additional honors [advanced] courses in the subject areas of English language arts, mathematics, science, social studies, economics, or a language other than English for the purpose of this section, but must identify such courses prior to the semester in which any exemptions related to extracurricular activities occur.

(c) Districts are neither required to nor restricted from considering courses as honors for the purpose of grade point average calculation.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 7, 2008.

TRD-200801816

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Earliest possible date of adoption: May 18, 2008

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



**19 TAC §74.36**

The State Board of Education (SBOE) proposes new §74.36, concerning requirements for elective courses on the Bible's Hebrew Scriptures (Old Testament) and New Testament and their impact on the history and literature of Western civilization. The proposed new rule would add requirements for the teaching of

an elective course on the Hebrew Scriptures (Old Testament) and the New Testament and their impact, as required in Texas Education Code (TEC), §28.011.

The 80th Texas Legislature passed House Bill (HB) 1287, adding TEC, §28.011, allowing school districts to teach an elective course on the Hebrew Scriptures (Old Testament) and the New Testament and their impact on the history and literature of Western civilization. School districts currently have the discretion to teach any topic in Special Topics in Social Studies or Independent Study in English. The Texas Essential Knowledge and Skills (TEKS) for these courses focus on the skills students should develop, and the content decisions are left to local district discretion.

During the July 2007 meeting, the SBOE Committee of the Full Board discussed the requirements of HB 1287 as part of a discussion item on the process for TEKS review. A proposed rule allowing the elective course on the Hebrew Scriptures (Old Testament) and the New Testament to be taught using the TEKS for Special Topics in Social Studies or Independent Study in English was presented to the SBOE at its March 2008 meeting.

During the March 2008 meeting, the SBOE took action to approve for first reading and filing authorization the proposed new 19 TAC §74.36. The proposed new rule would reiterate specific provisions of the TEC, §28.011, and establish the TEKS for Special Topics in Social Studies and the TEKS for Independent Study in English as the essential knowledge and skills required for teaching an elective course on the Hebrew Scriptures (Old Testament) and the New Testament and their impact, in accordance with the Texas Education Code (TEC), §28.011.

In accordance with the TEC, §28.011(e), the proposed new rule must be submitted to the Attorney General for review to ensure that the course complies with the First Amendment to the United States Constitution before the SBOE adopts the proposed new rule.

Sharon Jackson, Associate Commissioner for Standards and Programs, has determined that for the first five-year period the new section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the new section.

Dr. Jackson has determined that for each year of the first five years the new section is in effect the public benefit anticipated as a result of enforcing the new section would include multiple options through which students can take an elective course on the Hebrew Scriptures (Old Testament) and the New Testament. There is no anticipated economic cost to persons who are required to comply with the proposed new section. In addition, there is no economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to [rules@tea.state.tx.us](mailto:rules@tea.state.tx.us) or faxed to (512) 463-0028. All requests for a public hearing on the proposed new section submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of the proposal has been published in the *Texas Register*.

The new section is proposed under the Texas Education Code, §28.011, as added by House Bill 1287, 80th Texas Legislature, 2007, which authorizes the SBOE to adopt rules, subsequent to review of the proposal by the Attorney General, identifying the essential knowledge and skills of a course on the Bible's Hebrew Scriptures (Old Testament) and New Testament and their impact on the history and literature of Western Civilization.

The new section implements the Texas Education Code, §28.011.

§74.36. Requirements for Elective Courses on the Bible's Hebrew Scriptures (Old Testament) and New Testament and Their Impact on the History and Literature of Western Civilization.

(a) Pursuant to this rule, a school district may offer to students in Grade 9 or above:

(1) an elective course on the Hebrew Scriptures (Old Testament) and its impact and an elective course on the New Testament and its impact; or

(2) an elective course that combines the courses on the Hebrew Scriptures (Old Testament) and its impact and on the New Testament and its impact.

(b) The purpose of a course under this section is to:

(1) teach students knowledge of biblical content, characters, poetry, and narratives that are prerequisites to understanding contemporary society and culture, including literature, art, music, mores, oratory, and public policy; and

(2) familiarize students with, as applicable:

(A) the contents of the Hebrew Scriptures or New Testament;

(B) the history of the Hebrew Scriptures or New Testament;

(C) the literary style and structure of the Hebrew Scriptures or New Testament; and

(D) the influence of the Hebrew Scriptures or New Testament on law, history, government, literature, art, music, customs, morals, values, and culture.

(c) A course offered under this section shall follow applicable law and all federal and state guidelines in maintaining religious neutrality and accommodating the diverse religious views, traditions, and perspectives of students in their school district. A course under this section shall not endorse, favor, or promote, or disfavor or show hostility toward, any particular religion or nonreligious faith or religious perspective.

(d) A course offered under this section shall follow the Texas Essential Knowledge and Skills for Special Topics in Social Studies or the Texas Essential Knowledge and Skills for Independent Study in English as set out in this subsection.

(1) Texas Essential Knowledge and Skills for Special Topics in Social Studies (One-Half Credit).

(A) General requirements. Students shall be awarded one-half unit of credit for successful completion of this course. Students may take this course with different course content for a maximum of two credits.

(B) Introduction. In Special Topics in Social Studies, an elective course comparable to the former Advanced Social Science Problems, students are provided the opportunity to apply the knowledge and skills of the social sciences to a variety of topics and issues.

Students use critical-thinking skills to locate, organize, analyze, and use data collected from a variety of sources. Problem solving and decision making are important elements of the course as is the communication of information in written, oral, and visual forms.

(C) Knowledge and skills.

(i) Social studies skills. The student applies critical-thinking skills to organize and use information acquired from a variety of sources including electronic technology. The student is expected to:

(I) differentiate between, locate, and use primary and secondary sources such as computer software, databases, media and news services, biographies, interviews, and artifacts to acquire information about a selected topic in social studies;

(II) analyze information by sequencing, categorizing, identifying cause-and-effect relationships, comparing, contrasting, finding the main idea, summarizing, making generalizations and predictions, and drawing inferences and conclusions;

(III) identify points of view from the historic context surrounding an event and the frame of reference that influenced the participants;

(IV) support a point of view on a social studies issue or event;

(V) identify bias in written, oral, and visual material;

(VI) evaluate the validity of a source based on language, corroboration with other sources, and information about the author; and

(VII) use appropriate mathematical skills to interpret social studies information such as maps and graphs.

(ii) Social studies skills. The student communicates in written, oral, and visual forms. The student is expected to:

(I) use social studies terminology correctly;

(II) use standard grammar, spelling, sentence structure, and punctuation;

(III) transfer information from one medium to another, including written to visual and statistical to written or visual, using computer software as appropriate; and

(IV) create written, oral, and visual presentations of social studies information.

(iii) Social studies skills. The student uses problem-solving and decision-making skills, working independently and with others, in a variety of settings. The student is expected to:

(I) use a problem-solving process to identify a problem, gather information, list and consider options, consider advantages and disadvantages, choose and implement a solution, and evaluate the effectiveness of the solution; and

(II) use a decision-making process to identify a situation that requires a decision, gather information, identify options, predict consequences, and take action to implement a decision.

(2) Texas Essential Knowledge and Skills for Independent Study in English (One-Half to One Credit).

(A) Introduction. Students enrolled in Independent Study in English write in a variety of forms for a variety of audiences and purposes. High school students are expected to plan, draft, and complete written compositions on a regular basis, and carefully examine their papers for clarity, engaging language, and the correct

use of the conventions and mechanics of written English. Independent Study in English students are expected to write in a variety of forms including business, personal, literary, and persuasive texts for a variety of audiences and purposes. Writing is used as a tool for learning as students create, clarify, critique, and express appreciation for others' ideas and responses. Independent Study in English students evaluate their own written work as well as the work of others. Students continue to read extensively in increasingly difficult texts selected in multiple genres for a variety of purposes. When comprehension breaks down, students effectively and efficiently monitor and adjust their use of a variety of comprehension strategies. Students respond to texts through talking and writing in both traditional print and electronic formats. Students connect their knowledge of the world and the knowledge they gather from other texts with the text being read. For high school students whose first language is not English, the students' native language serves as a foundation for English language acquisition and language learning.

(B) Knowledge and skills.

(i) Writing. The student uses writing as a tool for learning and research. The student is expected to:

(I) use writing to formulate questions, refine topics, and clarify ideas;

(II) use writing to organize and support what is known and what needs to be learned about a topic;

(III) compile information from primary and secondary sources using available technology;

(IV) use writing to discover, record, review, and learn;

(V) organize notes from multiple sources, including primary and secondary sources, in useful and informing ways;

(VI) link related information and ideas from a variety of sources;

(VII) represent information in a variety of ways such as graphics, conceptual maps, and learning logs;

(VIII) compile written ideas and representations, interpret empirical data into reports, summaries, or other formats, and draw conclusions; and

(IX) use writing as a tool such as to reflect, explore, or problem solve.

(ii) Reading. The student inquires through reading and researching self-selected and assigned topics. The student is expected to:

(I) read widely to establish a specific area of interest for further study;

(II) generate relevant, interesting, and researchable questions with instructor guidance and approval;

(III) locate appropriate print and non-print information using text and technical resources, including databases;

(IV) use text organizers such as overviews, headings, and graphic features to locate and categorize information;

(V) organize and record new information in systematic ways such as notes, charts, and graphic organizers;

(VI) produce research projects and reports in various forms for audiences;



(VII) draw relevant questions for further study from the research findings or conclusions; and

(VIII) conduct a research project(s), producing an original work in print or another medium with a demonstration of advanced skill.

(iii) Viewing/representing. The student produces visual representations that communicate with others. The student is expected to:

(I) use a range of techniques in planning and creating media text; and

(II) prepare and present a research project.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 7, 2008.

TRD-200801817

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Earliest possible date of adoption: May 18, 2008

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



## CHAPTER 102. EDUCATIONAL PROGRAMS SUBCHAPTER HH. COMMISSIONER'S RULES CONCERNING THE TEXAS ADOLESCENT LITERACY ACADEMIES

### 19 TAC §102.1101

The Texas Education Agency (TEA) proposes new §102.1101, concerning attendance and completion requirements for Texas Adolescent Literacy Academies. The proposed new rule would implement the requirement of the Texas Education Code (TEC), §21.4551, that the commissioner of education by rule require a teacher to attend a reading academy if the teacher provides instruction in reading, mathematics, science, or social studies to students at the sixth, seventh, or eighth grade level at a campus that is issued a final accountability rating of Academically Unacceptable in reading.

In 1999, the 76th Texas Legislature enacted the Student Success Initiative, which established grade advancement requirements based on student performance on statewide assessments in reading and/or mathematics in Grades 3, 5, and 8. Students in Grade 3 were subject to the grade advancement requirement in reading beginning in school year 2002-2003. Students in Grade 5 were subject to the requirements in reading and mathematics beginning in school year 2004-2005. In order to provide teachers of these students with the most current research-based strategies in the teaching of reading, the legislature funded reading academies for teachers of students in Kindergarten-Grade 4. These teacher reading academies ended in 2003, after the development of the reading academy for Grade 4.

In 2007, the 80th Texas Legislature passed legislation that would address the academic performance differences of elementary students and students in Grades 6-8 on the state reading assessments. In addition, Grade 8 students are subject to the grade advancement requirements of the Student Success Initia-

tive beginning with school year 2007-2008. The 80th Texas Legislature, through House Bill (HB) 2237, provided for the statewide implementation of adolescent literacy academies for teachers in Grades 6-8, beginning in the summer of 2008.

The Texas Adolescent Literacy Academies are intended to instruct English language arts and reading and content area teachers in successful, research-based strategies for improving students' academic literacy. The legislation also mandates that all teachers who provide instruction in reading, mathematics, science, or social studies to students in Grade 6, 7, or 8 at a campus issued an accountability rating of Academically Unacceptable must attend and complete the requirements of an English Language Arts or Content Area Academy.

Proposed new 19 TAC §102.1101 would specify the Texas Adolescent Literacy Academies and attendance and completion requirements for specific teachers. The proposal would also define which teachers must attend the academies, establish an implementation schedule, address payment of stipends for eligible teachers, and require school districts to maintain attendance and completion records.

To assist the TEA in implementing the proposed new rule, the regional education service centers (ESCs) will maintain records of teachers who registered and completed the training sessions in their ESC regions. The Vaughn Gross Center at The University of Texas at Austin will maintain a management system to verify participants' completion of the online follow-up sessions and provide the names to the appropriate ESCs. An outside evaluator will conduct evaluation activities, including developing an evaluation report to be submitted to the TEA.

Sharon Jackson, Associate Commissioner for Standards and Programs, has determined that for the first five-year period the new section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the new section. The proposal would establish in rule procedures for implementation of the attendance and completion requirements for Texas Adolescent Literacy Academies. All costs associated with implementation of the Texas Adolescent Literacy Academies will be covered by appropriated state funds.

Dr. Jackson has determined that for each year of the first five years the new section is in effect the public benefit anticipated as a result of enforcing the new section would be that teachers at Academically Unacceptable campuses would receive professional development in successful, research-based strategies for improving academic literacy across the curriculum. There is no anticipated economic cost to persons who are required to comply with the proposed new section. Each teacher required to attend the literacy academies will be eligible for a stipend and will not be required to pay for the training.

There is no projected economic impact to small businesses or microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

The public comment period on the proposal begins April 18, 2008, and ends May 18, 2008. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to [rules@tea.state.tx.us](mailto:rules@tea.state.tx.us) or faxed to (512) 463-0028. All requests for a public hearing on the proposed new rule submitted under the Administrative Procedure Act must be received by the commissioner of education not more

than 15 calendar days after notice of the proposal has been published in the *Texas Register* on April 18, 2008.

The new section is proposed under the Texas Education Code, §21.4551, which authorizes the commissioner to by rule require a teacher to attend a reading academy if the teacher provides instruction in reading, mathematics, science, or social studies to students at the sixth, seventh, or eighth grade level at a campus that is considered academically unacceptable under §39.132 on the basis of student performance on the reading assessment instrument administered under §39.023(a) to students in any grade level at the campus.

The new section implements the Texas Education Code, §21.4551.

§102.1101. Attendance and Completion Requirements for Texas Adolescent Literacy Academies.

(a) Purpose. In accordance with the Texas Education Code (TEC), §21.4551, the Texas adolescent literacy academies shall provide instruction to English language arts and reading and content area teachers in successful, research-based strategies for improving students' academic literacy. The literacy academies shall be framed within a school-wide approach to address the needs of struggling adolescent readers.

(1) The English Language Arts Academy training, which addresses requirements in the TEC, §21.4551(b)(1) and (2), for English language arts and reading, will be conducted over a period of three days of attendance in person plus completion of an equivalent of one day of follow-up activity with online documentation.

(2) The Content Area Academy training, which addresses requirements in the TEC, §21.4551(b)(3), for mathematics, science, and social studies, will be conducted over a period of one and one-half days of attendance in person plus completion of an equivalent of one day of follow-up activity with online documentation.

(b) Applicability. The requirements of this section apply to the following teachers in general education, special education, or English as a second language for students in Grade 6, 7, or 8 at a campus that is rated Academically Unacceptable (AU) based on student performance on the state reading assessment:

(1) a certified, full-time English language arts and reading teacher who instructs English language arts and/or reading for at least 50% of the teacher's instructional duties;

(2) a certified, full-time content area teacher who instructs mathematics, science, and/or social studies for at least 50% of the teacher's instructional duties; and

(3) a noncertified, full-time teacher at an open-enrollment charter school who meets the subject area and instructional duties criteria specified in paragraph (1) or (2) of this subsection.

(c) Attendance and completion requirements.

(1) A teacher who is assigned to instruct students in Grade 6 in the 2008-2009 school year at a campus rated AU based on student performance on the state reading assessment as of the final state accountability rating issued in the fall of 2007 must attend and complete the appropriate literacy academy by December 2008.

(2) A teacher who is assigned to instruct students in Grade 7 or 8 in the 2009-2010 school year at a campus rated AU based on student performance on the state reading assessment as of the final state accountability rating issued in the fall of 2008 must attend and complete the appropriate literacy academy by December 2009.

(3) Attendance in person is required for each day of training at the appropriate literacy academy. Each education service center

will determine the process for the makeup of any days missed due to emergencies on an individual basis.

(4) Completion is demonstrated by implementation of the strategies learned and completion of the online follow-up activities.

(d) Eligibility for teacher stipends. A teacher whose attendance is required in subsection (c) of this section is eligible for teacher stipends upon completion of the appropriate literacy academy.

(e) Record retention. Each school district with teachers required to attend and complete Texas adolescent reading academies according to this section must maintain records to verify teacher attendance and completion in accordance with the school district's record retention policy.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 7, 2008.

TRD-200801829

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Earliest possible date of adoption: May 18, 2008

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



## CHAPTER 109. BUDGETING, ACCOUNTING, AND AUDITING

### SUBCHAPTER C. ADOPTIONS BY REFERENCE

#### 19 TAC §109.41

The Texas Education Agency (TEA) proposes an amendment to §109.41, concerning the *Financial Accountability System Resource Guide*. This proposed amendment replaces an earlier version that was published as proposed in the November 30, 2007, issue of the *Texas Register* (32 TexReg 8650), which has been withdrawn. The withdrawal and reproposal are necessary to update provisions related to recovering over-allocated charter school funds.

Section 109.41 adopts by reference the *Financial Accountability System Resource Guide* as the TEA's official rule. The *Resource Guide* describes rules for financial accounting in modules for financial accountability and reporting, budgeting, purchasing, auditing, site-based decision making, accountability, data collection and reporting, management, state compensatory education, GASB 34, and dropout audits. The *Resource Guide* also includes a special supplement module for nonprofit charter school chart of accounts. Public school districts use the *Resource Guide* to meet the accounting, auditing, budgeting, and reporting requirements as set forth in the Texas Education Code (TEC) and other state statutes relating to public school finance. Under §109.41(b), the commissioner of education shall amend the *Resource Guide*, adopting it by reference, as needed. The *Resource Guide* is available at <http://www.tea.state.tx.us/school.finance/> on the TEA website.

The proposed amendment to §109.41 will reference the *Resource Guide* dated April 2008. The amendment being proposed includes updates to the state compensatory education

module and the accounting and auditing modules to reflect new accounting and auditing rules and standards. Part of the update will include the addition of new account codes and the deletion of some account codes. The charter school supplement will also be updated to reflect these changes in accounting and auditing rules and standards. In addition, the charter school supplement will be updated to address provisions for recovering over-allocated funds as a result of an audit adjustment.

Adrain Johnson, Associate Commissioner for Accreditation, has determined that for the first five-year period the amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amendment.

Dr. Johnson has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amendment will be improving financial accountability for educational programs in the Texas school system and keeping financial management practices current with changes in state law and federal rules and regulations. There is no anticipated economic cost to persons who are required to comply with the amendment as proposed. In addition, there is no economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

The public comment period on the proposal begins April 18, 2008, and ends May 18, 2008. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to [rules@tea.state.tx.us](mailto:rules@tea.state.tx.us) or faxed to (512) 463-0028. All requests for a public hearing on the proposed amendment submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of the proposal has been published in the *Texas Register* on April 18, 2008.

The amendment is proposed under the Texas Education Code, §§7.055, 7.102(c)(32), 44.001, 44.007, and 44.008, which authorizes the commissioner of education to establish advisory guidelines relating to fiscal management of a school district and the State Board of Education to establish a standard school fiscal accounting system in conformity with generally accepted accounting principles.

The proposed amendment implements the Texas Education Code, §§7.055, 7.102(c)(32), 44.001, 44.007, and 44.008.

*§109.41. Financial Accountability System Resource Guide.*

(a) The rules for financial accounting are described in the official Texas Education Agency publication, *Financial Accountability System Resource Guide*, dated April 2008, [as amended December 2004,] which is adopted by this reference as the agency's official rule. A copy is available for examination during regular office hours, 8:00 a.m. to 5:00 p.m., except holidays, Saturdays, and Sundays, at the Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701.

(b) The commissioner of education shall amend the *Financial Accountability System Resource Guide* and this section adopting it by reference, as needed. The commissioner shall inform the State Board of Education of the intent to amend the *Resource Guide* and of the effect of proposed amendments before submitting them to the Office of the Secretary of State as proposed rule changes.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 7, 2008.

TRD-200801831

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Earliest possible date of adoption: May 18, 2008

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

◆ ◆ ◆  
**CHAPTER 110. TEXAS ESSENTIAL  
KNOWLEDGE AND SKILLS FOR ENGLISH  
LANGUAGE ARTS AND READING**

The State Board of Education (SBOE) proposes amendments to §§110.1, 110.21, and 110.41 and new §§110.10 - 110.20 and 110.30 - 110.34, concerning Texas essential knowledge and skills (TEKS) for English language arts and reading. The proposed amendments and new sections would establish revised English language arts and reading TEKS for Kindergarten-Grade 8 and English I-IV for implementation beginning with the 2009-2010 school year.

The SBOE adopted the TEKS for elementary, middle, and high school English language arts and reading courses to be effective September 1, 1998. The refinement and alignment of English language arts and reading TEKS began in 2005. In June 2006, the SBOE directed Texas Education Agency staff to reconvene the review committees for further revision of the English language arts and reading TEKS. The committee was charged with making the TEKS more grade-level specific, less repetitive, and measurable at the state or local level. In September 2007, a facilitator was hired through a request for qualifications process to assist with the completion of the revisions.

Proposed revisions, which included restructuring and revising knowledge and skills statements as well as student expectations for Kindergarten-Grade 8 and English I-IV, were presented to the SBOE for first reading and filing authorization on February 13, 2008. At that time, the SBOE chair appointed a subcommittee to work with the facilitator to incorporate input from all interested parties into the proposed revisions. The SBOE directed staff to present proposed revisions for first reading and filing authorization at the March 2008 SBOE meeting.

During its March 2008 meeting, the SBOE took action to approve for first reading and filing authorization the proposed revisions to 19 TAC Chapter 110, Texas Essential Knowledge and Skills for English Language Arts and Reading.

Sharon Jackson, Associate Commissioner for Standards and Programs, has determined that for the first five-year period the amendments and new sections are in effect there will be fiscal implications for state and local government as a result of enforcing or administering the amendments and new sections.

The proposed rule actions would revise the TEKS for English language arts and reading in Kindergarten-Grade 8 and English I-IV. Due to the significance of the revisions, a need for the creation and implementation of professional development to help teachers and administrators understand the new TEKS is anticipated. Fiscal implications for the state, estimated at \$500,000

each year for fiscal years 2009 and 2010, would include costs for professional development. Additional implications for the state include the need for revision of the Texas Assessment of Knowledge and Skills (TAKS) in reading to match the new standards. It is not possible to determine the cost of revising the TAKS until a separate process for determining student expectations to be assessed has been completed.

There are anticipated fiscal implications for school districts to comply with implementation of the new TEKS, which may include the need for professional development and revisions to district-developed databases, curriculum, and scope and sequence documents. Since curriculum and instruction decisions are made at the local district level, it is difficult to estimate the fiscal impact on any given district.

Dr. Jackson has determined that for each year of the first five years the amendments and new sections are in effect the public benefit anticipated as a result of enforcing the amendments and new sections would be better alignment of the TEKS and coordination of the TEKS revision with the textbook adoption process. There is no anticipated economic cost to persons who are required to comply with the proposed amendments and new sections.

There is no anticipated economic impact to small businesses or microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to [rules@tea.state.tx.us](mailto:rules@tea.state.tx.us) or faxed to (512) 463-0028. All requests for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of the proposal has been published in the *Texas Register*.

## SUBCHAPTER A. ELEMENTARY

### 19 TAC §§110.1, 110.10 - 110.16

The amendment and new sections are proposed under the Texas Education Code, §7.102(c)(4), which authorizes the SBOE to establish curriculum and graduation requirements, and §28.002, which authorizes the SBOE to by rule identify the essential knowledge and skills of each subject of the required curriculum that all students should be able to demonstrate and that will be used in evaluating textbooks and addressed on the assessment instruments.

The amendment and new sections implement the Texas Education Code, §7.102(c)(4) and §28.002.

§110.1. Implementation of Texas Essential Knowledge and Skills for English Language Arts and Reading, Elementary.

The provisions of §§110.2 - 110.7 of this subchapter shall be superseded by §§110.11 - 110.16 of this subchapter [implemented by school districts] beginning with the 2009-2010 school year [September 1, 1998, and at that time shall supersede §75.23(a)-(1) of this title (relating to English Language Arts)].

§110.10. Implementation of Texas Essential Knowledge and Skills for English Language Arts and Reading, Elementary, Beginning with School Year 2009-2010.

The provisions of §§110.11 - 110.16 of this subchapter shall be implemented by school districts beginning with the 2009-2010 school year and at that time shall supersede §§110.2 - 110.7 of this subchapter.

§110.11. English Language Arts and Reading, Kindergarten, Beginning with School Year 2009-2010.

#### (a) Introduction.

(1) The English Language Arts and Reading Texas Essential Knowledge and Skills (TEKS) are organized into the following strands: Reading, where students read and understand a wide variety of literary and informational texts; Writing, where students compose a variety of written texts with a clear controlling idea, coherent organization, and sufficient detail; Research, where students are expected to know how to locate a range of relevant sources and evaluate, synthesize, and present ideas and information; Listening and Speaking, where students listen and respond to the ideas of others while contributing their own ideas in conversations and in groups; and Oral and Written Conventions, where students learn how to use the oral and written conventions of the English language in speaking and writing. The Reading strand is structured to reflect the major topic areas of the National Reading Panel Report. In Kindergarten, students engage in activities that build on their natural curiosity and prior knowledge to develop their reading, writing, and oral language skills.

(2) For Kindergarten students whose first language is not English, the students' native language serves as a foundation for English language acquisition.

(3) To meet Public Education Goal 1 of the Texas Education Code, §4.002, which states, "The students in the public education system will demonstrate exemplary performance in the reading and writing of the English language," students will accomplish the essential knowledge, skills, and student expectations at Kindergarten as described in subsection (b) of this section.

(4) To meet Texas Education Code, §28.002(h), which states, ". . . each school district shall foster the continuation of the tradition of teaching United States and Texas history and the free enterprise system in regular subject matter and in reading courses and in the adoption of textbooks," students will be provided oral and written narratives as well as other informational texts that can help them to become thoughtful, active citizens who appreciate the basic democratic values of our state and nation.

#### (b) Knowledge and skills.

(1) Reading/Beginning Reading Skills. Students understand how English is written and printed. The student is expected to:

(A) recognize that spoken words can be represented by print for communication;

(B) identify upper- and lower-case letters;

(C) demonstrate the one-to-one correspondence between a spoken word and a printed word in text;

(D) recognize the difference between a letter and a printed word;

(E) recognize that sentences are comprised of words separated by spaces and demonstrate the awareness of word boundaries (e.g., through kinesthetic or tactile actions such as clapping and jumping);

(F) hold a book right side up, turn its pages correctly, and know that reading moves from top to bottom and left to right; and

(G) identify different parts of a book (e.g., front and back covers, title page).

(2) Reading/Beginning Reading Skills. Students display phonological awareness. The student is expected to:

(A) identify a sentence made up of a group of words;

(B) identify syllables in spoken words;

(C) orally generate rhymes in response to spoken words (e.g., "What rhymes with hat?");

(D) distinguish orally presented rhyming pairs of words from non-rhyming pairs;

(E) recognize spoken alliteration or groups of words that begin with the same spoken onset or initial sound (e.g., "baby boy bounces the ball");

(F) blend spoken onsets and rimes to form simple words (e.g., onset /c/ and rime /at/ make cat);

(G) blend spoken phonemes to form one-syllable words (e.g., /m/ . . . /a/ . . . /n/ says man);

(H) isolate the initial sound in one-syllable spoken words; and

(I) segment spoken one-syllable words into two to three phonemes (e.g., dog: /d/ . . . /o/ . . . /g/).

(3) Reading/Beginning Reading Skills. Students use the relationships between letters and sounds, spelling patterns, and morphological analysis to decode written English. The student is expected to:

(A) identify the common sounds that letters represent;

(B) use knowledge of letter-sound relationships to decode regular words in text and independent of content (e.g., VC, CVC, CCVC, and CVCC words);

(C) recognize that new words are created when letters are changed, added, or deleted; and

(D) identify and read at least 25 high-frequency words from a commonly used list.

(4) Reading/Vocabulary Development. Students understand new vocabulary and use it correctly when reading and writing. The student is expected to:

(A) identify and use words that name persons, places, and things;

(B) identify and use words that name actions, directions, positions, sequences, and locations; and

(C) recognize that compound words are made up of shorter words.

(5) Reading/Comprehension of Literary Text/Theme and Genre. Students analyze theme and genre in different cultural, historical, and contemporary contexts and provide evidence from the text to support their understanding. The student is expected to:

(A) connect the meaning of a well-known folktale or fable to personal experience; and

(B) recognize well-known language and characters in traditional fairy tales, lullabies, and folk tales from various cultures.

(6) Reading/Comprehension of Literary Text/Poetry. Students understand the structure and elements of poetry and respond by providing evidence from text to support their understanding. The student is expected to:

(A) respond to rhythm and rhyme in poetry through identifying a regular beat and similarities in word sounds (e.g., consider reading Mother Goose rhymes); and

(B) recite brief poems, rhymes, and songs following the cues of an adult.

(7) Reading/Comprehension of Literary Text/Fiction. Students understand the structure and elements of fiction and respond by providing evidence from text to support their understanding. The student is expected to:

(A) predict what might happen next in a story based on the cover, title, and illustrations;

(B) ask and respond to questions about the setting, characters, and events of stories read aloud and support answers with evidence from the text; and

(C) retell a main event from a story read aloud.

(8) Reading/Comprehension of Literary Text/Sensory Language. Students understand how an author's sensory language creates imagery in literary text and provide evidence from text to support their understanding. The student is expected to use expressive language to describe objects, events, and feelings.

(9) Reading/Comprehension of Informational Text/Culture and History. Students analyze and understand the author's purpose in cultural, historical, and contemporary contexts and respond by providing evidence from the text to support their understanding. The student is expected to identify the topic of an informational text heard.

(10) Reading/Comprehension of Informational Text/Expository Text. Students analyze and understand expository text and respond by providing evidence from text to support their understanding. The student is expected to:

(A) identify the content in expository text heard or read, referring to the words and/or illustrations; and

(B) retell important facts in a text, heard or read (e.g., consider reading biographies of George Washington, Stephen F. Austin, Paul Revere).

(11) Reading/Comprehension of Informational Text/Procedural Texts. Students understand how to glean and use information in procedural texts and documents. The student is expected to:

(A) follow pictorial directions (e.g., recipes, science experiments); and

(B) identify the meaning of specific signs (e.g., traffic signs, warning signs).

(12) Writing/Writing Process. Students use elements of the writing process (planning, drafting, revising, editing, and publishing) to compose text. The student is expected to (with adult assistance):

(A) plan a first draft by generating ideas for writing through class discussion;

(B) develop drafts by sequencing the action or details in the story;

(C) revise drafts by adding or deleting sentences;

(D) edit drafts by leaving spaces between letters and words; and

(E) share writing with others.

(13) Writing/Literary Texts. Students write literary texts to express their ideas and feelings about real or imagined people, events, and ideas. The student is expected to:

(A) dictate or write sentences to tell a story and put the sentences in chronological sequence; and

(B) write short poems that use rhyme or rhythm.

(14) Writing/Expository and Procedural Texts. Students write expository and procedural or work-related texts to communicate ideas and information to specific audiences for specific purposes. The student is expected to dictate or write information for lists, labels, captions, and invitations.

(15) Research/Research Plan. Students ask open-ended research questions and develop a plan for answering them. The student is expected to (with adult assistance):

(A) ask questions about topics of class-wide interest; and

(B) decide what sources or people in the classroom, school, library, or home can answer these questions.

(16) Research/Gathering Sources. Students determine, locate, and explore the full range of relevant sources addressing a research question and systematically record the information they gather. The student is expected to (with adult assistance):

(A) gather evidence from provided text sources; and

(B) use pictures in conjunction with writing when documenting research.

(17) Listening and Speaking/Listening. Students listen attentively to others in formal and informal settings. The student is expected to:

(A) listen attentively by facing speakers and asking questions to clarify information; and

(B) follow oral directions that involve a short related sequence of actions.

(18) Listening and Speaking/Speaking. Students speak clearly and to the point. The student is expected to share information and ideas by speaking audibly and clearly.

(19) Listening and Speaking/Teamwork. Students work productively with others in teams. The student is expected to follow agreed-upon rules for discussion, including taking turns and speaking one at a time.

(20) Oral and Written Conventions/Conventions. Students identify and use the grammatical conventions of academic language when speaking and writing. The student is expected to:

(A) use past and future tenses when speaking;

(B) use descriptive words to modify subjects and verbs;

(C) use prepositions appropriately when speaking (e.g., in, on, under, over);

(D) ask questions with appropriate subject-verb inversion; and

(E) compose a complete thought orally.

(21) Oral and Written Conventions/Handwriting, Capitalization, and Punctuation. Students write legibly and use appropriate capitalization and punctuation conventions in their compositions. The student is expected to:

(A) form upper- and lower-case letters legibly using the basic conventions of print (left-to-right and top-to-bottom progression);

(B) recognize that first letters in sentences should be capitalized; and

(C) recognize punctuation at the end of a sentence.

(22) Oral and Written Conventions/Spelling. Students spell correctly. The student is expected to:

(A) use phonological knowledge to match sounds to letters;

(B) write one's own name; and

(C) use letter-sound correspondences to spell consonant-vowel-consonant (CVC) words (e.g., "cut").

§110.12. English Language Arts and Reading, Grade 1, Beginning with School Year 2009-2010.

(a) Introduction.

(1) The English Language Arts and Reading Texas Essential Knowledge and Skills (TEKS) are organized into the following strands: Reading, where students read and understand a wide variety of literary and informational texts; Writing, where students compose a variety of written texts with a clear controlling idea, coherent organization, and sufficient detail; Research, where students are expected to know how to locate a range of relevant sources and evaluate, synthesize, and present ideas and information; Listening and Speaking, where students listen and respond to the ideas of others while contributing their own ideas in conversations and in groups; and Oral and Written Conventions, where students learn how to use the oral and written conventions of the English language in speaking and writing. The Reading strand is structured to reflect the major topic areas of the National Reading Panel Report. In first grade, students will engage in activities that build on their prior knowledge and skills in order to strengthen their reading, writing, and oral language skills. Students should write and read (or be read to) on a daily basis.

(2) For first grade students whose first language is not English, the students' native language serves as a foundation for English language acquisition.

(3) To meet Public Education Goal 1 of the Texas Education Code, §4.002, which states, "The students in the public education system will demonstrate exemplary performance in the reading and writing of the English language," students will accomplish the essential knowledge, skills, and student expectations in Grade 1 as described in subsection (b) of this section.

(4) To meet Texas Education Code, §28.002(h), which states, ". . . each school district shall foster the continuation of the tradition of teaching United States and Texas history and the free enterprise system in regular subject matter and in reading courses and in the adoption of textbooks," students will be provided oral and written narratives as well as other informational texts that can help them to become thoughtful, active citizens who appreciate the basic democratic values of our state and nation.

(b) Knowledge and skills.

(1) Reading/Beginning Reading Skills. Students understand how English is written and printed. The student is expected to:

(A) recognize that spoken words are represented in written English by specific sequences of letters;

(B) identify upper- and lower-case letters;

(C) sequence the letters of the alphabet;

(D) recognize the distinguishing features of a sentence (e.g., capitalization of first word, ending punctuation); and

(E) identify the information that different parts of a book provide (e.g., title, author, illustrator, table of contents).

(2) Reading/Beginning Reading Skills. Students display phonological awareness. The student is expected to:

(A) orally generate a series of original rhyming words using a variety of phonograms (e.g., -ake, -ant, -ain) and consonant blends (e.g., bl, st, tr);

(B) distinguish between long- and short-vowel sounds in spoken one-syllable words (e.g., bit/bite);

(C) blend spoken phonemes to form one- and two-syllable words, including consonant blends (e.g., spr);

(D) recognize the change in a spoken word when a specified phoneme is added, changed, or removed (e.g., /b/l/o/w/ to /g/l/o/w/);

(E) segment spoken one-syllable words of three to five phonemes into individual phonemes (e.g., splat = /s/p/l/a/t/); and

(F) isolate initial, medial, and final sounds in one-syllable spoken words.

(3) Reading/Beginning Reading Skills. Students use the relationships between letters and sounds, spelling patterns, and morphological analysis to decode written English. The student is expected to:

(A) read words in text and independent of context by applying common letter-sound correspondences including:

(i) single letters (consonants and vowels);

(ii) consonant blends (e.g., bl, st);

(iii) consonant digraphs (e.g., th, sh); and

(iv) vowel digraphs (e.g., oo, ee) and diphthongs (e.g., oi, ow);

(B) combine sounds from letters and common spelling patterns (e.g., consonant blends, long- and short-vowel patterns) to create recognizable words;

(C) use common syllabication patterns to read words including:

(i) closed syllable (CVC) (e.g., mat, rab-bit);

(ii) open syllable (CV) (e.g., he, ba-by);

(iii) final stable syllable (e.g., ap-ple, a-ble);

(iv) vowel-consonant-silent "e" words (VCe) (e.g., kite, hide); and

(v) r-controlled vowel sounds (e.g., tar);

(D) read words with common spelling patterns (e.g., -ight, -ant);

(E) read base words with inflectional endings (e.g., plurals, past tenses);

(F) use knowledge of the meaning of base words to identify and read common compound words (e.g., football, popcorn, daydream);

(G) identify and read contractions (e.g., isn't, can't);

(H) identify and read at least 100 high-frequency words from a commonly used list; and

(I) monitor accuracy of decoding using syntax and semantics.

(4) Reading/Beginning Reading Skills. Students read grade-level text with fluency and comprehension. The student is expected to read aloud grade-level appropriate text with fluency (rate, accuracy, expression, appropriate phrasing) and comprehension.

(5) Reading/Vocabulary Development. Students understand new vocabulary and use it correctly when reading and writing. The student is expected to:

(A) identify words that name actions (verbs) and words that name persons, places, or things (nouns);

(B) identify and sort words into conceptual categories (e.g., opposites, living things);

(C) identify base words (e.g., look) and their inflectional forms (e.g., looks, looked, looking);

(D) determine what words mean from how they are used in a sentence, either heard or read; and

(E) alphabetize a series of words to the first or second letter.

(6) Reading/Comprehension of Literary Text/Theme and Genre. Students analyze theme and genre in different cultural, historical, and contemporary contexts and provide evidence from the text to support their understanding. The student is expected to:

(A) connect the meaning of a well-known story or fable to personal experiences;

(B) recognize the role of recurring phrases (e.g., "Once upon a time" or "They lived happily ever after") in traditional folk and fairy tales; and

(C) identify similarities in plot, setting, or characters among the works of an author or illustrator.

(7) Reading/Comprehension of Literary Text/Poetry. Students understand the structure and elements of poetry and respond by providing evidence from text to support their understanding. The student is expected to:

(A) identify rhythm, rhyme, and alliteration in poetry; and

(B) recite brief poems, rhymes, and songs, speaking clearly at an appropriate and understandable pace.

(8) Reading/Comprehension of Literary Text/Fiction. Students understand the structure and elements of fiction and respond by providing evidence from text to support their understanding. The student is expected to:

(A) confirm predictions about what will happen next in text by "reading the part that tells";

(B) visualize and describe the setting of a story;

(C) identify the plot (problem and solution) and retell a story's beginning, middle, and end with attention to the sequence of events; and

(D) ask and respond to questions about characteristics of main characters in a story and discuss the reasons for their actions.

(9) Reading/Comprehension of Literary Text/Literary Nonfiction. Students understand the varied structural patterns and features of literary nonfiction and respond by providing evidence from text to support their understanding. The student is expected to determine whether a story is true or a fantasy and explain why.

(10) Reading/Comprehension of Literary Text/Sensory Language. Students understand how an author’s sensory language creates imagery in literary text and provide evidence from text to support their understanding. The student is expected to recognize sensory details in literary text.

(11) Reading/Comprehension of Informational Text/Culture and History. Students analyze and understand the author’s purpose in cultural, historical, and contemporary contexts and respond by providing evidence from the text to support their understanding. The student is expected to identify the topic and explain the author’s purpose in writing about it.

(12) Reading/Comprehension of Informational Text/Expository Text. Students analyze and understand expository text and respond by providing evidence from text to support their understanding. The student is expected to:

- (A) restate the main idea, heard or read;
- (B) identify important facts or details in text, heard or read;
- (C) retell the order of events in a text by referring to the words and/or illustrations;
- (D) use text features (e.g., title, illustrations) to make predictions about the topic of the text; and
- (E) identify different forms of visual and electronic media (e.g., television, film, the Internet, magazines).

(13) Reading/Comprehension of Informational Text/Procedural Texts. Students understand how to glean and use information in procedural texts and documents. The student is expected to:

- (A) follow written multi-step directions with picture cues to assist with understanding; and
- (B) explain the meaning of specific signs and symbols (e.g., map features).

(14) Writing/Writing Process. Students use elements of the writing process (planning, drafting, revising, editing, and publishing) to compose text. The student is expected to:

- (A) plan a first draft by generating ideas for writing (e.g., drawing, sharing ideas, listing key ideas);
- (B) develop drafts by sequencing ideas through writing sentences;
- (C) revise drafts by adding or deleting a word, phrase, or sentence;
- (D) edit drafts for grammar, punctuation, and spelling using a teacher-developed rubric; and
- (E) publish and share writing with others.

(15) Writing/Literary Texts. Students write literary texts to express their ideas and feelings about real or imagined people, events, and ideas. The student is expected to:

- (A) write brief stories that include a beginning, middle, and end; and
- (B) write short poems that convey sensory details.

(16) Writing/Expository and Procedural Texts. Students write expository and procedural or work-related texts to communicate ideas and information to specific audiences for specific purposes. The student is expected to:

(A) write short letters that put ideas in a chronological or logical sequence and use appropriate conventions (e.g., date, salutation, closing);

(B) write brief compositions about topics of interest to the student; and

(C) write brief comments on literary or informational texts.

(17) Writing/Persuasive Texts. Students write persuasive texts to influence the attitudes or actions of a specific audience on specific issues. The student is expected to write persuasive statements about issues that are important to the student to the appropriate audience in the school, home, or local community.

(18) Research/Research Plan. Students ask open-ended research questions and develop a plan for answering them. The student is expected to (with adult assistance):

- (A) generate a list of topics of class-wide interest and formulate open-ended questions about one or two of the topics; and
- (B) decide what sources of information might be relevant.

(19) Research/Gathering Sources. Students determine, locate, and explore the full range of relevant sources addressing a research question and systematically record the information they gather. The student is expected to (with adult assistance):

- (A) gather evidence from available sources (natural and personal) as well as from interviews with local experts;
- (B) use text features (e.g., table of contents, alphabetized index) in age-appropriate reference works (e.g., picture dictionaries) to locate information; and
- (C) record basic information in simple visual formats (e.g., notes, charts, picture graphs, diagrams).

(20) Research/Synthesizing Information. Students clarify research questions and evaluate and synthesize collected information. The student is expected to (with adult assistance) revise the topic as a result of answers to initial research questions.

(21) Research/Organizing and Presenting Ideas. Students organize and present their ideas and information according to the purpose of the research and their audience. The student is expected to (with adult assistance) create a visual display or dramatization to convey the results of the research.

(22) Listening and Speaking/Listening. Students listen attentively to others in formal and informal settings. The student is expected to:

- (A) listen attentively to speakers and ask relevant questions to clarify information; and
- (B) follow, restate, and give oral instructions that involve a short related sequence of actions.

(23) Listening and Speaking/Speaking. Students speak clearly and to the point. The student is expected to share information and ideas about the topic under discussion, speaking clearly at an appropriate and understandable pace.

(24) Listening and Speaking/Teamwork. Students work productively with others in teams. The student is expected to follow agreed-upon rules for discussion, including listening to others, speaking when recognized, and making appropriate contributions.



(25) Oral and Written Conventions/Conventions. Students identify and use the grammatical conventions of academic language when speaking and writing. The student is expected to:

(A) identify and use the following parts of speech in the context of reading, writing, and speaking:

(i) verbs (past, present, and future);

(ii) nouns (singular/plural, common/proper);

(iii) adjectives (descriptive: green, tall; limiting: this, that; articles: a, an, the);

(iv) adverbs (time: before, next; manner: carefully, beautifully; frequency: usually, sometimes; intensity: almost, a lot); and

(v) prepositions (e.g., at, on, in, to, with, around);

(B) speak in complete sentences with correct subject-verb agreement; and

(C) distinguish among declarative and interrogative sentences.

(26) Oral and Written Conventions/Handwriting, Capitalization, and Punctuation. Students write legibly and use appropriate capitalization and punctuation conventions in their compositions. The student is expected to:

(A) form upper- and lowercase letters legibly using the basic conventions of print (left-to-right and top-to-bottom progression);

(B) write text using the basic conventions of print, including spacing between words and sentences;

(C) use basic capitalization for:

(i) the beginning of sentences;

(ii) the pronoun "I"; and

(iii) names of people; and

(D) recognize and use punctuation marks at the end of declarative, exclamatory, and interrogative sentences.

(27) Oral and Written Conventions/Spelling. Students spell correctly. The student is expected to:

(A) use phonological knowledge to match sounds to letters to construct words;

(B) spell high-frequency words from a commonly used list;

(C) spell base words with inflectional endings (e.g., adding "s" to make words plurals); and

(D) use letter-sound patterns to spell:

(i) consonant-vowel-consonant (CVC) words;

(ii) consonant-vowel-consonant-silent e (CVCe) words (e.g., "hope"); and

(iii) one-syllable words with consonant blends (e.g., "drop");

(E) spell unfamiliar words, using strategies such as segmenting, sounding out, and connecting words and word parts; and

(F) use resources to find correct spellings.

§110.13. English Language Arts and Reading, Grade 2, Beginning with School Year 2009-2010.

(a) Introduction.

(1) The English Language Arts and Reading Texas Essential Knowledge and Skills (TEKS) are organized into the following strands: Reading, where students read and understand a wide variety of literary and informational texts; Writing, where students compose a variety of written texts with a clear controlling idea, coherent organization, and sufficient detail; Research, where students are expected to know how to locate a range of relevant sources and evaluate, synthesize, and present ideas and information; Listening and Speaking, where students listen and respond to the ideas of others while contributing their own ideas in conversations and in groups; and Oral and Written Conventions, where students learn how to use the oral and written conventions of the English language in speaking and writing. The Reading strand is structured to reflect the major topic areas of the National Reading Panel Report. In second grade, students will engage in activities that build on their prior knowledge and skills in order to strengthen their reading, writing, and oral language skills. Students should write and read (or be read to) on a daily basis.

(2) For second grade students whose first language is not English, the students' native language serves as a foundation for English language acquisition.

(3) To meet Public Education Goal 1 of the Texas Education Code, §4.002, which states, "The students in the public education system will demonstrate exemplary performance in the reading and writing of the English language," students will accomplish the essential knowledge, skills, and student expectations at Grade 2 as described in subsection (b) of this section.

(4) To meet Texas Education Code, §28.002(h), which states, ". . . each school district shall foster the continuation of the tradition of teaching United States and Texas history and the free enterprise system in regular subject matter and in reading courses and in the adoption of textbooks," students will be provided oral and written narratives as well as other informational texts that can help them to become thoughtful, active citizens who appreciate the basic democratic values of our state and nation.

(b) Knowledge and skills.

(1) Reading/Beginning Reading Skills. Students understand how English is written and printed. The student is expected to distinguish features of a sentence (e.g., capitalization of first word, ending punctuation, commas, quotation marks).

(2) Reading/Beginning Reading Skills. Students use the relationships between letters and sounds, spelling patterns, and morphological analysis to decode written English. The student is expected to:

(A) read multisyllabic words in text and independent of context by applying common letter-sound correspondences including:

(i) single letters (consonants and vowels);

(ii) consonant blends (e.g., thr, spl);

(iii) consonant digraphs (e.g., ng, ck, ph); and

(iv) vowel digraphs (e.g., ie, ue, ew) and diphthongs (e.g., oi, ou);

(B) use common syllabication patterns to read words including:

(i) closed syllable (CVC) (e.g., pic-nic, mon-ster);

(ii) open syllable (CV) (e.g., ti-ger);

(iii) final stable syllable (e.g., sta-tion, tum-ble);

oat-meal);  
(iv) vowel digraphs and diphthongs (e.g., boy-hood,  
in-vite, cape);  
(v) r-controlled vowels (e.g., per-fect, cor-ner); and  
(vi) vowel-consonant-silent "e" words (VCe) (e.g.,

(C) read words by applying knowledge of common  
spelling patterns (e.g., -eigh, -ough);

(D) read words with common prefixes (e.g., un-, dis-)  
and suffixes (e.g., -ly, -less, -ful);

(E) identify and read abbreviations (e.g., Mr., Ave.);

(F) identify and read contractions (e.g., haven't, it's);

(G) identify and read at least 300 high-frequency words  
from a commonly used list; and

(H) monitor accuracy of decoding using syntax and se-  
mantics.

(3) Reading/Beginning Reading Skills. Students read  
grade-level text with fluency and comprehension. The student is  
expected to read aloud grade-level appropriate text with fluency (rate,  
accuracy, expression, appropriate phrasing) and comprehension.

(4) Reading/Vocabulary Development. Students under-  
stand new vocabulary and use it correctly when reading and writing.  
The student is expected to:

(A) determine the meaning of grade-level academic  
English words derived from Latin, Greek, or other linguistic roots and  
affixes;

(B) identify the meaning of common prefixes (e.g., in-  
, dis-) and suffixes (e.g., -ful, -less), and know how they change the  
meaning of roots (e.g., allow/disallow);

(C) identify regular plurals (e.g., -s, -es, -ies) and irreg-  
ular plurals (e.g., man/men);

(D) use context to determine the relevant meaning of  
unfamiliar words or distinguish among multiple-meaning words;

(E) identify common words that are opposite in mean-  
ing (antonyms); and

(F) alphabetize a series of words and use a dictionary or  
a glossary to find words.

(5) Reading/Comprehension of Literary Text/Theme and  
Genre. Students analyze theme and genre in different cultural, histori-  
cal, and contemporary contexts and provide evidence from the text to  
support their understanding. The student is expected to:

(A) identify moral lessons as themes in well-known fa-  
bles or stories; and

(B) compare different versions of the same story in tra-  
ditional and contemporary folktales with respect to characters, settings,  
and plot.

(6) Reading/Comprehension of Literary Text/Poetry. Stu-  
dents understand the structure and elements of poetry and respond by  
providing evidence from text to support their understanding. The stu-  
dent is expected to:

(A) describe how rhyme, rhythm, and repetition interact  
to create images in poetry;

(B) recite poems, rhymes, and songs, speaking clearly  
at an appropriate and understandable pace; and

(C) distinguish poetry from prose.

(7) Reading/Comprehension of Literary Text/Drama. Stu-  
dents understand the structure and elements of drama and respond by  
providing evidence from text to support their understanding. The stu-  
dent is expected to identify the elements of dialogue and use them in  
informal plays.

(8) Reading/Comprehension of Literary Text/Fiction. Stu-  
dents understand the structure and elements of fiction and respond by  
providing evidence from text to support their understanding. The stu-  
dent is expected to:

(A) use ideas presented in stories (e.g., illustrations, ti-  
tlés, topic sentences, key words, foreshadowing clues) to make and con-  
firm predictions;

(B) identify similarities and differences in the plots and  
settings of several works by the same author; and

(C) ask and respond to questions about main charac-  
ters of works of fiction, including their traits, motivations, and feelings  
(e.g., replying to questions about the story of Annie Oakley, Johnny  
Appleseed).

(9) Reading/Comprehension of Literary Text/Literary  
Nonfiction. Students understand the varied structural patterns and  
features of literary nonfiction and respond by providing evidence  
from text to support their understanding. The student is expected to  
distinguish between fiction and nonfiction.

(10) Reading/Comprehension of Literary Text/Sensory  
Language. Students understand how an author's sensory language  
creates imagery in literary text and provide evidence from text to  
support their understanding. The student is expected to recognize that  
some words and phrases have literal and non-literal meanings (e.g.,  
take steps).

(11) Reading/Comprehension of Informational Text/Cul-  
ture and History. Students analyze and understand the author's  
purpose in cultural, historical, and contemporary contexts and respond  
by providing evidence from the text to support their understanding.  
The student is expected to identify the topic and explain the author's  
purpose in writing the text.

(12) Reading/Comprehension of Informational Text/Ex-  
pository Text. Students analyze and understand expository text and  
respond by providing evidence from text to support their understand-  
ing. The student is expected to:

(A) identify the main idea in a text and distinguish it  
from the topic;

(B) locate the facts that are clearly stated in a text (e.g.,  
consider reading encyclopedia entries on Thurgood Marshall, Amelia  
Earhart, Florence Nightingale, Robert Fulton);

(C) describe the order of events or ideas in a text (e.g.,  
consider reading articles on the origins of national holidays such as  
Thanksgiving, Memorial Day);

(D) use text features (e.g., table of contents, headings)  
to make and verify predictions about the contents of a text; and

(E) explain how sound and images (e.g., music, graph-  
ics) affect spoken or written informational text in documentary films  
and television.

(13) Reading/Comprehension of Informational Text/Pro-  
cedural Text. Students understand how to glean and use information  
in procedural texts and documents. The student is expected to:

(A) follow written multi-step directions; and

(B) use common graphic features to assist in the interpretation of text (e.g., captions, illustrations).

(14) Writing/Writing Process. Students use elements of the writing process (planning, drafting, revising, editing, and publishing) to compose text. The student is expected to:

(A) plan a first draft by generating ideas for writing (e.g., drawing, sharing ideas, listing key ideas);

(B) develop drafts by sequencing ideas through writing sentences;

(C) revise drafts by adding or deleting a word, phrase, or sentence;

(D) edit drafts for grammar, punctuation, and spelling using a teacher-developed rubric; and

(E) publish and share writing with others.

(15) Writing/Literary Texts. Students write literary texts to express their ideas and feelings about real or imagined people, events, and ideas. The student is expected to:

(A) write brief stories that include a beginning, middle, and end; and

(B) write short poems that convey sensory details.

(16) Writing/Expository and Procedural Texts. Students write expository and procedural or work-related texts to communicate ideas and information to specific audiences for specific purposes. The student is expected to:

(A) write short letters that put ideas in a chronological or logical sequence and use appropriate conventions (e.g., date, salutation, closing);

(B) write brief compositions about topics of interest to the student; and

(C) write brief comments on literary or informational texts.

(17) Writing/Persuasive Texts. Students write persuasive texts to influence the attitudes or actions of a specific audience on specific issues. The student is expected to write persuasive statements about issues that are important to the student to the appropriate audience in the school, home, or local community.

(18) Research/Research Plan. Students ask open-ended research questions and develop a plan for answering them. The student is expected to:

(A) generate a list of topics of class-wide interest and formulate open-ended questions about one or two of the topics; and

(B) decide what sources of information might be relevant to answer them.

(19) Research/Gathering Sources. Students determine, locate, and explore the full range of relevant sources addressing a research question and systematically record the information they gather. The student is expected to:

(A) gather evidence from available sources (natural and personal) as well as from interviews with local experts;

(B) use text features (e.g., table of contents, alphabetized index) in age-appropriate reference works (e.g., picture dictionaries) to locate information; and

(C) record basic information in simple visual formats (e.g., notes, charts, picture graphs, diagrams).

(20) Research/Synthesizing Information. Students clarify research questions and evaluate and synthesize collected information. The student is expected to revise the topic as a result of answers to initial research questions.

(21) Research/Organizing and Presenting Ideas. Students organize and present their ideas and information according to the purpose of the research and their audience. The student is expected to (with adult assistance) create a visual display or dramatization to convey the results of the research.

(22) Listening and Speaking/Listening. Students listen attentively to others in formal and informal settings. The student is expected to:

(A) listen attentively to speakers and ask relevant questions to clarify information; and

(B) follow, restate, and give oral instructions that involve a short related sequence of actions.

(23) Listening and Speaking/Speaking. Students speak clearly and to the point. The student is expected to share information and ideas that focus on the topic under discussion, speaking clearly at an appropriate and understandable pace.

(24) Listening and Speaking/Teamwork. Students work productively with others in teams. The student is expected to follow agreed-upon rules for discussion, including listening to others, speaking when recognized, and making appropriate contributions.

(25) Oral and Written Conventions/Conventions. Students identify and use the grammatical conventions of academic language when speaking and writing. The student is expected to:

(A) identify and use the following parts of speech in the context of reading, writing, and speaking:

(i) verbs (past, present, and future);

(ii) nouns (singular/plural, common/proper);

(iii) adjectives (descriptive: green, tall; limiting: this, that; articles: a, an, the);

(iv) adverbs (time: before, next; manner: carefully, beautifully; frequency: usually, sometimes; intensity: almost, a lot); and

(v) prepositions (e.g., at, on, in, to, with, around); and

(B) identify and use complete sentences with correct subject-verb agreement and distinguish between complete and incomplete sentences.

(26) Oral and Written Conventions/Handwriting, Capitalization, and Punctuation. Students write legibly and use appropriate capitalization and punctuation conventions in their compositions. The student is expected to:

(A) write legibly leaving appropriate margins for readability; and

(B) use capitalization for:

(i) proper nouns;

(ii) months and days of the week; and

(iii) the salutation and closing of a letter; and

(C) recognize and use punctuation marks including ending punctuation in sentences.

(27) Oral and Written Conventions/Spelling. Students spell correctly. The student is expected to:

(A) use phonological knowledge to match sounds to letters to construct unknown words;

(B) spell high-frequency words from a commonly used list;

(C) spell base words with inflectional endings (e.g., -ing and -ed); and

(D) spell words with common orthographic patterns and rules:

(i) complex consonants (e.g., hard and soft c and g, ck);

(ii) r-controlled vowels;

(iii) long vowels (VCe-hope);

(iv) vowel digraphs (e.g., oo-book, fool, ee-feet);

(v) diphthongs (e.g., ou-out, ow-cow, oi-coil, oy-toy);

(E) spell simple contractions (e.g., isn't, aren't, can't);

(F) use resources to find correct spellings.

§110.14. English Language Arts and Reading, Grade 3, Beginning with School Year 2009-2010.

(a) Introduction.

(1) The English Language Arts and Reading Texas Essential Knowledge and Skills (TEKS) are organized into the following strands: Reading, where students read and understand a wide variety of literary and informational texts; Writing, where students compose a variety of written texts with a clear controlling idea, coherent organization, and sufficient detail; Research, where students are expected to know how to locate a range of relevant sources and evaluate, synthesize, and present ideas and information; Listening and Speaking, where students listen and respond to the ideas of others while contributing their own ideas in conversations and in groups; and Oral and Written Conventions, where students learn how to use the oral and written conventions of the English language in speaking and writing. The standards are cumulative--students will continue to address earlier standards as needed while they attend to standards for their grade. In third grade, students will engage in activities that build on their prior knowledge and skills in order to strengthen their reading, writing, and oral language skills. Students should read and write on a daily basis.

(2) For third grade students whose first language is not English, the students' native language serves as a foundation for English language acquisition.

(3) To meet Public Education Goal 1 of the Texas Education Code, §4.002, which states, "The students in the public education system will demonstrate exemplary performance in the reading and writing of the English language," students will accomplish the essential knowledge, skills, and student expectations at Grade 3 as described in subsection (b) of this section.

(4) To meet Texas Education Code, §28.002(h), which states, ". . . each school district shall foster the continuation of the tradition of teaching United States and Texas history and the free enterprise system in regular subject matter and in reading courses

and in the adoption of textbooks," students will be provided oral and written narratives as well as other informational texts that can help them to become thoughtful, active citizens who appreciate the basic democratic values of our state and nation.

(b) Knowledge and skills.

(1) Reading/Beginning Reading Skills. Students use the relationships between letters and sounds, spelling patterns, and morphological analysis to decode written English. The student is expected to:

(A) read multisyllabic words in text and independent of context by applying common spelling patterns including:

(i) dropping the final "e" and add endings such as -ing, -ed, or -able (e.g., use, using, used, usable);

(ii) doubling final consonants when adding an ending (e.g., hop to hopping);

(iii) changing the final "y" to "i" (e.g., baby to babies);

(iv) using knowledge of common prefixes and suffixes (e.g., dis-, -ly); and

(v) using knowledge of derivational affixes (e.g., -de, -ful, -able);

(B) use common syllabication patterns to read words including:

(i) closed syllable (CVC) (e.g., mag-net, splen-did);

(ii) open syllable (CV) (e.g., ve-to);

(iii) final stable syllable (e.g., puz-zle, con-trac-tion);

(iv) vowel digraphs and diphthongs (e.g., ei-ther);

(v) r-controlled vowels (fer-ment, car-pool);

(C) identify and read contractions (e.g., I'd); and

(D) monitor accuracy in decoding using syntax and semantics.

(2) Reading/Beginning Reading Skills. Students read grade-level text with fluency and comprehension. The student is expected to read aloud grade-level appropriate text with fluency (rate, accuracy, expression, appropriate phrasing) and comprehension.

(3) Reading/Vocabulary Development. Students understand new vocabulary and use it correctly when reading and writing. The student is expected to:

(A) determine the meaning of grade-level academic English words derived from Latin, Greek, or other linguistic roots and affixes;

(B) use prefixes and suffixes to determine the meaning of words (e.g., allow/disallow);

(C) use context to determine the relevant meaning of unfamiliar words or distinguish among multiple meaning words and homographs;

(D) identify common words that are opposite (antonyms) or similar (synonyms) in meaning; and

(E) alphabetize a series of words to the third letter and use a dictionary or a glossary to determine the meanings, syllabication, and pronunciation of unknown words.

(4) Reading/Comprehension of Literary Text/Theme and Genre. Students analyze theme and genre in different cultural, historical, and contemporary contexts and provide evidence from the text to support their understanding. The student is expected to:

(A) identify culturally significant characters in Greek, Roman, and Norse mythology and note how they are used (e.g., names of days of the week, months of the year, planets); and

(B) describe the cultural and historical settings of tall tales and legends and their characteristics (e.g., consider reading tales about Paul Bunyan, John Henry).

(5) Reading/Comprehension of Literary Text/Poetry. Students understand the structure and elements of poetry and respond by providing evidence from text to support their understanding. The student is expected to:

(A) describe the characteristics of various forms of poetry and how they create imagery (e.g., narrative poetry, lyrical poetry, humorous poetry, free verse); and

(B) recite grade-level poems with expressive gestures and appropriate rhythm, pace, and intonation.

(6) Reading/Comprehension of Literary Text/Drama. Students understand the structure and elements of drama and respond by providing evidence from text to support their understanding. The student is expected to explain the elements of plot and character as presented through dialogue in scripts that are read, viewed, written, or performed (e.g., consider reading or viewing dramatic scenes from fables and folktales).

(7) Reading/Comprehension of Literary Text/Fiction. Students understand the structure and elements of fiction and respond by providing evidence from text to support their understanding. The student is expected to:

(A) describe and infer how a story is affected by its setting;

(B) describe how the plot moves from problem to solution;

(C) explain the changes that major and minor characters undergo; and

(D) identify the narrator or speaker of a story (i.e., literary point of view).

(8) Reading/Comprehension of Literary Text/Literary Nonfiction. Students understand the varied structural patterns and features of literary nonfiction and respond by providing evidence from text to support their understanding. The student is expected to explain the difference in point of view between a biography and autobiography.

(9) Reading/Comprehension of Literary Text/Sensory Language. Students understand how an author's sensory language creates imagery in literary text and provide evidence from text to support their understanding. The student is expected to identify language that creates a graphic visual experience and appeals to the senses.

(10) Reading/Comprehension of Informational Text/Culture and History. Students analyze and understand the author's purpose in cultural, historical, and contemporary contexts and respond by providing evidence from the text to support their understanding. The student is expected to identify the topic and locate the author's stated purposes in writing the text.

(11) Reading/Comprehension of Informational Text/Expository Text. Students analyze and understand expository text and

respond by providing evidence from text to support their understanding. The student is expected to:

(A) identify the details or facts that support the main idea (e.g., consider reading articles on cultural holidays such as St. Patrick's Day, Hanukkah);

(B) draw conclusions from the facts presented in text and support those assertions with textual evidence (e.g., consider reading encyclopedia entries on Louis Pasteur, Henry Ford, Helen Keller, Harriett Tubman);

(C) identify explicit cause and effect relationships among ideas in texts;

(D) use common text features (e.g., bold print, captions, key words) to make and justify predictions about content; and

(E) distinguish between the techniques used in a television commercial and those programs used to convey factual information (e.g., documentaries, news, educational programming).

(12) Reading/Comprehension of Informational Text/Persuasive Text. Students analyze and understand persuasive text and respond by providing evidence from text to support their analysis. The student is expected to identify what the author is trying to persuade the reader to think or do.

(13) Reading/Comprehension of Informational Text/Procedural Texts. Students understand how to glean and use information in procedural texts and documents. The student is expected to:

(A) follow and explain a set of written multi-step directions; and

(B) locate and use specific information in graphic features of text.

(14) Writing/Writing Process. Students use elements of the writing process (planning, drafting, revising, editing, and publishing) to compose text. The student is expected to:

(A) plan a first draft by selecting a genre appropriate for conveying the intended meaning to an audience and generating ideas through a range of strategies (e.g., brainstorming, graphic organizers, logs, journals);

(B) develop drafts by categorizing ideas and organizing them into paragraphs;

(C) revise drafts for coherence, organization, simple and compound sentences, and audience;

(D) edit drafts for grammar, mechanics, and spelling using a teacher-developed rubric; and

(E) publish written work for a specific audience.

(15) Writing/Literary Texts. Students write literary texts to express their ideas and feelings about real or imagined people, events, and ideas. The student is expected to:

(A) write imaginative stories that build the plot to a climax and contain details about the characters and setting;

(B) write poems that convey sensory details using the conventions of poetry (e.g., rhyme, meter, patterns of verse); and

(C) write about important personal experiences.

(16) Writing/Expository and Procedural Texts. Students write expository and procedural or work-related texts to communicate ideas and information to specific audiences for specific purposes. The student is expected to:

(A) write paragraphs that:

(i) establish a central idea in a topic sentence;

(ii) include supporting sentences with simple facts, details, and explanations; and

(iii) contain a concluding statement;

(B) write letters whose language is tailored to the audience and purpose (e.g., a thank you note to a friend) and that use appropriate conventions (e.g., date, salutation, closing);

(C) write brief compositions that contain a clear focus, organization, and sufficient supporting details; and

(D) write responses to literary or expository texts that demonstrate an understanding of the text.

(17) Writing/Persuasive Texts. Students write persuasive texts to influence the attitudes or actions of a specific audience on specific issues. The student is expected to write persuasive essays to the appropriate audience that establish a position and use supporting details.

(18) Research/Research Plan. Students ask open-ended research questions and develop a plan for answering them. The student is expected to:

(A) generate research topics from personal interests or by brainstorming with others, narrow to one topic, and formulate open-ended questions about the major research topic; and

(B) generate a research plan for gathering relevant information (e.g., surveys, interviews, encyclopedias) about the major research question.

(19) Research/Gathering Sources. Students determine, locate, and explore the full range of relevant sources addressing a research question and systematically record the information they gather. The student is expected to:

(A) follow the research plan to collect information from multiple sources of information, both oral and written, including:

(i) student-initiated surveys, on-site inspections, and interviews;

(ii) data from experts, reference texts, and online searches; and

(iii) visual sources of information (e.g., maps, timelines, graphs) where appropriate;

(B) use skimming and scanning techniques to identify data by looking at text features (e.g., bold print, italics);

(C) take simple notes and sort evidence into provided categories or an organizer;

(D) identify the author, title, publisher, and publication year of sources; and

(E) differentiate between paraphrasing and plagiarism and identify the importance of citing valid and reliable sources.

(20) Research/Synthesizing Information. Students clarify research questions and evaluate and synthesize collected information. The student is expected to improve the focus of research as a result of consulting expert sources (e.g., reference librarians and local experts on the topic).

(21) Research/Organizing and Presenting Ideas. Students organize and present their ideas and information according to the purpose of the research and their audience. The student is expected to draw

conclusions through a brief written explanation and create a works-cited page from notes, including the author, title, publisher, and publication year for each source used.

(22) Listening and Speaking/Listening. Students listen attentively to others in formal and informal settings. The student is expected to:

(A) listen attentively to speakers and ask relevant questions and make pertinent comments; and

(B) follow, restate, and give oral instructions that involve a series of related sequences of action.

(23) Listening and Speaking/Speaking. Students speak clearly and to the point. The student is expected to speak coherently about the topic under discussion, employing eye contact, speaking rate, volume, and enunciation to communicate ideas effectively.

(24) Listening and Speaking/Teamwork. Students work productively with others in teams. The student is expected to participate in teacher- and student-led small-group discussions by posing and answering questions with appropriate detail and providing suggestions that build upon the ideas of others.

(25) Oral and Written Conventions/Conventions. Students identify and use the grammatical conventions of academic language when speaking and writing. The student is expected to:

(A) identify and use the following parts of speech in the context of reading, writing, and speaking:

(i) verbs (past, present, and future);

(ii) nouns (regular and irregular);

(iii) adjectives (descriptive: green, tall; limiting: this, that; articles: a, an, the);

(iv) adverbs (time: before, next; manner: carefully, beautifully; frequency: usually, sometimes; intensity: almost, a lot);

(v) prepositions (at, on, in, to, with, around);

(vi) pronouns (e.g., he, his, him); and

(vii) coordinating conjunctions (e.g., and, or, but);

(B) identify the complete subject and the complete predicate in a sentence; and

(C) identify and use complete simple and compound sentences with correct subject-verb agreement and distinguish between complete and incomplete sentences.

(26) Oral and Written Conventions/Handwriting, Capitalization, and Punctuation. Students write legibly and use appropriate capitalization and punctuation conventions in their compositions. The student is expected to:

(A) write legibly in cursive script with spacing between words in a sentence;

(B) use capitalization for:

(i) geographical names and places;

(ii) historical periods; and

(iii) official titles of people;

(C) recognize and use punctuation marks including:

(i) apostrophes in contractions; and

(ii) commas in series and dates; and

(D) use correct mechanics including paragraph indentations.

(27) Oral and Written Conventions/Spelling. Students spell correctly. The student is expected to:

(A) spell words with more advanced orthographic patterns and rules:

(i) consonant doubling when adding an ending;

(ii) dropping final "e" when endings are added (e.g., -ing, -ed);

(iii) changing y to i before adding an ending;

(iv) double consonants in middle of words;

(v) complex consonants (e.g., scr-, -dge, -tch); and

(vi) abstract vowels (e.g., ou as in could, touch, through, bought);

(B) spell high-frequency and compound words;

(C) spell words with common syllable constructions (e.g., closed, open, final stable syllable);

(D) spell single syllable homophones (e.g., bear/bare; week/weak; road/rode);

(E) use knowledge of letter sounds, word parts, word segmentation, and syllabication to spell;

(F) spell complex contractions (e.g., should've, won't); and

(G) use print and electronic resources to find and check correct spellings.

§110.15. English Language Arts and Reading, Grade 4, Beginning with School Year 2009-2010.

(a) Introduction.

(1) The English Language Arts and Reading Texas Essential Knowledge and Skills (TEKS) are organized into the following strands: Reading, where students read and understand a wide variety of literary and informational texts; Writing, where students compose a variety of written texts with a clear controlling idea, coherent organization, and sufficient detail; Research, where students are expected to know how to locate a range of relevant sources and evaluate, synthesize, and present ideas and information; Listening and Speaking, where students listen and respond to the ideas of others while contributing their own ideas in conversations and in groups; and Oral and Written Conventions, where students learn how to use the oral and written conventions of the English language in speaking and writing. The standards are cumulative--students will continue to address earlier standards as needed while they attend to standards for their grade. In fourth grade, students will engage in activities that build on their prior knowledge and skills in order to strengthen their reading, writing, and oral language skills. Students should read and write on a daily basis.

(2) For fourth grade students whose first language is not English, the students' native language serves as a foundation for English language acquisition.

(3) To meet Public Education Goal 1 of the Texas Education Code, §4.002, which states, "The students in the public education system will demonstrate exemplary performance in the reading and writing of the English language," students will accomplish the essential knowledge, skills, and student expectations at Grade 4 as described in subsection (b) of this section.

(4) To meet Texas Education Code, §28.002(h), which states, ". . . each school district shall foster the continuation of the tradition of teaching United States and Texas history and the free enterprise system in regular subject matter and in reading courses and in the adoption of textbooks," students will be provided oral and written narratives as well as other informational texts that can help them to become thoughtful, active citizens who appreciate the basic democratic values of our state and nation.

(b) Knowledge and skills.

(1) Reading/Vocabulary Development. Students understand new vocabulary and use it correctly when reading and writing. The student is expected to:

(A) determine the meaning of grade-level academic English words derived from Latin, Greek, or other linguistic roots and affixes;

(B) use the context of the sentence (e.g., in-sentence example or definition) to determine the intended meaning of an unfamiliar word;

(C) identify antonyms, synonyms, homographs, and homophones;

(D) complete analogies using knowledge of antonyms and synonyms (e.g., boy:girl as male:\_\_\_\_\_ or girl:woman as boy:\_\_\_\_\_); and

(E) use a dictionary or glossary to determine the meanings, syllabication, and pronunciation of unknown words.

(2) Reading/Comprehension of Literary Text/Theme and Genre. Students analyze theme and genre in different cultural, historical, and contemporary contexts and provide evidence from the text to support their understanding. The student is expected to:

(A) compare and contrast the themes or moral lessons of several similar folktales, fables, or myths from various cultures;

(B) identify the phenomena explained in origin myths (e.g., consider reading about Prometheus' fire, Pandora's box of evils);

(C) compare and contrast the adventures or exploits of the trickster in texts from various cultures; and

(D) describe the genre characteristics of folktales, fables, and myths.

(3) Reading/Comprehension of Literary Text/Poetry. Students understand the structure and elements of poetry and respond by providing evidence from text to support their understanding. The student is expected to:

(A) identify the author's use of similes and metaphors to produce imagery;

(B) recognize how the structural elements of poetry (e.g., rhyme, meter, stanzas, line breaks) relate to form (e.g., lyrical poetry, free verse); and

(C) recite grade-level poems with expressive gestures and appropriate rhythm, pace, and intonation.

(4) Reading/Comprehension of Literary Text/Drama. Students understand the structure and elements of drama and respond by providing evidence from text to support their understanding. The student is expected to describe the structural elements particular to dramatic literature (e.g., scenes, acts, cast of characters).

(5) Reading/Comprehension of Literary Text/Fiction. Students understand the structure and elements of fiction and respond by

providing evidence from text to support their understanding. The student is expected to:

(A) visualize and describe different aspects of the setting (e.g., time, place, situation);

(B) sequence and identify the plot's main events and describe their influence on future actions;

(C) describe the personality traits, motivations, and feelings of the characters using their thoughts, dialogue, and actions and other evidence from the text;

(D) identify whether the narrator or speaker of a story is first or third person; and

(E) read aloud grade-level stories with fluency (rate, accuracy, expression, appropriate phrasing) and comprehension.

(6) Reading/Comprehension of Literary Text/Literary Nonfiction. Students understand the varied structural patterns and features of literary nonfiction and respond by providing evidence from text to support their understanding. The student is expected to identify similarities and differences between the events and characters' experiences in a fictional work and the actual events and experiences in the author's biography or autobiography.

(7) Reading/Comprehension of Literary Text/Sensory Language. Students understand how an author's sensory language creates imagery in literary text and provide evidence from text to support their understanding. The student is expected to evaluate the impact of sensory details and figurative language (metaphors and similes) on a story or poem.

(8) Reading/Comprehension of Informational Text/Culture and History. Students analyze and understand the author's purpose in cultural, historical, and contemporary contexts and respond by providing evidence from the text to support their understanding. The student is expected to explain the difference between a stated and an implied purpose for an expository text.

(9) Reading/Comprehension of Informational Text/Expository Text. Students analyze and understand expository text and respond by providing evidence from text to support their understanding. The student is expected to:

(A) describe the main idea and supporting details in text (e.g., consider reading encyclopedia entries on Juan Seguin, Miriam Ferguson, Audie Murphy, Barbara Jordan);

(B) distinguish fact from opinion in a text and explain how to verify what is a fact (e.g., consider reading history books on Mexico's independence from Spain, the annexation of Texas by the United States);

(C) identify explicit and implicit relationships among ideas in texts organized by cause-and-effect, sequence, or comparison (e.g., consider reading the Declaration of Independence, constitutions of Texas and the United States);

(D) identify and use text features (e.g., index, glossary) to locate information quickly and efficiently; and

(E) describe how various media techniques (e.g., shape, line, color, pacing, close-ups, sound effects, texture in illustrations) influence the information presented.

(10) Reading/Comprehension of Informational Text/Persuasive Text. Students analyze and understand persuasive text and respond by providing evidence from text to support their analysis. The student is expected to:

(A) explain how an author uses language to present information to influence the reader to think or do something; and

(B) draw conclusions about why advertisements use well-known persons or exaggerate the benefits of their products.

(11) Reading/Comprehension of Informational Text/Procedural Texts. Students understand how to glean and use information in procedural texts and documents. The student is expected to:

(A) determine the sequence of activities needed to carry out a procedure (e.g., following a recipe); and

(B) explain factual information presented graphically (e.g., charts, diagrams, graphs, illustrations).

(12) Writing/Writing Process. Students use elements of the writing process (planning, drafting, revising, editing, and publishing) to compose text. The student is expected to:

(A) plan a first draft by selecting a genre appropriate for conveying the intended meaning to an audience and generating ideas through a range of strategies (e.g., brainstorming, graphic organizers, logs, journals);

(B) develop drafts by categorizing ideas and organizing them into paragraphs;

(C) revise drafts for coherence, organization, simple and compound sentences, and audience;

(D) edit drafts for grammar, mechanics, and spelling using a teacher-developed rubric; and

(E) revise final draft in response to feedback from peers and teacher and publish written work for a specific audience.

(13) Writing/Literary Texts. Students write literary texts to express their ideas and feelings about real or imagined people, events, and ideas. The student is expected to:

(A) write imaginative stories that build the plot to a climax and contain details about the characters and setting;

(B) write poems that convey sensory details using the conventions of poetry (e.g., rhyme, meter, patterns of verse); and

(C) write about important personal experiences.

(14) Writing/Expository and Procedural Texts. Students write expository and procedural or work-related texts to communicate ideas and information to specific audiences for specific purposes. The student is expected to:

(A) write paragraphs that:

(i) establish a central idea in a topic sentence;

(ii) include supporting sentences with simple facts, details, and explanations; and

(iii) contain a concluding statement;

(B) write letters whose language is tailored to the audience and purpose (e.g., a thank you note to a friend) and that use appropriate conventions (e.g., date, salutation, closing);

(C) write brief compositions that contain a clear focus, organization, and sufficient supporting details; and

(D) write responses to literary or expository texts and provide evidence from the text to demonstrate understanding.

(15) Writing/Persuasive Texts. Students write persuasive texts to influence the attitudes or actions of a specific audience on specific issues. The student is expected to write persuasive essays to the



appropriate audience that establish a position and use supporting details.

(16) Research/Research Plan. Students ask open-ended research questions and develop a plan for answering them. The student is expected to:

(A) generate research topics from personal interests or by brainstorming with others, narrow to one topic, and formulate open-ended questions about the major research topic; and

(B) generate a research plan for gathering relevant information (e.g., surveys, interviews, encyclopedias) about the major research question.

(17) Research/Gathering Sources. Students determine, locate, and explore the full range of relevant sources addressing a research question and systematically record the information they gather. The student is expected to:

(A) follow the research plan to collect information from multiple sources of information both oral and written, including:

(i) student-initiated surveys, on-site inspections, and interviews;

(ii) data from experts, reference texts, and online searches; and

(iii) visual sources of information (e.g., maps, timelines, graphs) where appropriate;

(B) use skimming and scanning techniques to identify data by looking at text features (e.g., bold print, italics);

(C) take simple notes and sort evidence into provided categories or an organizer;

(D) identify the author, title, publisher, and publication year of sources; and

(E) differentiate between paraphrasing and plagiarism and identify the importance of citing valid and reliable sources.

(18) Research/Synthesizing Information. Students clarify research questions and evaluate and synthesize collected information. The student is expected to improve the focus of research as a result of consulting expert sources (e.g., reference librarians and local experts on the topic).

(19) Research/Organizing and Presenting Ideas. Students organize and present their ideas and information according to the purpose of the research and their audience. The student is expected to draw conclusions through a brief written explanation and create a works-cited page from notes, including the author, title, publisher, and publication year for each source used.

(20) Listening and Speaking/Listening. Students listen attentively to others in formal and informal settings. The student is expected to:

(A) listen attentively to speakers and ask relevant questions and make pertinent comments; and

(B) follow, restate, and give oral instructions that involve a series of related sequences of action.

(21) Listening and Speaking/Speaking. Students speak clearly and to the point. The student is expected to express an opinion supported by accurate information, employing eye contact, speaking rate, volume, and enunciation to communicate ideas effectively.

(22) Listening and Speaking/Teamwork. Students work productively with others in teams. The student is expected to partici-

pate in teacher- and student-led small-group discussions by posing and answering questions with appropriate detail and providing suggestions that build upon the ideas of others.

(23) Oral and Written Conventions/Conventions. Students identify and use the grammatical conventions of academic language when speaking and writing. The student is expected to:

(A) identify and use the following parts of speech in the context of reading, writing, and speaking:

(i) verbs (irregular verbs);

(ii) nouns (singular and plural);

(iii) pronouns (e.g., myself, ourselves);

(iv) comparatives and superlatives (e.g., fast, faster, fastest); and

(v) correlative conjunctions (e.g., either/or, neither/nor); and

(B) identify and use complete simple and compound sentences with correct subject-verb agreement and distinguish between complete and incomplete sentences.

(24) Oral and Written Conventions/Handwriting, Capitalization, and Punctuation. Students write legibly and use appropriate capitalization and punctuation conventions in their compositions. The student is expected to:

(A) write legibly by selecting cursive script or manuscript printing as appropriate;

(B) use capitalization for:

(i) historical events and documents;

(ii) titles of books, stories, and essays; and

(iii) languages, races, and nationalities; and

(C) recognize and use punctuation marks including:

(i) commas in compound sentences;

(ii) apostrophes in possessives; and

(iii) quotation marks.

(25) Oral and Written Conventions/Spelling. Students spell correctly. The student is expected to:

(A) spell words with more advanced orthographic patterns and rules:

(i) double consonants in middle of words;

(ii) plural rules (e.g., words ending in f as in leaf, leaves; adding -es);

(iii) irregular plurals (e.g., man/men, foot/feet, child/children);

(iv) silent letters (e.g., knee, wring); and

(v) other ways to spell sh (e.g., -sion, -tion, -cian);

(B) spell base words and roots with affixes (e.g., -ion, -ment, -ly, dis-, pre-);

(C) spell commonly used homophones (e.g., there, they're, their; two, too, to); and

(D) use spelling patterns and rules and print and electronic resources to determine and check correct spellings.

§110.16. English Language Arts and Reading, Grade 5, Beginning with School Year 2009-2010.

(a) Introduction.

(1) The English Language Arts and Reading Texas Essential Knowledge and Skills (TEKS) are organized into the following strands: Reading, where students read and understand a wide variety of literary and informational texts; Writing, where students compose a variety of written texts with a clear controlling idea, coherent organization, and sufficient detail; Research, where students are expected to know how to locate a range of relevant sources and evaluate, synthesize, and present ideas and information; Listening and Speaking, where students listen and respond to the ideas of others while contributing their own ideas in conversations and in groups; and Oral and Written Conventions, where students learn how to use the oral and written conventions of the English language in speaking and writing. The standards are cumulative--students will continue to address earlier standards as needed while they attend to standards for their grade. In fifth grade, students will engage in activities that build on their prior knowledge and skills in order to strengthen their reading, writing, and oral language skills. Students should read and write on a daily basis.

(2) For fifth grade students whose first language is not English, the students' native language serves as a foundation for English language acquisition.

(3) To meet Public Education Goal 1 of the Texas Education Code, §4.002, which states, "The students in the public education system will demonstrate exemplary performance in the reading and writing of the English language," students will accomplish the essential knowledge, skills, and student expectations at Grade 5 as described in subsection (b) of this section.

(4) To meet Texas Education Code, §28.002(h), which states, ". . . each school district shall foster the continuation of the tradition of teaching United States and Texas history and the free enterprise system in regular subject matter and in reading courses and in the adoption of textbooks," students will be provided oral and written narratives as well as other informational texts that can help them to become thoughtful, active citizens who appreciate the basic democratic values of our state and nation.

(b) Knowledge and skills.

(1) Reading/Vocabulary Development. Students understand new vocabulary and use it correctly when reading and writing. The student is expected to:

(A) determine the meaning of grade-level academic English words derived from Latin, Greek, or other linguistic roots and affixes;

(B) use context (e.g., in-sentence restatement) to determine or clarify the meaning of unfamiliar or multiple meaning words;

(C) produce analogies with known antonyms and synonyms;

(D) identify and explain the meaning of common idioms, adages, and other sayings; and

(E) use a dictionary, a glossary, or a thesaurus (printed or electronic) to determine the meanings, syllabication, pronunciations, alternate word choices, and parts of speech of words.

(2) Reading/Comprehension of Literary Text/Theme and Genre. Students analyze theme and genre in different cultural, historical, and contemporary contexts and provide evidence from the text to support their understanding. The student is expected to:

(A) explain the lesson or message of a work of literature as its theme, referring to several recently read stories or novels;

(B) read myths or folktales explaining different scientific phenomena from various cultures (e.g., consider reading Greek, Roman, and Native American mythologies that tell how each culture configured and explained different groups of stars, especially those used in navigation or astronomy today); and

(C) explain the effect of a historical event or movement on the theme of a specific work of literature.

(3) Reading/Comprehension of Literary Text/Poetry. Students understand the structure and elements of poetry and respond by providing evidence from text to support their understanding. The student is expected to:

(A) listen to the poems and analyze how poets use sound effects (e.g., alliteration, internal rhyme, onomatopoeia, rhyme scheme) as accompaniment in humorous poems; and

(B) recite grade-level poems using expressive gestures, clear diction, and appropriate rhythm, pace, and phrasing.

(4) Reading/Comprehension of Literary Text/Drama. Students understand the structure and elements of drama and respond by providing evidence from text to support their understanding. The student is expected to analyze the similarities and differences between an original text and its dramatic adaptation.

(5) Reading/Comprehension of Literary Text/Fiction. Students understand the structure and elements of fiction and respond by providing evidence from text to support their understanding. The student is expected to:

(A) describe incidents that advance the story or novel, explaining how each incident gives rise to or foreshadows future events;

(B) summarize the roles and functions of characters in the various plots;

(C) identify different kinds of third-person points of view in stories;

(D) explain the characteristics of adventure stories and contemporary realistic fiction as genres of fiction; and

(E) read aloud grade-level stories with fluency (rate, accuracy, expression, appropriate phrasing) and comprehension.

(6) Reading/Comprehension of Literary Text/Literary Nonfiction. Students understand the varied structural patterns and features of literary nonfiction and respond by providing evidence from text to support their understanding. The student is expected to:

(A) identify the literary language and devices used in biographies and autobiographies that are considered literary nonfiction; and

(B) describe how a biographer presents the major events in a person's life.

(7) Reading/Comprehension of Literary Text/Sensory Language. Students understand how an author's sensory language creates imagery in literary text and provide evidence from text to support their understanding. The student is expected to draw inferences about the author's use of sensory details, imagery, and figurative language in literary text.

(8) Reading/Comprehension of Informational Text/Culture and History. Students analyze and understand the author's purpose in cultural, historical, and contemporary contexts and respond by provid-

ing evidence from the text to support their understanding. The student is expected to draw conclusions from the information presented by an author and evaluate how well the author's purpose was achieved.

(9) Reading/Comprehension of Informational Text/Expository Text. Students analyze and understand expository text and respond by providing evidence from text to support their understanding. The student is expected to:

(A) summarize the main ideas and supporting details in a text in ways that maintain logical order (e.g., consider reading encyclopedia entries or history books on Thomas Jefferson, Benjamin Baneker, Rosa Parks);

(B) determine the facts in text and verify them;

(C) explain how the organizational pattern of a text (e.g., cause-and-effect, compare-and-contrast, sequential order, logical order, classification schemes) addresses the author's purpose;

(D) use multiple text features (e.g., topic sentences, organizational structure) to draw conclusions about the main points of a text; and

(E) describe how the choice of image, music, and other elements shapes information in various forms of electronic media.

(10) Reading/Comprehension of Informational Text/Persuasive Text. Students analyze and understand persuasive text and respond by providing evidence from text to support their analysis. The student is expected to:

(A) identify the author's viewpoint or position in a persuasive text and provide supporting textual evidence;

(B) recognize exaggerated or misleading statements in text;

(C) identify persuasive techniques used in electronic media messages (e.g., listen to radio advertising and locate persuasive content); and

(D) identify basic relationships among ideas in an argument, including similarity, difference, and causality.

(11) Reading/Comprehension of Informational Text/Procedural Texts. Students understand how to glean and use information in procedural texts and documents. The student is expected to:

(A) interpret details from procedural text to complete a task, solve a problem, or perform procedures; and

(B) interpret factual or quantitative information presented in maps, charts, illustrations, graphs, timelines, tables, and diagrams.

(12) Writing/Writing Process. Students use elements of the writing process (planning, drafting, revising, editing, and publishing) to compose text. The student is expected to:

(A) plan a first draft by selecting a genre appropriate for conveying the intended meaning to an audience, determining appropriate topics through a range of strategies (e.g., discussion, background reading, personal interests, interviews), and developing a thesis or controlling idea;

(B) develop drafts by choosing an appropriate organizational strategy (e.g., sequence of events, cause-effect, compare-contrast) and building on ideas to create a focused, organized, and coherent piece of writing;

(C) revise drafts to clarify meaning, enhance style, include simple and compound sentences, and improve transitions by

adding, deleting, combining, and rearranging sentences or larger units of text;

(D) edit drafts for grammar, mechanics, and spelling; and

(E) revise final draft in response to feedback from peers and teacher and publish written work for appropriate audiences.

(13) Writing/Literary Texts. Students write literary texts to express their ideas and feelings about real or imagined people, events, and ideas. The student is expected to:

(A) write imaginative stories that include:

(i) a clearly defined focus, plot, and point of view;

(ii) a specific, believable setting created through the use of sensory details; and

(iii) dialogue that develops the story; and

(B) write poems using:

(i) poetic techniques (e.g., alliteration, onomatopoeia);

(ii) figurative language (e.g., similes, metaphors);

and

(iii) graphic elements (e.g., capital letters, line length).

(14) Writing/Expository and Procedural Texts. Students write expository and procedural or work-related texts to communicate ideas and information to specific audiences for specific purposes. The student is expected to:

(A) create multi-paragraph essays that:

(i) present effective introductions and concluding paragraphs;

(ii) guide and inform the reader's understanding of key ideas and evidence;

(iii) include specific facts, details, and examples in an appropriately organized structure; and

(iv) use a variety of sentence structures and transitions to link paragraphs;

(B) write to convey information about a topic, in print or electronically, using different forms of text, such as a description or explanation; and

(C) write responses to literary or expository texts and provide evidence from the text to demonstrate understanding.

(15) Writing/Persuasive Texts. Students write persuasive texts to influence the attitudes or actions of a specific audience on specific issues. The student is expected to write persuasive essays to the appropriate audience that establish a position and include sound reasoning, detailed and relevant evidence, and consideration of alternatives.

(16) Research/Research Plan. Students ask open-ended research questions and develop a plan for answering them. The student is expected to:

(A) brainstorm, consult with others, decide upon a topic for research, and formulate open-ended questions to address the major research topic; and

(B) generate a research plan for gathering information.

(17) Research/Gathering Sources. Students determine, locate, and explore the full range of relevant sources addressing a research question and systematically record the information they gather. The student is expected to:

(A) follow the research plan to collect data from a range of print and electronic resources (e.g., reference texts periodicals, web pages, online sources) and from experts;

(B) differentiate between primary and secondary sources;

(C) record data, using available technology (e.g., word processors) in order to see the relationships between ideas, and convert graphic/visual data (e.g., charts, diagrams, timelines) into written notes;

(D) identify the source of notes (e.g., author, title, page number) and record bibliographic information concerning those sources according to a standard format; and

(E) differentiate between paraphrasing and plagiarism and identify the importance of citing valid and reliable sources.

(18) Research/Synthesizing Information. Students clarify research questions and evaluate and synthesize collected information. The student is expected to:

(A) refocus the major research question, if necessary, guided by the answers to a secondary set of questions; and

(B) evaluate the relevance, validity, and reliability of sources for the research.

(19) Research/Organizing and Presenting Ideas. Students organize and present their ideas and information according to the purpose of the research and their audience. The student is expected to synthesize the research into a written or an oral presentation that:

(A) compiles important information from multiple sources;

(B) develops a topic sentence, summarizes findings, and uses evidence to support conclusions;

(C) presents the findings in a consistent format; and

(D) uses quotations to support ideas and an appropriate form of documentation to acknowledge sources (e.g., bibliography, works cited).

(20) Listening and Speaking/Listening. Students listen attentively to others in formal and informal settings. The student is expected to:

(A) listen to and interpret a speaker's messages (both verbal and nonverbal) and ask questions to clarify the speaker's purpose or perspective;

(B) follow, restate, and give oral instructions that include multiple action steps; and

(C) paraphrase a speaker's message in an organized fashion, noting both main and supporting ideas.

(21) Listening and Speaking/Speaking. Students speak clearly and to the point. The student is expected to organize ideas into presentations with a beginning, middle, and end, employing eye contact, speaking rate, volume, enunciation, and natural gestures to communicate ideas effectively.

(22) Listening and Speaking/Teamwork. Students work productively with others in teams. The student is expected to participate in student-led small-group discussions by eliciting and

considering suggestions from other group members and identifying points of agreement and disagreement.

(23) Oral and Written Conventions/Conventions. Students identify and use the grammatical conventions of academic language when speaking and writing. The student is expected to:

(A) identify and use the following parts of speech in the context of reading, writing, and speaking:

(i) verbs (irregular verbs and passive voice);

(ii) collective nouns (e.g., class, public);

(iii) comparatives and superlatives (e.g., good, better, best);

(iv) indefinite pronouns (e.g., all, both, nothing, anything);

(v) subordinating conjunctions (e.g., while, because, although, if); and

(vi) transitional words (e.g., also, therefore); and

(B) identify and use complete simple and compound sentences with correct subject-verb agreement and distinguish between complete and incomplete sentences.

(24) Oral and Written Conventions/Handwriting, Capitalization, and Punctuation. Students write legibly and use appropriate capitalization and punctuation conventions in their compositions. The student is expected to:

(A) use capitalization for:

(i) abbreviations;

(ii) initials and acronyms; and

(iii) organizations;

(B) use proper mechanics including italics for titles and emphasis; and

(C) recognize and use punctuation marks including:

(i) commas in compound sentences; and

(ii) proper punctuation and spacing for quotations.

(25) Oral and Written Conventions/Spelling. Students spell correctly. The student is expected to:

(A) spell words with more advanced orthographic patterns and rules including:

(i) silent and sounded consonants (e.g., haste, hasten; sign, signal; condemn, condemnation);

(ii) consonant changes (e.g., /t/ to /sh/ in select, selection; /k/ to /sh/ in music, musician); and

(iii) vowel changes (e.g., long to short in crime, criminal; long to schwa in define, definition; short to schwa in legality, legal);

(B) spell words with:

(i) Greek Roots (e.g., tele, photo, graph, meter);

(ii) Latin Roots (e.g., spec, scribe, rupt, port, ject, dict);

(iii) Greek suffixes (e.g., -ology, -phobia, -ism, -ist);

and

(iv) Latin derived suffixes (e.g., -able, -ible; -ance, -ence);

(C) differentiate between commonly confused terms (e.g., its, it's; affect, effect);

(D) use spelling patterns and rules and print and electronic resources to determine and check correct spellings; and

(E) know how to use the spell-check function in word processing while understanding its limitations.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 7, 2008.

TRD-200801818

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Earliest possible date of adoption: May 18, 2008

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



## SUBCHAPTER B. MIDDLE SCHOOL

### 19 TAC §§110.17 - 110.21

The new sections and amendment are proposed under the Texas Education Code, §7.102(c)(4), which authorizes the SBOE to establish curriculum and graduation requirements, and §28.002, which authorizes the SBOE to by rule identify the essential knowledge and skills of each subject of the required curriculum that all students should be able to demonstrate and that will be used in evaluating textbooks and addressed on the assessment instruments.

The new sections and amendment implement the Texas Education Code, §7.102(c)(4) and §28.002.

§110.17. Implementation of Texas Essential Knowledge and Skills for English Language Arts and Reading, Middle School, Beginning with School Year 2009-2010.

The provisions of §§110.18 - 110.20 of this subchapter shall be implemented by school districts beginning with the 2009-2010 school year and at that time shall supersede §§110.22 - 110.24 of this subchapter.

§110.18. English Language Arts and Reading, Grade 6, Beginning with School Year 2009-2010.

#### (a) Introduction.

(1) The English Language Arts and Reading Texas Essential Knowledge and Skills (TEKS) are organized into the following strands: Reading, where students read and understand a wide variety of literary and informational texts; Writing, where students compose a variety of written texts with a clear controlling idea, coherent organization, and sufficient detail; Research, where students are expected to know how to locate a range of relevant sources and evaluate, synthesize, and present ideas and information; Listening and Speaking, where students listen and respond to the ideas of others while contributing their own ideas in conversations and in groups; and Oral and Written Conventions, where students learn how to use the oral and written conventions of the English language in speaking and writing. The standards are cumulative--students will continue to address earlier standards as needed while they attend to standards for their grade. In sixth

grade, students will engage in activities that build on their prior knowledge and skills in order to strengthen their reading, writing, and oral language skills. Students should read and write on a daily basis.

(2) For sixth grade students whose first language is not English, the students' native language serves as a foundation for English language acquisition.

(3) To meet Public Education Goal 1 of the Texas Education Code, §4.002, which states, "The students in the public education system will demonstrate exemplary performance in the reading and writing of the English language," students will accomplish the essential knowledge, skills, and student expectations at Grade 6 as described in subsection (b) of this section.

(4) To meet Texas Education Code, §28.002(h), which states, ". . . each school district shall foster the continuation of the tradition of teaching United States and Texas history and the free enterprise system in regular subject matter and in reading courses and in the adoption of textbooks," students will be provided oral and written narratives as well as other informational texts that can help them to become thoughtful, active citizens who appreciate the basic democratic values of our state and nation.

#### (b) Knowledge and skills.

(1) Reading/Vocabulary Development. Students understand new vocabulary and use it correctly when reading and writing. The student is expected to:

(A) determine the meaning of grade-level academic English words derived from Latin, Greek, or other linguistic roots and affixes;

(B) use context (e.g., cause and effect or compare and contrast organizational text structures) to determine or clarify the meaning of unfamiliar or multiple meaning words;

(C) complete analogies that describe part to whole or whole to part (e.g., ink:pen as page: \_\_\_ or pen:ink as book: \_\_\_);

(D) explain the meaning of foreign words and phrases commonly used in written English (e.g., RSVP, que sera sera); and

(E) use a dictionary, a glossary, or a thesaurus (printed or electronic) to determine the meanings, syllabication, pronunciations, alternate word choices, and parts of speech of words.

(2) Reading/Comprehension of Literary Text/Theme and Genre. Students analyze theme and genre in different cultural, historical, and contemporary contexts and provide evidence from the text to support their understanding. The student is expected to:

(A) identify the implicit theme of a work of fiction, distinguishing theme from the topic;

(B) describe stylistic elements (e.g., magic helper, rule of three) in the traditional literature of several cultures and their relationship to the lesson or message of the work; and

(C) relate an adventure story to information about the period of its setting or creation.

(3) Reading/Comprehension of Literary Text/Poetry. Students understand the structure and elements of poetry and respond by providing evidence from text to support their understanding. The student is expected to:

(A) explain how figurative language (e.g., personification, metaphors, similes, hyperbole) contributes to the meaning of a poem; and

(B) recite grade-level poems using expressive gestures, clear diction, and appropriate rhythm, pace, and phrasing.

(4) Reading/Comprehension of Literary Text/Drama. Students understand the structure and elements of drama and respond by providing evidence from text to support their understanding. The student is expected to explain a playwright's use of dialogue and stage directions.

(5) Reading/Comprehension of Literary Text/Fiction. Students understand the structure and elements of fiction and respond by providing evidence from text to support their understanding. The student is expected to:

(A) summarize the elements of plot development (e.g., rising action, turning point, climax, falling action, denouement) in various works of fiction;

(B) recognize dialect and conversational voice and explain how authors use dialect to convey characters;

(C) describe the effect of the literary point of view in fiction; and

(D) adjust fluency when reading aloud grade-level text based on the reading purpose and the nature of the text.

(6) Reading/Comprehension of Literary Text/Literary Nonfiction. Students understand the varied structural patterns and features of literary nonfiction and respond by providing evidence from text to support their understanding. The student is expected to describe the characteristics of a memoir and compare them with the characteristics of an autobiography.

(7) Reading/Comprehension of Literary Text/Sensory Language. Students understand how an author's sensory language creates imagery in literary text and provide evidence from text to support their understanding. The student is expected to explain how authors create meaning through stylistic elements and figurative language emphasizing the use of personification, hyperbole, refrains, and metaphors.

(8) Reading/Comprehension of Informational Text/Culture and History. Students analyze and understand the author's purpose in cultural, historical, and contemporary contexts and respond by providing evidence from the text to support their understanding. The student is expected to compare and contrast the stated or implied purposes of different authors writing on the same topic.

(9) Reading/Comprehension of Informational Text/Expository Text. Students analyze and understand expository text and respond by providing evidence from text to support their understanding. The student is expected to:

(A) summarize the main ideas and supporting details in text, demonstrating an understanding that a summary does not include opinions;

(B) explain whether a detail in an argument is used for or against an issue;

(C) explain how different organizational patterns develop the main idea and the author's viewpoint;

(D) use multiple text features (e.g., chapter titles, headings, sub-headings, guidewords, and topic and concluding sentences) to answer questions and summarize ideas;

(E) distinguish the sections of major or national newspapers (e.g., sports, local) and magazines; and

(F) explain differences in techniques that inform the audience in digital media as compared to print materials.

(10) Reading/Comprehension of Informational Text/Persuasive Text. Students analyze and understand persuasive text and respond by providing evidence from text to support their analysis. The student is expected to:

(A) compare and contrast the viewpoints of two different authors writing about the same topic (e.g., consider reading first-hand accounts and newspaper reports of an historical event such as the Battle of San Jacinto);

(B) identify rhetorical techniques used in persuasive texts (e.g., emotional appeal, logical appeal);

(C) describe the structure of an argument, noting the stated claim and supporting evidence; and

(D) compare techniques used in print versus electronic journalism to influence the reader's or viewer's emotions or mood.

(11) Reading/Comprehension of Informational Text/Procedural Texts. Students understand how to glean and use information in procedural texts and documents. The student is expected to:

(A) follow multi-tasked instructions to complete a task, solve a problem, or perform procedures; and

(B) interpret factual, quantitative, or technical information presented in maps, charts, illustrations, graphs, timelines, tables, and diagrams.

(12) Writing/Writing Process. Students use elements of the writing process (planning, drafting, revising, editing, and publishing) to compose text. The student is expected to:

(A) plan a first draft by selecting a genre appropriate for conveying the intended meaning to an audience, determining appropriate topics through a range of strategies (e.g., discussion, background reading, personal interests, interviews), and developing a thesis or controlling idea;

(B) develop drafts by choosing an appropriate organizational strategy (e.g., sequence of events, cause-effect, compare-contrast) and building on ideas to create a focused, organized, and coherent piece of writing;

(C) revise drafts to clarify meaning, enhance style, include simple and compound sentences, and improve transitions by adding, deleting, combining, and rearranging sentences or larger units of text;

(D) edit drafts for grammar, mechanics, and spelling;  
and

(E) revise final draft in response to feedback from peers and teacher and publish written work for appropriate audiences.

(13) Writing/Literary Texts. Students write literary texts to express their ideas and feelings about real or imagined people, events, and ideas. The student is expected to:

(A) write imaginative stories that include:

(i) a clearly defined focus, plot, and point of view;

(ii) a specific, believable setting created through the use of sensory details; and

(iii) dialogue that develops the story; and

(B) write poems using:

(i) poetic techniques (e.g., alliteration, onomatopoeia);

and (ii) figurative language (e.g., similes, metaphors);  
(iii) graphic elements (e.g., capital letters, line length).

(14) Writing/Expository and Procedural Texts. Students write expository and procedural or work-related texts to communicate ideas and information to specific audiences for specific purposes. The student is expected to:

(A) create multi-paragraph essays that:

(i) present effective introductions and concluding paragraphs;

(ii) guide and inform the reader's understanding of key ideas and evidence;

(iii) include specific facts, details, and examples in an appropriately organized structure; and

(iv) use a variety of sentence structures and transitions to link paragraphs;

(B) write to convey information about a topic, in print or electronically, using different forms of text, such as a description or explanation, that demonstrate the writing skills for multi-paragraph essays;

(C) write responses to literary or expository texts and provide evidence from the text to demonstrate understanding; and

(D) produce a multimedia presentation involving text and graphics using available technology.

(15) Writing/Persuasive Texts. Students write persuasive texts to influence the attitudes or actions of a specific audience on specific issues. The student is expected to write persuasive essays to the appropriate audience that establish a position and include sound reasoning, detailed and relevant evidence, and consideration of alternatives.

(16) Research/Research Plan. Students ask open-ended research questions and develop a plan for answering them. The student is expected to:

(A) brainstorm, consult with others, decide upon a topic, and formulate open-ended questions to address the major research topic; and

(B) generate a research plan for gathering information.

(17) Research/Gathering Sources. Students determine, locate, and explore the full range of relevant sources addressing a research question and systematically record the information they gather. The student is expected to:

(A) follow the research plan to collect data from a range of print and electronic resources (e.g., reference texts periodicals, web pages, online sources) and from experts;

(B) differentiate between primary and secondary sources;

(C) record data, using available technology (e.g., word processors) in order to see the relationships between ideas, and convert graphic/visual data (e.g., charts, diagrams, timelines) into written notes;

(D) identify the source of notes (e.g., author, title, page number) and record bibliographic information concerning those sources according to a standard format; and

(E) differentiate between paraphrasing and plagiarism and identify the importance of citing valid and reliable sources.

(18) Research/Synthesizing Information. Students clarify research questions and evaluate and synthesize collected information. The student is expected to:

(A) refocus the major research question, if necessary, guided by the answers to a secondary set of questions; and

(B) evaluate the relevance and reliability of sources for the research.

(19) Research/Organizing and Presenting Ideas. Students organize and present their ideas and information according to the purpose of the research and their audience. The student is expected to synthesize the research into a written or an oral presentation that:

(A) compiles important information from multiple sources;

(B) develops a topic sentence, summarizes findings, and uses evidence to support conclusions;

(C) presents the findings in a consistent format; and

(D) uses quotations to support ideas and an appropriate form of documentation to acknowledge sources (e.g., bibliography, works cited).

(20) Listening and Speaking/Listening. Students listen attentively to others in formal and informal settings. The student is expected to:

(A) listen to and interpret a speaker's messages (both verbal and nonverbal) and ask questions to clarify the speaker's purpose and perspective;

(B) follow, restate, and give oral instructions that include multiple action steps; and

(C) paraphrase the major ideas and supporting evidence presented in spoken messages and formal presentations.

(21) Listening and Speaking/Speaking. Students speak clearly and to the point. The student is expected to give a presentation with a focused organization and a specific point of view, employing eye contact, speaking rate, volume, enunciation, and natural gestures to communicate ideas effectively.

(22) Listening and Speaking/Teamwork. Students work productively with others in teams. The student is expected to participate in student-led small-group discussions by eliciting and considering suggestions from other group members and identifying points of agreement and disagreement.

(23) Oral and Written Conventions/Conventions. Students identify and use the grammatical conventions of academic language when speaking and writing. The student is expected to:

(A) identify and use the following parts of speech in the context of reading, writing, and speaking:

(i) verbs (irregular verbs and passive voice);

(ii) non-count nouns (e.g., rice, paper);

(iii) comparatives and superlatives (e.g., many, more, most);

(iv) relative pronouns (e.g., whose, which, that); and

(v) transitional words and phrases (e.g., on the contrary, in addition to);

(B) differentiate between the active and passive voice and know how to use them both; and

(C) identify and use a variety of complete simple and compound sentences with correct subject-verb agreement and distinguish between complete and incomplete sentences.

(24) Oral and Written Conventions/Handwriting, Capitalization, and Punctuation. Students write legibly and use appropriate capitalization and punctuation conventions in their compositions. The student is expected to:

(A) use capitalization for:

(i) abbreviations;

(ii) initials and acronyms; and

(iii) organizations;

(B) use proper mechanics including italics and underlining for titles of books; and

(C) recognize and use punctuation marks including:

(i) commas in compound sentences;

(ii) proper punctuation and spacing for quotations;

and

(iii) parentheses, brackets, and ellipses (to indicate omissions and interruptions or incomplete statements).

(25) Oral and Written Conventions/Spelling. Students spell correctly. The student is expected to:

(A) differentiate between commonly confused terms (e.g., its, it's; affect, effect);

(B) use spelling patterns and rules and print and electronic resources to determine and check correct spellings; and

(C) know how to use the spell-check function in word processing while understanding its limitations.

§110.19. English Language Arts and Reading, Grade 7, Beginning with School Year 2009-2010.

(a) Introduction.

(1) The English Language Arts and Reading Texas Essential Knowledge and Skills (TEKS) are organized into the following strands: Reading, where students read and understand a wide variety of literary and informational texts; Writing, where students compose a variety of written texts with a clear controlling idea, coherent organization, and sufficient detail; Research, where students are expected to know how to locate a range of relevant sources and evaluate, synthesize, and present ideas and information; Listening and Speaking, where students listen and respond to the ideas of others while contributing their own ideas in conversations and in groups; and Oral and Written Conventions, where students learn how to use the oral and written conventions of the English language in speaking and writing. The standards are cumulative--students will continue to address earlier standards as needed while they attend to standards for their grade. In seventh grade, students will engage in activities that build on their prior knowledge and skills in order to strengthen their reading, writing, and oral language skills. Students should read and write on a daily basis.

(2) For seventh grade students whose first language is not English, the students' native language serves as a foundation for English language acquisition.

(3) To meet Public Education Goal 1 of the Texas Education Code, §4.002, which states, "The students in the public education system will demonstrate exemplary performance in the reading and

writing of the English language," students will accomplish the essential knowledge, skills, and student expectations at Grade 7 as described in subsection (b) of this section.

(4) To meet Texas Education Code, §28.002(h), which states, ". . . each school district shall foster the continuation of the tradition of teaching United States and Texas history and the free enterprise system in regular subject matter and in reading courses and in the adoption of textbooks," students will be provided oral and written narratives as well as other informational texts that can help them to become thoughtful, active citizens who appreciate the basic democratic values of our state and nation.

(b) Knowledge and skills.

(1) Reading/Vocabulary Development. Students understand new vocabulary and use it correctly when reading and writing. The student is expected to:

(A) determine the meaning of grade-level academic English words derived from Latin, Greek, or other linguistic roots and affixes;

(B) use context to determine the differences in precise meaning among words with related meanings (e.g., irritated, angry, irate) and explain how writers and speakers use language to evoke emotions in their audiences;

(C) complete analogies that describe part to whole or whole to part;

(D) identify the meaning of foreign words commonly used in written English with emphasis on Latin and Greek words (e.g., *habeus corpus*, *e pluribus unum*, *bona fide*, *nemesis*); and

(E) use a dictionary, a glossary, or a thesaurus (printed or electronic) to determine the meanings, syllabication, pronunciations, alternate word choices, and parts of speech of words.

(2) Reading/Comprehension of Literary Text/Theme and Genre. Students analyze theme and genre in different cultural, historical, and contemporary contexts and provide evidence from the text to support their understanding. The student is expected to:

(A) recognize and describe multiple themes in a work of fiction;

(B) identify conventions in epic tales (e.g., extended simile, the quest, the hero's tasks, special weapons or clothing, helpers) in traditional literature;

(C) describe how place and time can influence the theme or message of a literary work; and

(D) relate a literary work to artifacts, artistic creations, or historical sites of the period of its setting.

(3) Reading/Comprehension of Literary Text/Poetry. Students understand the structure and elements of poetry and respond by providing evidence from text to support their understanding. The student is expected to:

(A) analyze the importance of graphical elements (e.g., capital letters, line length, word position) on the meaning of a poem; and

(B) recite grade-level poems, using expressive gestures, clear diction, and appropriate rhythm, pace, and phrasing.

(4) Reading/Comprehension of Literary Text/Drama. Students understand the structure and elements of drama and respond by providing evidence from text to support their understanding. The student is expected to explain the similarities and differences in the setting,



characters, and plot of a play and those in a film based upon the same story line.

(5) Reading/Comprehension of Literary Text/Fiction. Students understand the structure and elements of fiction and respond by providing evidence from text to support their understanding. The student is expected to:

(A) draw conclusions about the relevance of the setting to the mood and tone of works of fiction;

(B) analyze linear plot development (e.g., conflict, rising action, falling action, resolution, subplots) in a work of fiction to determine whether and how conflicts are resolved;

(C) make inferences about characters' motivations and conflicts;

(D) analyze different forms of point of view, including first-person, third-person omniscient, and third-person limited;

(E) explain the characteristics of mysteries, science fiction, and historical fiction as genres of fiction; and

(F) adjust fluency when reading aloud grade-level text based on the reading purpose and the nature of the text.

(6) Reading/Comprehension of Literary Text/Literary Nonfiction. Students understand the varied structural patterns and features of literary nonfiction and respond by providing evidence from text to support their understanding. The student is expected to:

(A) describe the structural and substantive differences between an autobiography; and

(B) outline the character in a character sketch, including the person's outward appearance, personality, interests, and beliefs.

(7) Reading/Comprehension of Literary Text/Sensory Language. Students understand how an author's sensory language creates imagery in literary text and provide evidence from text to support their understanding. The student is expected to analyze how an author's use of language creates imagery, appeals to the senses, and suggests mood.

(8) Reading/Comprehension of Informational Text/Culture and History. Students analyze and understand the author's purpose in cultural, historical, and contemporary contexts and respond by providing evidence from the text to support their understanding. The student is expected to explain the difference between the theme of a literary work and the author's purpose in an expository text.

(9) Reading/Comprehension of Informational Text/Expository Text. Students analyze and understand expository text and respond by providing evidence from text to support their understanding. The student is expected to:

(A) summarize the main ideas, supporting details, and relationships among ideas in text succinctly in ways that maintain logical order;

(B) distinguish facts from commonplace assertions and opinions (e.g., consider reading history books or encyclopedia articles on Lyndon Johnson, Michael DeBakey, Buffalo Soldiers, Texas Rangers);

(C) use different organizational patterns as guides for summarizing different kinds of expository text;

(D) use multiple text features to answer questions and summarize ideas (e.g., footnotes, endnotes, bibliographies, sidebars, captions);

(E) distinguish between the purposes and other characteristics of a report and an expository essay;

(F) explain how multiple print techniques (e.g., layout, graphics, color) interact to produce a media message; and

(G) evaluate how visual image-makers (e.g., documentary filmmakers, news reporters) inform their audiences.

(10) Reading/Comprehension of Informational Text/Persuasive Text. Students analyze and understand persuasive text and respond by providing evidence from text to support their analysis. The student is expected to:

(A) compare and contrast the evidence presented and conclusions reached in two or more arguments on the same topic; and

(B) identify such rhetorical fallacies as attack ad hominem, exaggeration, stereotyping, or categorical claims in persuasive texts.

(11) Reading/Comprehension of Informational Text/Procedural Texts. Students understand how to glean and use information in procedural texts and documents. The student is expected to:

(A) follow multi-dimensional instructions from text to complete a task, solve a problem, or perform procedures; and

(B) explain the function of the graphical components of a text.

(12) Writing/Writing Process. Students use elements of the writing process (planning, drafting, revising, editing, and publishing) to compose text. The student is expected to:

(A) plan a first draft by selecting a genre appropriate for conveying the intended meaning to an audience, determining appropriate topics through a range of strategies (e.g., discussion, background reading, personal interests, interviews), and developing a thesis or controlling idea;

(B) develop drafts by choosing an appropriate organizational strategy (e.g., sequence of events, cause-effect, compare-contrast) and building on ideas to create a focused, organized, and coherent piece of writing;

(C) revise drafts to ensure precise word choice and vivid image; consistent point of view; use of simple, compound, and complex sentences; internal and external coherence; and the use of effective transitions;

(D) edit drafts for grammar, mechanics, and spelling; and

(E) revise final draft in response to feedback from peers and teacher and publish written work for appropriate audiences.

(13) Writing/Literary Texts. Students write literary texts to express their ideas and feelings about real or imagined people, events, and ideas. The student is expected to:

(A) write an imaginative story that:

(i) sustains reader interest;

(ii) includes well-paced action and an engaging story line;

(iii) develops interesting characters; and

(iv) uses a range of literary strategies and devices to enhance the style and tone; and

(B) write a poem using:

(i) poetic techniques (e.g., rhyme scheme, meter);

(ii) figurative language (e.g., personification, idioms, hyperbole); and

(iii) graphic elements (e.g., word position).

(14) Writing/Expository and Procedural Texts. Students write expository and procedural or work-related texts to communicate ideas and information to specific audiences for specific purposes. The student is expected to:

(A) write a multi-paragraph essay that:

(i) presents effective introductions and concluding paragraphs;

(ii) contains a clearly stated purpose or controlling idea;

(iii) is logically organized with appropriate facts and details and includes no extraneous information or inconsistencies; and

(iv) uses a variety of sentence structures, rhetorical devices, and transitions to link paragraphs;

(B) write a letter that reflects an opinion, registers a complaint, or requests information in a business or friendly context;

(C) write an informational report that logically and accurately relates ideas from several sources and demonstrates the writing skills for multi-paragraph essays; and

(D) write responses to literary or expository texts that demonstrate the writing skills for multi-paragraph essays and provide evidence from the text using quotations when appropriate.

(15) Writing/Persuasive Texts. Students write persuasive texts to influence the attitudes or actions of a specific audience on specific issues. The student is expected to write a persuasive essay to the appropriate audience that:

(A) establishes a clear controlling idea;

(B) considers and responds to the views of others and anticipates and answers reader concerns and counter-arguments; and

(C) includes evidence that is logically organized to support the author's viewpoint and that differentiates between fact and opinion.

(16) Research/Research Plan. Students ask open-ended research questions and develop a plan for answering them. The student is expected to:

(A) brainstorm, consult with others, decide upon a topic, and formulate a major research question to address the selected research topic; and

(B) apply steps for obtaining and evaluating information from a wide variety of sources and create a written plan after preliminary research in reference works and additional text searches.

(17) Research/Gathering Sources. Students determine, locate, and explore the full range of relevant sources addressing a research question and systematically record the information they gather. The student is expected to:

(A) follow the research plan to gather information from a range of relevant print and electronic sources using advanced search strategies;

(B) categorize information thematically in order to see the larger constructs inherent in the information;

(C) record bibliographic information (e.g., author, title, page number) for all notes and sources according to a standard format; and

(D) differentiate between paraphrasing and plagiarism and identify the importance of citing valid and reliable sources.

(18) Research/Synthesizing Information. Students clarify research questions and evaluate and synthesize collected information. The student is expected to:

(A) narrow or broaden the major research question, if necessary, based on further research and investigation;

(B) identify elements that demonstrate the reliability and validity of the sources used (e.g., publication date, coverage, language, point of view); and

(C) differentiate between theories and the evidence that supports them and explain why one source is more useful than another.

(19) Research/Organizing and Presenting Ideas. Students organize and present their ideas and information according to the purpose of the research and their audience. The student is expected to synthesize the research into a written or an oral presentation that:

(A) draws conclusions and summarizes or paraphrases the findings in a systematic way;

(B) marshals evidence to explain the topic and gives relevant reasons for conclusions; and

(C) follows accepted formats for integrating quotations and citations into the written text to maintain a flow of ideas.

(20) Listening and Speaking/Listening. Students listen attentively to others in formal and informal settings. The student is expected to:

(A) listen to and interpret a speaker's purpose by explaining the content, evaluating the delivery of the presentation, and asking questions or making comments about the evidence that supports a speaker's claims;

(B) follow, restate, and give oral instructions that include multiple action steps; and

(C) draw conclusions and make inferences about the meaning and purpose of presentations by relating a speaker's verbal communication (e.g., word choice, tone) and the nonverbal cues used (e.g., posture, gestures, facial expressions).

(21) Listening and Speaking/Speaking. Students speak clearly and to the point. The student is expected to present a critique of a literary work, film, or dramatic production, employing eye contact, speaking rate, volume, enunciation, and a variety of natural gestures to communicate ideas effectively.

(22) Listening and Speaking/Teamwork. Students work productively with others in teams. The student is expected to know and apply rules for small-group discussions, including planning agendas, setting time limits for speakers, taking votes on key issues, and setting clear goals and deadlines.

(23) Oral and Written Conventions/Conventions. Students identify and use the grammatical conventions of academic language when speaking and writing. The student is expected to:

(A) identify and use the following parts of speech in the context of reading, writing, and speaking:

(i) verbs (perfect and progressive tenses);

(ii) relative pronouns (e.g., whose, that, which);

(iii) subordinating conjunctions (e.g., because, since);

(iv) appositive phrases; and

(v) adverbial and adjectival phrases and clauses;

(B) write complex sentences and identify main versus subordinate clauses; and

(C) identify and use a variety of complete sentences (e.g., simple, compound, complex) that include properly placed modifiers, correctly identified antecedents, parallel structures, and consistent tenses.

(24) Oral and Written Conventions/Handwriting, Capitalization, and Punctuation. Students write legibly and use appropriate capitalization and punctuation conventions in their compositions. The student is expected to:

(A) use conventions of capitalization; and

(B) recognize and use punctuation marks including:

(i) commas after introductory structures and dependent adverbial clauses; and

(ii) semicolons, colons, and hyphens.

(25) Oral and Written Conventions/Spelling. Students spell correctly. The student is expected to spell correctly, including using various resources to find correct spellings.

§110.20. English Language Arts and Reading, Grade 8, Beginning with School Year 2009-2010.

(a) Introduction.

(1) The English Language Arts and Reading Texas Essential Knowledge and Skills (TEKS) are organized into the following strands: Reading, where students read and understand a wide variety of literary and informational texts; Writing, where students compose a variety of written texts with a clear controlling idea, coherent organization, and sufficient detail; Research, where students are expected to know how to locate a range of relevant sources and evaluate, synthesize, and present ideas and information; Listening and Speaking, where students listen and respond to the ideas of others while contributing their own ideas in conversations and in groups; and Oral and Written Conventions, where students learn how to use the oral and written conventions of the English language in speaking and writing. The standards are cumulative--students will continue to address earlier standards as needed while they attend to standards for their grade. In eighth grade, students will engage in activities that build on their prior knowledge and skills in order to strengthen their reading, writing, and oral language skills. Students should read and write on a daily basis.

(2) For eighth grade students whose first language is not English, the students' native language serves as a foundation for English language acquisition.

(3) To meet Public Education Goal 1 of the Texas Education Code, §4.002, which states, "The students in the public education system will demonstrate exemplary performance in the reading and writing of the English language," students will accomplish the essential knowledge, skills, and student expectations at Grade 8 as described in subsection (b) of this section.

(4) To meet Texas Education Code, §28.002(h), which states, ". . . each school district shall foster the continuation of the tradition of teaching United States and Texas history and the free enterprise system in regular subject matter and in reading courses and in the adoption of textbooks," students will be provided oral and written narratives as well as other informational texts that can help

them to become thoughtful, active citizens who appreciate the basic democratic values of our state and nation.

(b) Knowledge and skills.

(1) Reading/Vocabulary Development. Students understand new vocabulary and use it correctly when reading and writing. The student is expected to:

(A) determine the meaning of grade-level academic English words derived from Latin, Greek, or other linguistic roots and affixes;

(B) analyze context within a sentence and in larger sections of text to determine or clarify the meaning of unfamiliar or ambiguous words;

(C) complete analogies that describe a function or its description (e.g., pen:paper as chalk: \_\_\_\_\_ or soft:kitten as hard: \_\_\_\_\_);

(D) identify common words or word parts from other languages that are used in written English (e.g., phenomenon, charisma, chorus, passé, flora, fauna); and

(E) use a dictionary, a glossary, or a thesaurus (printed or electronic) to determine the meanings, syllabication, pronunciations, alternate word choices, and parts of speech of words.

(2) Comprehension of Literary Text/Theme and Genre. Students analyze theme and genre in different cultural, historical, and contemporary contexts and provide evidence from the text to support their understanding. The student is expected to:

(A) compare and contrast works of fiction that share similar themes;

(B) compare and contrast the similarities and differences in mythologies from different cultures (e.g., ideas of afterlife, roles and characteristics of deities, purposes of myths); and

(C) explain how the values and beliefs of a particular character are affected by the historical context of the work.

(3) Comprehension of Literary Text/Poetry. Students understand the structure and elements of poetry and respond by providing evidence from text to support their understanding. The student is expected to:

(A) explain the relationship between the purpose and characteristics of different poetic forms (e.g., epic poetry, lyric poetry);

(B) listen to the poems and analyze how poets use sound effects (alliteration, internal rhyme, rhyme scheme, onomatopoeia) as reinforcement of meaning in serious poems; and

(C) recite grade-level poems using expressive gestures, clear diction, and appropriate rhythm, pace, and phrasing.

(4) Comprehension of Literary Text/Drama. Students understand the structure and elements of drama and respond by providing evidence from text to support their understanding. The student is expected to analyze how different playwrights characterize their protagonists and antagonists through the dialogue and staging of their plays.

(5) Comprehension of Literary Text/Fiction. Students understand the structure and elements of fiction and respond by providing evidence from text to support their understanding. The student is expected to:

(A) summarize the influence of the setting on the work of fiction;

(B) analyze the use of flashback and foreshadowing in plot development;

(C) analyze and infer how the central characters' qualities influence the theme and resolution of the conflict;

(D) analyze different forms of point of view, including limited versus omniscient, subjective versus objective;

(E) identify the forms of fiction and explain the characteristics of each genre; and

(F) adjust fluency when reading aloud grade-level text based on the reading purpose and the nature of the text.

(6) Comprehension of Literary Text/Literary Nonfiction. Students understand the varied structural patterns and features of literary nonfiction and respond by providing evidence from text to support their understanding. The student is expected to:

(A) analyze passages in well-known speeches for the author's use of literary devices and word and phrase choice (e.g., aphorisms, epigraphs) to appeal to the audience; and

(B) distinguish between the purposes and characteristics of book reviews and responses to literature.

(7) Comprehension of Literary Text/Sensory Language. Students understand how an author's sensory language creates imagery in literary text and provide evidence from text to support their understanding. The student is expected to explain the effect of similes and extended metaphors in literary text.

(8) Comprehension of Informational Text/Culture and History. Students analyze and understand the author's purpose in cultural, historical, and contemporary contexts and respond by providing evidence from the text to support their understanding. The student is expected to analyze works written on the same topic and compare how the authors achieved similar or different purposes.

(9) Comprehension of Informational Text/Expository Text. Students analyze and understand expository text and respond by providing evidence from text to support their understanding. The student is expected to:

(A) evaluate a summary of the original text for accuracy of the main ideas, supporting details, and overall meaning;

(B) differentiate between opinions in a text that are substantiated and unsubstantiated;

(C) use multiple text features and graphics to gain an overview of the contents of a text and to determine where to locate information;

(D) explain the differences between historical fiction and historical nonfiction;

(E) analyze how information presented in the media is conveyed through visual and sound techniques (e.g., editing, reaction shots, sequencing, background music); and

(F) analyze forms of potential or actual bias in journalistic media (e.g., nightly news programs, news features or specials, news magazines).

(10) Comprehension of Informational Text/Persuasive Text. Students analyze and understand persuasive text and respond by providing evidence from text to support their analysis. The student is expected to:

(A) analyze persuasive texts that reached different conclusions about the same issue and explain how the authors reached different conclusions; and

(B) analyze persuasive texts to identify such rhetorical and logical fallacies as loaded terms, caricatures, leading questions, false assumptions, and incorrect premises.

(11) Comprehension of Informational Text/Procedural Texts. Students understand how to glean and use information in procedural texts and documents. The student is expected to:

(A) analyze text for missing or extraneous information in multi-step directions or legends for diagrams (e.g., consider reading a product manual and determine what elements of the text are crucial to its meaning and what text is redundant or unnecessary); and

(B) evaluate graphics for their clarity in communicating meaning or achieving a specific purpose.

(12) Writing/Writing Process. Students use elements of the writing process (planning, drafting, revising, editing, and publishing) to compose text. The student is expected to:

(A) plan a first draft by selecting a genre appropriate for conveying the intended meaning to an audience, determining appropriate topics through a range of strategies (e.g., discussion, background reading, personal interests, interviews), and developing a thesis or controlling idea;

(B) develop drafts by choosing an appropriate organizational strategy (e.g., sequence of events, cause-effect, compare-contrast) and building on ideas to create a focused, organized, and coherent piece of writing;

(C) revise drafts to ensure precise word choice and vivid image; consistent point of view; use of simple, compound, and complex sentences; internal and external coherence; and the use of effective transitions;

(D) edit drafts for grammar, mechanics, and spelling;

(E) revise final draft in response to feedback from peers and teacher and publish written work for appropriate audiences.

(13) Writing/Literary Texts. Students write literary texts to express their ideas and feelings about real or imagined people, events, and ideas. The student is expected to:

(A) write an imaginative story that:

(i) sustains reader interest;

(ii) includes well-paced action and an engaging story line;

(iii) develops interesting and believable characters;

(iv) uses a range of literary strategies and devices to enhance the style and tone; and

(B) write a poem using:

(i) poetic techniques (e.g., rhyme scheme, meter);

(ii) figurative language (e.g., personification, idioms, hyperbole); and

(iii) graphic elements (e.g., word position).

(14) Writing/Expository and Procedural Texts. Students write expository and procedural or work-related texts to communicate

ideas and information to specific audiences for specific purposes. The student is expected to:

(A) write a multi-paragraph essay that:

(i) presents effective introductions and concluding paragraphs;

(ii) contains a clearly stated purpose and controlling idea;

(iii) is logically organized with appropriate facts and details and includes no extraneous information or inconsistencies; and

(iv) uses a variety of sentence structures, rhetorical devices, and transitions to link paragraphs;

(B) write a letter that reflects an opinion, registers a complaint, or requests information in a business or friendly context;

(C) write an informational report that demonstrates the use of writing skills for a multi-paragraph essay, accurately synthesizing material from several sources, and documenting sources;

(D) write responses to literary or expository texts that demonstrate the use of writing skills for a multi-paragraph essay and provide sustained evidence from the text using quotations when appropriate; and

(E) produce a multimedia presentation involving text, graphics, images, and sound using available technology.

(15) Writing/Persuasive Texts. Students write persuasive texts to influence the attitudes or actions of a specific audience on specific issues. The student is expected to write a persuasive essay to the appropriate audience that:

(A) establishes a clear thesis or position;

(B) considers and responds to the views of others and anticipates and answers reader concerns and counter-arguments; and

(C) includes evidence that is logically organized to support the author's viewpoint and that differentiates between fact and opinion.

(16) Research/Research Plan. Students ask open-ended research questions and develop a plan for answering them. The student is expected to:

(A) brainstorm, consult with others, decide upon a topic, and formulate a major research question to address the major research topic; and

(B) apply steps for obtaining and evaluating information from a wide variety of sources and create a written plan after preliminary research in reference works and additional text searches.

(17) Research/Gathering Sources. Students determine, locate, and explore the full range of relevant sources addressing a research question and systematically record the information they gather. The student is expected to:

(A) follow the research plan to gather information from a range of relevant print and electronic sources using advanced search strategies;

(B) categorize information thematically in order to see the larger constructs inherent in the information;

(C) record bibliographic information (e.g., author, title, page number) for all notes and sources according to a standard format; and

(D) differentiate between paraphrasing and plagiarism and identify the importance of using valid and reliable sources.

(18) Research/Synthesizing Information. Students clarify research questions and evaluate and synthesize collected information. The student is expected to:

(A) narrow or broaden the major research question, if necessary, based on further research and investigation;

(B) identify elements that demonstrate the reliability and validity of the sources used (e.g., publication date, coverage, language, point of view); and

(C) differentiate between theories and the evidence that supports them and explain why one source is more useful and relevant than another.

(19) Research/Organizing and Presenting Ideas. Students organize and present their ideas and information according to the purpose of the research and their audience. The student is expected to synthesize the research into a written or an oral presentation that:

(A) draws conclusions and summarizes or paraphrases the findings in a systematic way;

(B) marshals evidence to explain the topic and gives relevant reasons for conclusions; and

(C) follows accepted formats for integrating quotations and citations into the written text to maintain a flow of ideas.

(20) Listening and Speaking/Listening. Students listen attentively to others in formal and informal settings. The student is expected to:

(A) listen to and interpret a speaker's purpose by explaining the content, evaluating the delivery of the presentation, and asking questions or making comments about the evidence that supports a speaker's claims;

(B) follow, restate, and give oral instructions that include multiple action steps; and

(C) summarize formal and informal presentations made in various genres in an organized manner and distinguish among facts, opinions, and rhetorical devices used.

(21) Listening and Speaking/Speaking. Students speak clearly and to the point. The student is expected to present an opinion that uses anecdotes, analogies, and/or illustrations to advocate a position, employing eye contact, speaking rate, volume, enunciation, and a variety of natural gestures to communicate ideas effectively.

(22) Listening and Speaking/Teamwork. Students work productively with others in teams. The student is expected to know and apply rules for small-group discussions, including planning agendas, setting time limits for speakers, taking votes on key issues, and setting clear goals and deadlines.

(23) Oral and Written Conventions/Conventions. Students identify and use the grammatical conventions of academic language when speaking and writing. The student is expected to:

(A) identify and use the following parts of speech in the context of reading, writing, and speaking:

(i) verbs (perfect and progressive tenses);

(ii) relative pronouns (e.g., whose, that, which);

(iii) subordinating conjunctions (e.g., because, since);

(iv) appositive phrases; and

(v) adverbial and adjectival phrases and clauses;

(B) write complex sentences and identify main versus subordinate clauses; and

(C) identify and use a variety of complete sentences (e.g., simple, compound, complex) that include properly placed modifiers, correctly identified antecedents, parallel structures, and consistent tenses.

(24) Oral and Written Conventions/Handwriting, Capitalization, and Punctuation. Students write legibly and use appropriate capitalization and punctuation conventions in their compositions. The student is expected to:

(A) use conventions of capitalization; and

(B) use correct punctuation marks including:

(i) commas after introductory structures and dependent adverbial clauses; and

(ii) semicolons, colons, and hyphens.

(25) Oral and Written Conventions/Spelling. Students spell correctly. The student is expected to spell correctly, including using various resources to find correct spellings.

§110.21. Implementation of Texas Essential Knowledge and Skills for English Language Arts and Reading, Middle School.

The provisions of §§110.22 - 110.24 of this subchapter shall be superseded by §§110.18 - 110.20 of this subchapter [implemented by school districts] beginning with the 2009-2010 school year [September 1, 1998, and at that time shall supersede §75.23(m) and §75.41 of this title (relating to English Language Arts)].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 7, 2008.

TRD-200801819

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Earliest possible date of adoption: May 18, 2008

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



## SUBCHAPTER C. HIGH SCHOOL

### 19 TAC §§110.30 - 110.34, 110.41

The new sections and amendment are proposed under the Texas Education Code, §7.102(c)(4), which authorizes the SBOE to establish curriculum and graduation requirements, §28.002, which authorizes the SBOE to by rule identify the essential knowledge and skills of each subject of the required curriculum that all students should be able to demonstrate and that will be used in evaluating textbooks and addressed on the assessment instruments, and §28.025, which authorizes the SBOE to by rule determine curriculum requirements for the minimum, recommended, and advanced high school programs that are consistent with the required curriculum under §28.002.

The new sections and amendment implement the Texas Education Code, §§7.102(c)(4), 28.002, and 28.025.

§110.30. Implementation of Texas Essential Knowledge and Skills for English Language Arts and Reading, High School, Beginning with School Year 2009-2010.

The provisions of §§110.31 - 110.34 of this subchapter shall be implemented by school districts beginning with the 2009-2010 school year and at that time shall supersede §§110.42 - 110.45 of this subchapter.

§110.31. English Language Arts and Reading, English I (One Credit), Beginning with School Year 2009-2010.

#### (a) Introduction.

(1) The English Language Arts and Reading Texas Essential Knowledge and Skills (TEKS) are organized into the following strands: Reading, where students read and understand a wide variety of literary and informational texts; Writing, where students compose a variety of written texts with a clear controlling idea, coherent organization, and sufficient detail; Research, where students are expected to know how to locate a range of relevant sources and evaluate, synthesize, and present ideas and information; Listening and Speaking, where students listen and respond to the ideas of others while contributing their own ideas in conversations and in groups; and Oral and Written Conventions, where students learn how to use the oral and written conventions of the English language in speaking and writing. The standards are cumulative--students will continue to address earlier standards as needed while they attend to standards for their grade. In English I, students will engage in activities that build on their prior knowledge and skills in order to strengthen their reading, writing, and oral language skills. Students should read and write on a daily basis.

(2) For English I students whose first language is not English, the students' native language serves as a foundation for English language acquisition.

(3) To meet Public Education Goal 1 of the Texas Education Code, §4.002, which states, "The students in the public education system will demonstrate exemplary performance in the reading and writing of the English language," students will accomplish the essential knowledge, skills, and student expectations in English I as described in subsection (b) of this section.

(4) To meet Texas Education Code, §28.002(h), which states, ". . . each school district shall foster the continuation of the tradition of teaching United States and Texas history and the free enterprise system in regular subject matter and in reading courses and in the adoption of textbooks," students will be provided oral and written narratives as well as other informational texts that can help them to become thoughtful, active citizens who appreciate the basic democratic values of our state and nation.

#### (b) Knowledge and skills.

(1) Reading/Vocabulary Development. Students understand new vocabulary and use it correctly when reading and writing. The student is expected to:

(A) determine the meaning of grade-level academic English words derived from Latin, Greek, or other linguistic roots and affixes;

(B) analyze the context to distinguish between the denotative and connotative meanings of words;

(C) produce analogies that describe a function of an object or its description;

(D) describe the origins and meaning of foreign words or phrases used frequently in written English (e.g., *caveat emptor*, *carte blanche*, *tete a tete*, *pas de deux*, *bon appetit*, *quid pro quo*); and

(E) use a dictionary, a glossary, or a thesaurus (printed or electronic) to determine or confirm the meanings of words and phrases, including their connotations and denotations, and their etymology.

(2) Reading/Comprehension of Literary Text/Theme and Genre. Students analyze theme and genre in different cultural, historical, and contemporary contexts and provide evidence from the text to support their understanding. The student is expected to:

(A) compare similar themes across cultures; and

(B) analyze the characters, structure, and themes of classical and traditional literature and trace their influence on 20th century works.

(3) Reading/Comprehension of Literary Text/Poetry. Students understand the structure and elements of poetry and respond by providing evidence from text to support their understanding. The student is expected to analyze and evaluate the appropriateness of diction and imagery (controlling images, figurative language, understatement, overstatement, irony, paradox).

(4) Reading/Comprehension of Literary Text/Drama. Students understand the structure and elements of drama and respond by providing evidence from text to support their understanding. The student is expected to analyze how archetypes and motifs in drama affect the dramatic plot of plays.

(5) Reading/Comprehension of Literary Text/Fiction. Students understand the structure and elements of fiction and respond by providing evidence from text to support their understanding. The student is expected to:

(A) compare and contrast the role of a similar setting in two different works of fiction;

(B) identify and analyze the effects of non-linear plot development (e.g., flashbacks, sub-plots, parallel plot structures);

(C) analyze how authors develop complex yet believable characters in works of fiction through a range of literary devices, including character foils;

(D) analyze the way in which a work of fiction is shaped by the narrator's point of view;

(E) explain the characteristics of different genres of prose with emphasis on short stories, novels, and novellas; and

(F) analyze the style and language of an adventure story from another culture.

(6) Reading/Comprehension of Literary Text/Literary Nonfiction. Students understand the varied structural patterns and features of literary nonfiction and respond by providing evidence from text to support their understanding. The student is expected to:

(A) analyze how classical essays interweave personal examples and ideas with factual information to explain, present a perspective, or describe a situation or event; and

(B) analyze the role of syntax and diction in the overall effectiveness of a literary essay or speech.

(7) Reading/Comprehension of Literary Text/Sensory Language. Students understand how an author's sensory language creates imagery in literary text and provide evidence from text to support their understanding. The student is expected to explain the function of symbolism, allegory, and hyperbole in literary works.

(8) Reading/Comprehension of Informational Text/Culture and History. Students analyze and understand the author's purpose in

cultural, historical, and contemporary contexts and respond by providing evidence from the text to support their understanding. The student is expected to explain the controlling idea and specific purpose of an expository text and distinguish the most important from the less important details that support the author's purpose.

(9) Reading/Comprehension of Informational Text/Expository Text. Students analyze and understand expository text and respond by providing evidence from text to support their understanding. The student is expected to:

(A) compare and contrast the central ideas and details in several texts selected to reflect a range of viewpoints on the same topic (e.g., read essays on foreign policy);

(B) draw conclusions about the logic and credibility of evidence used to support an argument;

(C) analyze how the organizational pattern of a text influences the relationships among the ideas in the text;

(D) explain how sentence variety, word choice, and other text features affect the clarity and coherence of an expository essay;

(E) describe the structure and features of a nonfiction work of science or history for a general audience;

(F) distinguish between inductive and deductive reasoning;

(G) interpret how visual and sound techniques (e.g., special effects, camera angles, lighting, and music in television or film) used in different types of media influence the information presented; and

(H) compare and contrast coverage of the same news event in various types of media (e.g., newspapers, television, documentaries, Internet).

(10) Reading/Comprehension of Informational Text/Persuasive Text. Students analyze and understand persuasive text and respond by providing evidence from text to support their analysis. The student is expected to:

(A) distinguish facts from simple assertions and opinions and evaluate inferences for their logic in text;

(B) analyze the relevance and quality of evidence given to support an author's argument; and

(C) analyze recent campaign speeches by candidates of both major political parties and identify the rhetorical structure and devices used to convince the reader of the authors' propositions.

(11) Reading/Comprehension of Informational Text/Procedural Texts. Students understand how to glean and use information in procedural texts and documents. The student is expected to:

(A) analyze the clarity of the objective(s) of text (e.g., consider reading instructions for software, warranties, consumer publications); and

(B) analyze the clarity of the factual, quantitative, or technical data presented in multiple graphical sources to complete a task, solve a problem, or perform procedures.

(12) Writing/Writing Process. Students use elements of the writing process (planning, drafting, revising, editing, and publishing) to compose text. The student is expected to:

(A) plan a first draft by selecting the correct genre for conveying the intended meaning to multiple audiences, determining

appropriate topics through a range of strategies (e.g., discussion, background reading, personal interests, interviews), and developing a thesis or controlling idea;

(B) develop drafts in timed and open-ended situations that structure ideas in a sustained and persuasive way (e.g., using outlines, note taking, graphic organizers, lists) and include transitions and the rhetorical devices used to convey meaning;

(C) revise drafts to improve style, word choice, figurative language, sentence variety, and subtlety of meaning after rethinking how well questions of purpose, audience, and genre have been addressed;

(D) edit drafts to correct grammar, mechanics, and spelling; and

(E) revise final draft in response to feedback from peers and teacher and publish written work for appropriate audiences.

(13) Writing/Literary Texts. Students write literary texts to express their ideas and feelings about real or imagined people, events, and ideas. Students are responsible for two forms of literary writing. The student is expected to:

(A) write an engaging story with a well-developed conflict and resolution, interesting and believable characters, and a range of literary strategies (e.g., dialogue, suspense) and devices to enhance the plot;

(B) write a poem using a variety of poetic techniques (e.g., structural elements, figurative language) and a variety of poetic forms (e.g., sonnets, ballads); and

(C) write a script with an explicit or implicit theme and details that contribute to a definite mood or tone.

(14) Writing/Expository and Procedural Texts. Students write expository and procedural or work-related texts to communicate ideas and information to specific audiences for specific purposes. The student is expected to:

(A) write an analytical essay of sufficient length that includes:

(i) effective introductions and concluding paragraphs and a variety of sentence structures, rhetorical devices, and transitions to link paragraphs;

(ii) a controlling idea or thesis;

(iii) an organizing structure appropriate to purpose, audience, and context; and

(iv) relevant information and valid inferences;

(B) write procedural or work-related documents (e.g., instructions, e-mails, correspondence, memos, project plans) that include:

(i) organized and accurately conveyed information; and

(ii) reader-friendly formatting techniques;

(C) write an interpretative response to an expository or a literary text (e.g., essay or review) that:

(i) extends beyond a summary and literal analysis;

(ii) addresses the writing skills for an analytical essay and provides evidence from the text using embedded quotations; and

(iii) analyzes the aesthetic effects of an author's use of stylistic or rhetorical devices; and

(D) produce a multimedia presentation (e.g., documentary, class newspaper, docudrama, infomercial, visual or textual parodies, theatrical production) with graphics, images, and sound that conveys a distinctive point of view and appeals to a specific audience.

(15) Writing/Persuasive Texts. Students write persuasive texts to influence the attitudes or actions of a specific audience on specific issues. The student is expected to write an argumentative essay to the appropriate audience that includes:

(A) a clear position based on logical reasons supported by precise and relevant evidence;

(B) an organizing structure appropriate to the purpose, audience, and context;

(C) an analysis of the relative value of specific data, facts, and ideas;

(D) consideration of the whole range of information and views on the topic and accurate and honest representation of these views; and

(E) counter-arguments based on evidence to anticipate and address objections.

(16) Research/Research Plan. Students ask open-ended research questions and develop a plan for answering them. The student is expected to:

(A) brainstorm, consult with others, decide upon a topic, and formulate a major research question to address the major research topic; and

(B) formulate a plan for engaging in research on a complex, multi-faceted topic.

(17) Research/Gathering Sources. Students determine, locate, and explore the full range of relevant sources addressing a research question and systematically record the information they gather. The student is expected to:

(A) follow the research plan to compile data from authoritative sources in a manner that identifies the major issues and debates within the field of inquiry;

(B) organize information gathered from multiple sources to create a variety of graphics and forms (e.g., notes, learning logs); and

(C) paraphrase, summarize, quote, and accurately cite all researched information according to a standard format.

(18) Research/Synthesizing Information. Students clarify research questions and evaluate and synthesize collected information. The student is expected to:

(A) modify the major research question as necessary to refocus the research plan;

(B) evaluate the relevance of information to the topic and determine the reliability, validity, and accuracy of sources (including Internet sources) by examining their authority and objectivity; and

(C) critique the research process at each step to implement changes as the need occurs and is identified.

(19) Research/Organizing and Presenting Ideas. Students organize and present their ideas and information according to the purpose of the research and their audience. The student is expected to synthesize the research into a written or an oral presentation that:



(A) marshals evidence in support of a clear thesis statement and related claims;

(B) provides an analysis for various audiences that reflects a logical progression of ideas and a clearly stated point of view;

(C) uses graphics and illustrations to help explain concepts where appropriate;

(D) uses a variety of evaluative tools (e.g., self-made rubrics, peer reviews, teacher and expert evaluations) to examine the quality of the research; and

(E) uses a style manual (e.g., *Modern Language Association, Chicago Manual of Style*) to document sources and format written materials.

(20) Listening and Speaking/Listening. Students listen attentively to others in formal and informal settings. The student is expected to:

(A) listen responsively to a speaker by taking notes that summarize, synthesize, or highlight the speaker's ideas for critical reflection and by asking questions related to the content for clarification and elaboration;

(B) follow, restate, and give multi-dimensional oral instructions to perform specific tasks, answer questions, or solve problems; and

(C) evaluate the controlling idea of a presentation and the essential elements that elaborate it.

(21) Listening and Speaking/Speaking. Students speak clearly and to the point. The student is expected to present and advance a unified and coherent argument that incorporates a clear thesis and a logical progression of valid evidence from reliable sources as support, employing eye contact, speaking rate (including pauses for effect), volume, enunciation, and a variety of purposeful gestures to communicate ideas effectively.

(22) Listening and Speaking/Teamwork. Students work productively with others in teams. The student is expected to participate productively in teams, including building on the ideas of others, contributing relevant information, developing a plan for consensus-building, and setting ground rules for decision-making.

(23) Oral and Written Conventions/Conventions. Students identify and use the grammatical conventions of academic language when speaking and writing. The student is expected to:

(A) identify and use the following parts of speech in the context of reading, writing, and speaking:

(i) verbals (gerunds, infinitives, participles);

(ii) reciprocal pronouns (e.g., each other, one another); and

(iii) restrictive and nonrestrictive relative clauses;

(B) identify and use the subjunctive mood to express doubts, wishes, and possibilities in complete sentences; and

(C) identify and use a variety of complete sentences (e.g., compound, complex, compound-complex) with correct syntax and distinguish between complete and incomplete sentences.

(24) Oral and Written Conventions/Handwriting, Capitalization, and Punctuation. Students write legibly and use appropriate capitalization and punctuation conventions in their compositions. The student is expected to:

(A) use conventions of capitalization; and

(B) use correct punctuation marks including:

(i) quotation marks to indicate sarcasm or irony;

(ii) comma placement in nonrestrictive phrases, clauses, and contrasting expressions; and

(iii) dashes to emphasize parenthetical information.

(25) Oral and Written Conventions/Spelling. Students spell correctly. The student is expected to spell correctly, including using various resources to find correct spellings.

§110.32. English Language Arts and Reading, English II (One Credit), Beginning with School Year 2009-2010.

(a) Introduction.

(1) The English Language Arts and Reading Texas Essential Knowledge and Skills (TEKS) are organized into the following strands: Reading, where students read and understand a wide variety of literary and informational texts; Writing, where students compose a variety of written texts with a clear controlling idea, coherent organization, and sufficient detail; Research, where students are expected to know how to locate a range of relevant sources and evaluate, synthesize, and present ideas and information; Listening and Speaking, where students listen and respond to the ideas of others while contributing their own ideas in conversations and in groups; and Oral and Written Conventions, where students learn how to use the oral and written conventions of the English language in speaking and writing. The standards are cumulative--students will continue to address earlier standards as needed while they attend to standards for their grade. In English II, students will engage in activities that build on their prior knowledge and skills in order to strengthen their reading, writing, and oral language skills. Students should read and write on a daily basis.

(2) For English II students whose first language is not English, the students' native language serves as a foundation for English language acquisition.

(3) To meet Public Education Goal 1 of the Texas Education Code, §4.002, which states, "The students in the public education system will demonstrate exemplary performance in the reading and writing of the English language," students will accomplish the essential knowledge, skills, and student expectations in English II as described in subsection (b) of this section.

(4) To meet Texas Education Code, §28.002(h), which states, ". . . each school district shall foster the continuation of the tradition of teaching United States and Texas history and the free enterprise system in regular subject matter and in reading courses and in the adoption of textbooks," students will be provided oral and written narratives as well as other informational texts that can help them to become thoughtful, active citizens who appreciate the basic democratic values of our state and nation.

(b) Knowledge and skills.

(1) Reading/Vocabulary Development. Students understand new vocabulary and use it correctly when reading and writing. The student is expected to:

(A) determine the meaning of grade-level academic English words derived from Latin, Greek, or other linguistic roots and affixes;

(B) use knowledge of Greek, Roman, and Norse mythology alluded to in American and world literature to clarify or understand the meaning of words or phrases (e.g., Trojan Horse, Achilles Heel);

(C) infer word meaning through the identification and analysis of analogies and other word relationships;

(D) analyze the context to distinguish between the denotative and connotative meanings of words and draw conclusions about the nuances in word meanings;

(E) show the relationship between the origins and meaning of foreign words or phrases used frequently in written English and historical events or developments (e.g., *glasnost*, *avant-garde*, *coup d'état*); and

(F) use a dictionary, a glossary, or a thesaurus (printed or electronic) to determine or confirm the meanings of words and phrases, including their connotations and denotations, and etymology.

(2) Reading/Comprehension of Literary Text/Theme and Genre. Students analyze theme and genre in different cultural, historical, and contemporary contexts and provide evidence from the text to support their understanding. The student is expected to:

(A) compare and contrast cross-cultural works of literature that express a universal theme;

(B) analyze archetypes (e.g., journey of a hero, tragic flaw) in mythic, traditional, and classical literature; and

(C) explain the role of literary techniques (e.g., irony, sarcasm, paradox, symbolism) in mythic, traditional, and classical literature.

(3) Reading/Comprehension of Literary Text/Poetry. Students understand the structure and elements of poetry and respond by providing evidence from text to support their understanding. The student is expected to describe the structure or prosody (e.g., meter, rhyme scheme) and graphic elements (e.g., line length, punctuation, word position) in poetry.

(4) Reading/Comprehension of Literary Text/Drama. Students understand the structure and elements of drama and respond by providing evidence from text to support their understanding. The student is expected to explain how dramatic conventions (e.g., monologues, soliloquies, dramatic irony) enhance dramatic text.

(5) Reading/Comprehension of Literary Text/Fiction. Students understand the structure and elements of fiction and respond by providing evidence from text to support their understanding. The student is expected to:

(A) describe the influence of setting on plot, character, theme, and tone;

(B) analyze linear and nonlinear plot developments and support that analysis with evidence drawn from the text;

(C) analyze the development of the plot through the internal responses of the characters;

(D) evaluate the connection between forms of narration (e.g., unreliable, omniscient) and tone in works of fiction; and

(E) analyze differences in the characters' moral dilemmas in 19th century short stories across different countries or cultures.

(6) Reading/Comprehension of Literary Text/Literary Nonfiction. Students understand the varied structural patterns and features of literary nonfiction and respond by providing evidence from text to support their understanding. The student is expected to:

(A) evaluate the effect of voice, tone, and imagery of a speech, classical essay, or other forms of literary nonfiction on the audience; and

(B) analyze the role of denotation, connotation, and irony within literary essays.

(7) Reading/Comprehension of Literary Text/Sensory Language. Students understand how an author's sensory language creates imagery in literary text and provide evidence from text to support their understanding. The student is expected to describe and compare how authors use style to inform readers of aspects of specific cultures, locations, or time periods.

(8) Reading/Comprehension of Informational Text/Culture and History. Students analyze and understand the author's purpose in cultural, historical, and contemporary contexts and respond by providing evidence from the text to support their understanding. The student is expected to analyze the controlling idea and specific purpose of a passage and the textual elements that support and elaborate it, including both the most important details and the less important details.

(9) Reading/Comprehension of Informational Text/Expository Text. Students analyze and understand expository text and respond by providing evidence from text to support their understanding. The student is expected to:

(A) distinguish between a summary that captures the main ideas and elements of a text and a critique that takes a position and expresses an opinion;

(B) distinguish among different kinds of evidence used to support conclusions and arguments (e.g., logical, empirical, anecdotal) in texts;

(C) explain the major organizational patterns of a text (e.g., proposition and support, problem and solution) to form an overview of text;

(D) analyze the elements of deductively and inductively reasoned texts and the different ways conclusions are supported;

(E) analyze how nonfiction authors use literary elements to achieve their purposes;

(F) analyze the intersections and conflicts between visual images and verbal information in various types of media; and

(G) examine the role of specific techniques (e.g., layout or presentation of content) in coverage of the same news event in various types of media (e.g., newspapers, periodicals, television, Internet).

(10) Reading/Comprehension of Informational Text/Persuasive Text. Students analyze and understand persuasive text and respond by providing evidence from text to support their analysis. The student is expected to:

(A) analyze the structure of the central argument in contemporary policy speeches (e.g., argument by cause and effect, analogy, authority);

(B) distinguish between supported and unsupported inferences in contemporary political speeches, editorials, or newspaper articles; and

(C) analyze contemporary political debates for such rhetorical and logical fallacies as appeals to commonly held opinions, false dilemmas, appeals to pity, and personal attacks.

(11) Reading/Comprehension of Informational Text/Procedural Texts. Students understand how to glean and use information in procedural texts and documents. The student is expected to:

(A) evaluate text for the clarity of its graphics and its visual appeal; and

(B) synthesize information from multiple graphical sources to draw conclusions about the ideas presented (e.g., maps, charts, schematics).

(12) Writing/Writing Process. Students use elements of the writing process (planning, drafting, revising, editing, and publishing) to compose text. The student is expected to:

(A) plan a first draft by selecting the correct genre for conveying the intended meaning to multiple audiences, determining appropriate topics through a range of strategies (e.g., discussion, background reading, personal interests, interviews), and developing a thesis or controlling idea;

(B) develop drafts in timed and open-ended situations that structure ideas in a sustained and persuasive way (e.g., using outlines, note taking, graphic organizers, lists) and include transitions and rhetorical devices used to convey meaning;

(C) revise drafts to improve style, word choice, figurative language, sentence variety, and subtlety of meaning after rethinking how well questions of purpose, audience, and genre have been addressed;

(D) edit drafts to correct grammar, mechanics, and spelling; and

(E) revise final draft in response to feedback from peers and teacher and publish written work for appropriate audiences.

(13) Writing/Literary Texts. Students write literary texts to express their ideas and feelings about real or imagined people, events, and ideas. Students are responsible for two forms of literary writing. The student is expected to:

(A) write an engaging story with a well-developed conflict and resolution, interesting and believable characters, a range of literary strategies (e.g., dialogue, suspense) and devices to enhance the plot, and sensory details that define the mood or tone;

(B) write a poem using a variety of poetic techniques (e.g., structural elements, figurative language) and a variety of poetic forms (e.g., sonnets, ballads); and

(C) write a script with an explicit or implicit theme and details that contribute to a definite mood or tone.

(14) Writing/Expository and Procedural Texts. Students write expository and procedural or work-related texts to communicate ideas and information to specific audiences for specific purposes. The student is expected to:

(A) write an analytical essay of sufficient length that includes:

(i) effective introductions and concluding paragraphs and a variety of sentence structures, rhetorical devices, and transitions to link paragraphs;

(ii) a thesis or controlling idea;

(iii) an organizing structure appropriate to purpose, audience, and context;

(iv) relevant evidence and well-chosen details; and

(v) distinctions about the relative value of specific data, facts, and ideas that support the thesis statement;

(B) write procedural or work-related documents (e.g., instructions, e-mails, correspondence, memos, project plans) that include:

(i) organized and accurately conveyed information;

(ii) reader-friendly formatting techniques; and

(iii) anticipation of readers' questions;

(C) write an interpretative response to an expository or a literary text (e.g., essay or review) that:

(i) extends beyond a summary and literal analysis;

(ii) addresses the writing skills for an analytical essay and provides evidence from the text using embedded quotations; and

(iii) analyzes the aesthetic effects of an author's use of stylistic and rhetorical devices; and

(D) produce a multimedia presentation (e.g., documentary, class newspaper, docudrama, infomercial, visual or textual parodies, theatrical production) with graphics, images, and sound that conveys a distinctive point of view and appeals to a specific audience.

(15) Writing/Persuasive Texts. Students write persuasive texts to influence the attitudes or actions of a specific audience on specific issues. The student is expected to write an argumentative essay to the appropriate audience that includes:

(A) a clear position based on logical reasons supported by precise and relevant evidence;

(B) an organizing structure appropriate to the purpose, audience, and context;

(C) an analysis of the relative value of specific data, facts, and ideas;

(D) consideration of the whole range of information and views on the topic and accurate and honest representation of these views (i.e., in the author's own words and not out of context);

(E) counter-arguments based on evidence to anticipate and address objections; and

(F) a range of appropriate appeals (e.g., descriptions, anecdotes, case studies, analogies, illustrations).

(16) Research/Research Plan. Students ask open-ended research questions and develop a plan for answering them. The student is expected to:

(A) brainstorm, consult with others, decide upon a topic, and formulate a major research question to address the major research topic; and

(B) formulate a plan for engaging in research on a complex, multi-faceted topic.

(17) Research/Gathering Sources. Students determine, locate, and explore the full range of relevant sources addressing a research question and systematically record the information they gather. The student is expected to:

(A) follow the research plan to compile data from authoritative sources in a manner that identifies the major issues and debates within the field of inquiry;

(B) organize information gathered from multiple sources to create a variety of graphics and forms (e.g., notes, learning logs); and

(C) paraphrase, summarize, quote, and accurately cite all researched information according to a standard format.

(18) Research/Synthesizing Information. Students clarify research questions and evaluate and synthesize collected information. The student is expected to:

(A) modify the major research question as necessary to refocus the research plan;

(B) evaluate the relevance of information to the topic and determine the reliability, validity, and accuracy of sources (including Internet sources) by examining their authority and objectivity; and

(C) critique the research process at each step to implement changes as the need occurs and is identified.

(19) Research/Organizing and Presenting Ideas. Students organize and present their ideas and information according to the purpose of the research and their audience. The student is expected to synthesize the research into a written or an oral presentation that:

(A) marshals evidence in support of a clear thesis statement and related claims;

(B) provides an analysis for various audiences that reflects a logical progression of ideas and a clearly stated point of view;

(C) uses graphics and illustrations to help explain concepts where appropriate;

(D) uses a variety of evaluative tools (e.g., self-made rubrics, peer reviews, teacher and expert evaluations) to examine the quality of the research; and

(E) uses a style manual (e.g., *Modern Language Association, Chicago Manual of Style*) to document sources and format written materials.

(20) Listening and Speaking/Listening. Students listen attentively to others in formal and informal settings. The student is expected to:

(A) listen responsively to a speaker by taking notes that summarize, synthesize, or highlight the speaker's ideas for critical reflection and by asking questions related to the content for clarification and elaboration;

(B) follow, restate, and give multi-dimensional oral instructions to perform specific tasks, answer questions, or solve problems; and

(C) summarize how the style and structure of a speech supports or undermines its purpose or meaning.

(21) Listening and Speaking/Speaking. Students speak clearly and to the point. The student is expected to give formal and informal talks using informal, standard, and technical language effectively to meet the needs of the audience, purpose, and occasion, employing eye contact, speaking rate (including pauses for effect), volume, enunciation, and a variety of purposeful gestures to communicate ideas effectively.

(22) Listening and Speaking/Teamwork. Students work productively with others in teams. The student is expected to participate productively in teams, including building on the ideas of others, contributing relevant information, developing a plan for consensus-building, and setting ground rules for decision-making.

(23) Oral and Written Conventions/Conventions. Students identify and use the grammatical conventions of academic language when speaking and writing. The student is expected to:

(A) identify and use the following parts of speech in the context of reading, writing, and speaking:

(i) verbals (gerunds, infinitives, participles);

(ii) reciprocal pronouns (e.g., each other, one another); and

(iii) restrictive and nonrestrictive relative clauses;

(B) identify and use the subjunctive mood to express doubts, wishes, and possibilities in complete sentences; and

(C) identify and use a variety of complete sentences (e.g., compound, complex, compound-complex) with correct syntax and distinguish between complete and incomplete sentences.

(24) Oral and Written Conventions/Handwriting, Capitalization, and Punctuation. Students write legibly and use appropriate capitalization and punctuation conventions in their compositions. The student is expected to:

(A) use conventions of capitalization; and

(B) use correct punctuation marks including:

(i) quotation marks to indicate sarcasm or irony;

(ii) comma placement in nonrestrictive phrases, clauses, and contrasting expressions; and

(iii) dashes to emphasize parenthetical information.

(25) Oral and Written Conventions/Spelling. Students spell correctly. The student is expected to spell correctly, including using various resources to find correct spellings.

§110.33. English Language Arts and Reading, English III (One Credit), Beginning with School Year 2009-2010.

(a) Introduction.

(1) The English Language Arts and Reading Texas Essential Knowledge and Skills (TEKS) are organized into the following strands: Reading, where students read and understand a wide variety of literary and informational texts; Writing, where students compose a variety of written texts with a clear controlling idea, coherent organization, and sufficient detail; Research, where students are expected to know how to locate a range of relevant sources and evaluate, synthesize, and present ideas and information; Listening and Speaking, where students listen and respond to the ideas of others while contributing their own ideas in conversations and in groups; and Oral and Written Conventions, where students learn how to use the oral and written conventions of the English language in speaking and writing. The standards are cumulative--students will continue to address earlier standards as needed while they attend to standards for their grade. In English III, students will engage in activities that build on their prior knowledge and skills in order to strengthen their reading, writing, and oral language skills. Students should read and write on a daily basis.

(2) For English III students whose first language is not English, the students' native language serves as a foundation for English language acquisition.

(3) To meet Public Education Goal 1 of the Texas Education Code, §4.002, which states, "The students in the public education system will demonstrate exemplary performance in the reading and writing of the English language," students will accomplish the essential knowledge, skills, and student expectations in English III as described in subsection (b) of this section.

(4) To meet Texas Education Code, §28.002(h), which states, ". . . each school district shall foster the continuation of the tradition of teaching United States and Texas history and the free enterprise system in regular subject matter and in reading courses and in the adoption of textbooks," students will be provided oral and written narratives as well as other informational texts that can help them to become thoughtful, active citizens who appreciate the basic democratic values of our state and nation.

(b) Knowledge and skills.

(1) Reading/Vocabulary Development. Students understand new vocabulary and use it correctly when reading and writing. The student is expected to:

(A) determine the meaning of grade-level academic English words derived from Latin, Greek, or other linguistic roots and affixes;

(B) infer word meaning through the identification and analysis of analogies and other word relationships;

(C) recognize and use knowledge of cognates in different languages and of word origins to determine the meaning of words; and

(D) use general and specialized dictionaries, thesauri, glossaries, histories of language, books of quotations, and other related references (printed or electronic) as needed.

(2) Reading/Comprehension of Literary Text/Theme and Genre. Students analyze theme and genre in different cultural, historical, and contemporary contexts and provide evidence from the text to support their understanding. The student is expected to:

(A) analyze the way in which the theme or meaning of a selection represents a view or comment on life;

(B) relate the characters and structure of mythic, traditional, and classical literature to 20th century American novels, plays, or films;

(C) compare and contrast the presentation of a theme or topic across genres to explain how the selection of genre shapes the meaning; and

(D) connect the ideas found in a literary work to primary source documents of its literary period or historical setting.

(3) Reading/Comprehension of Literary Text/Poetry. Students understand the structure and elements of poetry and respond by providing evidence from text to support their understanding. The student is expected to analyze the effects of metrics, rhyme schemes (e.g., end, internal, slant, eye), and other conventions of verse in poetry.

(4) Reading/Comprehension of Literary Text/Drama. Students understand the structure and elements of drama and respond by providing evidence from text to support their understanding. The student is expected to analyze the relationship between the expressed purposes and the characteristics of different forms of modern American drama.

(5) Reading/Comprehension of Literary Text/Fiction. Students understand the structure and elements of fiction and respond by providing evidence from text to support their understanding. The student is expected to:

(A) analyze how different literary elements (e.g., figurative language, point of view) shape the author's portrayal of the setting in works of fiction;

(B) analyze the impact of characters shaping their destinies on the plot and outcome of works of fiction;

(C) analyze the impact of narration when the narrator's point of view shifts from one character to another;

(D) compare and contrast the presentation of a theme or topic across genres to explain how the selection of genre shapes the message; and

(E) demonstrate familiarity with works by key authors in American fiction from each major literary period.

(6) Reading/Comprehension of Literary Text/Literary Nonfiction. Students understand the varied structural patterns and features of literary nonfiction and respond by providing evidence from text to support their understanding. The student is expected to:

(A) analyze how rhetorical techniques in literary essays, true life adventures, and well-known speeches (e.g., repetition, parallel structure, understatement, overstatement) influence the reader, evoke emotions, and create meaning; and

(B) analyze differences in genre among essays, speeches, historical nonfiction, autobiographies, and biographies.

(7) Reading/Comprehension of Literary Text/Sensory Language. Students understand how an author's sensory language creates imagery in literary text and provide evidence from text to support their understanding. The student is expected to analyze the meaning of literary, classical, and biblical allusions in literary text.

(8) Reading/Comprehension of Informational Text/Culture and History. Students analyze and understand the author's purpose in cultural, historical, and contemporary contexts and respond by providing evidence from the text to support their understanding. The student is expected to analyze how the style, tone, and diction of a text advance the author's purpose and perspective or stance.

(9) Reading/Comprehension of Informational Text/Expository Text. Students analyze and understand expository text and respond by providing evidence from text to support their understanding. The student is expected to:

(A) summarize the text of a historical document in a manner that captures the author's viewpoint, its main ideas, and its elements without taking a position or expressing an opinion;

(B) evaluate the accuracy of the information used to support an author's argument by examining the information presented on the same topic in several other sources;

(C) make supported inferences concerning the relationships between and among the ideas in text and the organizational patterns (e.g., cause-and-effect, additive, comparative, sequential, adversative) used;

(D) evaluate the effectiveness of various types of media (traditional and digital) as communicated through visual and audio elements; and

(E) evaluate differences in coverage of the same event in various types of media (e.g., newspapers, periodicals, television, Internet).

(10) Reading/Comprehension of Informational Text/Persuasive Text. Students analyze and understand persuasive text and respond by providing evidence from text to support their analysis. The student is expected to:

(A) draw conclusions about the credibility of a text by examining its implicit and stated assumptions about an issue as conveyed by the specific use of language;

(B) explain shifts in perspective in an argument; and

(C) evaluate the aesthetic techniques used to create a point of view in explicitly persuasive media messages for a particular audience.

(11) Reading/Comprehension of Informational Text/Procedural Texts. Students understand how to glean and use information in procedural texts and documents. The student is expected to:

(A) evaluate the logic of the sequence of information presented in a text (e.g., product support material, contracts); and

(B) translate (from text to graphic or from graphic to text) complex factual, quantitative, or technical information presented in maps, charts, illustrations, graphs, timelines, tables, and diagrams.

(12) Writing/Writing Process. Students use elements of the writing process (planning, drafting, revising, editing, and publishing) to compose text. The student is expected to:

(A) plan a first draft by selecting the correct genre for conveying the intended meaning to multiple audiences, determining appropriate topics through a range of strategies (e.g., discussion, background reading, personal interests, interviews), and developing a thesis or controlling idea;

(B) develop drafts in timed and open-ended situations that structure ideas in a sustained and persuasive way (e.g., using outlines, note taking, graphic organizers, lists) and include transitions and rhetorical devices to convey meaning;

(C) revise drafts to clarify meaning and achieve specific rhetorical purposes, consistency of tone, and logical organization by rearranging the words, sentences, and paragraphs to employ tropes (e.g., metaphors, similes, analogies, hyperbole, understatement, rhetorical questions, irony), schemes (e.g., parallelism, antithesis, inverted word order, repetition, reversed structures), and add transitional words and phrases;

(D) edit drafts to correct grammar, mechanics, and spelling; and

(E) revise final draft in response to feedback from peers and teacher and publish written work for appropriate audiences.

(13) Writing/Literary Texts. Students write literary texts to express their ideas and feelings about real or imagined people, events, and ideas. Students are responsible for two forms of literary writing. The student is expected to:

(A) write an engaging story with a well-developed conflict and resolution, complex and non-stereotypical characters, a range of literary strategies (e.g., dialogue, suspense) and devices to enhance the plot, and sensory details that define the mood or tone;

(B) write a poem that reflects an awareness of poetic conventions and traditions within different forms (e.g., sonnets, ballads, free verse); and

(C) write a script with an explicit or implicit theme, using a variety of literary techniques.

(14) Writing/Expository and Procedural Texts. Students write expository and procedural or work-related texts to communicate ideas and information to specific audiences for specific purposes. The student is expected to:

(A) write an analytical essay of sufficient length that includes:

(i) effective introductions and concluding paragraphs and a variety of sentence structures, rhetorical devices, and transitions to link paragraphs;

(ii) a clear thesis statement or controlling idea;

(iii) a clear organizational schema for conveying ideas;

(iv) relevant and substantial evidence and well-chosen details; and

(v) information on all relevant perspectives and a consideration of the validity, reliability, and relevance of primary and secondary sources;

(B) write procedural or work-related documents (e.g., résumés, proposals, college applications, operation manuals) that include:

(i) relevant questions that engage readers and consider their needs;

(ii) a clearly stated purpose combined with a well-supported viewpoint on the topic;

(iii) technical information accurately in accessible language;

(iv) appropriate organizational structures supported by facts and details (documented if appropriate); and

(v) appropriate formatting structures (e.g., headings, graphics, white space);

(C) write an interpretation of an expository or a literary text that:

(i) advances a clear interpretive or analytical thesis statement;

(ii) addresses the writing skills for an analytical essay, including references to and commentary on quotations from the text;

(iii) analyzes the aesthetic effects of an author's use of stylistic or rhetorical devices;

(iv) identifies and analyzes the ambiguities, nuances, and complexities within the text; and

(v) anticipates and responds to readers' questions or contradictory information; and

(D) produce a multimedia presentation (e.g., documentary, class newspaper, docudrama, infomercial, visual or textual parodies, theatrical production) with graphics, images, and sound that appeals to a specific audience and synthesizes information from multiple points of view.

(15) Writing/Persuasive Texts. Students write persuasive texts to influence the attitudes or actions of a specific audience on specific issues. The student is expected to write an argumentative essay (e.g., evaluative essays, proposals) to the appropriate audience that includes:

(A) a clear position based on logical reasons supported by precise and relevant evidence, including facts, expert opinions, quotations, and/or expressions of commonly accepted beliefs;

(B) an organizing structure appropriate to the purpose, audience, and context;

(C) information on the complete range of relevant perspectives;

(D) accurate and honest representation of divergent views (i.e., in the author's own words and not out of context);

(E) demonstrated consideration of the validity and reliability of all primary and secondary sources used; and

(F) language attentively crafted to move a disinterested or opposed audience, using specific rhetorical devices to back up assertions (e.g., appeals to logic, emotions, ethical beliefs).

(16) Research/Research Plan. Students ask open-ended research questions and develop a plan for answering them. The student is expected to:

(A) brainstorm, consult with others, decide upon a topic, and formulate a major research question to address the major research topic; and

(B) formulate a plan for engaging in research on a complex, multi-faceted topic in depth.

(17) Research/Gathering Sources. Students determine, locate, and explore the full range of relevant sources addressing a research question and systematically record the information they gather. The student is expected to:

(A) follow the research plan to gather evidence from experts on the topic and texts written for informed audiences in the field, distinguishing between reliable and unreliable sources and avoiding over-reliance on one source; and

(B) paraphrase, summarize, quote, and accurately cite all researched information according to a standard format, differentiating among primary, secondary, and other sources.

(18) Research/Synthesizing Information. Students clarify research questions and evaluate and synthesize collected information. The student is expected to:

(A) modify the major research question as necessary to refocus the research plan;

(B) systematically organize relevant and accurate information to support central ideas, concepts, and themes, outline ideas into conceptual maps/timelines, and separate factual data from complex inferences;

(C) determine whether the evidence found is weak or strong and how that evidence helps create a cogent argument; and

(D) critique the research process at each step to implement changes as the need occurs and is identified.

(19) Research/Organizing and Presenting Ideas. Students organize and present their ideas and information according to the purpose of the research and their audience. The student is expected to synthesize the research into an extended written or oral presentation that:

(A) provides an analysis that supports and develops personal opinions, as opposed to simply restating existing information;

(B) uses a variety of narrative formats and rhetorical strategies to argue for the thesis;

(C) develops an argument that incorporates the complexities of and discrepancies in information from multiple sources and perspectives while anticipating and refuting counter-arguments;

(D) uses a style manual (e.g., *Modern Language Association, Chicago Manual of Style*) to document sources and format written materials; and

(E) is of sufficient length and complexity to address the topic.

(20) Listening and Speaking/Listening. Students listen attentively to others in formal and informal settings. The student is expected to:

(A) listen responsively by framing inquiries that reflect an understanding of the content and identifying the positions taken and the evidence in support of those positions;

(B) follow and restate complex oral instructions that include technical vocabulary and processes; and

(C) evaluate the clarity and coherence of a speaker's message and critique the impact of a speaker's diction and syntax on an audience.

(21) Listening and Speaking/Speaking. Students speak clearly and to the point. The student is expected to give a formal presentation that exhibits a logical structure, smooth transitions, and an accurate use of evidence and well-chosen details, employing eye contact, speaking rate (including pauses for effect), volume, enunciation, purposeful gestures, and rhetorical devices to communicate ideas effectively.

(22) Listening and Speaking/Teamwork. Students work productively with others in teams. The student is expected to participate productively in teams, including offering ideas or judgments that are purposeful in moving the team towards its goals, asking relevant and insightful questions, tolerating a range of positions and ambiguity in decision-making, and evaluating the work of the group based on agreed-upon criteria.

(23) Oral and Written Conventions/Conventions. Students identify and use the grammatical conventions of academic language when speaking and writing. The student is expected to:

(A) identify and use different types of clauses and phrases, including adjectival clauses and adverbial clauses and phrases; and

(B) identify and use a variety of complete sentences (e.g., compound, complex, compound-complex) with correct syntax and distinguish between complete and incomplete sentences.

(24) Oral and Written Conventions/Handwriting, Capitalization, and Punctuation. Students write legibly and use appropriate capitalization and punctuation conventions in their compositions. The student is expected to know and correctly and consistently use conventions of punctuation and capitalization.

(25) Oral and Written Conventions/Spelling. Students spell correctly. The student is expected to spell correctly, including using various resources to find correct spellings.

§110.34. English Language Arts and Reading, English IV (One Credit), Beginning with School Year 2009-2010.

(a) Introduction.

(1) The English Language Arts and Reading Texas Essential Knowledge and Skills (TEKS) are organized into the following strands: Reading, where students read and understand a wide variety of literary and informational texts; Writing, where students compose a variety of written texts with a clear controlling idea, coherent organization, and sufficient detail; Research, where students are expected to know how to locate a range of relevant sources and evaluate, synthesize, and present ideas and information; Listening and Speaking, where students listen and respond to the ideas of others while contributing their own ideas in conversations and in groups; and Oral and Written Conventions, where students learn how to use the oral and written conventions of the English language in speaking and writing. The standards are cumulative--students will continue to address earlier standards as needed while they attend to standards for their grade. In English IV, students will engage in activities that build on their prior knowledge and skills in order to strengthen their reading, writing, and oral language skills. Students should read and write on a daily basis.

(2) For English IV students whose first language is not English, the students' native language serves as a foundation for English language acquisition.

(3) To meet Public Education Goal 1 of the Texas Education Code, §4.002, which states, "The students in the public education system will demonstrate exemplary performance in the reading and writing of the English language," students will accomplish the essential knowledge, skills, and student expectations in English IV as described in subsection (b) of this section.

(4) To meet Texas Education Code, §28.002(h), which states, ". . . each school district shall foster the continuation of the tradition of teaching United States and Texas history and the free enterprise system in regular subject matter and in reading courses and in the adoption of textbooks," students will be provided oral and written narratives as well as other informational texts that can help them to become thoughtful, active citizens who appreciate the basic democratic values of our state and nation.

(b) Knowledge and skills.

(1) Reading/Vocabulary Development. Students understand new vocabulary and use it correctly when reading and writing. The student is expected to:

(A) determine the meaning of technical academic English words in science and mathematics derived from Latin, Greek, or other linguistic roots and affixes;

(B) use the relationship between words encountered in analogies to determine their meanings (e.g., synonyms/antonyms, connotation/denotation);

(C) analyze and explain how the English language has developed and been influenced by other languages; and

(D) use general and specialized dictionaries, thesauri, histories of language, books of quotations, and other related references (printed or electronic) as needed.

(2) Reading/Comprehension of Literary Text/Theme and Genre. Students analyze theme and genre in different cultural, historical, and contemporary contexts and provide evidence from the text to support their understanding. The student is expected to:

(A) analyze and evaluate the political assumptions underlying an author's work and its relationship to contemporary social issues or political movements;

(B) examine how classical plays have been re-interpreted by contemporary theater or film directors;

(C) analyze how the historical, social, and economic contexts of a literary work influence an author's characters, plot, and setting; and

(D) relate the theme of a literary work to the seminal ideas of its time.

(3) Reading/Comprehension of Literary Text/Poetry. Students understand the structure and elements of poetry and respond by providing evidence from text to support their understanding. The student is expected to identify, respond to, analyze, and evaluate the effects of sound, form, figurative language, graphics, and dramatic structure of poems.

(4) Reading/Comprehension of Literary Text/Drama. Students understand the structure and elements of drama and respond by providing evidence from text to support their understanding. The student is expected to demonstrate familiarity with key speeches and characters in the works of key dramatists in British literary history (e.g., Elizabethan, Restoration, 20th century).

(5) Reading/Comprehension of Literary Text/Fiction. Students understand the structure and elements of fiction and respond by

providing evidence from text to support their understanding. The student is expected to:

(A) analyze how complex plot structures (e.g., subplots) and devices (e.g., foreshadowing, flashbacks, suspense) function and advance the action in a work of fiction;

(B) analyze the moral dilemmas and quandaries in works of fiction as revealed by the underlying motivations and behaviors of the characters;

(C) evaluate how the setting and changes in the setting affect the plot, characters, themes, and tone in works of fiction;

(D) compare and contrast the effectiveness of different forms of narration in a collection of short stories;

(E) analyze the characteristics of genres that overlap or cut across the lines of classifications such as satire, parody, and allegory; and

(F) demonstrate familiarity with works of fiction by key British authors from each major literary period.

(6) Reading/Comprehension of Literary Text/Literary Nonfiction. Students understand the varied structural patterns and features of literary nonfiction and respond by providing evidence from text to support their understanding. The student is expected to:

(A) analyze passages in well-known literary essays and speeches for the rhetorical techniques of ambiguity, contradiction, paradox, irony, sarcasm, and overstatement; and

(B) evaluate the effect of the author's use of oxymorons, subtleties, and sarcasm in literary essays and other forms of literary nonfiction.

(7) Reading/Comprehension of Literary Text/Sensory Language. Students understand how an author's sensory language creates imagery in literary text and provide evidence from text to support their understanding. The student is expected to analyze how the author's patterns of imagery reveals theme, sets tone, and creates meaning in literary works.

(8) Reading/Comprehension of Informational Text/Culture and History. Students analyze and understand the author's purpose in cultural, historical, and contemporary contexts and respond by providing evidence from the text to support their understanding. The student is expected to analyze the consistency and clarity of the expression of the controlling idea and specific purpose in an expository text.

(9) Reading/Comprehension of Informational Text/Expository Text. Students analyze and understand expository text and respond by providing evidence from text to support their understanding. The student is expected to:

(A) synthesize ideas and make logical connections among multiple expository texts and technical sources;

(B) explain how authors writing on the same issue reached different conclusions because of differences in assumptions, evidence, reasoning, and viewpoints;

(C) evaluate the ways in which the organizational and rhetorical patterns of text support or confound the author's meaning or purpose; and

(D) critique the visual, aural, and written elements in various forms of media for their role in the delivery of information accurately, comprehensively, and effectively.

(10) Reading/Comprehension of Informational Text/Persuasive Text. Students analyze and understand persuasive text and



respond by providing evidence from text to support their analysis. The student is expected to:

(A) evaluate the merits of an argument, action, or policy by comparing the evidence with information available in other sources;

(B) analyze the relationships (e.g., implication, necessity, sufficiency) among evidence, inferences, assumptions, and claims in text;

(C) analyze contemporary political debates for such logical fallacies as non-sequiturs, circular logic, hasty generalizations; and

(D) evaluate the persuasive effect on the viewer of different techniques used in multi-layered media campaigns (e.g., print, web, television).

(11) Reading/Comprehension of Informational Text/Procedural Texts. Students understand how to glean and use information in procedural texts and documents. The student is expected to:

(A) draw conclusions about how the patterns of organization and hierarchic structures support the understandability of text (e.g., consider reading and critiquing a college course catalog or an annual report to determine whether the information is presented clearly and effectively); and

(B) evaluate the structures of text (e.g., format, headers) for their clarity and organizational coherence and for the effectiveness of their graphic representations.

(12) Writing/Writing Process. Students use elements of the writing process (planning, drafting, revising, editing, and publishing) to compose text. The student is expected to:

(A) plan a first draft by selecting the correct genre for conveying the intended meaning to multiple audiences, determining appropriate topics through a range of strategies (e.g., discussion, background reading, personal interests, interviews), and developing a thesis or controlling idea;

(B) develop drafts in timed and open-ended situations that structure ideas in a sustained and persuasive way (e.g., using outlines, note taking, graphic organizers, lists) and include transitions and the rhetorical devices to convey meaning;

(C) revise drafts to clarify meaning and achieve specific rhetorical purposes, consistency of tone, and logical organization by rearranging the words, sentences, and paragraphs to employ tropes (e.g., metaphors, similes, analogies, hyperbole, understatement, rhetorical questions, irony), schemes (e.g., parallelism, antithesis, inverted word order, repetition, reversed structures), and add transitional words and phrases;

(D) edit drafts to correct grammar, mechanics, and spelling; and

(E) revise final draft in response to feedback from peers and teacher and publish written work for appropriate audiences.

(13) Writing/Literary Texts. Students write literary texts to express their ideas and feelings about real or imagined people, events, and ideas. Students are responsible for two forms of literary writing. The student is expected to:

(A) write an engaging story with a well-developed conflict and resolution, a clear theme, complex and non-stereotypical characters, a range of literary strategies (e.g., dialogue, suspense) and devices to enhance the plot, and sensory details that define the mood or tone;

(B) write a poem that reflects an awareness of poetic conventions and traditions within different forms (e.g., sonnets, ballads, free verse); and

(C) write a script with an explicit or implicit theme, using a variety of literary techniques.

(14) Writing/Expository and Procedural Texts. Students write expository and procedural or work-related texts to communicate ideas and information to specific audiences for specific purposes. The student is expected to:

(A) write an analytical essay of sufficient length that includes:

(i) effective introductions and concluding paragraphs and a variety of sentence structures, rhetorical devices, and transitions to link paragraphs;

(ii) a clear thesis statement or controlling idea;

(iii) a clear organizational schema for conveying ideas;

(iv) relevant and substantial evidence and well-chosen details;

(v) information on all relevant perspectives and consideration of the validity, reliability, and relevance of primary and secondary sources; and

(vi) an analysis of views and information that contradict the thesis statement and the evidence presented for it;

(B) write procedural and work-related documents (e.g., résumés, proposals, college applications, operation manuals) that include:

(i) relevant questions that engage readers and address their potential problems and misunderstandings;

(ii) a clearly stated purpose combined with a well-supported viewpoint on the topic;

(iii) technical information accurately in accessible language;

(iv) appropriate organizational structures supported by facts and details (documented if appropriate); and

(v) appropriate formatting structures (e.g., headings, graphics, white space);

(C) write an interpretation of an expository or a literary text that:

(i) advances a clear thesis statement;

(ii) addresses the writing skills for an analytical essay including references to and commentary on quotations from the text;

(iii) analyzes the aesthetic effects of an author's use of stylistic or rhetorical devices;

(iv) identifies and analyzes ambiguities, nuances, and complexities within the text; and

(v) anticipates and responds to readers' questions and contradictory information; and

(D) produce a multimedia presentation (e.g., documentary, class newspaper, docudrama, infomercial, visual or textual parodies, theatrical production) with graphics, images, and sound that ap-

peals to a specific audience and synthesizes information from multiple points of view.

(15) Writing/Persuasive Texts. Students write persuasive texts to influence the attitudes or actions of a specific audience on specific issues. The student is expected to write an argumentative essay (e.g., evaluative essays, proposals) to the appropriate audience that includes:

(A) a clear position based on logical reasons with various forms of support (e.g., hard evidence, reason, common sense, cultural assumptions);

(B) an organizing structure appropriate to the purpose, audience, and context;

(C) information on the complete range of relevant perspectives;

(D) accurate and honest representation of divergent views (i.e., in the author's own words and not out of context);

(E) demonstrated consideration of the validity and reliability of all primary and secondary sources used;

(F) language attentively crafted to move a disinterested or opposed audience, using specific rhetorical devices to back up assertions (e.g., appeals to logic, emotions, ethical beliefs); and

(G) an awareness and anticipation of audience response that is reflected in different levels of formality, style, and tone.

(16) Research/Research Plan. Students ask open-ended research questions and develop a plan for answering them. The student is expected to:

(A) brainstorm, consult with others, decide upon a topic, and formulate a major research question to address the major research topic; and

(B) formulate a plan for engaging in research on a complex, multi-faceted topic in depth.

(17) Research/Gathering Sources. Students determine, locate, and explore the full range of relevant sources addressing a research question and systematically record the information they gather. The student is expected to:

(A) follow the research plan to gather evidence from experts on the topic and texts written for informed audiences in the field, distinguishing between reliable and unreliable sources and avoiding over-reliance on one source; and

(B) paraphrase, summarize, quote, and accurately cite all researched information according to a standard format, differentiating among primary, secondary, and other sources.

(18) Research/Synthesizing Information. Students clarify research questions and evaluate and synthesize collected information. The student is expected to:

(A) modify the major research question as necessary to refocus the research plan;

(B) systematically organize relevant and accurate information to support central ideas, concepts, and themes, outline ideas into conceptual maps/timelines, and separate factual data from complex inferences;

(C) determine whether the evidence found is weak or strong and how that evidence helps create a cogent argument; and

(D) critique the research process at each step to implement changes as the need occurs and is identified.

(19) Research/Organizing and Presenting Ideas. Students organize and present their ideas and information according to the purpose of the research and their audience. The student is expected to synthesize the research into an extended written or oral presentation that:

(A) provides an analysis that supports and develops personal opinions, as opposed to simply restating existing information;

(B) uses a variety of narrative formats and rhetorical strategies to argue for the thesis;

(C) develops an argument that incorporates the complexities of and discrepancies in information from multiple sources and perspectives while anticipating and refuting counter-arguments;

(D) uses a style manual (e.g., *Modern Language Association, Chicago Manual of Style*) to document sources and format written materials; and

(E) is of sufficient length and complexity to address the topic.

(20) Listening and Speaking/Listening. Students listen attentively to others in formal and informal settings. The student is expected to:

(A) listen responsively to a speaker by framing inquiries that reflect an understanding of the content and identifying the positions taken and the evidence in support of those positions;

(B) follow and restate complex oral instructions that include technical vocabulary and processes; and

(C) assess the persuasiveness of a presentation based on its content, word choice, rhetorical strategies, and delivery techniques used by the speaker.

(21) Listening and Speaking/Speaking. Students speak clearly and to the point. The student is expected to recognize and use elements of classical speeches (e.g., introduction, first and second transitions, body, and conclusion) to formulate sound, rational arguments and use the art of persuasion and debate to them, employing eye contact, speaking rate (including pauses for effect), volume, enunciation, purposeful gestures, and rhetorical devices to communicate ideas effectively.

(22) Listening and Speaking/Teamwork. Students work productively with others in teams. The student is expected to participate productively in teams, including offering ideas or judgments that are purposeful in moving the team towards its goals, asking relevant and insightful questions, tolerating a range of positions and ambiguity in decision-making, and evaluating the work of the group based on agreed-upon criteria.

(23) Oral and Written Conventions/Conventions. Students identify and use the grammatical conventions of academic language when speaking and writing. The student is expected to:

(A) identify and use different types of clauses and phrases (e.g., adjectival clauses, noun phrases, adverbial clauses and phrases); and

(B) identify and use a variety of complete sentences (e.g., compound, complex, compound-complex) with correct syntax and distinguish between complete and incomplete sentences.

(24) Oral and Written Conventions/Handwriting, Capitalization, and Punctuation. Students write legibly and use appropriate capitalization and punctuation conventions in their compositions. The student is expected to know and correctly and consistently use conventions of punctuation and capitalization.

(25) Oral and Written Conventions/Spelling. Students spell correctly. The student is expected to spell correctly, including using various resources to find correct spellings.

§110.41. *Implementation of Texas Essential Knowledge and Skills for English Language Arts and Reading, High School.*

The provisions of §§110.42 - 110.45 of this subchapter shall be superseded by §§110.31 - 110.34 of this subchapter [implemented by school districts] beginning with the 2009-2010 school year [September 1, 1998, and at that time shall supersede §75.61 of this title (relating to English Language Arts)].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 7, 2008.

TRD-200801820

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Earliest possible date of adoption: May 18, 2008

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



## SUBCHAPTER B. MIDDLE SCHOOL

### 19 TAC §110.25, §110.26

The State Board of Education (SBOE) proposes amendments to §110.25 and §110.26, concerning Texas essential knowledge and skills (TEKS) for English language arts and reading middle school elective courses. The sections establish the curriculum requirements for reading and speech elective courses at the middle school level. The proposed amendments would incorporate refinements to these elective courses.

The proposed amendments were recommended by educator review committees and feedback received from stakeholders through online surveys placed on the Texas Education Agency (TEA) website. The proposed amendments to the middle school elective courses are necessary at this time because these elective courses are included in the currently-issued proclamation that calls for instructional materials to be used in classrooms beginning in 2010.

Sharon Jackson, Associate Commissioner for Standards and Programs, has determined that for the first five-year period the amendments are in effect there will be fiscal implications for state and local government as a result of enforcing or administering the amendments. The TEA expects minor fiscal implications for the state to develop professional development to help teachers and administrators understand the amendments to the TEKS for the middle school reading and speech elective courses. The TEA is unable to determine the exact cost to local governments until input is received from school districts regarding potential needs. It is possible that school districts may incur costs for local professional development to help teachers understand the amendments or for revision of curriculum scope and sequence documents.

Dr. Jackson has determined that for each year of the first five years the amendments are in effect the public benefit anticipated as a result of enforcing the amendments would be better alignment of the TEKS and coordination of standards with the adoption of instructional materials. There is no anticipated economic

cost to persons who are required to comply with the proposed amendments. In addition, there is no anticipated economic impact to small businesses or microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to [rules@tea.state.tx.us](mailto:rules@tea.state.tx.us) or faxed to (512) 463-0028. All requests for a public hearing on the proposed amendments submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of the proposal has been published in the *Texas Register*.

The amendments are proposed under the Texas Education Code, §7.102(c)(4), which authorizes the SBOE to establish curriculum and graduation requirements, and §28.002, which authorizes the SBOE to by rule identify the essential knowledge and skills of each subject of the required curriculum that all students should be able to demonstrate and that will be used in evaluating textbooks.

The amendments implement the Texas Education Code, §7.102(c)(4) and §28.002.

§110.25. *English Language Arts and Reading, Reading (Elective Credit).*

#### (a) Introduction.

(1) Reading offers students an opportunity to read with competence, confidence, and understanding through instruction in comprehension strategies, word recognition, and vocabulary. Middle school students read, write, listen, speak, and view to learn more about the world around them and to create, clarify, critique, and appreciate ideas and responses. Middle school students complete research projects or locate answers to questions using multiple texts and resources. In addition, middle school students continue to read on their own or listen to texts read aloud for the purpose of enjoyment. Middle school students read both printed texts and electronic media independently, bringing with them various strategies to aid in comprehension. Significant blocks of time are provided for reading both independent and instructional-level material for varied purposes such as collecting information, learning about and appreciating the writer's craft, and discovering models for their own writing. Middle school students respond to texts through various avenues such as talk, print and electronic formats, connecting their knowledge of the world with the text being read. For middle school students whose first language is not English, the students' native language serves as a foundation for English language acquisition and language learning.

(2) The essential knowledge and skills as well as the student expectations for Reading, an elective course, are described in subsection (b) of this section.

#### (b) Knowledge and skills.

(1) The student uses a variety of word recognition strategies. The student is expected to:

(A) apply knowledge of letter-sound correspondences, language structure, and context to recognize words; and

(B) use ~~the keys and entry information in~~ dictionaries, glossaries, and other sources to confirm pronunciations and meanings of unfamiliar words.

(2) The student acquires [~~builds~~] vocabulary through reading and systematic word study. The student is expected to:

(A) expand vocabulary by reading, viewing, listening, and discussing [~~conversing~~];

(B) determine word meaning by using context;

(C) use spelling, prefixes and suffixes, roots, and word origins to understand meanings;

~~[(C) derive word meaning by applying knowledge of the meanings of prefixes, suffixes, and bases; and]~~

(D) use reference aids such as a glossary, dictionary, thesaurus, and available technology to determine [~~investigate word origins;~~] meanings [~~;~~] and pronunciations; and [~~usage;~~]

(E) identify analogies, homonyms, synonyms/antonyms, and connotation/denotation.

(3) The student reads with fluency and understanding in increasingly demanding texts. The student is expected to:

(A) read silently for a variety of purposes with comprehension for sustained periods of time;

~~[(B) read proficiently from diverse texts such as newspapers, textbooks, manuals, literature, references, and electronic text; and]~~

(B) ~~[(C)]~~ adjust reading rate based on purposes for reading; and [~~;~~]

(C) read orally at a rate that enables comprehension.

(4) The student comprehends selections using a variety of strategies. The student is expected to:

(A) use prior [~~draw upon background~~] knowledge and experience to comprehend;

(B) determine purpose for reading;

~~[(B) establish and adjust both immediate and long-term purposes for reading such as to find out, understand, interpret, enjoy, and solve problems;]~~

(C) self-monitor reading and adjust when confusion occurs [~~monitor his/her own reading strategies and make adjustments when understanding breaks down such as~~] by rereading, using resources, and questioning;

(D) summarize texts by identifying main ideas and relevant details;

~~[(D) produce summaries of texts that include main ideas and supporting details;]~~

(E) make [~~draw~~] inferences such as drawing conclusions and making [~~or~~] generalizations or predictions, supporting [~~from text and support~~] them with prior experiences and textual [~~text~~] evidence; [~~and~~]

(F) analyze and use both narrative and expository text structures: sequence, description, problem/solution, compare/contrast, and cause/effect;

(G) make connections and find patterns, similarities, and differences across texts;

(H) construct visual images based on text descriptions;

(I) determine important ideas from texts and oral presentations;

(J) manage text by using practices such as previewing, highlighting, making marginal notes, notetaking, outlining, and journaling; and

(K) use questioning to enhance comprehension before, during, and after reading.

~~[(F) identify structures of text organization such as chronological, cause-effect, and deductive;]~~

~~[(5) The student uses study strategies to learn from texts. The student is expected to:]~~

~~[(A) identify important text information by taking notes, making marginal notation, and underlining;]~~

~~[(B) use various strategies to understand and recall text information such as previewing, skimming, using graphic aids and headings, rereading, and reviewing;]~~

~~[(C) recall important text information by reviewing notes, rereading, and writing important ideas;]~~

~~[(D) answer different types of questions, including test-like questions such as multiple choice, open-ended, literal, and interpretive; and]~~

~~[(E) practice test-taking skills by previewing questions, skimming texts, reading carefully, and revisiting questions;]~~

(5) ~~[(6)]~~ The student reads texts to find information on [~~researches~~] self-selected and assigned topics [~~through reading and writing~~]. The student is expected to:

(A) generate relevant, interesting, and researchable questions;

(B) locate appropriate print and non-print information using text and technical resources[~~;~~ including databases];

(C) organize and record new information in systematic ways to develop [~~such as~~] notes, charts, and graphic organizers;

(D) communicate information gained from reading;

(E) use compiled information and knowledge to raise additional unanswered questions; and

(F) use text organizers such as overviews, headings, and graphic features to locate and categorize information.

~~[(D) produce research reports and projects in various formats and audiences;]~~

~~[(E) draw conclusions based on the information gathered; and]~~

~~[(F) identify relevant questions for further study from research findings or conclusions;]~~

(6) The student reads for different purposes in varied sources, both narrative and expository. The student is expected to:

(A) read to enjoy, to complete a task, to gather information, to be informed, to solve problems, to answer questions, to analyze, to interpret, and to evaluate;

(B) read sources such as literature, diaries, journals, textbooks, maps, newspapers, letters, speeches, memoranda, electronic texts, and technical documents; and

(C) understand and interpret visual representations.

(7) The student formulates and supports responses to various types of texts. The student is expected to:

(A) respond actively to texts in both aesthetic and critical ways;

(B) respond to text through discussion, journal writing, performance, and visual representation; and

(C) support responses by using prior knowledge and experience and/or citing textual evidence which may consist of a direct quotation, paraphrase, or specific synopsis.

(8) The student reads critically to evaluate texts in order to determine the credibility of sources. The student is expected to:

(A) evaluate the credibility of informational sources and their relevance for assigned and self-selected topics;

(B) evaluate how a writer's motivation, stance, or position may affect text credibility, structure, or tone;

(C) analyze aspects of text, such as patterns of organization and choice of language, for persuasive effect;

(D) recognize modes of reasoning, such as induction and deduction; and

(E) recognize logical and illogical arguments in text.

(9) The student reads to increase knowledge of own culture, the culture of others, and the common elements of cultures. The student is expected to:

(A) compare text events with personal and other readers' experiences; and

(B) recognize and discuss literary themes and connections that cross cultures.

*§110.26. English Language Arts and Reading, Speech (Elective Credit).*

(a) Introduction.

(1) Communication is an integral part of our social, cultural, and academic lives; ~~therefore,~~ middle school students ~~should~~ ~~must~~ develop effective communication skills to further their academic pursuits and to prepare for interaction in social, civic ~~[citizenship]~~, and professional roles. Competent communicators develop skills focused on five identifiable functions of expressing and responding ~~appropriately~~ to feelings, participating in social traditions, informing, persuading, creating, and imagining. To become competent communicators, students will develop and apply skills in using oral language, nonverbal communication, and listening in interpersonal, group, academic, and public contexts. For middle school students whose first language is not English, the students' ~~experiences with oral communication serve~~ ~~[native language serves]~~ as a foundation for English language acquisition ~~[and language learning]~~.

(2) The essential knowledge and skills as well as the student expectations for Speech, an elective course, are described in subsection (b) of this section.

(b) Knowledge and skills.

(1) Understanding the communication process. The student demonstrates a knowledge of communication. The student is expected to:

(A) recognize and explain the importance of communication in social, academic, civic ~~[citizenship]~~, and professional roles;

(B) identify the related components of the communication process;

(C) identify standards of making communication choices considering appropriateness for self, listener, occasion, and task;

(D) identify characteristics of oral language and analyze standards for using oral language appropriately;

(E) identify the importance of using appropriate non-verbal communication;

(F) identify and explain the components of listening process;

(G) identify the kinds of listening and analyze skills related to each type;

(H) analyze how perception of self and others affects communication;

(I) analyze and develop techniques and strategies for building self-confidence and reducing communication apprehension;

(J) identify and explain factors that influence communication decisions such as knowledge, attitudes, and culture; and

(K) explain the importance of assuming responsibility for communication decisions.

(2) Expressing and responding. The student develops skills for expressing and responding appropriately in a variety of situations. The student is expected to:

(A) use appropriate verbal and nonverbal communication skills in interpersonal situations;

(B) use reflective empathic listening skills to respond appropriately in interpersonal situations;

(C) explain the importance of using tact, courtesy, and assertiveness appropriately in interpersonal situations;

(D) identify kinds of groups and analyze basic principles of group dynamics;

(E) use appropriate communication skills in groups to make plans or accomplish goals;

(F) use appropriate strategies for agreeing or disagreeing in interpersonal and group situations; and

(G) prepare and present an oral statement on a topic of interest or concern.

(3) Participating in social traditions. The student develops an understanding of social traditions. The student is expected to:

(A) identify the importance of social traditions and ceremonies in various contexts and cultures;

(B) communicate appropriately in a variety of interpersonal social traditions, including making and acknowledging introductions and giving and accepting praise and criticism;

(C) employ parliamentary procedure in a group meeting;

(D) use effective techniques to prepare, organize, and present a speech for a special occasion; and

(E) use appreciative and critical-listening skills to analyze, evaluate, and respond appropriately to class, public, or media.

(4) Informing. The student expresses and responds appropriately to informative messages. The student is expected to:

(A) research ideas and topics to acquire accurate information from a variety of primary, secondary, and technological sources;

(B) use appropriate communication skills to request, provide, and respond to information in interpersonal conversations;

(C) use appropriate verbal, nonverbal, and listening skills in interviews;

(D) use appropriate information and effective critical-thinking skills in group decision-making and problem-solving processes;

(E) plan and present an informative group discussion for an audience;

(F) plan, research, organize, prepare, and present [~~write~~] an informative speech;

(G) rehearse speeches to gain command of ideas and information, reduce communication apprehension, develop confidence, and practice presentation skills;

(H) use notes, manuscripts, rostrum, and visual and auditory aids appropriately in speeches;

(I) use effective verbal and nonverbal communication in presenting informative speeches;

(J) apply critical-listening skills to analyze, evaluate, and respond appropriately to informative group discussions and speeches; and

(K) develop and use communication skills needed for academic achievement such as participating appropriately in class discussions, using active and critical-listening skills, and taking accurate notes.

(5) Persuading. The student expresses and responds appropriately to persuasive messages. The student is expected to:

(A) recognize and develop skills for analyzing persuasive strategies such as propaganda devices and emotional appeals;

(B) respond appropriately to persuasive messages in situations such as accepting or rejecting peer pressure and making or responding to requests;

(C) plan, research, organize, prepare, and present a persuasive speech;

~~[(C) research, write, rehearse, and present persuasive speeches;]~~

(D) demonstrate persuasive skills in informal or formal argumentation, discussions, or debates; and

(E) develop and use critical listening skills to analyze, evaluate, and respond appropriately to class, public, or media presentations.

(6) Creating and imagining. The student uses imagination and creativity to prepare and perform various types of literature. The student is expected to:

(A) use imagination to plan, organize, and tell stories;

(B) use appropriate verbal and nonverbal skills to share stories;

(C) select, analyze, adapt, interpret, and rehearse a variety of literary selections;

(D) use effective group decision-making skills in group performances;

(E) use appropriate verbal and nonverbal skills in individual or group interpretations of literature; and

(F) use appreciative and critical-listening skills to respond appropriately to class, public, or media performances.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 7, 2008.

TRD-200801821

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Earliest possible date of adoption: May 18, 2008

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

◆ ◆ ◆  
**TITLE 28. INSURANCE**

**PART 1. TEXAS DEPARTMENT OF INSURANCE**

**CHAPTER 7. CORPORATE AND FINANCIAL REGULATION**

The Texas Department of Insurance proposes repeal of §§7.8, 7.15, 7.27, 7.71, 7.613, 7.1012, and 7.1701 - 7.1711, concerning corporate and financial regulation. Repeal of these sections is necessary because they are obsolete and the need for these rules no longer exists. Repeal of §7.8, concerning annual statement filing instructions for county mutual insurance companies, is necessary because it is superseded by 28 TAC §7.7(f), concerning insurer accounting requirements for subordinated indebtedness. Repeal of §7.15, concerning premium taxes provided for under Insurance Code §982.114, is necessary because the Department no longer collects premium taxes, and the functions of administering, collecting, and enforcing these premium taxes are the responsibility of the Comptroller of Public Accounts pursuant to the Insurance Code §201.051. Repeal of §7.27, concerning the regulation of accounting for reinsurance agreements by life, accident and health, and annuity insurers, is necessary to eliminate a redundancy between §7.27 and §7.18, and the potential for conflicting interpretations. The substantive provisions of §7.27 are contained in Statement of Statutory Accounting Principle No. 61 and Appendix A-791, which are part of The Accounting Practices and Procedures Manual (Manual) published by the National Association of Insurance Commissioners and adopted by reference in §7.18. Repeal of §7.71, concerning requirements for filing quarterly and annual statements, is necessary because the 2001 quarterly and 2001 annual statements and other reports adopted under the section have been filed and the due dates for such filings have passed. Repeal of §7.613, concerning reinsurance ceded to nonlicensed reinsurers during the transitional period (from September 1, 1989 to the inception, anniversary, or renewal date not less than four months after September 1, 1989), is necessary because the transitional period has expired, and therefore, there no longer is a need for this rule. Repeal of §7.1012, concerning the 2006 foreign and domestic insurance company examination assessments, is necessary because the due dates for filing the overhead assessments assessed under the section have passed; therefore, the repealed section is no

longer necessary. Repeal of §§7.1701 - 7.1711, concerning taxation of administrative services, is necessary because the enactment of HB 3315, 80th Legislature, Regular Session, effective June 15, 2007, repealed the administrative service tax under Insurance Code Article 4.11A, and thus, the Department no longer needs these rules to administer this tax function.

The Department identified these sections for repeal as part of the Department's ongoing review of existing rules pursuant to Government Code §2001.039.

**FISCAL NOTE.** Danny Saenz, Senior Associate Commissioner, Financial Program, has determined that during the first five years that the proposed repeals are in effect, there will be no fiscal impact on state or local government as a result of enforcing or administering the repeals. There will be no effect on local employment or the local economy as a result of the proposed repeals.

**PUBLIC BENEFIT/COST NOTE.** Mr. Saenz also has determined that for each year of the first five years that the repeals are in effect, the public benefit anticipated as a result of the repeals will be the elimination of obsolete regulations. There will be no economic cost to any individuals, insurers, or other Department regulated entities, regardless of size, as a result of the proposed repeals.

**ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES.** In accordance with the Government Code §2006.002(c), the Department has determined that this proposal will not have an adverse economic effect on small or micro-businesses because the proposal simply repeals unnecessary rules. Therefore, in accordance with the Government Code §2006.002(c), the Department is not required to prepare a regulatory flexibility analysis.

**TAKINGS IMPACT ASSESSMENT.** The Department has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

**REQUEST FOR PUBLIC COMMENT.** To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on April 18, 2008 to Gene C. Jarmon, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comment must be simultaneously submitted to Danny Saenz, Senior Associate Commissioner, Financial Program, Mail Code 305-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Any request for a public hearing must be submitted separately to the Office of Chief Clerk before the close of the public comment period. If a hearing is held, written and oral comments presented at the hearing will be considered.

## SUBCHAPTER A. EXAMINATION AND FINANCIAL ANALYSIS

### 28 TAC §§7.8, 7.15, 7.27, 7.71

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Insurance or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

**STATUTORY AUTHORITY.** The repeal of §§7.8, 7.15, 7.27, and 7.71 is proposed pursuant to Insurance Code §36.001, which

provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

**CROSS REFERENCE TO STATUTE.** The following statutes are affected by this proposed repeal: Insurance Code Chapters 2201, 2210, and 2211 and §§32.041, 401.151 - 401.152, 401.155 - 401.156, 421.001, 802.001 - 802.003, 802.051 - 802.056, 841.255, 842.003, 842.201, 842.202, 843.151, 843.155, 844.001 - 844.005, 844.051 - 844.054, 844.101, 861.254, 861.255, 862.001, 862.003, 882.001, 882.003, 883.002, 883.204, 884.256, 885.401, 885.403-885.406, 886.107, 887.009, 887.060, 887.401 - 887.407, 911.001, 911.304, 912.002, 912.201 - 912.203, 912.301, 941.252, 942.201, 961.002, 961.003, 961.052, 961.202, 982.001, 982.002, 982.004, 982.052, 982.101, 982.102, 982.103, 982.104, 982.106, 982.108, 982.110 - 982.112, 982.114, 982.251 - 982.255, 982.302 - 982.306, 984.153, 984.201, 984.202, 1301.009, 1506.057, 2551.001, and 2551.152.

*§7.8. Annual Statement Filing Instructions for County Mutual Insurance Companies.*

*§7.15. Premium Taxes Provided for under the Insurance Code, Art. 3.25.*

*§7.27. Regulation of Accounting for Reinsurance Agreements by Life, Accident and Health, and Annuity Insurers*

*§7.71. Requirement for Filing the 2001 Quarterly and 2001 Annual Statements, Other Reporting Forms, and Diskettes or Electronic Filings with the NAIC via the Internet.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 7, 2008.

TRD-200801833

Gene C. Jarmon

General Counsel and Chief Clerk

Texas Department of Insurance

Earliest possible date of adoption: May 18, 2008

For further information, please call: (512) 463-6327



## SUBCHAPTER F. REINSURANCE

### 28 TAC §7.613

*(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Department of Insurance or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

**STATUTORY AUTHORITY.** The repeal of §7.613 is proposed pursuant to Insurance Code §36.001, which provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

**CROSS REFERENCE TO STATUTE.** The following statutes are affected by this proposed repeal: Insurance Code Chapters 2201, 2210, and 2211 and §§32.041, 401.151 - 401.152, 401.155 - 401.156, 421.001, 802.001 - 802.003, 802.051 - 802.056, 841.255, 842.003, 842.201, 842.202, 843.151,

843.155, 844.001 - 844.005, 844.051 - 844.054, 844.101, 861.254, 861.255, 862.001, 862.003, 882.001, 882.003, 883.002, 883.204, 884.256, 885.401, 885.403-885.406, 886.107, 887.009, 887.060, 887.401 - 887.407, 911.001, 911.304, 912.002, 912.201 - 912.203, 912.301, 941.252, 942.201, 961.002, 961.003, 961.052, 961.202, 982.001, 982.002, 982.004, 982.052, 982.101, 982.102, 982.103, 982.104, 982.106, 982.108, 982.110 - 982.112, 982.114, 982.251 - 982.255, 982.302 - 982.306, 984.153, 984.201, 984.202, 1301.009, 1506.057, 2551.001, and 2551.152.

§7.613. *Reinsurance Ceded to Nonlicensed Reinsurers during the Transitional Period.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 7, 2008.

TRD-200801834

Gene C. Jarmon

General Counsel and Chief Clerk

Texas Department of Insurance

Earliest possible date of adoption: May 18, 2008

For further information, please call: (512) 463-6327



## SUBCHAPTER J. EXAMINATION EXPENSES AND ASSESSMENTS

### 28 TAC §7.1012

*(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Department of Insurance or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

STATUTORY AUTHORITY. The repeal of §7.1012 is proposed pursuant to Insurance Code §36.001, which provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

CROSS REFERENCE TO STATUTE. The following statutes are affected by this proposed repeal: Insurance Code Chapters 2201, 2210, and 2211 and §§32.041, 401.151 - 401.152, 401.155 - 401.156, 421.001, 802.001 - 802.003, 802.051 - 802.056, 841.255, 842.003, 842.201, 842.202, 843.151, 843.155, 844.001 - 844.005, 844.051 - 844.054, 844.101, 861.254, 861.255, 862.001, 862.003, 882.001, 882.003, 883.002, 883.204, 884.256, 885.401, 885.403-885.406, 886.107, 887.009, 887.060, 887.401 - 887.407, 911.001, 911.304, 912.002, 912.201 - 912.203, 912.301, 941.252, 942.201, 961.002, 961.003, 961.052, 961.202, 982.001, 982.002, 982.004, 982.052, 982.101, 982.102, 982.103, 982.104, 982.106, 982.108, 982.110 - 982.112, 982.114, 982.251 - 982.255, 982.302 - 982.306, 984.153, 984.201, 984.202, 1301.009, 1506.057, 2551.001, and 2551.152.

§7.1012. *Domestic and Foreign Insurance Company Examination Assessments, 2006.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 7, 2008.

TRD-200801835

Gene C. Jarmon

General Counsel and Chief Clerk

Texas Department of Insurance

Earliest possible date of adoption: May 18, 2008

For further information, please call: (512) 463-6327



## SUBCHAPTER Q. TAXATION OF ADMINISTRATIVE SERVICES

### 28 TAC §§7.1701 - 7.1711

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Insurance or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

STATUTORY AUTHORITY. The repeal of §§7.1701 - 7.1711 is proposed pursuant to Insurance Code §36.001, which provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

CROSS REFERENCE TO STATUTE. The following statutes are affected by this proposed repeal: Insurance Code Chapters 2201, 2210, and 2211 and §§32.041, 401.151 - 401.152, 401.155 - 401.156, 421.001, 802.001 - 802.003, 802.051 - 802.056, 841.255, 842.003, 842.201, 842.202, 843.151, 843.155, 844.001 - 844.005, 844.051 - 844.054, 844.101, 861.254, 861.255, 862.001, 862.003, 882.001, 882.003, 883.002, 883.204, 884.256, 885.401, 885.403-885.406, 886.107, 887.009, 887.060, 887.401 - 887.407, 911.001, 911.304, 912.002, 912.201 - 912.203, 912.301, 941.252, 942.201, 961.002, 961.003, 961.052, 961.202, 982.001, 982.002, 982.004, 982.052, 982.101, 982.102, 982.103, 982.104, 982.106, 982.108, 982.110 - 982.112, 982.114, 982.251 - 982.255, 982.302 - 982.306, 984.153, 984.201, 984.202, 1301.009, 1506.057, 2551.001, and 2551.152.

§7.1701. *Definitions.*

§7.1702. *Form Filings.*

§7.1703. *Tax Payment Requirements.*

§7.1704. *Collection and Payment of Tax.*

§7.1705. *Date for Filing Tax Return and Paying Tax.*

§7.1706. *Payment under Protest.*

§7.1707. *Quarterly Prepayment of Taxes.*

§7.1708. *Application of Other Laws.*

§7.1709. *Tax Additional.*

§7.1710. *1987 Annual Administrative Service Tax Return.*

§7.1711. *Quarterly Tax Return for Administrative Services--1988.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 7, 2008.



TRD-200801836  
Gene C. Jarmon  
General Counsel and Chief Clerk  
Texas Department of Insurance  
Earliest possible date of adoption: May 18, 2008  
For further information, please call: (512) 463-6327



## TITLE 31. NATURAL RESOURCES AND CONSERVATION

### PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

#### CHAPTER 53. FINANCE

##### SUBCHAPTER A. FEES

#### DIVISION 1. LICENSE, PERMIT, AND BOAT AND MOTOR FEES

##### 31 TAC §53.17

The Texas Parks and Wildlife Department proposes an amendment to §53.17, concerning Miscellaneous Fees, to establish a fee for participation in a mentored hunting program. Elsewhere in this issue of the *Texas Register*, the department is proposing rules to create a mentored hunting permit for use on department wildlife management areas. The intent of the rulemaking is to provide an opportunity for persons who are not from traditional hunting backgrounds to learn about and participate in hunting activities on department wildlife management areas.

The proposed amendment to §53.17 would implement a fee of \$25 for the mentored hunting permit.

Ms. Linda Campbell, Director of Private Lands and Public Hunting, has determined that for each of the first five years that the rule as proposed is in effect, there may be fiscal implications to state government as a result of enforcement or administration of the rule. The department plans to hold at least five mentored hunting events per year and estimates that a total of 100 persons will participate. The department also estimates that it will sustain a cost of \$75 per event participant. Since the proposed permit fee is \$25, the department will, therefore, incur a net expense of \$50 per participant. Thus, the estimated maximum fiscal cost to the department of the pilot program will be \$5,000 per year. However, the department is seeking grant assistance for program delivery that, if secured, would result in a revenue-neutral impact to the department.

There will be no fiscal implications for other units of state or local government as a result of enforcing or administering the proposed rule.

Ms. Campbell also has determined that for each of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing or administering the rule as proposed will be the opportunity for persons who are not from traditional hunting backgrounds to learn about and participate in hunting activities.

There will be no adverse economic effect on persons required to comply with the rule as proposed. Participation in the mentored hunting program is voluntary, but persons wishing to participate will incur a fee of \$25.

The department has determined that small or micro-businesses will not be affected by the proposed rule. Accordingly, the department has not prepared a regulatory flexibility analysis under Government Code, Chapter 2006.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rule as proposed will not impact local economies.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rule.

Comments on the proposed rule may be submitted to Linda Campbell, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4395 (e-mail: linda.campbell@tpwd.state.tx.us).

The rule is proposed under the authority of Parks and Wildlife Code, §81.403, which authorizes the department to issue permits authorizing access to public hunting land or for specific hunting, fishing, recreational, or other use of public hunting land or wildlife management areas; requires the conditions for the issuance and use of such permits to be prescribed by rule; and requires the department to charge a permit fee by rule.

The proposed rule affects Parks and Wildlife Code, Chapter 81.

##### *§53.17. Miscellaneous Fees.*

- (a) Off-highway vehicle decal--\$8; [~~and~~]
- (b) Controlled exotic snake permits:
  - (1) recreational--\$20;
  - (2) commercial--\$60; and
- (c) Mentored hunting permit--\$25.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 7, 2008.

TRD-200801832  
Ann Bright  
General Counsel  
Texas Parks and Wildlife Department  
Earliest possible date of adoption: May 18, 2008  
For further information, please call: (512) 389-4775



#### DIVISION 2. FACILITY ADMISSION AND USE FEES

##### 31 TAC §53.30

The Texas Parks and Wildlife Department (the department) proposes an amendment to §53.30, concerning Facility Admission and Use Fees. The amendment would reorganize the fee structure for reserving and using facilities on the Parrie Haynes Ranch; establish minimum fees for department-provided meal services; create a fee discount for facility use by youth groups; add definitions to clarify words and terms; increase the amounts of existing fee ranges; waive fees for sub-lessees and persons participating in volunteer activities; and clarify that use of specific ranch facilities is by reservation only.

The Parrie Haynes Ranch is a 4,525-acre property the department leases from the Texas Youth Commission. During summer months, the department, with the consent of the Texas Youth Commission, subleases the property to the C5 Youth Foundation (formerly Camp Coca-Cola) for the operation of a camp for high-potential youth from risk-filled environments. In addition, the C5 Youth Foundation has made significant infrastructure improvements to and investments in the Parrie Haynes Ranch in support of the operation of the camp. To the extent that other uses do not conflict with the use of the ranch by the C5 Foundation and are consistent with the department's mission and the department's lease from the Texas Youth Commission, the department manages the property as an outdoor learning center and conference, environmental, and equestrian facility serving primarily youth, although ranch facilities are also available for use by other groups.

The current fee structure does not address the complete range of facilities and activities available on the ranch and the current fee ranges specified by rule are insufficient to recover the majority of the cost of operating the facility. The proposed rules would reconfigure the current fee structure to account for all facilities and activities available to the public, stipulate the fee range for each facility or type of facility, and provide for a fee discount for youth groups. The proposed amendment is intended to allow the department to recover a larger percentage of operational expenses while continuing to provide affordable opportunity for organizations and entities, especially youth groups.

The current rule addresses fee ranges very broadly for ranch facility components. The department has determined that it is necessary to assign fee ranges more specifically on the ranch. For instance, the current rule specifies individual fee ranges only for the larger houses on the ranch, and an aggregate fee range for "lodging," by which is meant the small cabins on the ranch. Because the facilities on the ranch are not all the same, the proposed amendment would identify the smaller components such as cabins, meeting rooms, pavilion, and pool and assign specific fee ranges to each.

Additionally, the proposed amendment would create definitions, make clarifications, and add stipulations as noted.

The proposed amendment to §53.30(5)(A) would define the meanings of specialized words and terms used in the paragraph for purposes of providing for the unambiguous interpretation of the paragraph or to reduce repetition of lengthy phrases.

For the sake of avoiding needless repetition, the proposed amendment to §53.30(5)(A)(i) would define "rig" to mean a tandem of one vehicle and one horse trailer.

The proposed amendment to §53.30(5)(A)(ii) would define "volunteer" as "a person the department has authorized to access the Parrie Haynes Ranch to provide maintenance, development, program delivery, or other similar assistance to the Parrie Haynes Ranch." The definition is necessary because another provision of the proposed amendment would waive all fees for volunteers and the department wishes to be clear as to what is meant by the term.

The proposed amendment to §53.30(5)(A)(iii) would define the term "youth group" as "a group at least 60% of which are 17 years of age or younger." The department chooses 17 years of age as the maximum age for youth in order to be consistent with the statutory definition of "youth" in the Parks and Wildlife Code. The minimum percentage composition of youth necessary for a group to qualify as a youth group is based on the minimum level of adult

supervision acceptable to the department and is consistent with criteria used by most school districts for supervision of children on away-from-school activities.

The proposed amendment to §53.30(5)(B) would clarify that use of specific ranch facilities by the public is on a reservation-only basis. Use of the Parrie Haynes Ranch facilities and activities (other than the equestrian center) is restricted to reservation-only because the ranch is not staffed or otherwise equipped to handle walk-up business.

The Parrie Haynes Ranch consists of two areas, the Hilltop Complex on the west side of the ranch, and the Equestrian Center on the east side of the ranch. The proposed amendment to §53.30(5)(C) would establish fee ranges for the various facilities on the Hilltop Complex portion of the ranch. The proposed fee ranges were developed with the intent of providing facilities and services at prices similar to those found at comparable facilities elsewhere in the state. The department compared rental prices for cabins, houses, meeting rooms, dining halls, pavilions, pools, and day use at Belton Lake Outdoor Recreation Center, Heart of Texas Baptist Encampment, Pine Cove Retreats, McKinney Roughs and Canyon of the Eagles (Lower Colorado River Authority), Camp Allen, the Texas 4-H Center, and the T-Bar-M resort and has determined that the proposed fee ranges are consistent with comparable fees for similar facilities and activities.

The proposed amendment to §53.30(5)(D) would establish fee ranges for camping and day use on the ranch. For the purposes of these rules, the department views camping as overnight visitation that does not include lodging in one of the buildings on the ranch. The camping fees are established at two levels, primitive and with recreational vehicle electrical hookup.

The proposed amendment to §53.30(5)(E) would establish fee ranges for use of the Equestrian Center. In addition, the proposed amendment would allow the closure of the equestrian center to overnight visitation and the waiver of fees by order of the executive director when necessary to address staffing and management priorities. The provision is necessary because the ranch is minimally staffed.

The proposed amendment to §53.30(5)(F) would establish a fee range for meals provided by the department. The minimum fee for meal service would be calculated on the basis of a 25-person party. The Parrie Haynes Ranch is minimally staffed; meal preparation, service, and cleanup represent a significant operational investment of staff time and cannot be provided on a cost-effective basis for fewer than 25 people.

The proposed amendment to §53.30(5)(G) would provide for exceptions to the provisions of the rule. The proposed amendment to §53.30(5)(G)(i) would establish a standard 40% discount on fees for the use of certain ranch facilities by youth groups. As noted earlier, the Parrie Haynes Ranch was donated to the state for the benefit of youth and is leased by the department from the Texas Youth Commission for that purpose. In order to provide affordable opportunities for groups and organizations that serve youth populations, the department believes that fees for youth groups should be substantially less than those charged to other groups and individuals.

The Parrie Haynes Ranch is used by other governmental entities under interagency and interlocal contracts pursuant to the requirements of Government Code, Chapters 771 and 791; therefore, the proposed amendment to §53.30(5)(G)(ii) would note that fact for the sake of clarity.

The proposed amendment to §53.30(5)(G)(iii) also would waive all fee requirements for volunteers and Texas Youth Commission-approved sub-lessees. In operating and maintaining the Parrie Haynes Ranch the department receives donated labor and program delivery benefits from volunteer individuals and organizations. The proposed amendment waives the fees for such persons in order to maximize and encourage volunteer activities on the ranch. As previously noted, the department sub-leases the property to the C5 Youth Foundation (formerly Camp Coca-Cola), for the operation of a camp for high-potential youth from risk-filled environments. The camp is operated completely at the expense of the C5 Youth Foundation and therefore the department believes it is appropriate to waive all fees for the camp.

The proposed amendment to paragraph (5) also standardizes terminology by creating standard rental time-unit of a "24-hour period" to replace current references to "per night" and "per day" as they occur throughout the rule.

Mr. Ernie Gammage, Chief of the Urban Outdoor Programs Branch, has determined that for each of the first five years the rule as proposed is in effect, there will be fiscal implications to state government as a result of enforcing or administering the rules.

Utilizing historical revenue data, the department estimates that the proposed rule will result in a revenue increase to the department of approximately \$24,300 per year. It is not possible to predict ranch revenues in the future, so for the purposes of this analysis, the department calculated the revenue increase that would occur if usage in the next fiscal year (FY) were identical to estimated usage in the past fiscal year. In FY 2007, the total revenue from fees at the Parrie Haynes Ranch was \$64,900. If the same estimated usage were to occur under the proposed fee increases, the department would realize \$89,200, or an increase of \$24,300.

There will be no negative fiscal implications for units of local government.

Mr. Gammage also has determined that for each of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing or administering the rule as proposed will be the continued ability of the department to operate the Parrie Haynes Ranch in support of the department's mission.

The department has determined that there will be no direct economic effect on small or micro-businesses as a result of the proposed rule, because the rule does not affect small or micro-businesses; accordingly, the department has not prepared a regulatory flexibility analysis under Government Code, Chapter 2006. There will be no adverse economic effect on persons required to comply with the rules as proposed.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rule as proposed will not impact local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rule.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rule.

Comments on the proposed rule may be submitted to Ernie Gammage, Texas Parks and Wildlife Department, 4200 Smith

School Road, Austin, Texas 78744; (512) 389-4472 (e-mail: ernie.gammage@tpwd.state.tx.us).

The amendment is proposed under Parks and Wildlife Code, §11.027, which authorizes the commission to establish and provide for the collection of a fee for entering, reserving, or using a facility or property owned or managed by the department.

The proposed amendment affects Parks and Wildlife Code, Chapter 11.

§53.30. *Facility Admission and Use Fees.*

As determined and authorized by the executive director, the department may charge entrance and facility use fees within the ranges established or the amounts specified in this section.

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

(5) Parrie Haynes Ranch.

(A) Definitions.

(i) Rig--a vehicle/horse trailer tandem;

(ii) Volunteer--a person the department has authorized to access the Parrie Haynes Ranch to provide maintenance, development, program delivery, or other similar assistance to the Parrie Haynes Ranch; and

(iii) Youth group--a group at least 60% of which are 17 years of age or younger.

(B) General. Use of the Parrie Haynes Ranch facilities listed in subparagraphs (C), (D) and (F) of this paragraph is on an as-available basis by reservation only.

(C) Facility fees. On the basis of availability, use of the Longhorn Lodge, Hoblitzelle Activity Pavilion, Rio Vista Hall, Buffalo Bunkhouse Meeting Rooms, and Pool is included for groups of 25 or more persons who purchase lodging and meals at the Hilltop Complex.

(i) Lodging.

(I) Mountain Laurel House--\$150 to \$250 per 24-hour period;

(II) Lone Star House--\$250 to \$400 per 24-hour period;

(III) Buffalo Bunkhouse--\$300 to \$600 per 24-hour period;

(IV) Cabins (Llano, Frio, Comal, Lantana, Primrose, Rattlesnake, Hawk, Coyote, and Bobcat)--\$300 to \$500 per 24-hour period, subject to applicable occupancy restrictions; and

(V) Rustic Hunter's Cabin--\$50 to \$100 per 24-hour period.

(ii) Other facilities.

(I) Longhorn Lodge (classroom)--\$150 to \$250 per 24-hour period;

(II) Hoblitzelle Activity Pavilion--\$100 to \$150 per 24-hour period;

(III) Buffalo Bunkhouse (meeting rooms)--\$50 to \$150 per 24-hour period;

(IV) Rio Vista Hall--\$150 to \$250 per 24-hour period;

(V) pool--\$150 to \$250 per 24-hour period (lifeguard not provided).

(iii) Miscellaneous.

(I) kayak rental--\$10 to \$40 per kayak per 24-hour period;

(II) ropes challenge course--\$10 to \$40 per person per 24-hour period (must be accompanied by or include at least one certified facilitator provided by the user).

(III) shooting range--\$20 to \$40 per person per 24-hour period (must be accompanied by or include at least one person, provided by the user, who is certified by the department or the National Rifle Association as a hunter education instructor); and

(IV) Hilltop equestrian arena--\$200 to \$300 per 24-hour period.

(V) Youth Hunting Package (maximum: two nights, lodging (Rustic Hunter's Cabin) and hunting only)--\$20 to \$60 per person per 48-hour period;

(D) camping and day use:

(i) camping:

(I) primitive--\$5 to \$20 per person per 24-hour period; and

(II) RV/electrical connection--\$16 to \$30 per 24-hour period.

(ii) day use: \$3 to \$15 per person per 24-hour period.

(E) Equestrian Center fees. When necessary to address staffing and management priorities, the Executive Director by order may close the equestrian center to overnight visitation and waive the fees established in this subparagraph.

(i) Day use (includes overnight, no lodging)--\$10 to \$20 per 24-hour period per rig;

(ii) Overnight (with electrical hook-up)--\$16 to \$30 per 24-hour period per rig;

(iii) Extra vehicle--\$5 to \$15 per 24-hour period;

(iv) Cowboy Cabin--\$20 to \$40 per 24-hour period;

(v) Hideout Clubhouse (including porch)--\$120 to \$200 per 24-hour period; and

(vi) Hideout Clubhouse (porch only)--\$60 to \$80 per 24-hour period.

(F) Meals.

(i) Meal fees shall be from \$5 to \$25 per person per meal, depending on the meal plan selected.

(ii) For groups of fewer than 25 people, the minimum meal fee shall be the fee that would be charged to a group of 25 persons, depending on the meal plan selected.

(G) Exceptions.

(i) The fees listed in subparagraph (C)(i) of this paragraph shall be discounted by 40% for youth groups.

(ii) Use of the Parrie Haynes Ranch by governmental entities shall be by agreement according to the relevant provisions of Government Code, Chapters 771 and 791, regarding Interagency Cooperation and Interlocal Cooperation.

(iii) Volunteers are exempt from all fee requirements.

(iv) Existing subleases of Parrie Haynes Ranch approved by the Texas Youth Commission are exempt from the provisions of this section.

[(5) Parrie Haynes Youth ranch.]

[(A) lodging--\$10 to \$50 per night;]

[(B) meals--\$21 to \$48 per day;]

[(C) hill-top rental--\$1,000 to \$5,000 per day;]

[(D) Mountain King--\$150 to \$200 per night;]

[(E) Big House--\$250 to \$600 per night;]

[(F) equine area--\$10 to \$12 per day; and]

[(G) equine area club house--\$125 to \$150 per day.]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 4, 2008.

TRD-200801766

Ann Bright

General Counsel

Texas Parks and Wildlife Department

Earliest possible date of adoption: May 18, 2008

For further information, please call: (512) 389-4775



## CHAPTER 57. FISHERIES

### SUBCHAPTER C. INTRODUCTION OF FISH, SHELLFISH AND AQUATIC PLANTS

#### 31 TAC §§57.251 - 57.253, 57.258, 57.259

The Texas Parks and Wildlife Department (the department) proposes amendments to §§57.251 - 57.253, 57.258, and 57.259, concerning Introduction of Fish, Shellfish and Aquatic Plants.

Parks and Wildlife Code, §12.015, requires the department to regulate the introduction and stocking of fish, shellfish, and aquatic plants into the public water of the state. Under Parks and Wildlife Code, §66.015, the department is required to adopt rules governing the issuance of permits for the introduction of fish, shellfish, and aquatic plants into public waters. Additionally, Agriculture Code, Chapter 134, requires the department to adopt rules to carry out its duties under that chapter.

The department's statutory responsibility is to protect the health and viability of native populations of fish, shellfish, and aquatic life in state waters, including endangered species. Although offshore aquaculture is being practiced elsewhere in the world, it is in its infancy in the United States in general and the Gulf of Mexico in particular.

In November 2006, the Texas Parks and Wildlife Commission adopted rules to govern offshore aquaculture activities in Texas waters. Since that time, persons with a prospective engagement in offshore aquaculture have suggested changes to the rules that would make administrative processes more tractable and therefore more conducive to the establishment of offshore aquaculture activities in Texas.

The proposed amendment to §57.251, concerning Definitions, would alter the definition of "disease condition" to eliminate the

5% mortality rate set forth in paragraph (3)(B) as a determinative criteria for the assumption of a disease condition. Instead, the proposed rule would require that a department-approved aquatic veterinarian be consulted within 48 hours of the discovery that a mortality rate of 5% or more has occurred in an enclosure within a seven-day period. The 48-hour notification was chosen because a longer time period would potentially allow for an epidemiologically unacceptable risk to native resource populations in public waters. The new provision is added as subsection (e)(5) of the proposed amendment to §57.252, concerning General Provisions.

The proposed amendment to §57.252 would alter subsection (a) to enable the department to issue permits to corporations, companies, and other entities that meet all legal requirements for doing business in Texas.

Currently, §57.252(e)(5) provides that in the event a disease condition is discovered or a necessary permit is suspended or revoked, the department has the option of ordering removal of stock from an offshore aquaculture facility. The proposed amendment to §57.252(e)(6) would give the department more flexibility in dealing with these issues, by providing that the department may take "other appropriate action" in addition to or instead of ordering removal of stock.

The proposed amendment to §57.253, concerning Permit Application, would alter subsection (c)(2)(B)(iv) to make the reference to the General Land Office (GLO) accurate. The current provision alludes to a GLO permit to "anchor" a facility. Technically, the General Land Office issues permits to lease submerged lands from the state and does not regulate anchoring activities per se. The proposed amendment is necessary to maintain accurate regulatory language.

The amendment to §57.253(d) would allow the issuance of an offshore aquaculture permit to an entity that possesses a certificate of existence from the Texas Secretary of State and a franchise tax certification of account status from the Texas Comptroller of Public Accounts. The amendment would reduce potential or perceived administrative complexity for prospective offshore aquaculturists.

The proposed amendment to §57.253 also would add a new subsection (e) to authorize the department to request any additional information from an applicant necessary to evaluate the impact of a prospective offshore aquaculture operation. The amendment would facilitate the department's investigation of whether a prospective offshore aquaculture operation poses minimal risk to native populations and systems. With the addition of new subsection (e), current subsection (d) is unnecessary.

The proposed amendment to §57.253(f) would establish an informal review process for permittees who wish to seek review of a department decision to deny a permit application or to refuse to renew a permit issued under the subchapter. The proposed amendment would require the department to notify a permittee upon a determination to deny or suspend a permit. A permittee would then have ten working days from receipt of notification to request a review of such a decision. The review panel would consist of the director and deputy director of the Coastal Fisheries Division and the Deputy Executive Director for Operations (or his or her designee). The review panel would be required to make a determination within ten working days and the decision of the review panel would be final. The proposed amendment would provide an internal mechanism for review by senior agency managers in the event that a permittee contests a de-

partment decision to deny a permit application or to refuse to renew a permit.

The proposed amendment to §57.258, concerning Prohibited Acts, would make it an offense for a permittee to construct an offshore aquaculture facility in a manner different from that indicated in an approved application. The current rule requires construction of the offshore aquaculture facility prior to issuance of a permit. Concern has been expressed that the existing rule inhibits project financing, since capital outlays would be required before all permits were secured. Accordingly, the proposed rule would allow issuance of the permit prior to construction. Adding the offense of construction in violation of the permit would help assure satisfactory facility construction.

The proposed amendment to §57.259, concerning Violations and Penalties, would allow for suspension or revocation of permits in the event of violations. This amendment would refer to the statutory requirements in Government Code, Chapter 12, as the permittee's procedural recourse in the event the permittee wishes to challenge the department's intended suspension or revocation of a permit.

Mr. Mike Ray, Coastal Fisheries Deputy Division Director, has determined that for each of the first five years the rules as proposed are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Mr. Ray also has determined that for each of the first five years the rules as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the rules as proposed will be adoption of a simpler regulatory process that continues to reflect the intent of the Texas Parks and Wildlife Commission that marine ecosystems not be negatively impacted by aquaculture facilities established in Texas waters.

The department has determined that small or micro-businesses will not be affected by the proposed rules, because there are no offshore aquaculture activities currently permitted by the department to operate in Texas waters. Moreover, the overall intent of the proposed rules is to respond to suggestions expressed by potential offshore aquaculturists regarding how to make the rules more manageable for businesses. Accordingly, the department has not prepared a regulatory flexibility analysis under Government Code, Chapter 2006. There will be no adverse economic effect on persons required to comply with the rules as proposed.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rules as proposed will not impact local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rules.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

Comments on the proposed rules may be submitted to Mike Ray, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4649 (e-mail: mike.ray@tpwd.state.tx.us).

The amendments are proposed under Parks and Wildlife Code, §12.015, which requires the department to regulate the introduction and stocking of fish, shellfish, and aquatic plants into the

public water of the state; §61.052, which requires the department to regulate taking or possessing aquatic animal life; §66.015(c), which requires the department to establish rules related to the issuance of permits for the introduction of fish, shellfish, or aquatic plants into the public water of the state; and Agriculture Code, §134.005, which requires the commission to adopt rules necessary to carry out its responsibilities under that chapter to regulate aquaculture.

The proposed amendments affect Parks and Wildlife Code, Chapters 12, 61, and 66, and Agriculture Code, Chapter 134.

§57.251. *Definitions.*

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

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

(3) Disease condition--

~~[(A)]~~ The presence of contagious pathogens or injurious parasites known or clinically suspected of constituting a threat to the health of native species of aquatic organisms. ~~;~~ ~~or~~

~~[(B)] A mortality rate of five percent or more occurring within a period of seven days in a single enclosure.~~

(4) - (11) (No change.)

§57.252. *General Provisions.*

(a) An offshore aquaculture [A] permit [issued] under this subchapter may [shall] be issued to an [a named] individual, [only and not in the name of a] corporation, company, or other entity that meets all requirements of Texas law for transacting business in this state and the requirements of this subchapter applicable to offshore aquaculture permits.

(b) A permit under this subchapter other than for an offshore aquaculture facility may be issued to a named individual only and not to a corporation, partnership, or other entity.

(c) [(b)] A permit issued under this subchapter shall not be sold or transferred except with the approval of the department.

(d) [(c)] A one-time introduction permit, for releases other than those made into an offshore aquaculture facility, is valid for 60 days from the date of issuance or until the permitted introduction has been completed, whichever comes first.

(e) [(d)] For offshore aquaculture facilities:

(1) An offshore aquaculture permit authorizes permitted activities in a designated area within the offshore aquaculture zone.

(2) The offshore aquaculture permit shall be issued only for the cultivation of native species. Upon request the permittee shall provide the form and type of evidence requested by the department that the individuals are:

(A) obtained from the Gulf of Mexico; or

(B) descended solely from individuals obtained from the Gulf of Mexico.

(3) An offshore aquaculture permit shall be valid from the date of issuance until the date of expiration, but for no longer than 5 years after the issuance date.

(4) The department may inspect:

(A) any enclosure or infrastructure used to engage in offshore aquaculture; or

(B) vessel used to transport stock and equipment to and from an offshore aquaculture facility.

(5) In the event that a single enclosure suffers a mortality rate of five percent or more within seven days, the permittee shall, within 48 hours of suffering the five percent mortality rate, submit samples to a department-approved aquatic veterinarian to determine whether a disease condition exists.

(6) [(5)] The department may order the removal of all stock from an enclosure or take other appropriate action upon:

(A) a determination that a disease condition exists; or

(B) an enforcement action by a federal or state agency resulting in the suspension or revocation of a clearance, permit, or authorization that is required under §57.253 of this title (relating to Permit Application).

(7) [(6)] The department may sample stock to determine genetic lineage.

(f) [(e)] A holder of an offshore aquaculture permit must:

(1) notify the department at least three calendar days prior to the placing of any fish, shellfish, or aquatic plant into public water;

(2) notify the department at least three calendar days prior to removing any fish, shellfish, or aquatic plant from an offshore aquaculture facility;

(3) notify the department immediately upon discovering that a disease condition exists within an offshore aquaculture facility;

(4) notify the department immediately upon determining that an offshore aquaculture facility has been damaged and the threat of the unintentional release of stock exists; and

(5) remove all enclosures and associated infrastructure from public waters within 10 calendar days of permit expiration or revocation.

(g) [(f)] A permit is not required for any person, while fishing, to place goldfish (*Carassius auratus*), common carp (*Cyprinus carpio*), native shrimp, crabs, crawfish and nongame fish into public waters or to immediately release any fish that does not comply with size and bag limits for that species.

(h) [(g)] An employee of the department acting at the direction of the executive director is exempt from the permit requirements specified by these sections.

§57.253. *Permit Application.*

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

(c) An application for an offshore aquaculture facility:

(1) must be received by the department at least 90 days prior to the proposed deployment of any enclosure or infrastructure;

(2) must include:

(A) (No change.)

(B) proof that the applicant has obtained:

(i) - (iii) (No change.)

(iv) approval from the General Land Office to install an offshore aquaculture facility in state waters [anchor the facility];

(C) - (G) (No change.)

(d) If the application is in the name of an entity other than an individual person or persons, the application must include a certificate

of existence from the Texas Secretary of State and a franchise tax certification of account status from the Texas Comptroller of Accounts.

(e) The department may require the applicant to submit any other information that the department determines is necessary to evaluate the application or protect state resources.

(f) An applicant for a permit under this subchapter may request a review of a decision of the department to refuse issuance of a permit or permit renewal.

(1) An applicant seeking review of a decision of the department with respect to permit issuance under this subchapter shall first contact the department within 10 working days of being notified by the department of permit denial.

(2) The department shall conduct the review and notify the applicant of the results within 10 working days of receiving a request for review. The decision of the review panel shall be final.

(3) The request for review shall be presented to a review panel. The review panel shall consist of the following:

(A) the Deputy Executive Director for Operations (or his or her designee);

(B) the Director of the Coastal Fisheries Division; and

(C) the Deputy Director of the Coastal Fisheries Division.

~~[(d) An offshore aquaculture permit will not be issued unless the department has conducted an inspection of all enclosures and infrastructure and found such to be consistent with the information provided in the application.]~~

§57.258. *Prohibited Acts.*

Except as provided in this subchapter, it is an offense if:

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

(5) any person to whom the department has issued an offshore aquaculture permit fails to remove all enclosures and associated infrastructure from public waters within 10 calendar days of permit expiration or revocation; [-]

(6) a permittee constructs an offshore aquaculture facility in a manner different from the department-approved application.

§57.259. *Violations and Penalties.*

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

(c) If a person violates a provision of this subchapter or a provision of a permit issued under this subchapter the department may suspend or revoke the permit after notifying the permittee that a violation has occurred. All contested cases shall be conducted pursuant to the provisions of Government Code, Chapter 2001.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 4, 2008.

TRD-200801767

Ann Bright

General Counsel

Texas Parks and Wildlife Department

Earliest possible date of adoption: May 18, 2008

For further information, please call: (512) 389-4775



## CHAPTER 65. WILDLIFE SUBCHAPTER H. PUBLIC LANDS PROCLAMATION

### 31 TAC §§65.191, 65.193, 65.194

The Texas Parks and Wildlife Department (the department) proposes amendments to §§65.191, 65.193, and 65.194, concerning the Public Lands Proclamation.

The Parks and Wildlife Code authorizes the department to issue permits for hunting in wildlife management areas and to establish a fair method for distribution of those permits. Tex. Parks & Wild. Code §81.403(a). Also, department employees are charged with providing outreach and education to "increase the participation in outdoor recreation . . . consistent with the mission and goals of the department." Tex. Parks & Wild. Code §11.0181. The department's mission includes providing "hunting and fishing and outdoor recreation opportunities for the use and enjoyment of present and future generations."

In an effort to increase participation in hunting and provide additional hunting opportunities, the proposed amendments to §65.191 and §65.193 would create and implement a new type of public hunting permit, the Mentored Hunting Permit (MPH). As a trial program, the department would offer limited opportunities on a first-come, first-served basis to persons interested in participating in a multi-day workshop on a department wildlife management area (WMA) that would teach hunting skills, safety, ethics, game processing and preparation, elements of habitat management, and provide guidance and advice for hunting activities in the future. As part of the workshop, participants would be offered the opportunity to participate in a mentored hunt in which the participant is accompanied by an experienced hunter on a WMA as a follow-on component of the workshop. The pilot program is intended to explore possible initiatives to increase hunter recruitment. The mentored hunter program could be an effective vehicle for providing the opportunity for persons who are not from traditional hunting backgrounds to learn about and participate in hunting activities.

Among the permits that allow for access to WMAs is the Field Trial Permit, which authorizes permit holders to participate in competitive events on a WMA in which the skills of hunting dogs are tested. The proposed amendment to §65.194, concerning Competitive Hunting Dog Event (Field Trials) and Fees, would allow event spectators to be named on the permit and therefore be exempt from access permit fees. The department issues an average of two field trial permits per year. These events are staged by trial groups and are attended by handlers, trainers, officials, and spectators. Spectators are typically persons who have dogs in training and wish to observe the progress of their dogs. Under current rule, dog handlers and officials are exempt from access permit fees, but not spectators. There is no regulatory criterion for distinguishing a spectator from a handler or official. Rather than developing a definition to distinguish spectators from handlers and officials and attempting to enforce it, which would not be cost-effective, the department has determined that it would be more effective to allow spectators to be listed on the field trial permit and thereby exempted from the access permit requirement. The field trial permittee already pays a permit fee of between \$100 and \$500 per day (based on the number of participants) and must have \$250,000 in liability insurance (personal injury and property damage) and a \$5,000 performance bond, spectators should be exempt from access fees, provided their names and social security numbers are on the list required to be

kept by the field trial permittee. Both state and federal laws regarding child support collection require the department to obtain social security numbers for each person to whom a recreational license is issued. Tex. Fam. Code §§231.302, 42 U.S.C. §666.

The proposed amendment to §65.194 would also update a reference to Chapter 53, Subchapter A, which has been retitled since the last time §65.194 was amended.

Ms. Linda Campbell, Director of Private Lands and Public Hunting, has determined that with respect to the proposed amendments to §65.191 and §65.193, there may be fiscal implications to state government as a result of enforcement or administration of the rules for each of the first five years that the rules as proposed are in effect.

Elsewhere in this issue of the *Texas Register* the department proposes an amendment to §53.17 that would establish a fee of \$25 for the mentored hunting permit. The department reproduces the fiscal note from that proposal here as a courtesy to the public.

The department plans to hold five mentored hunting events per year and estimates that a total of 100 persons will participate. The department also estimates that it will sustain a cost of \$75 per event participant. Since the proposed permit fee is \$25, the department will therefore incur a net expense of \$50 per participant. Thus, the estimated maximum fiscal cost to the department of the pilot program will be \$5,000 per year. However, the department is seeking grant assistance for program delivery that, if secured, would result in a revenue-neutral impact to the department.

There will be no fiscal implications for other units of state or local government as a result of enforcing the amendments to §65.191 and §65.193.

There will be fiscal implications for state government as a result of enforcing the amendment to §65.194. As previously noted, the department issues an average of two field trial permits per year, which attract a total of approximately 80 spectators, each of whom is required under current rule to purchase an access permit. There are currently two primary types of permits for access to a WMA: the Annual Public Hunting Permit (APH), addressed in §53.10(a)(1) and §§65.191 - 65.208, which allows entry to designated public hunting lands at designated times for the taking of wildlife resources as designated; and the Limited Public Use Permit (LPU), addressed in §53.10(a)(3) and §§65.191 - 65.208, which allows access to designated wildlife management areas and public hunting lands at the same times that access is provided by an APH permit, but does not authorize the take of wildlife resources. The least expensive of these access permits is the \$12 LPU. Therefore, the maximum fiscal cost to the agency of waiving access permit fees for field trial spectators is estimated to be approximately \$960 per year. The actual fiscal cost could be less, depending on how many spectators have independently purchased an LPU permit or an Annual Public Hunting Permit.

There will be no fiscal implications for other units of state or local government as a result of enforcing the amendments to §65.194.

Ms. Campbell also has determined that for each of the first five years the rules as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the rules as proposed will be the opportunity for persons who are not from traditional hunting backgrounds to learn about and participate in

hunting activities and the elimination of a regulatory requirement that is more expensive to enforce than it produces in revenue.

There will be no adverse economic effect on persons required to comply with the rules as proposed. Participation in the mentored hunting program is voluntary, but persons wishing to participate will incur a fee of \$25.

The department has determined that small or micro-businesses will not be affected by the proposed rules. Accordingly, the department has not prepared a regulatory flexibility analysis under Government Code, Chapter 2006.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rules as proposed will not impact local economies.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

Comments on the proposed rules may be submitted to Linda Campbell, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4395 (e-mail: linda.campbell@tpwd.state.tx.us).

The amendments are proposed under the authority of Parks and Wildlife Code, §81.403, which authorizes the department to issue permits authorizing access to public hunting land or for specific hunting, fishing, recreational, or other use of public hunting land or wildlife management areas; requires the conditions for the issuance and use of such permits to be prescribed by rule; and requires the department to charge a permit fee by rule.

The proposed rules affect Parks and Wildlife Code, Chapter 81.

#### §65.191. *Definitions.*

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise. All other words and terms shall have the meanings assigned in §65.3 of this title (relating to Statewide Hunting and Fishing Proclamation).

(1) - (24) (No change.)

(25) Mentored Hunting Permit--A permit authorizing access to public hunting lands for the purpose of attending a department-sponsored workshop, including participation in a designated hunting opportunity subsequent to the workshop.

(26) [~~(25)~~] Motor vehicle--As defined by Transportation Code, Chapter 541.

(27) [~~(26)~~] Off-road vehicle--An ATV, a utility vehicle, a vehicle that may not lawfully be operated on a public roadway, or any vehicle that is manufactured or adapted for off-road use.

(28) [~~(27)~~] On-site registration--The requirement for public users to register at designated places upon entry to and exit from specified public hunting lands, but does not constitute a permit.

(29) [~~(28)~~] Permit--Documentation authorizing specified access and public use privileges on public hunting lands.

(30) [~~(29)~~] Predatory animals--Coyotes and bobcats.

(31) [~~(30)~~] Preference point system--A method of special permit distribution in which the probability of selection is progressively enhanced by prior unsuccessful applications within a given hunt category by individuals or groups.



(32) [(31)] Public hunting area--A portion of public hunting lands designated as being open to the activity of hunting, and may include all or only a portion of a certain unit of public hunting land.

(33) [(32)] Public hunting compartment--A defined portion of a public hunting area to which hunters are assigned and authorized to perform public hunting activity.

(34) [(33)] Public hunting lands--Lands identified in §65.190 of this title (relating to Application) or by order of the executive director on which provisions of this subchapter apply.

(35) [(34)] Recreational use--Any use or activity other than hunting or fishing.

(36) [(35)] Regular Permit--A permit issued on a first-come-first-served basis, on-site, at the time of the hunt that allows the taking of designated species of wildlife on the issuing area.

(37) [(36)] Restricted area--All or portions of public hunting lands identified by boundary signs as being closed to public entry or use.

(38) [(37)] Sanctuary--All or a portion of public hunting lands identified by boundary sign as being closed to the hunting of specified wildlife resources.

(39) [(38)] Slug--A metallic object designed for being fired as a single projectile by discharge of a shotgun.

(40) [(39)] Special Access Permit--A permit, issued pursuant to a selection procedure, that allows access to a specified unit of the state park system at a specified time.

(41) [(40)] Special Permit--A permit, issued pursuant to a selection procedure, which allows the taking of designated species of wildlife.

(42) [(41)] Special package hunt--A public hunt conducted for promotional or fund raising purposes and offering the selected applicant(s) a high quality experience with enhanced provisions for food, lodging, transportation, and guide services.

(43) [(42)] Tagging fee--A fee which may be assessed in addition to the special permit fee for the harvest of alligators for commercial sale or prior to the attempted harvest of desert bighorn sheep or designated exotic mammals.

(44) [(43)] Wildlife management area (WMA)--A unit of public hunting lands which is intensively managed for the conservation, enhancement, and public use of wildlife resources and supporting habitats.

(45) [(44)] Wildlife resources--Game animals, game birds, furbearing animals, alligators, marine mammals, frogs, fish, crayfish, other aquatic life, exotic animals, predatory animals, rabbits and hares, and other wild fauna.

(46) [(45)] Wounded exotic mammal--An exotic mammal leaving a blood trail.

(47) [(46)] Youth--A person less than 17 years of age.

§65.193. *Access Permit Required and Fees.*

(a) - (e) (No change.)

(f) Mentored Hunting Permit - Permits issued under this subsection shall be available on a first-come, first-served basis for use on designated units of public hunting lands at designated times. A person may participate in a designated hunt under a mentored hunting permit only if the person has completed the mandatory mentored hunter workshop and has been authorized by the department to participate in hunt

activities. A person who participates in a mentored hunt under a mentored hunting permit must be accompanied by a designated mentor.

(g) [(f)] Permits for hunting wildlife resources on public hunting lands shall be issued by the department to applicants by means of a fair method of distribution subject to limitations on the maximum number of permits to be issued.

(h) [(g)] The department may implement a system of issuing special permits or special access permits that gives preference to those applicants who have applied previously but were not selected to receive a permit.

(i) [(h)] Application fees.

(1) The department may charge a non-refundable fee, which may be required to accompany and validate an individual's application in a drawing for a special hunting permit or special access permit.

(2) The application fee for a special hunting permit or special access permit is waived for a person under 17 years of age; however, the youth must apply in conjunction with an authorized supervising adult to whom an application fee is assessed, except as provided in paragraphs (3) and (4) of this subsection.

(3) The application fee for a special permit or special access permit is waived for an adult who is making application to serve as a non-hunting authorized supervising adult for a youth in a youth-only drawn hunt category.

(4) Persons under 17 years of age may be disqualified from applying for special package hunts or may be assessed the application fee.

(5) The application fee for a special permit or special access permit is waived for on-site applications made under standby procedures at the time of a hunt.

(6) Incomplete or incorrectly completed applications will be disqualified.

(j) [(i)] Legal animals to be taken by special or regular permit shall be stipulated on the permit.

(k) [(j)] Only one special, special access, or regular permit fee will be assessed in the event of concurrent hunts for multiple species, and the fee for the legal species having the most expensive permit will prevail.

(l) [(k)] Any applicable special, special access, or regular permit fees will be waived for youth under the supervision of a duly permitted authorized supervising adult.

(m) [(l)] Any applicable regular permit fees will be waived for persons possessing an APH permit.

(n) [(m)] Certain hunts may be conducted totally or in part by regular permit. It is an offense to fail to comply with established permit requirements specifying whether a regular permit is required of all participants or required only of adult participants who do not possess an APH permit.

(o) [(n)] Any applicable regular permit fees for authorized activities other than hunting or fishing will be waived for persons possessing an APH permit or an LPU permit.

(p) [(o)] An access permit applies only to the individual to whom the permit is issued, and neither the permit nor the rights granted thereunder are transferable to another person.

(q) [(p)] A person who fails to obey the conditions of a permit issued under this subchapter commits an offense.

§65.194. *Competitive Hunting Dog Event (Field Trials) and Fees.*

The department may authorize field trials on public hunting lands. All activities conducted pursuant to this section shall be subject to the provisions of this subchapter, except as specifically provided in this section.

(1) (No change.)

(2) An application for a Field Trial Permit shall be submitted at least 90 days in advance of the proposed event to the Wildlife Division regional director in whose region the proposed event would take place. The application shall include, at a minimum:

(A) - (E) (No change.)

(F) the fee for the field trial permit as assessed according to the number of participating dog handlers and officials as specified by Chapter 53, Subchapter A of this title, (relating to [~~License, Permit, and Boat and Motor~~] Fees).

(G) - (H) (No change.)

(3) - (4) (No change.)

(5) The field trial permit shall be present and available on-site during all field trial activities. The permittee shall, prior to commencing any competition, attach to the permit an accurate list containing the names and social security numbers of all dog handlers and officials who at any time participate in the event, and the names and social security numbers of all spectators. The aggregate number of participants named on the list shall not exceed the number of participants authorized by the field trial permit. The list shall be sent to the regional director no later than ten days following the conclusion of the event.

(6) All persons named on the list as officials, ~~or~~ dog handlers, or spectators shall, during the event, be exempt from the access permit requirements of this subchapter. [~~All other persons attending the event shall be subject to the provisions of this subchapter relative to requirement of an access permit.~~]

(7) - (9) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 4, 2008.

TRD-200801768

Ann Bright

General Counsel

Texas Parks and Wildlife Department

Earliest possible date of adoption: May 18, 2008

For further information, please call: (512) 389-4775



## TITLE 40. SOCIAL SERVICES AND ASSISTANCE

### PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

#### CHAPTER 19. NURSING FACILITY REQUIREMENTS FOR LICENSURE AND MEDICAID CERTIFICATION

The Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability

Services (DADS), amendments to §19.101, concerning definitions; §19.1210, concerning certification and recertification requirements in Medicaid-certified facilities; §19.1911, concerning contents of the clinical record; §19.1926, concerning Medicaid hospice services; §19.2302, concerning requirements for a contracted Medicaid facility; §19.2326, concerning the Medicaid Swing Bed Program for rural hospitals; §19.2500, concerning preadmission screening and resident review (PASARR); and §19.2609, concerning payment of claims; proposes new §19.2401, concerning general qualifications for medical necessity determinations; §19.2403, concerning medical necessity determination; §19.2407, concerning denied medical necessity; §19.2413, concerning determination of payment rate based on the minimum data set (MDS) assessment submission; §19.2611, concerning retroactive vendor payments; and §19.2615, concerning resident transaction notices; and proposes the repeal of §19.1212, concerning physicians charging a fee to complete Medicaid forms; §19.2402, concerning the utilization review plan; §19.2403, concerning the utilization review process; §19.2404, concerning utilization review effective dates; §19.2407, concerning denied medical necessity; §19.2408, concerning retroactive medical necessity determinations; §19.2409, concerning general qualifications for at-risk assessments and medical necessity determinations; §19.2410, concerning criteria specific to a medical necessity determination; and §19.2413, concerning reconsideration of medical necessity determination and effective dates, in Chapter 19, Nursing Facility Requirements for Licensure and Medicaid Certification.

#### BACKGROUND AND PURPOSE

The purpose of the amendments, new sections, and repeal is to implement rule changes necessitated by a project under the direction of HHSC that will replace the state case-mix system for provider payments, which is based on the Texas Index for Level of Effort (TILE) model, with the federal case-mix system, which is based on the Resource Utilization Group (RUG) model. The TILE-to-RUG project implements Texas Health and Safety Code, §242.221 et seq., which requires DADS to use an automated system for nursing facility reimbursement and an assessment form designed by the United States Health Care Financing Administration (now the Centers for Medicare and Medicaid Services). As a result, DADS is replacing its Client Assessment, Review and Evaluation (CARE) form (also known as Form 3652) with the federal MDS assessment for making medical necessity determinations and calculating the RUG.

The proposal also updates agency names, corrects rule cross-references, and updates statutory citations.

#### SECTION-BY-SECTION SUMMARY

The proposed amendment to §19.101 adds definitions for "admission MDS assessment," "completion date," "MDS nurse reviewer," "RN assessment coordinator," "RUG," and "state Medicaid claims administrator;" and deletes definitions for "admission determination of medical necessity," "CARE form," "case mix," "facility nurse assessor," "medical necessity assessment," "Natural Death Act," "nurse reviewer," "preadmission medical necessity determination," "TDMHMR," "TILE," "TILE 202 restorative nursing," "TILE error," and "utilization review committee." The amendment to §19.101 revises the definition of "comprehensive assessment," "medical necessity," "NHIC," and "vendor payment" to conform to terminology used in the RUG model. Other amendments to definitions in §19.101 update the name of the Texas State Board of Medical Examiners to the Texas Medical Board, update the name of the Board of Nurse Examiners

for the State of Texas to the Texas Board of Nursing, delete a reference to the Texas Board of Nursing Facility Administrators, and correct outdated citations to rules and statutes.

The proposed amendment to §19.1210 revises the section to reflect the procedure and time frame for the attending physician of an individual who is receiving Medicaid-funded nursing facility services in a Medicaid-certified nursing facility (hereinafter referred to as a recipient) to certify and recertify the recipient's need for nursing facility care under the RUG model.

The proposed amendment to §19.1911 adds a requirement for a nursing facility resident's clinical record to meet the documentation requirements in HHSC's rule at 1 TAC §371.214, concerning the RUG classification system, which is also being amended as part of the conversion from TILE to RUG. The amendment also adds requirements that a resident's clinical record contain a face sheet indicating the current mailing address and telephone numbers for the attending physician, that clinical documentation in the resident's record be signed and dated, and that each page of clinical documentation identify the name of the resident for whom the clinical care is intended. The amendment to §19.1911 also replaces a reference to the CARE form with a reference to the MDS assessment and replaces obsolete references to the Texas Department of Human Services (DHS) and the Texas Department of Mental Health and Mental Retardation (TDMHMR) with references to DADS.

The proposed amendment to §19.1926 replaces a reference to the TILE assessment with a reference to the MDS assessment.

The proposed amendment to §19.2302 revises the titles of sections in cross-references to HHSC's rules concerning MDS assessments and the RUG classification system to reflect the new titles of those sections, which are being amended as part of the conversion from TILE to RUG. The amendment to §19.2302 also changes references from DHS to DADS and updates subsection (f) to reflect current administrative hearing procedures for nursing facilities for which DADS has suspended vendor payments or has proposed contract termination.

The proposed amendment to §19.2326 replaces a reference to TILE payment rates with a reference to RUG payment rates, replaces references to DHS with references to DADS, replaces references to the Texas Department of Health with references to the Department of State Health Services, and corrects rule cross-references.

The proposed amendment to §19.2500 updates agency names and responsibilities to reflect the consolidation of health and human services agencies in 2004, and removes a reference to §19.2410, which is being repealed as part of this proposal.

The amendment to §19.2609 specifies the time frames with which a nursing facility must comply when submitting claims and making adjustments to claims under the RUG model.

Proposed new §19.2401 contains the general qualifications for a medical necessity determination that currently are in §19.2409, which is proposed for repeal. The proposed new section is similar to the section proposed for repeal, except that the criteria for nursing facility risk in §19.2409(a) are not in the new rule. Because the MDS assessment includes the risk criteria and because DADS rules require that a medical necessity determination be made based on an evaluation of the needs shown on the MDS assessment, it is duplicative to have the risk criteria in rule.

Proposed new §19.2403 describes the purpose of a medical necessity determination in establishing an individual's eligibility for

admission to the Texas Medicaid Nursing Facility Program and in securing a nursing facility's payment for services provided to a recipient. The new section describes the admission MDS assessment review process, the role of the state Medicaid claims administrator in making a medical necessity determination, and the effective period for a medical necessity determination. The new section governs the establishment of permanent medical necessity for a recipient, as well as the consequences a nursing facility faces if the facility fails to provide sufficient information on a recipient's MDS assessment for the state Medicaid claims administrator to make a medical necessity determination.

Proposed new §19.2407 governs the procedure the state Medicaid claims administrator must follow if the state Medicaid claims administrator finds that a Medicaid applicant or recipient does not meet the criteria for medical necessity. The procedure allows for the Medicaid applicant's or recipient's attending physician or a nursing facility physician to contest the finding of the state Medicaid claims administrator, and to provide additional information about the applicant's or recipient's medical need for nursing facility care. The proposed new section also describes the right of the applicant or recipient, or the applicant's or recipient's responsible party, to request a fair hearing if medical necessity is denied and sets forth the time frames in which the fair hearing must be requested.

Proposed new §19.2413 requires a nursing facility to complete an MDS assessment in accordance with instructions provided by the Centers for Medicare and Medicaid Services. A nursing facility must submit the MDS assessment and the Long-Term Care Medicaid Information Section in compliance with proposed new §19.2413 in order for the facility to be paid a calculated RUG rate for services provided, if the applicant or recipient is financially eligible for Medicaid and meets the medical necessity criteria for nursing facility care. The new section governs the payment consequences for a nursing facility if the facility submits an MDS assessment after the due date required by the federal MDS submission schedule or submits an MDS assessment outside the time period covered by the MDS assessment; it also governs how DADS determines the nursing facility payment rate when a facility submits a significant change in status assessment, a modification or significant correction to an MDS assessment, or an incomplete or erroneous MDS assessment.

Proposed new §19.2611 governs payments that DADS can make retroactively to a nursing facility for services the nursing facility provided to an individual who was eligible for, but had not yet applied for, Medicaid, for up to three months before the individual files an application for Medicaid eligibility. The proposed new section states that retroactive vendor payments are based on the individual's calculated RUG rate for the period covered by the retroactive vendor payment.

Proposed new §19.2615 requires a nursing facility to electronically submit to the state Medicaid claims administrator a resident transaction notice within 72 hours after a recipient's admission or discharge from the Medicaid nursing facility vendor payment system and requires the nursing facility administrator to sign the resident transaction notice.

The proposed repeal of §19.1212 eliminates an obsolete rule from DADS' rule base concerning a physician's charges for completing the CARE form.

The proposed repeal of §§19.2402 - 19.2404 and 19.2407 eliminates rules governing the procedures of the Utilization Review Committee, which will be obsolete under the RUG model. Under

the RUG model, the state Medicaid claims administrator, rather than the Utilization Review Committee, will determine if an individual has a medical necessity for nursing facility care. The provisions of §19.2404 that govern resident transaction notices, are in proposed new §19.2615; and the provisions of §19.2407, governing denied medical necessity, are in proposed new §19.2407.

The proposed repeal of §19.2408 eliminates a rule governing retroactive medical necessity determinations that will no longer be valid under the RUG model. Provisions concerning retroactive vendor payments, which currently are in §19.2408, can be found in proposed new §19.2611.

Section 19.2409 is proposed for repeal, so that it can be proposed as new §19.2401 and be located in a more logical place in the subchapter.

The proposed repeal of §19.2410 eliminates a rule containing criteria for a medical necessity determination, because the criteria listed are not all-inclusive and only reference possible services or procedures that might qualify an individual for a medical necessity determination. The MDS assessment is the tool used to determine an individual's medical necessity for nursing facility care and, therefore, this rule is unnecessary.

The proposed repeal of §19.2413 eliminates a rule governing the reconsideration of medical necessity determinations and effective dates if a nursing facility provides services for a recipient during a period of time not covered by an effective medical necessity determination. The provisions of §19.2413 will not apply under the RUG model and, therefore, need to be repealed. Proposed new §19.2403(d) covers effective periods for medical necessity determinations under the RUG model.

#### FISCAL NOTE

Gordon Taylor, DADS Chief Financial Officer, has determined that, for the first five years the proposed amendments, new sections, and repeal are in effect, there are foreseeable implications relating to costs or revenues of state government. There are no foreseeable implications relating to costs or revenues of local governments.

The effect on state government for the first five years the proposed amendments, new sections, and repeal are in effect is an estimated additional cost of \$5,935,500 in FY 2009; \$0 in FY 2010; \$0 in FY 2011; \$0 in FY 2012; and \$0 in FY 2013. The cost in FY 2009 is related to a one-year rate adjustment for providers who will lose revenue as a result of the TILE to RUG conversion to allow time for this group of providers to adjust to the RUG payment methodology.

#### SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed amendments, new sections, and repeal will not have an adverse economic effect on small businesses or micro-businesses, because elimination of the requirement for nursing facilities to complete both the MDS assessment and the CARE form will reduce costs for nursing facilities. To minimize the impact on providers who may lose revenue as a result of the new reimbursement methodology, DADS is planning a one-year rate adjustment to assist that group of providers.

#### PUBLIC BENEFIT AND COSTS

Barry Waller, DADS Assistant Commissioner for Provider Services, has determined that, for each year of the first five years the amendments, new sections, and repeal are in effect, the pub-

lic benefit expected as a result of enforcing the amendments, new sections, and repeal is a streamlined and simplified Medicaid form submission process and more accurate MDS assessment completion, because the MDS assessment will determine the nursing facility's payment rate. The elimination of the CARE form will mean nursing facility staff can spend less time on form completion and more time on individual direct care, which ultimately will benefit the health and safety of nursing facility residents.

Mr. Waller anticipates that there will not be an economic cost to persons who are required to comply with the amendments, new sections, and repeal. The amendments, new sections, and repeal will not affect a local economy.

#### TAKINGS IMPACT ASSESSMENT

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

#### PUBLIC COMMENT

Questions about the content of this proposal may be directed to Larry North at (512) 438-3922. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-008, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030, or street address 701 West 51st St., Austin, TX 78751; faxed to (512) 438-5759; or e-mailed to [rulescomments@dads.state.tx.us](mailto: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 either (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 008" in the subject line.

### SUBCHAPTER B. DEFINITIONS

#### 40 TAC §19.101

##### STATUTORY AUTHORITY

The amendment is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Health and Safety Code, §242.226, which authorizes the adoption of rules necessary to improve the efficiency of the reimbursement process for the state Medicaid system and maximize the automated reimbursement system's capabilities.

The amendment affects Texas Government Code, §531.0055 and §531.021; Texas Human Resources Code, §161.021; and Texas Health and Safety Code, §242.226.

§19.101. *Definitions.*

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

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

(3) Activities assessment--See Comprehensive Assessment and Comprehensive Care Plan [of Care].

(4) - (6) (No change.)

(7) Admission MDS assessment--An MDS assessment that determines a recipient's initial determination of eligibility for medical necessity for admission into the Texas Medicaid Nursing Facility Program.

~~{(7) Admission determination of medical necessity--The state Medicaid claims administrator's decision regarding an individual's need for medical and nursing services upon the individual's entering his entry into a nursing facility or upon his becoming eligible for Medicaid. The admission determination of medical necessity is valid for up to 120 days from the effective date assigned by the Utilization Review Committee.}~~

(8) - (11) (No change.)

(12) Attending physician--A physician, currently licensed by the Texas Medical [State] Board [of Medical Examiners], who is designated by the resident or responsible party as having primary responsibility for the treatment and care of the resident.

(13) - (14) (No change.)

~~{(15) CARE form--The DADS Client Assessment, Review and Evaluation (CARE) form completed by Medicaid-certified nursing facilities which allows for determination of medical necessity, reimbursement rate, initial level of the Preadmission Screening and Resident Review (PASARR) and the initial medical care determination and reassessment of the 1915(e) waivers.}~~

(15) [(16)] Care and treatment--Services required to maximize resident independence, personal choice, participation, health, self-care, psychosocial functioning and reasonable safety, all consistent with the preferences of the resident.

~~{(17) Case mix--A method of classifying recipients based upon resource and service needs and paying nursing facilities a per diem rate according to the recipient's classification.}~~

(16) [(18)] Certification--The determination by DADS that a nursing facility meets all the requirements of the Medicaid and/or Medicare programs.

(17) [(49)] CFR--Code of Federal Regulations.

(18) [(20)] CMS--Centers for Medicare & Medicaid Services, formerly the Health Care Financing Administration (HCFA).

(19) [(21)] Complaint--Any allegation received by DADS other than an incident reported by the facility. Such allegations include, but are not limited to, abuse, neglect, exploitation, or violation of state or federal standards.

(20) Completion date--The date an RN assessment coordinator signs an MDS assessment as complete.

(21) [(22)] Comprehensive assessment--An interdisciplinary description of a resident's needs and capabilities including daily life functions and significant impairments of functional capacity, as described in §19.801(2) of this chapter (relating to Resident Assessment).

(22) [(23)] Comprehensive care plan--A plan of care prepared by an interdisciplinary team that includes measurable short-term and long-term objectives and timetables to meet the resident's needs de-

veloped for each resident after admission. The plan addresses at least the following needs: medical, nursing, rehabilitative, psychosocial, dietary, activity, and resident's rights. The plan includes strategies developed by the team, as described in §19.802(b)(2) of this title (relating to Comprehensive Care Plans), consistent with the physician's prescribed plan of care, to assist the resident in eliminating, managing, or alleviating health or psychosocial problems identified through assessment. Planning includes:

(A) goal setting;

(B) establishing priorities for management of care;

(C) making decisions about specific measures to be used to resolve the resident's problems; and/or

(D) assisting in the development of appropriate coping mechanisms.

(23) [(24)] Controlled substance--A drug, substance, or immediate precursor as defined in the Texas Controlled Substance Act, Texas Health and Safety Code, Chapter 481, and/or the Federal Controlled Substance Act of 1970, Public Law 91-513.

(24) [(25)] Controlling person--A person with the ability, acting alone or in concert with others, to directly or indirectly, influence, direct, or cause the direction of the management, expenditure of money, or policies of a nursing facility or other person. A controlling person does not include a person, such as an employee, lender, secured creditor, or landlord, who does not exercise any influence or control, whether formal or actual, over the operation of a facility. A controlling person includes:

(A) a management company, landlord, or other business entity that operates or contracts with others for the operation of a nursing facility;

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

(C) any other individual who, because of a personal, familial, or other relationship with the owner, manager, landlord, tenant, or provider of a nursing facility, is in a position of actual control or authority with respect to the nursing facility, without regard to whether the individual is formally named as an owner, manager, director, officer, provider, consultant, contractor, or employee of the facility.

(25) [(26)] Covert electronic monitoring--The placement and use of an electronic monitoring device that is not open and obvious, and the facility and DADS have not been informed about the device by the resident, by a person who placed the device in the room, or by a person who uses the device.

(26) [(27)] DADS--The Department of Aging and Disability Services.

(27) [(28)] Dangerous drugs--Any drug as defined in the Texas Health and Safety Code, Chapter 483.

(28) [(29)] Dentist--A practitioner licensed by the Texas State Board of Dental Examiners [Board].

(29) [(30)] Department--Department of Aging and Disability Services.

(30) [(31)] DHS--Formerly, this term referred to the Texas Department of Human Services; it now refers to DADS, unless the context concerns an administrative hearing. Administrative hearings were formerly the responsibility of DHS; they now are the responsibility of the Texas Health and Human Services Commission (HHSC).

(31) ~~[(32)]~~ Dietitian--A qualified dietitian is one who is qualified based upon either:

(A) registration by the Commission on Dietetic Registration of the American Dietetic Association; or

(B) licensure, or provisional licensure, by the Texas State Board of Examiners of Dietitians. These individuals must have one year of supervisory experience in dietetic service of a health care facility.

(32) ~~[(33)]~~ Direct care by licensed nurses--Direct care consonant with the physician's planned regimen of total resident care includes:

- (A) assessment of the resident's health care status;
- (B) planning for the resident's care;
- (C) assignment of duties to achieve the resident's care;
- (D) nursing intervention; and
- (E) evaluation and change of approaches as necessary.

(33) ~~[(34)]~~ Distinct part--That portion of a facility certified to participate in the Medicaid Nursing Facility program.

(34) ~~[(35)]~~ Drug (also referred to as medication)--Any of the following:

(A) any substance recognized as a drug in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them;

(B) any substance intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man;

(C) any substance (other than food) intended to affect the structure or any function of the body of man; and

(D) any substance intended for use as a component of any substance specified in subparagraphs (A) - (C) of this definition. It does not include devices or their components, parts, or accessories.

(35) ~~[(36)]~~ Electronic monitoring device--Video surveillance cameras and audio devices installed in a resident's room, designed to acquire communications or other sounds that occur in the room. An electronic, mechanical, or other device used specifically for the nonconsensual interception of wire or electronic communication is excluded from this definition.

(36) ~~[(37)]~~ Emergency--A sudden change in a resident's condition requiring immediate medical intervention

(37) ~~[(38)]~~ Exploitation--The illegal or improper act or process of a caretaker using the resources of an elderly or disabled person for monetary or personal benefit, profit, or gain.

(38) ~~[(39)]~~ Exposure (infections)--The direct contact of blood or other potentially infectious materials of one person with the skin or mucous membranes of another person. Other potentially infectious materials include the following human body fluids: semen, vaginal secretions, cerebrospinal fluid, peritoneal fluid, amniotic fluid, saliva in dental procedures, and body fluid that is visibly contaminated with blood, and all body fluids when it is difficult or impossible to differentiate between body fluids.

(39) ~~[(40)]~~ Facility--Unless otherwise indicated, a facility is an institution that provides organized and structured nursing care and service and is subject to licensure under Health and Safety Code, Chapter 242.

(A) For Medicaid, a facility is a nursing facility which meets the requirements of §1919(a) - (d) of the Social Security Act. A facility may not include any institution that is for the care and treatment of mental diseases except for services furnished to individuals age 65 and over and who are eligible as defined in §19.2500 of this title (relating to Preadmission Screening and Resident Review (PASARR)).

(B) For Medicare and Medicaid purposes (including eligibility, coverage, certification, and payment), the "facility" is always the entity which participates in the program, whether that entity is comprised of all of, or a distinct part of, a larger institution.

(C) "Facility" is also referred to as a nursing home or nursing facility. Depending on context, these terms are used to represent the management, administrator, or other persons or groups involved in the provision of care of the resident; or to represent the physical building, which may consist of one or more floors or one or more units, or which may be a distinct part of a licensed hospital.

~~[(41) Facility nurse assessor--The licensed nurse in the nursing facility, who completes the Client Assessment, Review and Evaluation (CARE) forms.]~~

(40) ~~[(42)]~~ Family representative--An individual appointed by the resident to represent the resident and other family members, by formal or informal arrangement.

(41) ~~[(43)]~~ Fiduciary agent--An individual who holds in trust another's monies.

(42) ~~[(44)]~~ Free choice--Unrestricted right to choose a qualified provider of services.

(43) ~~[(45)]~~ Goals--Long-term: general statements of desired outcomes. Short-term: measurable time-limited, expected results that provide the means to evaluate the resident's progress toward achieving long-term goals.

(44) ~~[(46)]~~ Governmental unit--A state or a political subdivision of the state, including a county or municipality.

(45) ~~[(47)]~~ HCFA--Health Care Financing Administration, now the Centers for Medicare & Medicaid Services (CMS).

(46) ~~[(48)]~~ Health care provider--An individual, including a physician, or facility licensed, certified, or otherwise authorized to administer health care, in the ordinary course of business or professional practice.

(47) ~~[(49)]~~ Hearing--A contested case hearing held in accordance with the Administrative Procedure Act, Texas Government Code, Chapter 2001, and the formal hearing procedures in 1 TAC Chapter 357, Subchapter I.

(48) ~~[(50)]~~ HIV--Human Immunodeficiency Virus.

(49) ~~[(51)]~~ Incident--An abnormal event, including accidents or injury to staff or residents, which is documented in facility reports. An occurrence in which a resident may have been subject to abuse, neglect, or exploitation must also be reported to DADS.

(50) ~~[(52)]~~ Infection control--A program designed to prevent the transmission of disease and infection in order to provide a safe and sanitary environment.

(51) ~~[(53)]~~ Inspection--Any on-site visit to or survey of an institution by DADS for the purpose of licensing, monitoring, complaint investigation, architectural review, or similar purpose.

(52) ~~[(54)]~~ Interdisciplinary care plan--See the definition of "comprehensive care plan."

(53) ~~[(55)]~~ IV--Intravenous.

(54) ~~[(56)]~~ Legend drug or prescription drug--Any drug that requires a written or telephonic order of a practitioner before it may be dispensed by a pharmacist, or that may be delivered to a particular resident by a practitioner in the course of the practitioner's practice.

(55) ~~[(57)]~~ Licensed health professional--A physician; physician assistant; nurse practitioner; physical, speech, or occupational therapist; pharmacist; physical or occupational therapy assistant; registered professional nurse; licensed vocational nurse; licensed dietitian; or licensed social worker.

(56) ~~[(58)]~~ Licensed nursing home (facility) administrator--A person currently licensed by DADS in accordance with Chapter 18 of this title (relating to Nursing Facility Administrators) [~~the Texas Board of Nursing Facility Administrators~~].

(57) ~~[(59)]~~ Licensed vocational nurse (LVN)--A nurse who is currently licensed by the Texas Board of Nursing [~~Nurse Examiners for the State of Texas~~] as a licensed vocational nurse.

(58) ~~[(60)]~~ Life Safety Code (also referred to as the Code or NFPA 101)--The Code for Safety to Life from Fire in Buildings and Structures, Standard 101, of the National Fire Protection Association (NFPA).

(59) ~~[(64)]~~ Life safety features--Fire safety components required by the Life Safety Code, including, but not limited to, building construction, fire alarm systems, smoke detection systems, interior finishes, sizes and thicknesses of doors, exits, emergency electrical systems, and sprinkler systems.

(60) ~~[(62)]~~ Life support--Use of any technique, therapy, or device to assist in sustaining life. (See §19.419 of this title (relating to Advance Directives [~~and Medical Powers of Attorney~~])).

(61) ~~[(63)]~~ Local authorities--Persons, including, but not limited to, local health authority, fire marshal, and building inspector, who may be authorized by state law, county order, or municipal ordinance to perform certain inspections or certifications.

(62) ~~[(64)]~~ Local health authority--The physician appointed by the governing body of a municipality or the commissioner's court of the county to administer state and local laws relating to public health in the municipality's or county's jurisdiction as defined in Health and Safety Code, §121.021.

(63) ~~[(65)]~~ Long-term care-regulatory--DADS' Regulatory Services Division, which is responsible for surveying nursing facilities to determine compliance with regulations for licensure and certification for Title XIX participation.

(64) ~~[(66)]~~ Manager--A person, other than a licensed nursing home administrator, having a contractual relationship to provide management services to a facility.

(65) ~~[(67)]~~ Management services--Services provided under contract between the owner of a facility and a person to provide for the operation of a facility, including administration, staffing, maintenance, or delivery of resident services. Management services do not include contracts solely for maintenance, laundry, or food service.

(66) MDS--Minimum data set. See Resident Assessment Instrument (RAI).

(67) MDS nurse reviewer--A registered nurse employed by HHSC to monitor the accuracy of the MDS assessment submitted by a Medicaid-certified nursing facility.

(68) - (70) (No change.)

(71) Medical director--A physician licensed by the Texas Medical [State] Board [of Medical Examiners], who is engaged by the

nursing home to assist in and advise regarding the provision of nursing and health care.

(72) Medical necessity (MN)--The determination that a recipient requires the services of licensed nurses in an institutional setting to carry out the physician's planned regimen for total care. A recipient's need for custodial care in a 24-hour institutional setting does not constitute a medical need. A group of health care professionals employed or contracted by the state Medicaid claims administrator contracted with HHSC makes individual determinations of medical necessity regarding nursing facility care. These health care professionals consist of physicians and registered nurses.

~~[(73) Medical necessity assessment--The process by which the applicant's or recipient's medical condition is evaluated to determine the need for nursing facility care based upon information supplied by the nursing facility.]~~

(73) ~~[(74)]~~ Medical power of attorney--The legal document that designates an agent to make treatment decisions if the individual designator becomes incapable.

(74) ~~[(75)]~~ Medical-social care plan--See Interdisciplinary [Comprehensive] Care Plan.

(75) ~~[(76)]~~ Medically related condition--An organic, debilitating disease or health disorder that requires services provided in a nursing facility, under the supervision of licensed nurses.

(76) ~~[(77)]~~ Medication aide--A person who holds a current permit issued under the Medication Aide Training Program as described in Chapter 95 of this title (relating to Medication Aides--Program Requirements) and acts under the authority of a person who holds a current license under state law which authorizes the licensee to administer medication.

~~[(78) Minimum data set (MDS)--See Resident Assessment Instrument (RAI).]~~

(77) ~~[(79)]~~ Misappropriation of funds--The taking, secretion, misapplication, deprivation, transfer, or attempted transfer to any person not entitled to receive any property, real or personal, or anything of value belonging to or under the legal control of a resident without the effective consent of the resident or other appropriate legal authority, or the taking of any action contrary to any duty imposed by federal or state law prescribing conduct relating to the custody or disposition of property of a resident.

~~[(80) Natural Death Act--Provisions of Texas Health and Safety Code, Chapter 672.]~~

(78) ~~[(84)]~~ Neglect--A deprivation of life's necessities of food, water, or shelter, or a failure of an individual to provide services, treatment, or care to a resident which causes or could cause mental or physical injury, or harm or death to the resident.

(79) ~~[(82)]~~ NHIC--Formerly, this term referred to the National Heritage Insurance Corporation. It [~~which was the intermediary for the Texas Medicaid program; it~~] now refers to the state Medicaid claims administrator [current intermediary for the Texas Medicaid program, the Texas Medicaid and Health Partnership].

(80) ~~[(83)]~~ Nonnursing personnel--Persons not assigned to give direct personal care to residents; including administrators, secretaries, activities directors, bookkeepers, cooks, janitors, maids, laundry workers, and yard maintenance workers.

(81) ~~[(84)]~~ Nurse aide--An individual who provides nursing or nursing-related services to residents in a facility under the supervision of a licensed nurse. This definition does not include an individual who is a licensed health professional, a registered dietitian, or

someone who volunteers such services without pay. A nurse aide is not authorized to provide nursing and/or nursing-related services for which a license or registration is required under state law. Nurse aides do not include those individuals who furnish services to residents only as paid feeding assistants.

(82) [(85)] Nurse aide trainee--An individual who is attending a program teaching nurse aide skills.

(83) [(86)] Nurse practitioner--A person licensed by the Texas Board of Nursing [Nurse Examiners (BNE)] as a registered professional nurse, authorized by the Texas Board of Nursing [BNE] as an advanced practice nurse in the role of nurse practitioner.

[(87) Nurse reviewer--A registered professional nurse employed by HHSC to monitor the accuracy of the CARE form assessment data.]

(84) [(88)] Nursing assessment--See definition of "comprehensive assessment" and "comprehensive care plan."

(85) [(89)] Nursing care--Services provided by nursing personnel which include, but are not limited to, observation; promotion and maintenance of health; prevention of illness and disability; management of health care during acute and chronic phases of illness; guidance and counseling of individuals and families; and referral to physicians, other health care providers, and community resources when appropriate.

(86) [(90)] Nursing facility/home--An institution that provides organized and structured nursing care and service, and is subject to licensure under Health and Safety Code, Chapter 242. The nursing facility may also be certified to participate in the Medicaid Title XIX program. Depending on context, these terms are used to represent the management, administrator, or other persons or groups involved in the provision of care to the residents; or to represent the physical building, which may consist of one or more floors or one or more units, or which may be a distinct part of a licensed hospital.

(87) [(91)] Nursing facility/home administrator--See the definition of "licensed nursing home (facility) administrator."

(88) [(92)] Nursing personnel--Persons assigned to give direct personal and nursing services to residents, including registered nurses, licensed vocational nurses, nurse aides, orderlies, and medication aides. Unlicensed personnel function under the authority of licensed personnel.

(89) [(93)] Objectives--See definition of "goals."

(90) [(94)] OBRA--Omnibus Budget Reconciliation Act of 1987, which includes provisions relating to nursing home reform, as amended.

(91) [(95)] Ombudsman--An advocate who is a certified representative, staff member, or volunteer of the DADS Office of the State Long Term Care Ombudsman.

(92) [(96)] Optometrist--An individual with the profession of examining the eyes for defects of refraction and prescribing lenses for correction who is licensed by the Texas Optometry Board.

(93) [(97)] Paid feeding assistant--An individual who meets the requirements of §19.1113 of this chapter (relating to Paid Feeding Assistants) and who is paid to feed residents by a facility or who is used under an arrangement with another agency or organization.

(94) [(98)] PASARR--Preadmission Screening and Resident Review.

(95) [(99)] Palliative Plan of Care--Appropriate medical and nursing care for residents with advanced and progressive diseases

for whom the focus of care is controlling pain and symptoms while maintaining optimum quality of life.

(96) [(400)] Patient care-related electrical appliance--An electrical appliance that is intended to be used for diagnostic, therapeutic, or monitoring purposes in a patient care area, as defined in Standard 99 of the National Fire Protection Association.

(97) [(401)] Person--An individual, firm, partnership, corporation, association, joint stock company, limited partnership, limited liability company, or any other legal entity, including a legal successor of those entities.

(98) [(402)] Person with a disclosable interest--A person with a disclosable interest is any person who owns at least a 5.0% interest in any corporation, partnership, or other business entity that is required to be licensed under Health and Safety Code, Chapter 242. A person with a disclosable interest does not include a bank, savings and loan, savings bank, trust company, building and loan association, credit union, individual loan and thrift company, investment banking firm, or insurance company, unless these entities participate in the management of the facility.

(99) [(403)] Pharmacist--An individual, licensed by the Texas State Board of Pharmacy to practice pharmacy, who prepares and dispenses medications prescribed by a physician, dentist, or podiatrist.

(100) [(404)] Physical restraint--See Restraints (physical).

(101) [(405)] Physician--A doctor of medicine or osteopathy currently licensed by the Texas Medical [State] Board [of Medical Examiners].

(102) [(406)] Physician assistant (PA)--

(A) A graduate of a physician assistant training program who is accredited by the Committee on Allied Health Education and Accreditation of the Council on Medical Education of the American Medical Association; [ø]

(B) A person who has passed the examination given by the National Commission on Certification of Physician Assistants. According to federal requirements (42 CFR §491.2) a physician assistant is a person who meets the applicable state requirements governing the qualifications for assistant to primary care physicians, and who meets at least one of the following conditions:

(i) is currently certified by the National Commission on Certification of Physician Assistants to assist primary care physicians; or

(ii) has satisfactorily completed a program for preparing physician assistants that:

(I) was at least one academic year in length;

(II) consisted of supervised clinical practice and at least four months (in the aggregate) of classroom instruction directed toward preparing students to deliver health care; and

(III) was accredited by the American Medical Association's Committee on Allied Health Education and Accreditation; or

(C) A person who has satisfactorily completed a formal educational program for preparing physician assistants who does not meet the requirements of paragraph (d)(2), 42 CFR §491.2, and has been assisting primary care physicians for a total of 12 months during the 18-month period immediately preceding July 14, 1978.



(103) [(407)] Podiatrist--A practitioner whose profession encompasses the care and treatment of feet who is licensed by the Texas State Board of Podiatric Medical Examiners.

(104) [(408)] Poison--Any substance that federal or state regulations require the manufacturer to label as a poison and is to be used externally by the consumer from the original manufacturer's container. Drugs to be taken internally that contain the manufacturer's poison label, but are dispensed by a pharmacist only by or on the prescription order of a physician, are not considered a poison, unless regulations specifically require poison labeling by the pharmacist.

(105) [(409)] Practitioner--A physician, podiatrist, dentist, or an advanced practice nurse or physician assistant to whom a physician has delegated authority to sign a prescription order, when relating to pharmacy services.

~~(110) Preadmission medical necessity determination--The determination of need for nursing facility care before the individual's admission into the nursing facility. This determination is valid until admission into a nursing facility or up to 30 days from the effective date.~~

(106) [(411)] PRN (pro re nata)--As needed.

(107) [(412)] Provider--The individual or legal business entity that is contractually responsible for providing Medicaid services under an agreement with DADS.

(108) [(413)] Psychoactive drugs--Drugs prescribed to control mood, mental status, or behavior.

(109) [(414)] Qualified surveyor--An employee of DADS who has completed state and federal training on the survey process and passed a federal standardized exam.

(110) [(415)] Quality assessment and assurance committee--A group of health care professionals in a facility who develop and implement appropriate action to identify and rectify substandard care and deficient facility practice.

(111) [(416)] Quality-of-care monitor--A registered nurse, pharmacist, or dietitian employed by DADS who is trained and experienced in long-term care facility regulation, standards of practice in long-term care, and evaluation of resident care, and functions independently of DADS' Regulatory Services Division.

(112) [(417)] Recipient--Any individual residing in a Medicaid certified facility or a Medicaid distinct part of a facility whose daily vendor rate is paid by Medicaid.

(113) [(418)] Registered nurse (RN)--An individual currently licensed by the Texas Board of Nursing [Nurse Examiners for the State of Texas] as a Registered Nurse in the State of Texas.

(114) [(419)] Reimbursement methodology--The method by which HHSC determines nursing facility per diem rates.

(115) [(420)] Remodeling--The construction, removal, or relocation of walls and partitions, the construction of foundations, floors, or ceiling-roof assemblies, the expanding or altering of safety systems (including, but not limited to, sprinkler, fire alarm, and emergency systems) or the conversion of space in a facility to a different use.

(116) [(421)] Renovation--The restoration to a former better state by cleaning, repairing, or rebuilding, including, but not limited to, routine maintenance, repairs, equipment replacement, painting.

(117) [(422)] Representative payee--A person designated by the Social Security Administration to receive and disburse benefits,

act in the best interest of the beneficiary, and ensure that benefits will be used according to the beneficiary's needs.

(118) [(423)] Resident--Any individual residing in a nursing facility.

(119) [(424)] Resident assessment instrument (RAI)--An assessment tool used to conduct comprehensive, accurate, standardized, and reproducible assessments of each resident's functional capacity as specified by the Secretary of the U.S. Department of Health and Human Services. At a minimum, this instrument must consist of the Minimum Data Set (MDS) core elements as specified by the Centers for Medicare & Medicaid Services (CMS); utilization guidelines; and Resident Assessment Protocols (RAPS).

(120) [(425)] Responsible party--An individual authorized by the resident to act for him as an official delegate or agent. Responsible party is usually a family member or relative, but may be a legal guardian or other individual. Authorization may be in writing or may be given orally.

(121) [(426)] Restraint hold--

(A) A manual method, except for physical guidance or prompting of brief duration, used to restrict:

(i) free movement or normal functioning of all or a portion of a resident's body; or

(ii) normal access by a resident to a portion of the resident's body.

(B) Physical guidance or prompting of brief duration becomes a restraint if the resident resists the guidance or prompting.

(122) [(427)] Restraints (chemical)--Psychoactive drugs administered for the purposes of discipline, or convenience, and not required to treat the resident's medical symptoms.

(123) [(428)] Restraints (physical)--Any manual method, or physical or mechanical device, material or equipment attached, or adjacent to the resident's body, that the individual cannot remove easily which restricts freedom of movement or normal access to one's body. The term includes a restraint hold.

(124) RN assessment coordinator--A registered nurse who signs and certifies a comprehensive assessment of a resident's needs, using the RAI, including the MDS, as specified by DADS.

(125) RUG--Resource Utilization Group. A categorization method, consisting of 34 categories based on the MDS, that is used to determine a recipient's service and care requirements and to determine the daily rate DADS pays a nursing facility for services provided to the recipient.

(126) [(429)] Seclusion--See the definition of "involuntary seclusion" in paragraph (1)(A) of this section.

(127) [(430)] Secretary--Secretary of the U.S. Department of Health and Human Services.

(128) [(431)] Services required on a regular basis--Services which are provided at fixed or recurring intervals and are needed so frequently that it would be impractical to provide the services in a home or family setting. Services required on a regular basis include continuous or periodic nursing observation, assessment, and intervention in all areas of resident care.

(129) [(432)] SNF--A skilled nursing facility or distinct part of a facility that participates in the Medicare program. SNF requirements apply when a certified facility is billing Medicare for a resident's per diem rate.

(130) ~~[(433)]~~ Social Security Administration--Federal agency for administration of social security benefits. Local social security administration offices take applications for Medicare, assist beneficiaries file claims, and provide information about the Medicare program.

(131) ~~[(434)]~~ Social worker--A qualified social worker is an individual who is licensed, or provisionally licensed, by the Texas State Board of Social Work Examiners as prescribed by the Texas Occupations Code, Chapter 505, ~~[Chapter 50 of the Human Resources Code]~~ and who has at least:

(A) a bachelor's degree in social work; or

(B) similar professional qualifications, which include a minimum educational requirement of a bachelor's degree and one year experience met by employment providing social services in a health care setting.

(132) ~~[(435)]~~ Standards--The minimum conditions, requirements, and criteria established in this chapter with which an institution must comply to be licensed under this chapter.

(133) State Medicaid claims administrator--The entity under contract with HHSC to process Medicaid claims in Texas.

(134) ~~[(436)]~~ State plan--A formal plan for the medical assistance program, submitted to CMS, in which the State of Texas agrees to administer the program in accordance with the provisions of the State Plan, the requirements of Titles XVIII and XIX, and all applicable federal regulations and other official issuances of the U.S. Department of Health and Human Services.

(135) ~~[(437)]~~ State survey agency--DADS is the agency, which through contractual agreement with CMS is responsible for Title XIX (Medicaid) survey and certification of nursing facilities.

(136) ~~[(438)]~~ Supervising physician--A physician who assumes responsibility and legal liability for services rendered by a physician assistant (PA) and has been approved by the Texas Medical [State] Board [of Medical Examiners] to supervise services rendered by specific PAs. A supervising physician may also be a physician who provides general supervision of a nurse practitioner providing services in a nursing facility.

(137) ~~[(439)]~~ Supervision--General supervision, unless otherwise identified.

(138) ~~[(440)]~~ Supervision (direct)--Authoritative procedural guidance by a qualified person for the accomplishment of a function or activity within his sphere of competence. If the person being supervised does not meet assistant-level qualifications specified in this chapter and in federal regulations, the supervisor must be on the premises and directly supervising.

(139) ~~[(441)]~~ Supervision (general)--Authoritative procedural guidance by a qualified person for the accomplishment of a function or activity within his sphere of competence. The person being supervised must have access to the licensed and/or qualified person providing the supervision.

(140) ~~[(442)]~~ Supervision (intermittent)--Authoritative procedural guidance by a qualified person for the accomplishment of a function or activity within his sphere of competence, with initial direction and periodic inspection of the actual act of accomplishing the function or activity. The person being supervised must have access to the licensed and/or qualified person providing the supervision.

~~[(143) TDMHMR--Formerly, this term referred to the Texas Department of Mental Health and Mental Retardation; it now refers to DADS.]~~

(141) ~~[(444)]~~ *Texas Register*--A publication of the Texas Register Publications Section of the Office of the Secretary of State that contains emergency, proposed, withdrawn, and adopted rules issued by Texas state agencies. The *Texas Register* was established by the Administrative Procedure and Texas Register Act of 1975.

(142) ~~[(445)]~~ Therapeutic diet--A diet ordered by a physician as part of treatment for a disease or clinical condition, in order to eliminate, decrease, or increase certain substances in the diet or to provide food which has been altered to make it easier for the resident to eat.

(143) ~~[(446)]~~ Therapy week--A seven-day period beginning the first day rehabilitation therapy or restorative nursing care is given. All subsequent therapy weeks for a particular individual will begin on that day of the week.

(144) ~~[(447)]~~ Threatened violation--A situation that, unless immediate steps are taken to correct, may cause injury or harm to a resident's health and safety.

~~[(148) TILE--Texas Index for Level of Effort; an index of H categories plus a default that consists of relative resource utilization groups. The index determines where a nursing facility client fits based upon service and care requirements. It determines the daily rate to be paid on behalf of the client.]~~

~~[(149) TILE 202 restorative nursing--Nursing care and practices, based on a plan of care developed by the restorative team, designed to maintain or improve on goals achieved during physical or occupational therapy. Examples of TILE 202 restorative nursing include training and skill practice in self-feeding, bed mobility, transfers, ambulation, dressing or grooming, and active range of motion.]~~

~~[(150) TILE error--Inaccuracies in a CARE form assessment of a Medicaid recipient that result in an incorrect TILE classification.]~~

(145) ~~[(451)]~~ Title II--Federal Old-Age, Survivors, and Disability Insurance Benefits of the Social Security Act.

(146) ~~[(452)]~~ Title XVI--Supplemental Security Income (SSI) of the Social Security Act.

(147) ~~[(453)]~~ Title XVIII--Medicare provisions of the Social Security Act.

(148) ~~[(454)]~~ Title XIX--Medicaid provisions of the Social Security Act.

(149) ~~[(455)]~~ Total health status--Includes functional status, medical care, nursing care, nutritional status, rehabilitation and restorative potential, activities potential, cognitive status, oral health status, psychosocial status, and sensory and physical impairments.

(150) ~~[(456)]~~ UAR--HHSC's Utilization and Assessment Review Section.

(151) ~~[(457)]~~ Uniform data set--See Resident Assessment Instrument (RAI).

(152) ~~[(458)]~~ Universal precautions--The use of barrier and other precautions by long-term care facility employees and/or contract agents to prevent the spread of blood-borne diseases.

~~[(159) Utilization review committee--The group of health care professionals contracted by HHSC to make individual determinations of medical necessity regarding nursing facility care. The Utilization Review Committee consists of physicians and registered nurses.]~~

(153) ~~[(460)]~~ Vendor payment--Payment made by DADS on a daily-rate basis for services delivered to recipients in Medicaid-

certified nursing facilities. Vendor payment is based on the nursing facility's approved-to-pay claim processed by the state Medicaid claims administrator [claim approval of the DADS-generated Nursing Facility Billing Statement to DADS]. The Nursing Facility Billing Statement, subject to adjustments and corrections, is prepared from information submitted by the nursing facility, which is currently on file in the computer system as of the billing date. Vendor payment is made at periodic intervals, but not less than once per month for services rendered during the previous billing cycle.

(154) [(161)] Working day--Any 24-hour period, Monday through Friday, excluding state and federal holidays.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 7, 2008.

TRD-200801789

Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: May 18, 2008

For further information, please call: (512) 438-3734



## SUBCHAPTER M. PHYSICIAN SERVICES

### 40 TAC §19.1210

#### STATUTORY AUTHORITY

The amendment is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Health and Safety Code, §242.226, which authorizes the adoption of rules necessary to improve the efficiency of the reimbursement process for the state Medicaid system and maximize the automated reimbursement system's capabilities.

The amendment affects Texas Government Code, §531.0055 and §531.021; Texas Human Resources Code, §161.021; and Texas Health and Safety Code, §242.226.

§19.1210. *Certification and Recertification Requirements in Medicaid-Certified Facilities.*

(a) A recipient's [The] physician must certify and recertify the recipient's need for nursing facility care in accordance with this section [participates in the utilization review process as specified in §19.2405 of this title (relating to Physicians' Certifications and Recertifications)].

(b) A recipient's physician must certify the [Physician's certification of a] recipient's need for nursing facility care [is required] no later [more] than 20 days after the recipient's [or 30 days before] admission to the facility [or before the Medicaid agency authorizes payment, whichever is later].

(c) A recipient's physician must recertify the recipient's need for nursing facility care [Physician's recertification of residents is required for admission and] every 180 days that the recipient remains in the nursing facility after the first certification [thereafter].

(d) A nursing facility must:

(1) ensure that each certification and recertification statement [Physician's certification and recertification statements documenting the need for continued nursing facility services are placed in each resident's clinical record and reviewed on a regular basis by Texas Department of Human Services staff. The facility must ensure that each certification or recertification] states: "I hereby certify that this resident requires/continues to require nursing facility care for 180 days"; and

(2) keep the physician's certification and recertification statements in the recipient's clinical record. [When the physician anticipates that the recipient will require less than a 180-day stay, the physician must specify the anticipated number of days in the certification statement.]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 7, 2008.

TRD-200801790

Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: May 18, 2008

For further information, please call: (512) 438-3734



### 40 TAC §19.1212

*(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Department of Aging and Disability Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

#### STATUTORY AUTHORITY

The repeal is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Health and Safety Code, §242.226, which authorizes the adoption of rules necessary to improve the efficiency of the reimbursement process for the state Medicaid system and maximize the automated reimbursement system's capabilities.

The repeal affects Texas Government Code, §531.0055 and §531.021; Texas Human Resources Code, §161.021; and Texas Health and Safety Code, §242.226.

§19.1212. *Physicians Charging a Fee To Complete Medicaid Forms.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 7, 2008.

TRD-200801791

Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: May 18, 2008

For further information, please call: (512) 438-3734



## SUBCHAPTER T. ADMINISTRATION

### 40 TAC §19.1911, §19.1926

#### STATUTORY AUTHORITY

The amendments are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Health and Safety Code, §242.226, which authorizes the adoption of rules necessary to improve the efficiency of the reimbursement process for the state Medicaid system and maximize the automated reimbursement system's capabilities.

The amendments affect Texas Government Code, §531.0055 and §531.021; Texas Human Resources Code, §161.021; and Texas Health and Safety Code, §242.226.

#### §19.1911. *Contents of the Clinical Record.*

(a) A resident's clinical record must meet all documentation requirements in the Texas Health and Human Services Commission rule at 1 TAC §371.214 (relating to Resource Utilization Group Classification System).

(b) The clinical record of each resident must contain:

(1) a face sheet that contains the attending physician's current mailing address and telephone numbers;

(2) [(4)] sufficient [Sufficient] information to identify and care for the resident, to include at a minimum:

- (A) full name of resident;
- (B) full home/ mailing address;
- (C) social security number;
- (D) health insurance claim numbers, if applicable;
- (E) date of birth; and
- (F) clinical record number, if applicable;[-]

(3) [(2)] a [A] record of the resident's assessments;[-]

(4) [(3)] the [The] comprehensive, interdisciplinary plan of care and services provided (see also §19.802 of this chapter [title]

(relating to Comprehensive Care Plans)), and the permanency plan for pediatric residents younger than 22 years of age;[-]

(5) [(4)] the [The] results of any Preadmission Screening and Resident Review conducted by DADS; [the Texas Department of Human Services (DHS) or the Texas Department of Mental Health and Mental Retardation (TDMHMR);]

(6) [(5)] signed and dated clinical documentation [Progress notes] from all health care practitioners involved in the resident's care, with each page identifying the name of the resident for whom the clinical care is intended;[-]

(7) [(6)] any [Any] directives or medical [durable] powers of attorney as described in §19.419 of this chapter [title] (relating to Advance Directives [and Medical Powers of Attorney]);[-]

(8) [(7)] discharge [Discharge] information in accordance with §19.803 of this chapter [title] (relating to Discharge Summary (Discharge Plan of Care)) and a physician discharge summary, to include, at least, dates of admission and discharge, admitting and discharge diagnoses, condition on discharge, and prognosis, if applicable;[-]

(9) [(8)] at [At] admission or within 14 days after admission, documentation of an initial medical evaluation, including history, physical examination, diagnoses and an estimate of discharge potential and rehabilitation potential, and documentation of a previous [an] annual medical examination;[-]

(10) [(9)] authentication of a hospital diagnosis, which [Authentication of any hospital diagnoses.]-]

[(A)] [This] may be in the form of a signed hospital discharge summary, a signed report from the resident's hospital or attending physician, or a transfer form signed by the physician;[-]

[(B)] The facility is allowed 14 workdays after admission to receive this information from the hospital or transferring facility. If the author of such reports is not the resident's attending physician, then the attending physician must acknowledge the report in writing by co-signing the report at his or her next scheduled visit.-]

(11) [(10)] the [The] physician's signed and dated orders, including medication, treatment, diet, restorative and special medical procedures, and routine care to maintain or improve the resident's functional abilities (required for the safety and well-being of the resident), which must not be changed [- Changes cannot be made] either on a handwritten or computerized physician's order sheet after the orders have been signed by the physician unless space allows for additional orders below the physician's signature, including space for the physician to sign and date again;[-]

(12) [(11)] arrangements [Arrangements] for the emergency care of the resident in accordance with §19.1204 of this chapter [title] (relating to Availability of Physician for Emergency Care);[-]

(13) [(12)] observations [Observations] made by nursing personnel according to the time frames specified in §19.1010 of this chapter [title] (relating to Nursing Practices) and which facility [- Facility] staff must ensure [that the observations] show at least the following:

(A) items as specified on the MDS assessment [Resident Assessment Instrument and the Texas Nursing Facility Client Assessment Review and Evaluation (CARE) form]; and

(B) current information, including:

- (i) PRN medications and results;
- (ii) treatments and any notable results;

(iii) physical complaints, changes in clinical signs and behavior, mental and behavioral status, and all incidents or accidents;

(iv) flow sheets which may include bathing, restraint observation and/or release documentation, elimination, fluid intake, vital signs, ambulation status, positioning, continency status and care, and weight;

(v) the resident's ability to participate in activities of daily living as defined in §19.1010(e)(1) of this chapter [title]; and

(vi) dietary intake to include deviations from normal diet, rejection of substitutions, and physician's ordered snacks and/or supplemental feedings;[-]

(14) [(43)] the [The] date and hour all drugs and treatments are administered; and [-]

(15) [(14)] documentation [Documentation] of special procedures performed for the safety and well-being of the resident [must be included in the clinical record].

§19.1926. *Medicaid Hospice Services.*

(a) When a nursing facility (NF) contracts for hospice services for residents, the nursing facility must:

(1) have a written contract for the provision of arranged services, which must be signed by authorized[- Authorized] representatives of the NF and hospice and [must sign the contract. The contract] must include the following:

(A) - (F) (No change.)

(2) provide room and board services, which include the performance of personal care services, including[-] assistance in the activities of daily living, administration of medication, socializing activities, maintaining the cleanliness of a resident's room, and supervision and assisting in the use of durable medical equipment and prescribed therapies;[-]

(3) - (4) (No change.)

(5) ensure that hospice documentation is a part of the current clinical record, which, at [- At] a minimum, must [documentation will] include the current and past:

(A) (No change.)

(B) MDS assessment [Texas Index for Level of Effort (TITLE) Assessment];

(C) - (H) (No change.)

(b) The NF and hospice must ensure that the coordinated plan of care reflects the participation of the hospice, the NF, the recipient, and the recipient's legal representative to the extent possible. The plan of care must include directives for managing pain and other uncomfortable symptoms, and must be revised and updated as necessary to reflect the recipient's [individual's] current status.

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

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 7, 2008.

TRD-200801792

Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: May 18, 2008

For further information, please call: (512) 438-3734



## SUBCHAPTER X. REQUIREMENTS FOR MEDICAID-CERTIFIED FACILITIES

### 40 TAC §19.2302, §19.2326

#### STATUTORY AUTHORITY

The amendments are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Health and Safety Code, §242.226, which authorizes the adoption of rules necessary to improve the efficiency of the reimbursement process for the state Medicaid system and maximize the automated reimbursement system's capabilities.

The amendments affect Texas Government Code, §531.0055 and §531.021; Texas Human Resources Code, §161.021; and Texas Health and Safety Code, §242.226.

#### §19.2302. *Requirements for a Contracted Medicaid Facility.*

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

(c) Each NF must comply with the Texas Health and Human Services Commission's (HHSC's) utilization review requirements as provided in 1 TAC §371.212 (relating to Minimum Data Set (MDS) Assessments [Case Mix Classification System]), §371.213 (relating to Utilization Review and Control Activities Performed by Texas Health and Human Services Commission (Commission)), and §371.214 (relating to Resource Utilization Group Classification System [Texas Index for Level of Effort (TITLE) Assessments]).

(d) (No change.)

(e) If DADS [the Texas Department of Human Services (DHS)] has documentation showing good cause, it reserves the right to reject the facility's participation or to cancel an existing contract if the facility charges the Title XIX resident, any member of his family, or any other source for supplementation or for any item except as allowed within DADS [DHS] policies and regulations.

(f) If DADS suspends a facility's vendor payments or proposes to terminate a facility's contract, the facility may request an administrative hearing to challenge the action. If a facility requests a hearing, the facility must make the request in accordance with HHSC rules at 1 TAC Chapter 357, Subchapter I. [State statutes and Title XIX NF contracts provide for appeal procedures for aggrieved providers whose vendor payments may be or have been suspended or whose contracts have been canceled by DHS. A facility must submit a written request for a contract appeals hearing that is received by the department within 15 days of the facility's receipt of the letter notifying the facility of the

proposed action. The facility must send the request for a hearing to the Texas Department of Human Services, P.O. Box 149030 (W-613), Austin, Texas 78714-9030. Hearings will be held in Austin, Texas.]

(g) DADS [~~DHS~~]'s interpretations of the requirements for participation or the contract may not be appealed to HHSC's [~~DHS~~]'s hearings department unless the interpretation has caused an adverse action for the facility.

(h) Facilities must allow representatives of DADS [~~DHS~~], the Medicaid Fraud Control Unit, and the Department of Health and Human Services to enter the premises at any time to make inspections or to privately interview the residents receiving assistance from DADS [~~DHS~~].

(i) Facilities must supply DADS [~~DHS~~] complete information according to federal and state requirements about the identity of:

(1) - (5) (No change.)

(j) If a profit-making corporation operates the facility, a copy of the following material is required:

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

(3) a resolution from the board of directors authorizing a specific person or officer to sign contracts between DADS [~~DHS~~] and the corporation; and

(4) (No change.)

(k) If a nonprofit corporation operates the facility, a copy of the following material is required [~~Nonprofit corporations must furnish a copy of~~]:

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

(3) a resolution from the board of directors authorizing a specific person or officer to sign contracts with DADS [~~the department~~]; and

(4) (No change.)

(l) Facilities other than those described in subsections (j) and (k) of this section must furnish a copy of:

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

(4) other information required by DADS [~~DHS~~] to determine the status of the legal entity that owns the facility.

(m) Facilities must disclose business transaction information. A facility must send to DADS [~~DHS~~], within 35 days after the date of a written request, complete information on:

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

(n) The facility must report changes in the required information promptly to DADS [~~DHS~~].

(o) Failure to provide this information may result in suspension, termination, or other contract action, including[, but not limited to,] holding vendor funds. Payment to the facility is denied beginning on the day after the date information was due, and ending on the day before the date the information is received by DADS [~~DHS~~].

(p) (No change.)

#### §19.2326. Medicaid Swing Bed Program for Rural Hospitals.

(a) Program description [~~Description~~]. DADS [~~The Texas Department of Human Services (DHS)~~] operates the Medicaid Swing Bed Program for rural hospitals located in counties with populations of 100,000 or less. The Medicaid Swing Bed Program is modeled on Medicare's Swing Bed Program. The Medicaid Swing Bed Program permits participating rural hospitals to use their beds interchangeably

to furnish both acute hospital care and nursing facility care to Medicaid recipients, when no care beds are available in nursing facilities (NFs) in the area. When a participating rural hospital furnishes NF nursing care to Medicaid recipients, DADS [~~DHS~~] makes payment to the hospital using the same procedures[, the same case-mix methodology,] and the same Resource Utilization Group daily [~~Texas Index for Level of Effort (FILE)~~] rates that the Texas Health and Human Services Commission [~~Board of Human Services~~] authorizes for reimbursing NFs participating in the Texas Medicaid Nursing Home Program.

(b) Application to participate [~~Participate~~]. Rural hospitals apply to DADS [~~DHS~~] to participate in the Medicaid Swing Bed Program. Each applicant must be located in a county with a population of 100,000 or less and must meet the qualifying requirements of the Medicare Swing Bed Program. Hospitals approved for participation enter into swing bed provider agreements with DADS [~~DHS~~].

(c) Parallel participation [~~Participation~~] in Medicare. A rural hospital participating in the Medicaid Swing Bed Program [~~Each participating rural hospital~~] must:

(1) (No change.)

(2) be Medicare-certified by the Department of State Health Services (DSHS) [~~Texas Department of Health (TDH)~~] as a swing bed hospital in the Medicare Swing Bed Program.

(d) (No change.)

(e) Applicability of NF requirements [~~Requirements~~]. From day one of the resident's stay, a rural hospital participating in the Medicaid Swing Bed Program [~~participating rural hospitals~~] must meet the requirements set forth in §19.101 of this title (relating to Definitions); §19.2304(c) of this title (relating to Contract [~~Federal~~] Requirements); §§19.300 - 19.314 and 19.316 [~~§§19.1701 - 19.1715 and 19.1717~~] of this title (relating to General Requirements; Applicable Codes and Standards; Waivers; Emergency Power; Space and Equipment; Resident Rooms; Toilet Facilities; Resident Call System; Dining and Resident Activities; Other Environmental Conditions; Site and Grounds; Fire Service and Access; Means of Egress; Interior Finishes - Walls, Ceilings, and Floors; Fire Alarms, Detection Systems, and Sprinkler Systems; and Subdivision of Building Spaces - Smoke Barriers); §§19.1901-19.1914 and 19.1917 of this title (relating to Administration; Governing Body; Required Training of Nurse Aides; Proficiency of Nurse Aides; Staff Qualifications; Use of Outside Resources; Medical Director; Laboratory Services; Radiology and Other Diagnostic Services; Clinical Records; Contents of the Clinical Record; Additional Clinical Record Service Requirements; Clinical Records Service Supervisor; Disaster and Emergency Preparedness; and Quality Assessment and Assurance); §§19.2601-19.2608 and 19.2610 of this title (relating to Subchapter AA, Vendor Payment); Subchapter Y of this title [~~§§19.2402 - 19.2405, and 19.2407-19.2413 of this title~~] (relating to Medical Necessity Determinations [~~Subchapter Y, Medical Review and Re-evaluation~~]); [~~§§19.1801 and 19.1902 of this title (relating to General Reimbursement Information and Cost Reporting Procedures);~~] and Appendix B, Cost Determination Process, and Appendix C, Reimbursement Methodology for Nursing Facilities [~~A, General Reimbursement Methodology~~], of DADS' Nursing Facility Requirements for Licensure and Medicaid Certification Handbook [~~DHS's Long Term Care Nursing Facility Requirements for Licensure and Medicaid Certification~~].

(f) Rural hospital (Medicaid swing bed facility) licensure and certification requirements. Pursuant to Texas [~~the~~] Health and Safety Code §§222.021, 222.024, and 222.025 concerning the duplication of health care inspections and licensing, a rural hospital participating in the Medicaid Swing Bed Program [~~swing bed program~~] satisfies licensure and certification requirements referenced in this section when it

is currently licensed and certified as a hospital by DSHS [~~the Texas Department of Health~~]. However, in accordance with Texas Human Resources Code, §32.024 [~~of the Human Resources Code~~], if the rural hospital's swing beds are used for more than one 30-day length of stay per year, per resident the hospital must comply with the full Nursing Facility Requirements.

(g) Rural hospital (Medicaid swing bed facility) administrator. The governing body of a rural hospital participating in the Medicaid Swing Bed Program satisfies the requirement to appoint a qualified full-time nursing facility administrator, found at §19.1902(b) of this title (relating to Governing Body), when it appoints a hospital administrator as its official representative and designates the administrator's responsibilities and authority, subject to the following exception. If the swing beds are used for more than one 30-day length of stay per year, per resident, the hospital's governing body must appoint a full-time licensed nursing facility [~~home~~] administrator.

(h) - (j) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 7, 2008.

TRD-200801793

Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: May 18, 2008

For further information, please call: (512) 438-3734



## SUBCHAPTER Y. MEDICAL NECESSITY DETERMINATIONS

### 40 TAC §§19.2401, 19.2403, 19.2407, 19.2413

#### STATUTORY AUTHORITY

The new sections are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Health and Safety Code, §242.226, which authorizes the adoption of rules necessary to improve the efficiency of the reimbursement process for the state Medicaid system and maximize the automated reimbursement system's capabilities.

The new sections affect Texas Government Code, §531.0055 and §531.021; Texas Human Resources Code, §161.021; and Texas Health and Safety Code, §242.226.

§19.2401. General Qualifications for Medical Necessity Determinations.

Medical necessity is the prerequisite for participation in the Medicaid (Title XIX) Long-term Care program. This section contains the gen-

eral qualifications for a medical necessity determination. To verify that medical necessity exists, an individual must meet the conditions described in paragraphs (1) and (2) of this section.

(1) The individual must demonstrate a medical condition that:

(A) is of sufficient seriousness that the individual's needs exceed the routine care which may be given by an untrained person; and

(B) requires licensed nurses' supervision, assessment, planning, and intervention that are available only in an institution.

(2) The individual must require medical or nursing services that:

(A) are ordered by a physician;

(B) are dependent upon the individual's documented medical conditions;

(C) require the skills of a registered or licensed vocational nurse;

(D) are provided either directly by or under the supervision of a licensed nurse in an institutional setting; and

(E) are required on a regular basis.

§19.2403. Medical Necessity Determination.

(a) Purpose. A recipient must have a determination of medical necessity for nursing facility care to participate in the Texas Medicaid Nursing Facility Program.

(1) The state Medicaid claims administrator makes a medical necessity determination by evaluating a recipient's medical and nursing needs based on the MDS assessment required by DADS.

(2) A recipient must have a determination of medical necessity for nursing facility care before the nursing facility can be paid for services, except as provided in §19.2413 of this subchapter (relating to Determination of Payment Rate Based on the MDS Assessment Submission) and §19.2611 of this chapter (relating to Retroactive Vendor Payment).

(b) Admission MDS assessment review.

(1) The admission MDS assessment review process is initiated when the state Medicaid claims administrator receives an MDS assessment and the Long-Term Care Medicaid Information Section, in accordance with §19.2413 of this subchapter, indicating that a Medicaid applicant or recipient is requesting vendor payment for care in a contracted nursing facility. A registered nurse must sign and certify that the MDS assessment is completed in accordance with §19.801 of this chapter (relating to Resident Assessment).

(2) The admission MDS assessment review determines medical necessity and establishes the authorization for payment of a calculated RUG rate.

(c) Role of the state Medicaid claims administrator. The state Medicaid claims administrator reviews all MDS assessments, including significant change in status assessments, modifications, and significant corrections, and approves or denies medical necessity in accordance with §19.2401 of this subchapter (relating to General Qualifications for Medical Necessity Determinations).

(d) Effective period.

(1) A determination of medical necessity based on the admission MDS assessment review remains in effect for the time period determined by the federal MDS submission schedule.

(2) If a nursing facility submits a recipient's MDS assessment after the due date established by the federal MDS submission schedule, the recipient's medical necessity remains in effect for the period between the due date and the date the state Medicaid claims administrator received the MDS assessment.

(3) If a nursing facility submits a recipient's MDS assessment after the due date established by the federal MDS submission schedule and, after reviewing the MDS assessment, the state Medicaid claims administrator determines that the recipient does not meet the criteria for medical necessity, the effective date of the denial of medical necessity is the date the state Medicaid claims administrator received the MDS assessment. A denial of medical necessity is conducted in accordance with §19.2407 of this subchapter (relating to Denied Medical Necessity).

(e) Permanent medical necessity.

(1) A recipient's permanent medical necessity status is established on the completion date of any MDS assessment approved for medical necessity no less than 184 calendar days after the recipient's admission to the Texas Medicaid Nursing Facility Program.

(2) A nursing facility must submit a recipient's MDS assessment in compliance with the federal MDS submission schedule even after the recipient achieves permanent medical necessity status.

(3) A recipient's permanent medical necessity status moves with the recipient, unless the recipient is discharged to home for more than 30 days.

(4) If a recipient who has permanent medical necessity status transfers to another Medicaid-certified nursing facility, the nursing facility to which the recipient transfers must complete a new MDS assessment in compliance with the federal MDS submission schedule.

(f) Insufficient information. If an MDS assessment does not have sufficient information for the state Medicaid claims administrator to make a medical necessity determination, the MDS assessment is put in suspense for 21 days with a message from the state Medicaid claims administrator informing the nursing facility that the MDS assessment has been put in suspense for 21 days. Unless the nursing facility provides sufficient information on the MDS assessment to determine medical necessity within 21 days, medical necessity is denied.

§19.2407. Denied Medical Necessity.

(a) If the state Medicaid claims administrator determines that a Medicaid applicant or a recipient does not meet the criteria for medical necessity described in §19.2401 of this subchapter (relating to General Qualifications for Medical Necessity Determinations), the state Medicaid claims administrator notifies the attending physician and the nursing facility in writing and provides them an opportunity to present additional information about the applicant's or recipient's medical need for nursing facility care.

(1) If the attending physician or a nursing facility physician does not respond or contest the findings of the state Medicaid claims administrator within 10 working days after receipt of the written notice about the decision, the findings are final.

(2) If the attending physician or a nursing facility physician contests the findings of the state Medicaid claims administrator, at least one physician with the state Medicaid claims administrator must review the case. If the state Medicaid claims administrator's physician determines that the applicant's or recipient's admission or stay is not medically necessary, the determination becomes final.

(3) The state Medicaid claims administrator sends written notification of the final determination of denied medical necessity to the

attending physician, the nursing facility, and the applicant or recipient (or responsible party).

(b) After an applicant receives written notice of a determination of denied medical necessity, the applicant or responsible party must request a fair hearing within 90 days after the date of denied medical necessity, or the applicant loses the right to a fair hearing.

(c) After a recipient receives written notice of a determination of denied medical necessity, the recipient or responsible party must request a fair hearing within 10 days after the date of the written notice in order to have nursing facility services paid for during the appeal.

(1) If the recipient requests a fair hearing within 10 days after the date of the written notice and the determination of denied medical necessity is upheld, the effective date of the denial is 10 days after the hearing officer's written decision.

(2) If the recipient does not request a fair hearing within 10 days after the date of the written notice, DADS makes vendor payments to the nursing facility at the previously established RUG rate for 15 days or until the recipient is discharged, whichever occurs first.

(3) If the recipient does not request a fair hearing within 10 days after the date of the written notice, the recipient must request a fair hearing within 90 days after the date of denied medical necessity, or the recipient loses the right to a fair hearing.

(d) Fair hearings are conducted by the Texas Health and Human Services Commission (HHSC) in accordance with HHSC rules at 1 TAC Chapter 357.

§19.2413. Determination of Payment Rate Based on the MDS Assessment Submission.

(a) Definitions. In this section, the following words and terms have the following meanings unless the context clearly indicates otherwise.

(1) All conditions of eligibility--A recipient meets all conditions of eligibility when the state Medicaid claims administrator approves the recipient for medical necessity and the recipient meets financial eligibility for Medicaid.

(2) On-time MDS assessment--An MDS assessment that is submitted in accordance with the federal MDS submission schedule and is received by the state Medicaid claims administrator within 31 days after the completion date.

(3) Missed MDS assessment--An MDS assessment that is received by the state Medicaid claims administrator outside the time period that the MDS assessment covers.

(b) MDS submission requirement. A nursing facility must:

(1) complete all MDS assessments according to CMS' instructions;

(2) submit a recipient's MDS assessment, including an admission MDS assessment, a quarterly MDS assessment, and a significant change in status assessment, to the state MDS database in compliance with the federal MDS submission schedule;

(3) submit the Long-Term Care Medicaid Information Section to the state Medicaid claims administrator; and

(4) submit the recipient's MDS assessment in compliance with the federal MDS submission schedule even after the recipient has permanent medical necessity as described in §19.2403(e) of this subchapter (relating to Medical Necessity Determination).

(c) Admission MDS assessments.



(1) If a nursing facility discharges a recipient with a status of return not anticipated, and the recipient returns to the facility, the nursing facility must complete an admission MDS assessment for a determination of medical necessity and establishment of a RUG rate, regardless of the amount of time between the recipient's discharge and return.

(2) A nursing facility must complete and submit an admission MDS assessment to receive payment for a recipient's period of stay in the nursing facility, even if the recipient leaves the nursing facility before the MDS assessment is completed and never returns long enough for the MDS assessment to be completed. See subsection (i) of this section for completion of an admission MDS assessment in the event of a recipient's death.

(3) DADS pays a calculated RUG rate for an admission MDS assessment from the date the recipient was admitted to the nursing facility, except as provided in §19.2611 of this chapter (relating to Retroactive Vendor Payments).

(d) Payment of a calculated RUG rate. If a recipient meets all conditions of eligibility, DADS pays a calculated RUG rate for an MDS assessment if it is received by the state Medicaid claims administrator during the time period that the MDS assessment covers.

(e) On-time MDS assessment. If a recipient meets all conditions of eligibility, DADS pays a calculated RUG rate from the completion date of the required MDS assessment, except for an admission MDS assessment as described in subsection (c)(3) of this section.

(f) MDS assessments that are not on time. The state Medicaid claims administrator stops payment for services if the state Medicaid claims administrator does not receive an on-time MDS assessment. Payment for services resumes when the state Medicaid claims administrator receives all MDS assessments that are due as required by the federal MDS submission schedule.

(g) Missed MDS assessments. When the state Medicaid claims administrator receives a missed MDS assessment, DADS pays the nursing facility a default RUG rate for the entire period of the missed MDS assessment if the recipient meets financial eligibility for Medicaid, except as provided in paragraph (2) of this subsection.

(1) If an MDS assessment is missed for the purpose of calculating a RUG rate, the nursing facility must still submit the MDS assessment to comply with §19.801 of this chapter (relating to Resident Assessment).

(2) For a newly contracted nursing facility and a nursing facility that undergoes a change of ownership, DADS pays the calculated RUG rate for any missed MDS assessments that occur while the nursing facility is unable to submit MDS assessments to the state MDS database.

(h) Significant change in status assessment, modification, or significant correction. If a recipient meets all conditions of eligibility, DADS pays the calculated RUG rate from the completion date of a significant change in status assessment, modification, or significant correction.

(i) Incomplete or erroneous MDS assessments. If an applicant meets all conditions of eligibility, DADS pays a default rate for an MDS assessment that is incomplete or has errors.

(j) Prohibition against recourse. A nursing facility must not charge and must not take any other recourse against a recipient, the recipient's family members, the recipient's estate or the recipient's representative for a claim that is reduced because the facility failed to comply with a DADS rule or procedure pertaining to reimbursement.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 7, 2008.

TRD-200801794

Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: May 18, 2008

For further information, please call: (512) 438-3734



## SUBCHAPTER Y. MEDICAL REVIEW AND RE-EVALUATION

### 40 TAC §§19.2402 - 19.2404, 19.2407 - 19.2410, 19.2413

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Aging and Disability Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

#### STATUTORY AUTHORITY

The repeal is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Health and Safety Code, §242.226, which authorizes the adoption of rules necessary to improve the efficiency of the reimbursement process for the state Medicaid system and maximize the automated reimbursement system's capabilities.

The repeal affects Texas Government Code, §531.0055 and §531.021; Texas Human Resources Code, §161.021; and Texas Health and Safety Code, §242.226.

§19.2402. *Utilization Review Plan.*

§19.2403. *Utilization Review Process.*

§19.2404. *Utilization Review Effective Dates.*

§19.2407. *Denied Medical Necessity.*

§19.2408. *Retroactive Medical Necessity Determinations.*

§19.2409. *General Qualifications for At-Risk Assessments and Medical Necessity Determinations.*

§19.2410. *Criteria Specific to a Medical Necessity Determination.*

§19.2413. *Reconsideration of Medical Necessity (MN) Determination and Effective Dates.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 7, 2008.

TRD-200801795

Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: May 18, 2008

For further information, please call: (512) 438-3734



## SUBCHAPTER Z. PREADMISSION SCREENING AND RESIDENT REVIEW (PASARR)

### 40 TAC §19.2500

#### STATUTORY AUTHORITY

The amendment is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Health and Safety Code, §242.226, which authorizes the adoption of rules necessary to improve the efficiency of the reimbursement process for the state Medicaid system and maximize the automated reimbursement system's capabilities.

The amendment affects Texas Government Code, §531.0055 and §531.021; Texas Human Resources Code, §161.021; and Texas Health and Safety Code, §242.226.

§19.2500. *Preadmission Screening and Resident Review (PASARR).*

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

(1) - (25) (No change.)

(26) PASARR determination - A decision made by DADS or its designee [~~Texas Department of Human Services (DHS) PASARR Determination Program professional staff~~] to establish if an individual requires the level of services provided in a nursing facility, as defined by medical necessity, if the individual has the need for specialized services for mental illness, mental retardation, and/or a related condition. The decisions are based on information included in the Level II PASARR Assessment.

(27) - (29) (No change.)

(30) Specialized services for individuals with mental retardation or a related condition - A continuous program for each resident

[client], which includes aggressive, consistent implementation of specialized and generic training, treatment, health services and related services that is directed toward:

(A) the acquisition of the behaviors necessary for the resident [client] to function with as much self-determination and independence as possible; and

(B) the prevention or deceleration of regression or loss of current optimal functional status. Specialized services do not include services to maintain generally independent residents [clients] who are able to function with little supervision or in the absence of a continuous specialized services program.

(31) - (33) (No change.)

(b) Preadmission screenings.

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

(4) Level II - PASARR assessment [Level II Assessment]. DADS or its designee assesses [~~DHS staff must assess~~] the need for nursing facility and specialized services.

(A) The assessment process consists of a:

(i) PASARR preadmission [~~nursing facility~~] assessment; and

(ii) Level II - PASARR assessment. [~~PASARR mental illness assessment (as appropriate); and~~]

~~[(iii) PASARR mental retardation and related conditions assessment (as appropriate).]~~

(B) (No change.)

(C) It is the responsibility of the nursing facility to submit the required PASARR assessment to DADS or its designee [~~contact the PASARR unit of DHS~~] and request screening of any resident suspected of having MI, MR, or RC.

(c) Change in condition.

(1) The nursing facility will promptly notify DADS or its designee [~~the mental health mental retardation authority; and PASARR unit of DHS~~] after a significant change in the physical or mental condition of a resident that relates to the MI, MR, or RC diagnosis.

(2) DADS or its designee conducts [~~The PASARR unit of DHS will conduct~~] a review, as described in subsection (b)(4) of this section, and makes [~~make~~] a determination, as described in subsection (d) of this section.

(3) DADS or its designee [~~DHS staff~~] must evaluate and contact the attending physician when there is a question regarding a resident's [~~an individual's~~] capacity to understand and meaningfully participate in the decisions regarding his eligibility to remain in the nursing facility, be alternately placed, receive specialized services, and/or initiate appeals.

(A) A surrogate decision maker will be assigned by the attending physician if there is a question regarding capacity and the resident [individual] meets the criteria in the Consent to Medical Treatment Act, Health and Safety Code, Chapter 313, as referenced in §19.420(a)(3) of this chapter [title] (relating to Documentation for the Delegation of Long-Term Care Resident's Rights).

(B) A resident [~~An individual~~] will be referred to probate or county court for the assignment of a legal guardian if:

(i) (No change.)

(ii) there is a question regarding capacity, but the resident [individual] does not meet the criteria for a surrogate decision maker under §19.420(a)(3) of this chapter [title (relating to Documentation for the Delegation of Long-Term Care Resident's Rights)].

(d) Determination process.

(1) The assessment data is analyzed by a qualified mental health and/or mental retardation professional in order to determine whether:

(A) Nursing facility services are needed, as described in §19.2401 [§§19.2409 and 19.2410] of this chapter [title] (relating to General Qualifications for Medical Necessity Determinations [and Criteria Specific to a Medical Necessity Determination]).

(B) - (C) (No change.)

(2) One of the following determinations is made:

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

(C) Nursing facility services are not needed but specialized services are needed. Those individuals may not be admitted to or continue residing in a nursing facility except as described in paragraph (3) [(4)(3)] of this subsection [section]. Those individuals who are current nursing facility residents must be alternately placed as described in subsection (e) of this section.

(D) Nursing facility services are not needed and specialized services are not needed. Those individuals may not be admitted to or continue residing in a nursing facility. Those individuals who are current nursing facility residents must be alternately placed, according to discharge procedures stated under §19.502 of this chapter [title] (relating to Transfer and Discharge in Medicaid-certified [Medicaid-Certified] Facilities).

(3) (No change.)

(4) If during the determination process DADS or its designee [DHS] ascertains that a person does not have MI/MR/RC, the PASARR determination process is [will be] discontinued and the individual may be admitted to the nursing facility.

(5) DADS or its designee notifies [DHS will notify] all individuals and their legal representative or surrogate decision maker (SDM) [decisionmaker (SDM)] of the results of their PASARR determination through a letter sent to them, the nursing facility administrator, the attending physician, and the local mental retardation authority (MRA) or local mental health authority (MHA) as applicable, the Office of the State Long-Term Care Ombudsman [Texas Department of Mental Health and Mental Retardation authorities, the Texas Department on Aging (TDOA)], and Texas Health and Human Services Commission (HHSC) [the local] Medicaid eligibility staff [unit]. Individuals who have undergone a preadmission screening or change in condition are [will be] notified within 10 calendar days of the determination.

(6) Any individual, or his legal representative or responsible party or SDM, not in agreement with the PASARR determination may file an appeal with HHSC [DHS] to receive a [DHS] fair hearing according to 1 TAC Chapter 357 [Chapter 79 of this title (relating to Legal Services)].

(A) If [When] the hearing officer reverses DADS' or its designee's [DHS's] determination regarding nursing facility admission, the individual seeking entry into the nursing facility may be admitted immediately; and as long as the individual meets all other eligibility requirements, the facility may receive vendor payments. Current residents who have met all eligibility criteria may continue to reside in

the facility and receive Medicaid reimbursement retroactive to the date when medical and financial eligibility were in effect.

(B) If [When] the hearing officer sustains DADS' or its designee's [DHS's] determination regarding nursing facility admission, the individual seeking entry into the nursing facility may not enter the facility and may not be Medicaid-certified for nursing facility placement. Current residents who have met all eligibility criteria may be alternately placed.

(e) Specialized services and alternate placement.

(1) DADS requests [The Texas Department of Mental Health and Mental Retardation (TDMHMR) contracts with] the local MRA to provide service coordination, [MHMR authority to purchase] case management, specialized services, and [procure] alternate placement services for persons with mental retardation determined by DADS or its designee [DHS] to require specialized services and/or request alternate placement. The Department of State Health Services requests the local MHA to provide service coordination, case management, specialized services, and alternate placement services for persons with mental illness determined to require specialized services, alternate placement, or both.

(2) A service coordinator must [ease manager will] be assigned for those residents who require specialized services and/or request alternate placement.

(3) DADS [DHS] provides specialized rehabilitative services, as stated under §19.1303(a) of this chapter [title] (relating to Specialized Services in Medicaid-certified [Medicaid-Certified] Facilities).

(4) An interdisciplinary team is [will be] constituted by the physician, mental health/mental retardation professional, Director of Nurses, or other professionals as appropriate, the resident and legal representative, responsible party or SDM to develop a plan for specialized services and/or alternate placement. This team will identify those additional services required for specialized services that are not already being provided by the nursing facility and covered in the nursing facility daily vendor rate.

(5) The service coordinator must [ease manager will] provide a monthly written report [monthly] to the primary or attending physician and to the nursing facility regarding the delivery of specialized services and alternate placement activities. The report will be retained in the resident's clinical record.

(6) The nursing facility must allow Office of the State Long-Term Care Ombudsman [TDOA] staff or representatives from Advocacy, Inc., to counsel and inform affected residents of their rights and options under PASARR.

(7) Specialized services and nursing facility services must [are to] be coordinated and integrated for maximum benefit to the resident. A nursing facility must allow for the MRA or MHA, as applicable, [MHMR authority] or a subcontracted provider to provide specialized services within the facility. If a nursing facility accepts individuals or has individuals who require specialized services for their mental condition, it must establish and maintain a written cooperative agreement with the local MRA or MHA [MHMR authority] that includes:

(A) (No change.)

(B) a provision allowing the MRA staff or MHA [MHMR authority] staff to access the resident's clinical record and assessment information to avoid unnecessary duplication of services, with appropriate consent of the eligible resident, legal representative, responsible party or SDM;

(C) a provision allowing the MRA staff or MHA [MHMR authority] staff an opportunity to participate in or provide information for the facility's admission, programmatic, and discharge-planning meetings when the specialized services needs of an eligible resident are being considered; and

(D) a provision allowing the nursing facility staff to participate in or provide information to the service coordinator [MHMR authority case manager] during each resident's specialized services planning.

(8) The service coordinator [case manager] must provide and the nursing facility must maintain, as a separate document in the resident's record, a copy of the original Individual Specialized Services Plan developed by the interdisciplinary team, and any subsequent changes.

(9) The service coordinator [case manager] must provide to the facility and the facility must document in the comprehensive care plan the following information from the specialized services plan, the designated provider, the service coordinator [case manager], other written report, and documented telephone contacts:

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

(10) (No change.)

(11) If a resident [the individual] requires specialized rehabilitation services, the facility must cooperate in obtaining the screening or evaluation.

(12) For those residents who have been determined to be appropriately placed in a nursing facility and to need specialized services and who desire alternate placement, the following alternate placement activities occur:

(A) The MRA or MHA, as applicable, [MHMR authority] shall locate alternate placement in consultation with the resident or his legal representative.

(B) - (C) (No change.)

(13) For those residents who have been determined to not need nursing facility services and to need specialized services and who have 30 continuous months of nursing facility residence, a choice will be offered to either seek alternate placement or remain in the nursing facility. If the resident, legal representative, or SDM chooses alternate placement, the following alternate placement activities occur:

(A) The MRA or MHA, as applicable, [MHMR authority] shall locate alternate placement in consultation with the resident, his legal representative, or SDM.

(B) - (C) (No change.)

(14) For those residents determined not to need nursing facility services and to need specialized services but who do not have 30 months continuous residence, the resident will be discharged according to procedures stated under §19.502 of this chapter [title (relating to Transfer and Discharge)].

(f) Limitations on provider charges. Nursing facilities that [which] admit or retain residents [individuals] with a diagnosis of mental illness, mental retardation, or a related condition who have not been screened by DADS or its designee [DHS] or that [who] admit or retain residents [individuals] who do not need nursing facility services and who require specialized services will not be reimbursed for that resident [individual], as described in §19.2608 of this chapter [title] (relating to Limitations on Provider Charges).

(g) Discharge planning. Nursing facilities must provide discharge planning services to all residents who are to be alternately

placed as described in this section and provide residents those rights described in §19.502 of this chapter [title (relating to Transfer and Discharge)].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 7, 2008.

TRD-200801796

Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: May 18, 2008

For further information, please call: (512) 438-3734



## SUBCHAPTER AA. VENDOR PAYMENT

### 40 TAC §§19.2609, 19.2611, 19.2615

#### STATUTORY AUTHORITY

The amendment and new sections are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Health and Safety Code, §242.226, which authorizes the adoption of rules necessary to improve the efficiency of the reimbursement process for the state Medicaid system and maximize the automated reimbursement system's capabilities.

The amendment and new sections affect Texas Government Code, §531.0055 and §531.021; Texas Human Resources Code, §161.021; and Texas Health and Safety Code, §242.226.

#### §19.2609. *Payment of Claims.*

To [in order to] receive payment for a service, a nursing facility must submit a [services provided, the nursing facility's] complete and accurate claim to the state Medicaid claims administrator so that it is received [for services for which the nursing facility is entitled to payment must be received by the Texas Department of Human Services' (DHS's) claims processor] within 12 months after the date of service. In [For purposes of] this section, the date of service is [defined as] the last day of the month in which the service was provided. [Claims for services delivered before the effective date of this section must be submitted within 12 months of the effective date of this section.]

(1) (No change.)

(2) A nursing facility must submit claims and adjustments rejected or denied to the state Medicaid claims administrator within 12 months after the date of service. DADS may pay for claims and adjustments rejected or denied during the 12-month period through no fault of the nursing facility [Adjustments to claims must be received by DHS's claims processor during the applicable 12-month period. Claims and adjustments rejected or denied during the 12-month period through no fault of the nursing facility may be paid upon approval by DHS].

(3) If a recipient's [In the event that] Medicaid eligibility [for benefits] is established after [provision of] services are provided to the recipient, the nursing facility must submit the claim for service to the state Medicaid claims administrator within 12 months after [the 12-month period for submission of claims will start on] the date eligibility is established.

(4) A nursing facility may resubmit a claim after the 12-month period in the case of state-generated retroactive payments. [The requirement to submit claims within 12 months of the date of service does not prohibit a provider from re-billing in the case of state-generated retroactive adjustments.]

(5) The provisions of [procedures outlined in] §19.2413 of this chapter [title] (relating to Determination of Payment Rate Based on the MDS Assessment Submission [Reconsideration of Medical Necessity (MN) Determination and Effective Dates]) apply to [are not affected by] this section.

(6) DADS recoups any inadvertent payments made to a facility.

#### §19.2611. Retroactive Vendor Payment.

(a) In this section, retroactive vendor payment is payment DADS makes retroactively to a nursing facility for services the nursing facility provided to an individual who was eligible for, but had not yet applied for, Medicaid. A nursing facility is eligible for up to three months retroactive vendor payment for services it provided, if:

(1) the individual resided in a Medicaid-certified nursing facility, or a distinct part, during the time services were provided;

(2) the individual did not receive Supplemental Security Income cash benefits;

(3) the individual met Medicaid financial eligibility requirements;

(4) the state Medicaid claims administrator has a current MDS assessment for the individual that the facility submitted in compliance with the federal MDS submission requirements; and

(5) the nursing facility met physician certification and plan of care requirements during the time services were provided.

(b) After receipt of an application for Medicaid, Texas Health and Human Services Commission (HHSC) Medicaid eligibility staff notify the applicant whether the applicant meets financial eligibility. The state Medicaid claims administrator uses the applicant's current MDS assessment to make the MN determination and determine the effective date of the MN determination. For the purpose of establishing three months prior eligibility, the effective date of the MN determination for a new recipient is the first day of the month in which the recipient qualified for MN.

(c) If the requirements in subsection (a) of this section are met, DADS makes a retroactive vendor payment based on the recipient's calculated RUG rate for the period covered by the retroactive vendor payment.

(d) DADS or HHSC may verify that the recipient's record includes the required physician's certification, recertification, and plans of care, and that the plans were reviewed as required during the applicable periods.

(e) If a recipient paid the nursing facility for services for which the facility later receives retroactive vendor payment, the facility must reimburse the recipient the full amount the recipient paid, beginning with the effective date of Medicaid eligibility, minus any applied income or co-payment as determined by HHSC Medicaid eligibility staff.

#### §19.2615. Resident Transaction Notices.

A nursing facility must electronically submit to the state Medicaid claims administrator a resident transaction notice within 72 hours after a recipient's admission or discharge from the Medicaid nursing facility vendor payment system. The nursing facility administrator must sign the resident transaction notice.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 7, 2008.

TRD-200801797

Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: May 18, 2008

For further information, please call: (512) 438-3734



## SUBCHAPTER E. RESIDENT RIGHTS

### 40 TAC §19.413

The Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), an amendment to §19.413, concerning access and visitation rights, in Chapter 19, Nursing Facility Requirements for Licensure and Medicaid Certification.

#### BACKGROUND AND PURPOSE

The purpose of the amendment is to update §19.413 to be consistent with §712(b) of the Older Americans Act of 1965, as amended in 2006. Section 712(b) requires the State to ensure that certified ombudsmen and staff of the Office of the State Long-Term Care Ombudsman (the Office) have appropriate access to long-term care facilities, residents in those facilities, and residents' clinical records. The proposed amendment will ensure DADS is in compliance with the Older Americans Act by clarifying that nursing facilities must give certified volunteer ombudsmen access to residents' medical and social records.

#### SECTION-BY-SECTION SUMMARY

The proposed amendment to §19.413 requires a facility to allow a certified ombudsman and a staff person of the Office access to a resident's medical and social records, if the certified ombudsman or staff person of the Office has the consent of the resident or the legally authorized representative of the resident. The facility must also allow a certified ombudsman and a staff person of the Office access to the medical and social records of a resident 60 years of age or older, in accordance with the Older Americans Act. The amendment also requires that a certified ombudsman and a staff person of the Office have access to documented administrative policies of the nursing facility.

The amendment cross-references two rules in Chapter 85 (§85.2 and §85.401) that are proposed elsewhere in this issue of the *Texas Register*. Proposed new §85.2 defines a certified ombudsman as a certified staff ombudsman or a certified volunteer ombudsman. Proposed new §85.401(r) defines a representative of the Office of the State Long-Term Care Ombudsman as a staff person of the Office, a certified ombudsman, or an ombudsman intern.

The amendment updates state agency names to ensure the rule reflects changes resulting from the consolidation of health and human services agencies in 2004.

#### FISCAL NOTE

Gordon Taylor, DADS Chief Financial Officer, has determined that, for the first five years the proposed amendment is in effect, enforcing or administering the amendment does not have foreseeable implications relating to costs or revenues of state or local governments.

#### SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed amendment will not have an adverse economic effect on small businesses or micro-businesses, because the amendment imposes no new obligations on facilities that would require them to alter their business practices.

#### PUBLIC BENEFIT AND COSTS

Veronda Durden, DADS Assistant Commissioner for Regulatory Services, has determined that, for each year of the first five years the amendment is in effect, the public benefit expected as a result of enforcing the amendment is that DADS' rule will be in compliance with federal provisions of the Older Americans Act.

Ms. Durden anticipates that there will not be an economic cost to persons who are required to comply with the amendment. The amendment will not affect a local economy.

#### TAKINGS IMPACT ASSESSMENT

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

#### PUBLIC COMMENT

Questions about the content of this proposal may be directed to Jennifer Morrison at (512) 438-4624 in DADS' Regulatory Services Division. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-012, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030, or street address 701 West 51st St., Austin, TX 78751; faxed to (512) 438-5759; or e-mailed to [rulescomments@dads.state.tx.us](mailto: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 either (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 012" 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 Health and Safety Code, Chapter 242, which authorizes DADS to license and regulate nursing facilities.

The amendment implements Texas Government Code, §531.0055, Texas Human Resources Code, §161.021; and Texas Health and Safety Code, §§242.001 - 242.906.

#### §19.413. Access and Visitation Rights.

(a) A [The] resident has the right to have access to, and the facility must provide immediate access to a [any] resident to, [by] the following:

(1) in Medicaid-certified facilities, a [any] representative of the Secretary of Health and Human Services;

(2) a [any] representative of the State of Texas;

(3) (No change.)

(4) a [any] representative of the Office of the State Long Term Care Ombudsman (the Office), as described in §85.401(r) of this title (relating to Long-Term Care Ombudsman Program)[, Texas Department on Aging];

(5) a [any] representative of Advocacy, Incorporated, [Agency on Aging, or the office of the state long-term-care ombudsman] which [who] is responsible for the protection and advocacy system [systems] for developmentally disabled individuals established under the Developmental Disabilities Assistance and Bill of Rights Act, part C;

(6) a [any] representative of Advocacy, Incorporated, which [the Texas Department of Mental Health and Mental Retardation who] is responsible for the protection and advocacy system [systems] for mentally ill individuals established under the Protection and Advocacy for Mentally Ill Individuals Act;

(7) subject to the resident's [residents'] right to deny or withdraw consent at any time, immediate family or other relatives of the resident; and

(8) (No change.)

(b) A [The] facility must provide reasonable access to a [any] resident by any entity or individual that provides health, social, legal, or other services to the resident, subject to the resident's right to deny or withdraw consent at any time.

(c) A facility must allow a certified ombudsman, as defined in §85.2 of this title (relating to Definitions), and a staff person of the Office access: [The facility must allow representatives of the state ombudsman cited in subsection (a)(4) of this section to examine a resident's clinical records with the permission of the resident or the resident's legal representative, and consistent with state law.]

(1) to the medical and social records of a resident, including an incident report involving the resident, if the certified ombudsman or staff person of the Office has the consent of the resident or the legally authorized representative of the resident;

(2) to the medical and social records of a resident 60 years of age or older, including an incident report involving the resident, in accordance with the Older Americans Act, §712(b); and

(3) to the administrative records, policies, and documents of the facility to which the facility residents or general public have access.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 7, 2008.

TRD-200801813

Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: May 18, 2008

For further information, please call: (512) 438-3734



## CHAPTER 30. MEDICAID HOSPICE PROGRAM

The Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), amendments to §30.14, concerning certification of terminal illness; §30.60, concerning Medicaid hospice payments and limitations; §30.62, concerning Medicaid hospice claims requirements; and §30.92, concerning Texas Index for Level of Effort (TILE) assessments, in Chapter 30, Medicaid Hospice Program.

### BACKGROUND AND PURPOSE

The purpose of the amendments is to implement rule changes necessitated by a project under the direction of HHSC that will replace the state case-mix system for provider payments, which is based on the Texas Index for Level of Effort (TILE) model, with the federal case-mix system, which is based on the federal Resource Utilization Group (RUG) model. The TILE-to-RUG project implements Texas Health and Safety Code, §§242.221 et seq, which requires DADS to use an automated system for nursing facility reimbursement and an assessment form designed by the United States Health Care Financing Administration (now the Centers for Medicare and Medicaid Services). As allowed by Texas Health and Safety Code, §242.221(b), DADS and HHSC have elected to add other components of the state Medicaid program, such as the Medicaid Hospice Program, to the automated system of reimbursement. Medicaid hospice providers, therefore, will be required to use the Minimum Data Set (MDS) assessment forms, rather than the TILE-based assessments they currently use, for making medical necessity determinations and calculating the RUG.

The purpose of the amendments is also to update agency names and rule cross-references.

### SECTION-BY-SECTION SUMMARY

The proposed amendment to §30.14 replaces a requirement that a hospice provider retain copies of a current TILE assessment, if applicable, with a requirement that the hospice provider retain copies of the current MDS assessment. The amendment also corrects the section title in a rule cross-reference.

The proposed amendment to §30.60 replaces references to the TILE assessment with references to the MDS assessment. New language is added in subsection (e)(1) to provide the time frames for submitting the MDS assessment based on whether a hospice recipient or applicant is currently residing in a nursing facility or is newly admitted to the nursing facility. The proposed amendment also replaces references to the Texas Department of Human Services (DHS) with references to DADS and replaces the name of the former claims administrator with a more generic term.

The proposed amendment to §30.62 replaces a reference to the TILE assessment with a reference to the MDS assessment.

The proposed amendment to §30.92 changes the name of the section and updates section titles in several cross-references to HHSC rules that are being amended because of the TILE to RUG conversion project.

### FISCAL NOTE

Gordon Taylor, DADS Chief Financial Officer, has determined that, for the first five years the proposed amendments are in effect, enforcing or administering the amendments does not have foreseeable implications relating to costs or revenues of state or local governments.

### SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed amendments will not have an adverse economic effect on small businesses or micro-businesses, because the amendments impose no new requirements that would cause them to alter their business practices.

### PUBLIC BENEFIT AND COSTS

Barry Waller, DADS Assistant Commissioner for Provider Services, has determined that, for each year of the first five years the amendments are in effect, the public benefit expected as a result of enforcing the amendments is that DADS rules will provide accurate requirements for Medicaid hospice providers. The amendments, which require hospice providers to conduct assessments of individuals on the same form on which nursing facility residents are assessed, will allow for better comparison of services in Texas to services in other states and provide for more streamlined and integrated business processes. These improvements will in turn lead to opportunities for improved services for DADS' consumers.

Mr. Waller anticipates that there will not be an economic cost to persons who are required to comply with the amendments. 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 Lynn Cooper at (512) 438-3159 in DADS' Provider Services Division. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-011, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030, or street address 701 West 51st St., Austin, TX 78751; faxed to (512) 438-5759; or e-mailed to [rulescomments@dads.state.tx.us](mailto: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 either (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 011" in the subject line.

## SUBCHAPTER B. ELIGIBILITY REQUIREMENTS

#### 40 TAC §30.14

##### STATUTORY AUTHORITY

The amendment is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Health and Safety Code, §242.226, which authorizes the adoption of rules necessary to improve the efficiency of the reimbursement process for the state Medicaid system and maximize the automated reimbursement system's capabilities.

The amendment affects Texas Government Code, §531.0055 and §531.021; Texas Human Resources Code, §161.021; and Texas Health and Safety Code, §242.226.

##### §30.14. Certification of Terminal Illness.

###### (a) Timing of certification.

###### (1) (No change.)

(2) For the initial period, the physician(s) must sign and date the Medicaid Hospice Program Physician Certification of Terminal Illness form before the hospice submits an initial request for payment. The physician must sign and date the Medicaid Hospice Program Physician Certification of Terminal Illness form in all cases before the expiration date of each six-month certification period. Forms must be submitted by the hospice as outlined in §30.62 of this chapter [title] (relating to Medicaid Hospice Claims [Processing] Requirements) and must be submitted before billing.

###### (b) - (e) (No change.)

(f) Record maintenance. The hospice provider must retain copies of all physician certification statements, a current Minimum Data Set (MDS) assessment [Texas Index for Level of Effort (TILE)] or current level of need (LON) assessment, if applicable, and the client-specific comprehensive assessment in the recipient's records at the hospice and the nursing facility clinical record or ICF/MR-RC client record, if applicable.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 7, 2008.

TRD-200801798

Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: May 18, 2008

For further information, please call: (512) 438-3734



#### SUBCHAPTER F. REIMBURSEMENT

#### 40 TAC §30.60, §30.62

##### STATUTORY AUTHORITY

The amendments are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Health and Safety Code, §242.226, which authorizes the adoption of rules necessary to improve the efficiency of the reimbursement process for the state Medicaid system and maximize the automated reimbursement system's capabilities.

The amendments affect Texas Government Code, §531.0055 and §531.021; Texas Human Resources Code, §161.021; and Texas Health and Safety Code, §242.226.

##### §30.60. Medicaid Hospice Payments and Limitations.

(a) Medicaid hospice per diem rates. For each day that an individual is under the care of a hospice, the hospice will be reimbursed an amount applicable to the type and intensity of the services furnished to the individual for that day. For continuous home care, the amount of payment is determined based on the number of hours of continuous care furnished to the beneficiary on that day.

###### (1) (No change.)

(2) Continuous home care. The hospice will be paid the continuous home care rate when continuous home care is provided. The continuous home care rate is divided by 24 hours in order to arrive at an hourly rate. A minimum of 8 hours must be provided. For every hour or part of an hour of continuous care furnished, the hourly rate will be reimbursed to the hospice up to 24 hours a day. A maximum of five consecutive days are allowed for reimbursement. Additional days may be allowed with approval from the [Texas] Department of Aging and Disability [Human] Services (DADS) [~~DHS~~].

(3) Inpatient respite care. The hospice will be paid at the inpatient respite care rate for each day on which the beneficiary is in an approved inpatient facility and is receiving respite care. Payment for respite care may be made for a maximum of 5 days at a time including the date of admission but not counting the date of discharge. Payment for the sixth and any subsequent days is to be made at the routine home care rate.

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

(C) If the hospice recipient dies as an inpatient, DADS [~~DHS~~] pays the inpatient rate for the day of death.

(4) General Inpatient Care. Payment is made at the general inpatient rate when general inpatient care is provided.

###### (A) (No change.)

(B) For the day of discharge, DADS [~~DHS~~] pays the routine home care rate.

(C) If the hospice recipient dies as an inpatient, DADS [~~DHS~~] pays the inpatient rate for the day of death.

###### (D) (No change.)

(b) Medicaid payments for physician services.



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

(3) Payments for non-hospice physician services to Medicaid hospice recipients are made directly to physicians by Medicaid through DADS' claims processor [~~the National Heritage Insurance Company (NHIC)~~].

(4) (No change.)

(c) - (d) (No change.)

(e) Medicaid time limitations for DADS [~~DHS~~] hospice payment.

(1) To receive payment of the hospice nursing facility rate, the hospice and nursing facility providers must have completed and submitted a Minimum Data Set (MDS) assessment for [~~complete and submit the Texas Index for Level of Effort (TILE) assessment on~~] the hospice recipient or applicant [~~in a nursing facility within 20 days of either or both hospice election or entrance to the nursing facility~~].

(A) For a hospice recipient or applicant currently residing in the facility with a current MDS assessment, no action is required until the next required MDS assessment.

(B) For a hospice recipient or applicant newly admitted to the facility, the hospice and the nursing facility must complete and submit an MDS assessment as required by §19.801 of this title (relating to Resident Assessment).

(2) An MDS assessment [~~TILE Assessments~~] received after the required date [~~20th day~~] will have the stamp-in date as the effective date.

(f) - (h) (No change.)

(i) Medicaid payment limitations for inpatient care. During the 12-month period beginning November 1 of each calendar year and ending October 31 of the following calendar year (the cap year), the aggregate number of inpatient hospice care days must not exceed 20% of the aggregate total number of all hospice care days for the same cap year. This limitation is applied once each year, at the end of the cap year for each Medicaid hospice provider. If it is determined that the inpatient rate should not be paid, any days for which the hospice receives payment at a home care rate are not counted as inpatient days. The limitation is calculated as follows:

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

(4) If the inpatient care maximum has been exceeded, DADS [~~DHS~~] recoups excess payments from subsequent Medicaid hospice provider claims.

*§30.62. Medicaid Hospice Claims Requirements.*

(a) (No change.)

(b) Submittal and forms completion requirements. To receive Medicaid hospice payments, the hospice must submit the following documents to DADS' claims processor:

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

(3) Minimum Data Set (MDS) assessment [~~Texas Index for Level of Effort (TILE) Assessment form~~], if applicable; and

(4) (No change.)

(c) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 7, 2008.

TRD-200801799

Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: May 18, 2008

For further information, please call: (512) 438-3734



## SUBCHAPTER I. MEDICAL REVIEW AND RE-EVALUATION

### 40 TAC §30.92

#### STATUTORY AUTHORITY

The amendment is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Health and Safety Code, §242.226, which authorizes the adoption of rules necessary to improve the efficiency of the reimbursement process for the state Medicaid system and maximize the automated reimbursement system's capabilities.

The amendment affects Texas Government Code, §531.0055 and §531.021; Texas Human Resources Code, §161.021; and Texas Health and Safety Code, §242.226.

*§30.92. Minimum Data Set Assessment* [*Texas Index for Level of Effort (TILE) Assessments*].

The [~~Texas~~] Department of Aging and Disability [~~Human~~] Services [~~(DHS)~~] adopts by reference 1 TAC §371.212 (relating to Minimum Data Set (MDS) Assessments [~~Case Mix Classification System~~]), §371.213 (relating to Utilization Review and Control Activities Performed by Texas Health and Human Services Commission (Commission)), and §371.214 (relating to Resource Utilization Group Classification System [~~Texas Index for Level of Effort (TILE) Assessments~~]). Each hospice provider must comply with the Texas Health and Human Services Commission's utilization review requirements found at 1 TAC §§371.212 - 371.214.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 7, 2008.

TRD-200801800

Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: May 18, 2008

For further information, please call: (512) 438-3734



## CHAPTER 40. USE OF GENERAL REVENUE FOR SERVICES EXCEEDING THE INDIVIDUAL COST LIMIT OF A WAIVER PROGRAM

### 40 TAC §40.1

The Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), new §40.1, concerning the use of general revenue for services exceeding the individual cost limit of a waiver program, in new Chapter 40, Use of General Revenue for Services Exceeding the Individual Cost Limit of a Waiver Program.

#### BACKGROUND AND PURPOSE

The purpose of the new section is to implement provisions of the 2008-09 General Appropriations Act (Article II, Department of Aging and Disability Services, Rider 45, H.B. 1, 80th Legislature, Regular Session, 2007) concerning the use of general revenue for services exceeding an individual's cost limit in certain DADS programs operated in accordance with §1915(c) of the federal Social Security Act. Rider 45 authorizes DADS, under certain conditions, to use general revenue to pay for services that exceed the cost limit and requires DADS to use general revenue to continue to provide services to a person who was receiving waiver program services on September 1, 2005, at a cost that exceeded the waiver program's cost limit.

#### SECTION-BY-SECTION SUMMARY

Proposed new §40.1 provides definitions for the following words and terms used in the new section: waiver program, general revenue, and individual. It implements the provisions of Rider 45 concerning the use of general revenue for services that exceed an individual's waiver program cost limit by stating the conditions under which general revenue may be used and the requirements that services funded by general revenue under Rider 45 must meet. The proposed new section also states that DADS will use general revenue to continue to provide services to an individual who has been receiving waiver program services since September 1, 2005, at a cost that exceeded the individual cost limit of the waiver program, if the services above the individual cost limit are necessary for the individual to live in the most integrated setting appropriate to the individual's needs and federal financial participation is not available to pay for the services above the individual cost limit.

#### FISCAL NOTE

Gordon Taylor, DADS Chief Financial Officer, has determined that, for the first five years the proposed new section is in effect, enforcing or administering the new section does not have foreseeable implications relating to costs or revenues of state or local governments.

#### SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed new section will not have an adverse economic effect on small businesses or micro-businesses, because the proposal places no new requirements on small businesses or micro-businesses.

#### PUBLIC BENEFIT AND COSTS

Barry Waller, DADS Assistant Commissioner for Provider Services, has determined that, for each year of the first five years the new section is in effect, the public benefit expected as a re-

sult of enforcing the new section is that DADS procedures for addressing situations in which an individual cannot be served within the individual cost limit of a waiver program and whose health and safety cannot be ensured in another available living arrangement will be clarified.

Mr. Waller anticipates that there will not be an economic cost to persons who are required to comply with the new section. The new section 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 Kristi Guilbeaux at (512) 438-2756 in DADS' Provider Services Division. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-010, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030, or street address 701 West 51st St., Austin, TX 78751; faxed to (512) 438-5759; or e-mailed to [rulescomments@dads.state.tx.us](mailto: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 either (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 010" in the subject line.

#### STATUTORY AUTHORITY

The new section is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and the 2008-09 General Appropriations Act (Article II, Department of Aging and Disability Services, Rider 45, H.B. 1, 80th Legislature, Regular Session, 2007), which authorizes the use of general revenue to pay for services that exceed the cost of certain waiver programs operated by DADS.

The new section affects Texas Government Code, §531.0055 and §531.021; Texas Human Resources Code, §161.021; and the 2008-09 General Appropriations Act (Article II, Department of Aging and Disability Services, Rider 45, H.B. 1, 80th Legislature, Regular Session, 2007).

#### §40.1. Use of General Revenue for Services Exceeding the Individual Cost Limit of a Waiver Program.

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

(1) Waiver program--A program administered by the Department of Aging and Disability Services (DADS), other than the Texas Home Living Program, that provides services under a waiver granted by the Centers for Medicare and Medicaid Services in accordance with §1915(c) of the Social Security Act.

(2) General revenue--State funds appropriated by the Texas Legislature for use by DADS.

(3) Individual--A person applying for or enrolled in a waiver program.

(b) DADS may use general revenue to pay for services above the individual cost limit of a waiver program for an individual if DADS determines:

(1) the individual needs services that exceed the individual cost limit because the individual's health and safety cannot be protected by the services provided within the individual cost limit;

(2) the individual receives waiver services at the individual cost limit;

(3) federal financial participation is not available to pay for services above the individual cost limit; and

(4) there is no other available living arrangement in which the individual's health and safety can be protected, as evidenced by:

(A) an assessment conducted by DADS clinical staff; and

(B) supporting documentation, including the individual's medical and service records.

(c) Services funded by general revenue must be:

(1) the same service array offered by the waiver program in which the individual is enrolled;

(2) necessary to protect the individual's health and safety;

(3) authorized using the waiver program's criteria; and

(4) unavailable through other funding sources.

(d) For an individual who has been receiving waiver program services since September 1, 2005, at a cost that exceeded the individual cost limit of the waiver program, DADS uses general revenue to pay for services above the individual cost limit if:

(1) the services above the individual cost limit are necessary for the individual to live in the most integrated setting appropriate to the individual's needs; and

(2) federal financial participation is not available to pay for the services above the individual cost limit.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 7, 2008.

TRD-200801777

Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: May 18, 2008

For further information, please call: (512) 438-3734



## CHAPTER 42. MEDICAID WAIVER PROGRAM FOR PEOPLE WHO ARE DEAF BLIND WITH MULTIPLE DISABILITIES

The Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), amendments to §42.5, concerning eligibility criteria; and §42.6, concerning planning for and provision of services; and proposes the repeal of §42.12, concerning the provision of services when costs exceed the individual cost limit, in Chapter 42, Medicaid Waiver Program for People Who Are Deaf Blind with Multiple Disabilities.

### BACKGROUND AND PURPOSE

The purpose of the amendments and repeal is to implement the 2008-09 General Appropriations Act (Article II, Department of Aging and Disability Services, Rider 45, H.B. 1, 80th Legislature, Regular Session, 2007), concerning waiver program cost limits. Rider 45 places an individual's annual cost limit for Deaf Blind with Multiple Disabilities (DBMD) Program services at 200 percent of the estimated annualized per capita cost of providing services in an intermediate care facility for persons with mental retardation (ICF/MR) to an individual qualifying for an ICF/MR Level of Care VIII; authorizes DADS, under certain conditions, to use general revenue to pay for services that exceed the cost limit; requires DADS to use general revenue to continue to provide services to a person who was receiving waiver program services, such as DBMD Program services, on September 1, 2005, at a cost that exceeded the waiver program's cost limit; and requires DADS to employ utilization management and utilization review practices as necessary to ensure that the appropriate scope and level of services are provided to an individual receiving services through a waiver program.

The amendments are also proposed to update agency names and terminology, to update the rules to reflect current procedures, and to reorganize the structure of the rule for clarity and consistency with other DADS programs operated in accordance with §1915(c) of the federal Social Security Act.

### SECTION-BY-SECTION SUMMARY

The proposed amendment to §42.5 provides a definition for "individual" and replaces the terms "applicant" and "participant" with "individual" to provide consistency throughout the rule. The amendment implements Rider 45 provisions by: (1) increasing the cost limit from 115 percent of the average cost of institutional care in an ICF/MR (currently in §42.6(c)) to 200 percent of the estimated annualized per capita cost of providing services in an ICF/MR; and (2) providing a cross-reference to 40 TAC §40.1 proposed as a new section elsewhere in this issue of the *Texas Register*, which governs the use of general revenue, under certain conditions, to pay for services that exceed the cost limit. The proposed amendment also replaces a provision governing financial eligibility for the DBMD Program with a provision that the individual be determined by HHSC to be financially eligible for Medicaid, and deletes a provision governing calculation of an individual's co-payment, because HHSC, rather than DADS, now determines financial eligibility and calculates the co-payment. The amendment to §42.5 also revises terminology and reorganizes the structure of the rule for clarity and consistency with other DADS waiver program rules.

The proposed amendment to §42.6, concerning the individual plan of care (IPC), expands the provisions of the current rule to address the utilization management and review provisions of

Rider 45. Subsection (d) of the proposed amendment describes five requirements that DBMD Program services in the IPC must meet in order for DADS to approve the IPC. Subsection (e) of the proposed amendment requires the DBMD Program provider to submit documentation to DADS that demonstrates that the DBMD Program services in the IPC meet the five requirements described in subsection (d). Subsections (f) and (g) of the proposed amendment govern the procedures for utilization review and state that DADS may conduct utilization review at any time and may deny or reduce services if DADS determines that one or more of the DBMD Program services in the IPC do not meet the requirements of subsection (d).

The proposed repeal of §42.12 eliminates a rule governing exceptions to the DBMD Program cost limit. The Centers for Medicare and Medicaid Services has indicated that exceptions to the cost limit may not be granted and, therefore, this rule is no longer necessary. The provisions in §42.12 covering an individual who was receiving DBMD Program services on or before September 1, 2005, at a cost that exceeded the individual cost limit of the DBMD Program have been revised to comply with Rider 45 and are included in proposed new §40.1, published elsewhere in this issue of the *Texas Register*.

#### FISCAL NOTE

Gordon Taylor, DADS Chief Financial Officer, has determined that, for the first five years the proposed amendments and repeal are in effect, enforcing or administering the amendments and repeal does not have foreseeable implications relating to costs or revenues of state or local governments.

#### SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed amendments and repeal will not have an adverse economic effect on small businesses or micro-businesses, because the proposal places no new requirements on small businesses or micro-businesses.

#### PUBLIC BENEFIT AND COSTS

Barry Waller, DADS Assistant Commissioner for Provider Services, has determined that, for each year of the first five years the amendments and repeal are in effect, the public benefit expected as a result of enforcing the amendments and repeal is that DADS procedures for addressing situations in which an individual cannot be served within the individual cost limit of a waiver program and whose health and safety cannot be ensured in another available living arrangement will be clarified.

Mr. Waller anticipates that there will not be an economic cost to persons who are required to comply with the amendments and repeal. The amendments and repeal will not affect a local economy.

#### TAKINGS IMPACT ASSESSMENT

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

#### PUBLIC COMMENT

Questions about the content of this proposal may be directed to Kristi Guilbeaux at (512) 438-2756 in DADS' Provider Services Division. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-010, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin,

Texas 78714-9030, or street address 701 West 51st St., Austin, TX 78751; faxed to (512) 438-5759; or e-mailed to [rulescomments@dads.state.tx.us](mailto: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 either (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 010" in the subject line.

#### 40 TAC §42.5, §42.6

#### STATUTORY AUTHORITY

The amendments are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

The amendments affect Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021.

#### §42.5. *[Participant] Eligibility Criteria.*

(a) In this section, the term "individual" means a person applying for or enrolled in the Deaf Blind with Multiple Disabilities (DBMD) Program, unless the context clearly indicates otherwise.

(b) ~~[(a)] To be determined eligible by the Department of Aging and Disability Services (DADS) [Texas Rehabilitation Commission (TRC) {Texas Department of Human Services (DHS)}] for the DBMD Program [waiver program services], an individual [applicant] must:~~

~~(1) have been determined by the Texas Health and Human Services Commission (HHSC) to be financially eligible for Medicaid; [be eligible for Supplemental Security Income (SSI) benefits; or]~~

~~[(2) have been eligible for and received SSI benefits and continue to be eligible for Medicaid as a result of protective coverage mandated by federal law; or]~~

~~[(3) be an individual who would be financially eligible for Medicaid if residing in a Medicaid-certified institution. For these individuals, the policies specified in subparagraphs (A) and (B) of this paragraph apply.]~~

~~[(A) Spousal impoverishment provisions.]~~

~~[(i) For waiver participants with spouses who live in the community, the income and resource eligible requirements are determined according to the spousal impoverishment provisions in the Social Security Act, §1924, and as specified in the Medicaid State Plan and this subsection.]~~

~~[(ii) After the participant is determined to be eligible for Medicaid, DHS determines the amount of the participant's income applicable to payment.]~~

~~[(iii) To determine the amount of the participant's income applicable to payment, DHS uses the same methodology as if~~

the participant were residing in an institution, except that the personal needs allowance is equal to the institutional cap.}]

*[(iv)]* Texas Department of Human Services (DHS) applies post-eligibility treatment of income rules to individuals eligible under a special income level, as specified in 42 Code of Federal Regulations (CFR) 435.726, for use only by states that do not use the 209(b) option. For individuals receiving home and community-based services who are subject to the post-eligibility treatment of income rules, the Medicaid payment to the provider for home and community-based services will be reduced by the amount that remains after deducting the appropriate amounts from the individual's income. The DHS Copayment Worksheet form is used to calculate the client copayment amount.}]

*[(B)]* Calculation of participant copayment.}]

*[(i)]* A participant who is financially eligible based on the special institutional income limit must share in the cost of waiver services. The method for determining the participant copayment is specified in this subparagraph and is documented on DHS's Medical Assistance Only Worksheet form. When calculating the copayment amount for a participant with income that exceeds the SSI federal benefit rate, DHS deducts the following:}]

*[(I)]* the cost of participant(s) maintenance needs, which must equal the special institutional income limit for eligibility under the Texas Medicaid program.}]

*[(II)]* the cost of the maintenance needs of the participant's dependent children. This amount is equivalent to the Aid to Families with Dependent Children (AFDC) program basic monthly grant for children or for a spouse with children, using the recognizable needs amount in the AFDC Budgetary Allowance Chart.}]

*[(III)]* the costs incurred for medical or remedial care that are necessary, but not covered by Medicare, Medicaid, or any other third party. This included the cost of health insurance premiums, deductibles, and coinsurance; and}]

*[(IV)]* the cost of the maintenance needs of the participant's spouse. This amount is equivalent to the amount of the SSI federal benefit rate, less the spouse's own income.}]

*[(ii)]* The copayment amount is the participant's remaining income after all allowable expenses have been deducted. The copayment amount is applied only to the cost of home and community-based services which are funded through the Medicaid Waiver for People with Deaf-Blindness and Multiple Disabilities (DB-MD waiver) program and specified on the participant's individual plan of care. The copayment amount must not exceed the cost of services actually delivered.}]

*[(iii)]* Participants must pay the copayment amount to the provider contracted to deliver authorized waiver services.}]

*[(b)]* To be determined eligible by TRC [DHS] for DB-MD waiver program services, participants must also meet the following requirements.}]

*[(1)]* Have a completed "Project Link" Referral form on file with the Texas Rehabilitation Commission Program for People Who are Deaf-Blind with Multiple Disabilities. This form is forwarded by TRC [DHS] to providers in the region of the state of Texas designated as preferred by the participant. When placements are available, providers are to consider each participant in the order of received referral form.}]

*(2)* have medical [Medicael] documentation verifying a diagnosis of deaf blindness [must verify existence of deaf-blindness] with multiple disabilities; [-]

*(3)* have been determined by DADS to qualify for the intermediate care facility for persons with mental retardation (ICF/MR) Level of Care VIII, as described in §9.239 of this title (relating to ICF/MR Level of Care VIII Criteria); [Participants must meet the intermediate care facility for the mentally retarded with related conditions (ICF-MR/RC VIII) level-of-care criteria as determined by the Texas Department of Human Services (DHS) according to applicable state and federal regulations, and as verified by a current level of care assessment.}]

*[(A)]* A preadmission level of care assessment by DHS expires 90 calendar days from its issuance. For participants who are enrolled in the waiver program within 30 calendar days of discharge from an ICF-MR/RC VIII or another waiver program provider, the current level-of-care assessment may be used for enrollment and is valid until the expiration date on the level-of-care assessment.}]

*[(B)]* Re-evaluation of ICF-MR/RC level-of-care criteria is performed annually by the Texas Department of Human Services using the same criteria as used initially. An initial re-evaluation of level of care must be performed no later than 364 calendar days from the date of enrollment. Subsequent level-of-care re-evaluations must be performed no later than 364 calendar days from the effective date of the prior level-of-care assignment.}]

*[(C)]* Any gaps in the level-of-care coverage periods result in loss of payment to the provider.}]

*(4)* have an individual plan of care (IPC) with a cost for DBMD Program services at or below 200 percent of the estimated annualized per capita cost of providing services in an ICF/MR to an individual qualifying for an ICF/MR Level of Care VIII considering all other resources, including resources described in §40.1 of this title (relating to Use of General Revenue for Services Exceeding the Individual Cost Limit of a Waiver Program);

*(5)* not reside in an institutional setting, including a hospital, a nursing facility, an ICF/MR, a licensed assisted living facility in which more than six persons reside, or a facility required to be licensed as an assisted living facility but is not licensed; and

*(6)* not be enrolled in another Medicaid waiver program approved by the Centers for Medicare and Medicaid Services (CMS) pursuant to §1915(c) of the Social Security Act and operated by DADS.

*(c)* Enrollment in the DBMD Program is limited to the number of individuals approved by CMS or the availability of state funding.

*(d)* DADS enrolls an eligible individual from the DBMD Program interest list on a "first-come, first-served" basis.

*(e)* An individual found by HHSC to be financially eligible for the DBMD Program based on the special institutional income limit must share in the cost of DBMD Program services.

*(f)* DADS does not pay a DBMD Program provider for any gaps in level-of-care coverage periods.

*(g)* An individual receiving services reimbursed through the Texas Medicaid Nursing Facility Program will be approved for the DBMD Program if the individual requests DBMD Program services while residing in the nursing facility and meets all eligibility criteria for the DBMD Program. If the individual is discharged from the nursing facility to a community setting before being determined eligible for the DBMD Program, the individual will be denied immediate enrollment in the DBMD Program.

§42.6. *Planning for and Provision of Services.*

(a) In this section, the term "individual" means a person applying for or enrolled in the Deaf Blind with Multiple Disabilities (DBMD) Program, unless the context clearly indicates otherwise.

(b) A DBMD Program provider must ensure that an interdisciplinary team:

(1) develops an enrollment individual plan of care (IPC) for an individual;

(2) reviews and updates the IPC at least annually and when the individual's needs for DBMD Program services change;

(3) specifies in the IPC the type of DBMD Program services required to support the individual in the community, the units of services, and their frequency; and

(4) signs and dates the IPC.

(c) Before providing DBMD Program services in accordance with the IPC, the DBMD Program provider must obtain approval from the Department of Aging and Disability Services (DADS).

(d) To be approved by DADS, DBMD Program services in the IPC must:

(1) be necessary to protect the individual's health and welfare in the community;

(2) supplement rather than replace the individual's natural supports and other non-DBMD Program services and supports for which the individual may be eligible;

(3) prevent the individual's admission to an institution;

(4) be the most appropriate type and amount of services to meet the individual's needs; and

(5) be cost effective.

(e) To demonstrate that the DBMD Program services in the IPC meet the requirements described in subsection (d) of this section, the DBMD Program provider must submit the following to DADS:

(1) documentation supporting the DBMD Program services recommended by the DBMD Program provider; and

(2) documentation that other sources for the DBMD Program services are unavailable.

(f) DADS conducts utilization review of an IPC and supporting documentation at any time to determine if the DBMD Program services specified in the IPC meet the requirements described in subsection (d) of this section.

(1) The DBMD Program provider must submit documentation supporting the IPC to DADS as requested by DADS.

(2) If DADS determines that one or more of the DBMD Program services specified in the IPC do not meet the requirements described in subsection (d) of this section, DADS denies or reduces the service, modifies the IPC, and sends written notification to the individual and DBMD Program provider.

(g) In addition to the utilization review conducted in accordance with subsection (f) of this section, DADS may conduct utilization reviews of DBMD Program providers and DBMD Program services based on utilization patterns and trends.

[(a) Applicants must have an individual plan of care for home and community-based services, developed by the interdisciplinary team composed of a case manager and other appropriate professional

staff who meet the qualifications specified in the waiver request. The individual plan of care for home and community-based services must specify the type of waiver services required to keep an individual in the community, the units of waiver services, and their frequency and duration. The individual plan of care for home and community-based services must be signed and dated by the interdisciplinary team prior to implementation. The interdisciplinary team must certify in writing that the waiver program services authorized on the individual plan of care are necessary to avoid ICF-MR/RC VIII institutional placement and are appropriate to meet the applicant's needs in the community.]

[(b) The individual plan of care for home and community-based services must be approved by the Texas Department of Human Services (DHS) and updated by the provider at least annually. Any gaps in the coverage periods of the individual plan of care approved by DHS result in loss of payment to the provider.]

[(c) The estimated annual cost of the applicant's individual plan of care for a period of 364 days from the initial enrollment for home and community-based services must not exceed 115% of the average cost of institutional care in an ICF-MR/RC VIII facility.]

[(d) Enrollment into this waiver program is limited to the number of participants approved by the Centers for Medicare and Medicaid Services (CMS) or the availability of state funding. When the number of participants can be increased, DHS DB-MD waiver program will analyze need based on number of Project Link referral forms received. At that point, a Request for Proposals (RFP) will be issued statewide announcing the need for providers to serve particular counties or multiple counties where clients desire services. A team of experts will evaluate received proposals based on approved common standards. A contract will be signed by the approved providers and DHS, detailing standards to be followed in provision of home and community based services. Potential participants on the DHS centralized waiting list will be notified of qualified providers who can serve them in the location they desire. Notification of service availability to potential participants will be in order of the date DHS receives the Project Link Referral form. The providers will likewise be notified of those clients desiring services in their area. Once the providers and applicants decide to begin services, the case manager employed by the providers will establish eligibility of the clients and submit plan of care forms to DHS.]

[(e) Participants may be enrolled in only one waiver program at a time. Participants may not receive both DB-MD waiver services and other Medicaid community care services at the same time.]

[(f) Individuals residing in a Texas nursing facility who are enrolled in Medicaid will be approved for Community Care services if they request services while residing in a Texas nursing facility and meet all eligibility criteria for Community Care services. If an individual is discharged from the nursing facility for a community setting before being determined eligible for Medicaid nursing facility services and Community Care services, the individual will be denied Community Care services unless these services are part of an entitlement program. Upon admission to or discharge from the nursing facility, DHS must make information on Community Care services, including Medicaid waiver services, available to the nursing facility resident.]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 7, 2008.

TRD-200801778

Kenneth L. Owens  
General Counsel  
Department of Aging and Disability Services  
Earliest possible date of adoption: May 18, 2008  
For further information, please call: (512) 438-3734



## CHAPTER 42. MEDICAID WAIVER PROGRAM FOR PEOPLE WHO ARE DEAF-BLIND WITH MULTIPLE DISABILITIES

### 40 TAC §42.12

*(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Department of Aging and Disability Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

#### STATUTORY AUTHORITY

The repeal is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

The repeal affects Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021.

*§42.12. Providing DBMD Services When Costs Exceed the Individual Cost Limit.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 7, 2008.

TRD-200801779  
Kenneth L. Owens  
General Counsel  
Department of Aging and Disability Services  
Earliest possible date of adoption: May 18, 2008  
For further information, please call: (512) 438-3734



## CHAPTER 46. CONTRACTING TO PROVIDE ASSISTED LIVING AND RESIDENTIAL CARE SERVICES

### SUBCHAPTER B. PROVIDER CONTRACTS

#### 40 TAC §46.13

The Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), an amendment to §46.13, concerning housing

options, in Chapter 46, Contracting to Provide Assisted Living and Residential Care Services.

#### BACKGROUND AND PURPOSE

The purpose of the amendment is, in part, to implement Senate Bill 1318, 80th Legislature, Regular Session, 2007, which amended Texas Health and Safety Code, §247.069. Section 247.069 requires the Community Based Alternatives (CBA) Program to provide consumers with the opportunity to choose an assisted living facility that meets construction-related licensing standards without regard to the number of units in the facility, if the consumers are advised of all other community-based service options. Senate Bill 1318 removed the specific facility requirements from §247.069, and, therefore, the specific facility requirements need to be removed from the rule.

The purpose of the amendment is also to implement a rule change necessitated by a project under the direction of HHSC that will replace the state case-mix system for provider payments, which is based on the Texas Index for Level of Effort (TILE) model, with the federal case-mix system, which is based on the Resource Utilization Group (RUG) model. The transition to the RUG model affects the Texas Nursing Facility Program, as well as community-based waiver programs, including the CBA Program, which serve individuals who have a determination of medical necessity for nursing facility care. The project also requires that DADS replace its Client Assessment, Review and Evaluation (CARE) form (also known as Form 3652) with an assessment based on the federal Minimum Data Set (MDS) assessment for making medical necessity determinations and calculating the RUG. For the purpose of this rule, the community-based waiver assessment is termed the "medical necessity and level of care assessment."

#### SECTION-BY-SECTION SUMMARY

The proposed amendment to §46.13 removes the specific facility requirements listed in paragraph (3). The amendment also replaces references to the CARE form and to a specific score an individual must have on the CARE form with more generic terminology.

#### FISCAL NOTE

Gordon Taylor, DADS Chief Financial Officer, has determined that, for the first five years the proposed amendment is in effect, enforcing or administering the amendment does not have foreseeable implications relating to costs or revenues of state or local governments.

#### SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed amendment will have no adverse economic effect on small businesses or micro-businesses, because the amendment imposes no new requirements that would cause them to alter their business practices.

#### PUBLIC BENEFIT AND COSTS

Barry Waller, DADS Assistant Commissioner for Provider Services, has determined that, for each year of the first five years the amendment is in effect, the public benefit expected as a result of enforcing the amendment is that DADS rules will reflect current statutory requirements and that individuals receiving CBA services in non-apartment settings will be given a choice of living in a larger assisted living facility. Additionally, the amendment, which requires providers to conduct assessments of individuals served in the community on a form similar to the form on which

nursing facility residents are assessed, will allow for better comparison of services in Texas to that of other states and provide for more streamlined and integrated business processes. These improvements will in turn lead to opportunities for improved services for DADS' consumers.

Mr. Waller anticipates that there will not be an economic cost to persons who are required to comply with the amendment. The amendment will not affect a local economy.

#### TAKINGS IMPACT ASSESSMENT

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

#### PUBLIC COMMENT

Questions about the content of this proposal may be directed to Gilbert Estrada at (512) 438-2578 in DADS' Provider Services Division. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-029, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030, or street address 701 West 51st St., Austin, TX 78751; faxed to (512) 438-5759; or e-mailed to [rulescomments@dads.state.tx.us](mailto: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 either (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 029" in the subject line.

#### STATUTORY AUTHORITY

The amendment is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Health and Safety Code, §247.069, which provides consumer choice for assisted living in community care programs.

The amendment affects Texas Government Code, §531.0055 and §531.021; Texas Human Resources Code, §161.021; and Texas Health and Safety Code, §247.069.

#### §46.13. *Housing Options.*

(a) Setting. A facility must specify in the contract the type(s) of setting(s) it uses to provide assisted living services according to the following guidelines:

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

(3) Residential care non-apartment. A residential care non-apartment setting is a living unit that does not meet either the definition of an assisted living apartment or a residential care apartment. A living unit must not exceed double occupancy. ~~[The facility must be:~~

~~[(A) a freestanding building not physically attached to another licensed facility and have a capacity of 16 or fewer beds; or]~~

~~[(B) a building that:]~~

~~[(i) has never been licensed by DADS as anything other than an assisted living facility;]~~

~~[(ii) is not physically attached to a nursing facility licensed under Texas Health and Safety Code, Chapter 242;]~~

~~[(iii) was constructed before September 1, 2005; and]~~

~~[(iv) meets all other requirements of this chapter.]~~

(4) Personal Care 3. A Personal Care 3 setting is only available in the Community Based Alternatives (CBA) Assisted Living/Residential Care (AL/RC) Program, and must meet the following qualifications:

(A) - (C) (No change.)

(D) Sixty percent or more of the total clients served each month must require one-to-one staff assistance as documented ~~[- One-to-one assistance is determined by a value of three or more]~~ on the DADS medical necessity and level of care assessment ~~[Client Assessment, Review, and Evaluation form]~~ in one or more of the following activities of daily living:

(i) - (iii) (No change.)

(b) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 3, 2008.

TRD-200801748

Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: May 18, 2008

For further information, please call: (512) 438-3734



## CHAPTER 46. CONTRACTING TO PROVIDE ASSISTED LIVING AND RESIDENTIAL CARE SERVICES

The Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), amendments to §46.21, concerning reimbursement; §46.41, concerning required services; and §46.45, concerning required notifications, in Chapter 46, Contracting to Provide Assisted Living and Residential Care Services.

### BACKGROUND AND PURPOSE

The purpose of the amendments is to implement rule changes necessitated by a project under the direction of HHSC that will replace the state case-mix system for provider payments, which is based on the Texas Index for Level of Effort (TILE) model, with the federal case-mix system, which is based on the Resource Utilization Group (RUG) model. The TILE-to-RUG project implements Texas Health and Safety Code, §§242.221 et seq, which requires DADS to use an automated system for nursing facility reimbursement and an assessment form designed by the



United States Health Care Financing Administration (now the Centers for Medicare and Medicaid Services). As allowed by Texas Health and Safety Code, §242.221(b), DADS and HHSC have elected to add other components of the state Medicaid program, such as the Community Based Alternatives (CBA) Program, to the automated system of reimbursement and, therefore, to require use of an assessment form similar to the form on which nursing facility residents are assessed. The proposed amendments concern assisted living and residential care services offered under the CBA Program.

The purpose of the amendments is also to replace references to the Texas Department of Human Services and DHS with references to DADS.

#### SECTION-BY-SECTION SUMMARY

The proposed amendments to §46.21 and §46.45 replace references to procedures under the TILE model with more generic references, such as "level of care." The amendments also change DHS to DADS.

The proposed amendment to §46.41 deletes a sentence in subsection (b)(5) concerning the determination of a TILE score, because this reference will be obsolete with the implementation of the RUG model. The amendment also adjusts the grammatical structure of the rule to provide clarity.

#### FISCAL NOTE

Gordon Taylor, DADS Chief Financial Officer, has determined that, for the first five years the proposed amendments are in effect, enforcing or administering the amendments does not have foreseeable implications relating to costs or revenues of state or local governments.

#### SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed amendments will have no adverse economic effect on small businesses or micro-businesses, because the amendments impose no new requirements that would cause them to alter their business practices.

#### PUBLIC BENEFIT AND COSTS

Barry Waller, DADS Assistant Commissioner for Provider Services, has determined that, for each year of the first five years the amendments are in effect, the public benefit expected as a result of enforcing the amendments is that the rules will reflect accurate terminology and provide accurate requirements for providers.

Mr. Waller anticipates that there will not be an economic cost to persons who are required to comply with the amendments. 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 Gilbert Estrada at (512) 438-2578 in DADS' Provider Services Division. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-014, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030, or street address 701 West 51st St., Austin,

TX 78751; faxed to (512) 438-5759; or e-mailed to [rulescomments@dads.state.tx.us](mailto: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 either (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 014" in the subject line.

## SUBCHAPTER B. PROVIDER CONTRACTS

### 40 TAC §46.21

#### STATUTORY AUTHORITY

The amendment is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Health and Safety Code, §242.226, which authorizes the adoption of rules necessary to improve the efficiency of the reimbursement process for the state Medicaid system and maximize the automated reimbursement system's capabilities.

The amendment affects Texas Government Code, §531.0055 and §531.021; Texas Human Resources Code, §161.021; and Texas Health and Safety Code, §242.226.

#### §46.21. Reimbursement.

- (a) (No change.)
- (b) The [Texas] Department of Aging and Disability [~~Human~~] Services (DADS) [~~(DHS)~~] will pay for eligible services provided and billed in compliance with this chapter.
- (c) (No change.)
- (d) The facility must agree to accept the unit rate authorized by DADS [~~DHS~~], plus any applicable room and board payments, as payment in full for services required by DADS [~~DHS~~].
- (e) The unit rate reimbursed by DADS [~~DHS~~] includes any copayment. The combined reimbursement from DADS [~~DHS~~] and the client or the client's representative for the required services described in §46.41 of this chapter (relating to Required Services) must not exceed the unit rate plus room and board specified for each type of setting. The unit rate does not include charges for services described in §46.15 of this chapter (relating to Additional Services and Fees).
- (f) The facility must deduct the copayment amount from reimbursement claims submitted to DADS [~~DHS~~].
- (g) The facility must not bill DADS [~~DHS~~] for the day of discharge, unless the discharge is due to the death of the client.
- (h) (No change.)

(i) The facility must bill DADS [~~DHS~~] for the balance of the bedhold charge for any clients whose daily copayment is less than the maximum bedhold charge allowed by DADS [~~DHS~~].

(1) (No change.)

(2) The facility must deduct the client's daily copayment amount from the bedhold rate and submit the claim to DADS [~~DHS~~].

(3) (No change.)

(j) The facility may bill DADS [~~DHS~~] for emergency care provided to clients for:

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

(k) The facility must not bill for services provided before or after the authorized effective dates for CBA AL/RC or Community Care for Aged and Disabled (CCAD) Residential Care (RC) services, as those dates are determined by DADS [~~DHS~~].

(l) When the facility requests a level of care [~~Texas Index of Level of Effort (TILE)~~] reset, the facility may bill DADS [~~DHS~~] at the new payment rate [~~TILE level~~] effective the date of the new [~~TILE~~] assessment. The facility may request only two level of care [~~TILE~~] resets during each calendar year for each CBA client for the following time periods:

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

(m) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 7, 2008.

TRD-200801801

Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: May 18, 2008

For further information, please call: (512) 438-3734



## SUBCHAPTER C. PROVIDER REQUIREMENTS

### 40 TAC §46.41, §46.45

#### STATUTORY AUTHORITY

The amendments are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Health and Safety Code, §242.226, which authorizes the adoption of rules necessary to improve the efficiency of the reimbursement process for the state Medicaid system and maximize the automated reimbursement system's capabilities.

The amendments affect Texas Government Code, §531.0055 and §531.021; Texas Human Resources Code, §161.021; and Texas Health and Safety Code, §242.226.

#### §46.41. Required Services.

(a) (No change.)

(b) Required services. Services include:

(1) Personal care. The facility must provide or assist with personal care services identified on the service plan completed for the client. Personal care services are activities related to the care of the client's physical health that include at a minimum:

(A) - (F) (No change.)

(G) medication administration, including injections, except in [~~This does not apply to~~] the Community Care for Aged and Disabled (CCAD) Residential Care (RC) Program;

(H) transferring/ambulating, except [~~This does not apply to clients residing~~] in a Type A assisted living facility;

(I) twenty-four-hour supervision, which means the facility must: [~~The facility must conduct and document in the client file checks or visits to each client to ensure that each client is safe and well. The checks or visits must be made as identified on the service plan completed for the client; and~~]

(i) conduct checks or visits to each client as identified in the client's service plan, to ensure that each client is safe and well; and

(ii) document the checks and visits in the client's file;

(J) meal services, which means the [~~The~~] facility must:

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

(2) Home management. The facility must provide or assist with activities related to housekeeping that are essential to the client's health and comfort, including:

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

(E) storing purchased items in the client's living unit, including [~~This includes~~] medical supplies delivered to Community Based Alternatives (CBA) Assisted Living/Residential Care (AL/RC) clients; and

(F) (No change.)

(3) - (4) (No change.)

(5) Participation in the client assessment. The facility must designate someone who is familiar with the CBA AL/RC client's needs and service plan to participate in [~~with~~] the client's assessment by a home and community support services agency's licensed nurse. A facility is not required to designate someone to participate in a client's [~~The assessment will determine the Texas Index of Level of Effort (TILE) at both the annual assessment, and a requested re-TILE. Participation in the client~~] assessment in [~~does not apply to~~] the CCAD RC Program.

(6) (No change.)

#### §46.45. Required Notifications.

(a) The facility must notify the [~~Texas~~] Department of Aging and Disability [~~Human~~] Services (DADS) [~~(DHS)~~] when one of the following happens:

(1) - (9) (No change.)

(10) ~~when~~ the facility believes that a client's functional needs have changed such that it will impact the client's level of care, if the facility provides [~~Texas Index of Level of Effort (TILE)~~]. This only applies to facilities providing] assisted living services under the Community Based Alternatives (CBA) Assisted Living/Residential Care (AL/RC) Program and participates [~~that participate~~] in the attendant compensation rate option.

(b) The facility must notify the client's DADS [~~DHS~~] case manager orally or by facsimile about the change no later than one DADS working day [~~DHS workday~~] after the change happens. If the facility's first notification is oral, the facility must send written notification to the case manager within five working days of the initial notification.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 7, 2008.

TRD-200801802

Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: May 18, 2008

For further information, please call: (512) 438-3734



## CHAPTER 48. COMMUNITY CARE FOR AGED AND DISABLED

The Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), an amendment to §48.2103, concerning eligibility criteria; new §48.2106, concerning the individual service plan (ISP); and the repeal of §48.2123, concerning the provision of services when costs exceed the individual cost limit, in Chapter 48, Community Care for Aged and Disabled, Subchapter C, which is being renamed Community Living Assistance and Support Services (CLASS) Program.

### BACKGROUND AND PURPOSE

The purpose of the amendment, new section, and repeal is to implement the 2008-09 General Appropriations Act (Article II, Department of Aging and Disability Services, Rider 45, H.B. 1, 80th Legislature, Regular Session, 2007), concerning waiver program cost limits. Rider 45 places an individual's annual cost limit for CLASS Program services at 200 percent of the estimated annualized per capita cost of providing services in an intermediate care facility for persons with mental retardation (ICF/MR); authorizes DADS, under certain conditions, to use general revenue to pay for services that exceed the cost limit; requires DADS to use general revenue to continue to provide services to a person who was receiving waiver program services, such as CLASS Program services, on September 1, 2005, at a cost that exceeded the waiver program's cost limit; and requires DADS to employ utilization management and utilization review practices as necessary to ensure that the appropriate scope and level of services are provided to an individual receiving services through a waiver program.

The amendment is also proposed to update agency names and terminology, to correct cross-references, and to reorganize the structure of the rule for clarity and consistency with other DADS

programs operated in accordance with §1915(c) of the federal Social Security Act.

### SECTION-BY-SECTION SUMMARY

The proposed amendment to §48.2103 implements Rider 45 provisions by: (1) increasing the cost limit from 125 percent of the average cost of institutional care in an ICF/MR to 200 percent of the estimated annualized per capita cost of providing services in an ICF/MR; and (2) providing a cross-reference to 40 TAC §40.1 proposed as a new section elsewhere in this issue of the *Texas Register*, which governs the use of general revenue, under certain conditions, to pay for services that exceed the cost limit. The proposed amendment also replaces a provision governing financial eligibility for the CLASS Program with a provision that the applicant or participant be determined by HHSC to be financially eligible for Medicaid, and deletes a provision governing calculation of a participant's co-payment, because HHSC, rather than DADS, now determines financial eligibility and calculates the co-payment. The eligibility criteria in current §48.2103(b)(2), requiring an applicant or participant to live in a specific geographic catchment area, is being deleted because CLASS Program services are now available statewide. The provisions of current §48.2103(b)(3), concerning the development and content of an ISP, are deleted from §48.2103 so they can be moved to proposed new §48.2106 with other provisions concerning the ISP. The proposed amendment also updates agency names and reorganizes the structure of the rule for clarity and consistency with other DADS waiver program rules.

Proposed new §48.2106 governs the development and content of an ISP, including utilization management and review provisions required by Rider 45. Subsection (c) of the proposed new section describes five requirements that CLASS Program services in the ISP must meet in order for DADS to approve the ISP. Subsection (d) of the proposed amendment requires CLASS Program providers to have documentation that demonstrates that the CLASS Program services in the IPC meet the five requirements described in subsection (c). Subsections (e) and (f) of the proposed new section govern the procedures for utilization review and state that DADS may conduct utilization review at any time and may deny or reduce services if DADS determines that one or more of the CLASS Program services in the ISP do not meet the requirements of subsection (c).

The proposed repeal of §48.2123 eliminates a rule governing exceptions to the CLASS Program cost limit. The Centers for Medicare and Medicaid Services has indicated that exceptions to the cost limit may not be granted and, therefore, this rule is no longer necessary. The provisions in §48.6099 covering an individual who was receiving CLASS Program services on or before September 1, 2005, at a cost that exceeded the individual cost limit of the CLASS Program have been revised to comply with Rider 45 and are included in proposed new §40.1, published elsewhere in this issue of the *Texas Register*.

### FISCAL NOTE

Gordon Taylor, DADS Chief Financial Officer, has determined that, for the first five years the proposed amendment, new section, and repeal are in effect, enforcing or administering the amendment, new section, and repeal does not have foreseeable implications relating to costs or revenues of state or local governments.

### SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed amendment, new section, and repeal will not have an adverse economic effect on small businesses or micro-businesses, because the proposal places no new requirements on small businesses or micro-businesses.

#### PUBLIC BENEFIT AND COSTS

Barry Waller, DADS Assistant Commissioner for Provider Services, has determined that, for each year of the first five years the amendment, new section, and repeal are in effect, the public benefit expected as a result of enforcing the amendment, new section, and repeal is that DADS procedures for addressing situations in which an individual cannot be served within the individual cost limit of a waiver program and whose health and safety cannot be ensured in another available living arrangement will be clarified.

Mr. Waller anticipates that there will not be an economic cost to persons who are required to comply with the amendment, new section, and repeal. The amendment, new section, and repeal will not affect a local economy.

#### TAKINGS IMPACT ASSESSMENT

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

#### PUBLIC COMMENT

Questions about the content of this proposal may be directed to Kristi Guilbeaux at (512) 438-2756 in DADS' Provider Services Division. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-010, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030, or street address 701 West 51st St., Austin, TX 78751; faxed to (512) 438-5759; or e-mailed to [rulescomments@dads.state.tx.us](mailto: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 either (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 010" in the subject line.

### SUBCHAPTER C. COMMUNITY LIVING ASSISTANCE AND SUPPORT SERVICES (CLASS) PROGRAM

#### 40 TAC §48.2103, §48.2106

#### STATUTORY AUTHORITY

The amendment and new section are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Government Code, §531.021, which provides HHSC with the authority to administer

federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

The amendment and new section affect Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021.

#### §48.2103. *[Participant] Eligibility Criteria.*

(a) To be determined eligible by the [Texas] Department of Aging and Disability [Human] Services (DADS) [(DHS)] for the Community Living Assistance and Support Services (CLASS) Program [waiver program services], an applicant or participant must:

(1) have been determined by the Texas Health and Human Services Commission (HHSC) to be financially eligible for Medicaid; [be eligible for Supplemental Security Income (SSI) benefits; or]

(2) have been determined by DADS to qualify for the intermediate care facility for persons with mental retardation (ICF/MR) Level of Care VIII as described in §9.239 of this title (relating to ICF/MR Level of Care VIII Criteria); [eligible for and received SSI benefits and continue to be eligible for Medicaid as a result of protective coverage mandated by federal law; or]

(3) have been diagnosed with a related condition that manifested before the individual was 22 years of age; [be under age 18 and reside with parents or spouses; and]

~~[(A) be eligible for Medicaid benefits only if institutionalized;]~~

~~[(B) meet the SSI criteria for disability, as documented on the appropriate DHS forms;]~~

~~[(C) meet the SSI criteria for institutional deeming;]~~

~~[(D) have income and resources which meet the requirements of the SSI program; and]~~

~~[(E) receive waiver program services for persons with related conditions; or]~~

(4) have been determined by a service planning team to need habilitation services; [be an individual who would be financially eligible for Medicaid if residing in a Medicaid-certified institution. For these individuals, the policies specified in subparagraphs (A) and (B) apply.]

~~[(A) Spousal impoverishment provisions.]~~

~~[(i) For waiver participants with spouses who live in the community, the income and resource eligibility requirements are determined according to the spousal impoverishment provisions in §1924 of the Social Security Act, and as specified in the Medicaid State Plan and subsection (a) of this section.]~~

~~[(ii) After the participant is determined to be eligible for Medicaid, DHS determines the amount of the participant's income applicable to payment.]~~

~~[(iii) To determine the amount of the participant's income applicable to payment, DHS uses the same methodology as if the participant were residing in an institution, except that the personal needs allowance is equal to the institutional cap.]~~

~~[(iv) DHS applies post-eligibility treatment of income rules to individuals eligible under a special income level, as specified in 42 Code of Federal Regulations 435.726, for use only by states that do not use the 209(b) option. For individuals receiving home and community-based services who are subject to the post-eligibility treatment of income rules, the Medicaid payment to the provider for home and community-based services will be reduced~~

by the amount that remains after deducting the appropriate amounts from the individual's income. The DHS Copayment Worksheet form is used to calculate the client copayment amount.}]

{(B) Calculation of participant copayment.}]

{(i) A participant who is financially eligible based on the special institutional income limit must share in the cost of waiver services. The method for determining the participant copayment is specified in this subparagraph and is documented on DHS's Medical Assistance Only Worksheet form. When calculating the copayment amount for a participant with income that exceeds the SSI federal benefit rate, DHS deducts the following:}]

{(I) the cost of the participant(s) maintenance needs, which must equal the special institutional income limit for eligibility under the Texas Medicaid program;}]

{(II) the cost of the maintenance needs of the participant's dependent children. This amount is equivalent to the Aid to Families with Dependent Children (AFDC) program basic monthly grant for children or for a spouse with children, using the recognizable needs amount in the AFDC Budgetary Allowance Chart;}]

{(III) the costs incurred for medical or remedial care that are necessary, but not covered by Medicare, Medicaid, or any other third party. This includes the cost of health insurance premiums, deductibles, and coinsurance; and}]

{(IV) the cost of the maintenance needs of the participant's spouse. This amount is equivalent to the amount of the SSI federal benefit rate, less the spouse's own income.}]

{(ii) The copayment amount is the participant's remaining income after all allowable expenses have been deducted. The copayment amount is applied only to the cost of home and community-based services which are funded through the Community Living Assistance and Support Services (CLASS) waiver program and specified on the participant's individual plan of care. The copayment amount must not exceed the cost of services actually delivered.}]

{(iii) Participants must pay the copayment amount to the provider contracted to deliver authorized waiver services; or}]

(5) have an individual service plan (ISP) with a cost for CLASS Program services at or below 200 percent of the estimated annualized per capita cost of providing services in an ICF/MR to an individual qualifying for an ICF/MR Level of Care VIII considering all other resources, including resources described in §40.1 of this title (relating to Use of General Revenue for Services Exceeding the Individual Cost Limit of a Waiver Program); [be an individual under age 19:}]

{(A) for whom the Texas Department of Protective and Regulatory Services (TDPRS) assumes financial responsibility for, in whole or in part (not to exceed level II foster care payment), and}]

{(B) who is being cared for in a foster care home licensed or certified and supervised by:}]

{(i) TDPRS, or}]

{(ii) a licensed public or private nonprofit child placing agency; or}]

(6) not be enrolled in another Medicaid waiver program approved by the Centers for Medicare and Medicaid Services (CMS) pursuant to §1915(c) of the Social Security Act and operated by DADS; [be a member of a family that receives Medicaid as a result of qualifying for AFDC.}]

(7) live in the applicant's or participant's own home or family home; and

(8) not reside in an institutional setting, including a hospital, a nursing facility, an ICF/MR, a licensed assisted living facility, or a facility required to be licensed as an assisted living facility but is not licensed.

{(b) To be determined eligible by DHS for the waiver program services, participants must also meet the following requirements:}]

{(1) Participants must meet the intermediate care facility for the mentally retarded with related conditions (ICF-MR/RC VIII) level-of-care criteria as determined by the Texas Department of Health (TDH) according to applicable state and federal regulations, and as verified by a current level of care assessment.}]

{(A) A preadmission level of care assessment by TDH expires 90 calendar days from its issuance. For participants who are enrolled in the waiver program within 30 calendar days of discharge from an ICF-MR/RC VIII or another waiver program provider, the current level-of-care assessment may be used for enrollment and is valid until the expiration date on the level-of-care assessment.}]

{(B) Re-evaluation of ICF-MR level-of-care criteria is performed annually by the Texas Department of Health using the same criteria as used initially. An initial re-evaluation of level of care must be performed no later than 364 calendar days from the date of enrollment. Subsequent level-of-care re-evaluations must be performed no later than 364 calendar days from the effective date of the prior level-of-care assignment.}]

{(C) Any gaps in the level-of-care coverage periods result in loss of payment to the provider.}]

(2) Applicants must live in the contracted provider's geographic catchment area or must move into the geographic catchment area within 120 days from the date the applicant's name is removed from the waiting list and the applicant begins the Community Living Assistance and Support Services (CLASS) enrollment process.}]

(3) Applicants must have an individual plan of care for home and community-based services, developed by the interdisciplinary team composed of a case management service provider and other appropriate professional staff who meet the qualifications specified in the waiver request. The individual plan of care for home and community-based services must specify the type of waiver services required to keep an individual in the community, the units of waiver services, and their frequency and duration.}]

{(A) The individual plan of care for home and community-based services must be signed and dated by the interdisciplinary team prior to implementation. The interdisciplinary team must certify in writing that the waiver program services authorized on the individual plan of care are necessary to avoid ICF-MR/RC VIII institutional placement and are appropriate to meet the applicant's needs in the community.}]

{(B) The individual plan of care for home and community-based services must be approved by DHS and updated by the provider at least annually. Any gaps in the coverage periods of the individual plan of care approved by DHS result in loss of payment to the provider.}]

{(c) The estimated annual cost of the applicant's individual plan of care for a period of 364 days from the initial enrollment for home and community-base services must not exceed 125% of the average cost of institutional care in an ICF-MR/RC VIII facility.}]

(b) [(d)] Enrollment in the CLASS Program [into this waiver program] is limited to the number of individuals [participants] approved by CMS [Centers for Medicare and Medicaid Services (CMS)] or the availability of state funding.

(c) An individual found by HHSC to be financially eligible for the CLASS Program based on the special institutional income limit must share in the cost of CLASS Program services.

(d) DADS does not pay a CLASS Program provider for any gaps in the level-of-care coverage periods.

[(e) Participants may be enrolled in only one waiver program at a time. Participants may not receive both CLASS waiver services and other DHS community care services at the same time.]

(e) [(f)] An individual receiving services reimbursed through the Texas Medicaid Nursing Facility Program [Individuals residing in a Texas nursing facility who are enrolled in Medicaid] will be approved for the CLASS Program [Community Care services] if the individual requests CLASS Program [they request] services while residing in the nursing facility and meets [meet] all eligibility criteria for the CLASS Program [Community Care services]. If the [an] individual is discharged from the nursing facility to a community setting before being determined eligible for the CLASS Program [Medicaid nursing facility services and Community Care services], the individual will be denied immediate enrollment in the CLASS Program [Community Care services] unless these services are part of an entitlement program. Upon admission to or discharge from the nursing facility, DHS must make information on Community Care services, including Medicaid waiver services, available to the nursing facility resident].

§48.2106. Individual Service Plan.

(a) A Community Living Assistance and Support Services (CLASS) Program case management agency must ensure that an applicant's or participant's case manager convenes a service planning team that:

(1) develops an enrollment individual service plan (ISP) for the applicant;

(2) reviews and updates the ISP at least annually and when the participant's needs for CLASS Program services change;

(3) specifies in the ISP the type of CLASS Program services required to support the applicant or participant in the community, the units of waiver services, and their frequency; and

(4) signs and dates the ISP.

(b) Before providing CLASS Program services in accordance with the ISP, a CLASS Program provider must obtain approval from the Department of Aging and Disability Services (DADS).

(c) To be approved by DADS, CLASS Program services in the ISP must:

(1) be necessary to protect the applicant's or participant's health and welfare in the community;

(2) supplement rather than replace the applicant's or participant's natural supports and other non-CLASS Program services and supports for which the applicant or participant may be eligible;

(3) prevent the applicant's or participant's admission to an institution;

(4) be the most appropriate type and amount of services to meet the applicant's or participant's needs; and

(5) be cost effective.

(d) To demonstrate that the CLASS Program services in the ISP meet the requirements described in subsection (c) of this section, the CLASS Program providers must have the following:

(1) documentation, which may include assessments of the participant, supporting the CLASS Program services recommended by the CLASS Program providers; and

(2) documentation that other sources for the CLASS Program services are unavailable.

(e) DADS conducts utilization review of an ISP and supporting documentation at any time to determine if the CLASS Program services specified in the ISP meet the requirements described in subsection (c) of this section.

(1) The CLASS Program providers must submit documentation supporting the ISP to DADS as requested by DADS.

(2) If DADS determines that one or more of the CLASS Program services specified in the ISP do not meet the requirements described in subsection (c) of this section, DADS denies or reduces the service, modifies the ISP, and sends written notification to the applicant or participant and the CLASS Program providers.

(f) In addition to the utilization review conducted in accordance with subsection (e) of this section, DADS may conduct utilization reviews of CLASS Program providers and CLASS Program services based on utilization patterns and trends.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 7, 2008.

TRD-200801780

Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: May 18, 2008

For further information, please call: (512) 438-3734

◆ ◆ ◆  
**SUBCHAPTER C. MEDICAID WAIVER  
PROGRAM FOR PERSONS WITH RELATED  
CONDITIONS**

**40 TAC §48.2123**

*(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Department of Aging and Disability Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

**STATUTORY AUTHORITY**

The repeal is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

The repeal affects Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021.

§48.2123. *Providing CLASS Program Services When Costs Exceed the Individual Cost Limit.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 7, 2008.

TRD-200801781

Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: May 18, 2008

For further information, please call: (512) 438-3734



## CHAPTER 48. COMMUNITY CARE FOR AGED AND DISABLED

The Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), amendments to §48.6003, concerning eligibility criteria, and §48.6006, concerning the individual plan of care (IPC); and proposes the repeal of §48.6099, concerning the provision of services when costs exceed the individual cost limit, in Chapter 48, Community Care for Aged and Disabled, Subchapter J, which is being renamed Community Based Alternatives (CBA) Program.

### BACKGROUND AND PURPOSE

The purpose of the amendments and repeal is to implement the 2008-09 General Appropriations Act (Article II, Department of Aging and Disability Services, Rider 45, H.B. 1, 80th Legislature, Regular Session, 2007), concerning waiver program cost limits. Rider 45 places an individual's annual cost limit for CBA Program services at 200 percent of the reimbursement rate that would have been paid for that same individual to receive services in a nursing facility; authorizes DADS, under certain conditions, to use general revenue to pay for services that exceed the cost limit; requires DADS to use general revenue to continue to provide services to a person who was receiving waiver program services, such as CBA Program services, on September 1, 2005, at a cost that exceeded the waiver program's cost limit; and requires DADS to employ utilization management and utilization review practices as necessary to ensure that the appropriate scope and level of services are provided to an individual receiving services through a waiver program.

The amendments are also proposed to update agency names and terminology, to correct cross-references, and to reorganize the structure of the rule for clarity and consistency with other DADS programs operated in accordance with §1915(c) of the federal Social Security Act.

### SECTION-BY-SECTION SUMMARY

The proposed amendment to §48.6003 provides a definition for "individual" and replaces the terms "applicant" and "participant" with "individual" to provide consistency throughout the rule. The amendment also replaces two cross-references to nursing facility rules, concerning qualifications for medical necessity determinations, with one cross-reference to a proposed new nursing facility rule (40 TAC §19.2401), concerning qualifications for

medical necessity determinations. The proposed new §19.2401 is published elsewhere in this issue of the *Texas Register*. The amendment to §48.6003 implements Rider 45 provisions by: (1) increasing the cost limit from 100 percent of the individual's actual nursing facility payment rate to 200 percent of the reimbursement rate that would have been paid for that same individual to receive services in a nursing facility; and (2) providing a cross-reference to 40 TAC §40.1 proposed as a new section elsewhere in this issue of the *Texas Register*, which governs the use of general revenue, under certain conditions, to pay for services that exceed the cost limit. The amendment to §48.6003 also revises terminology, updates rule cross-references, and reorganizes the structure of the rule for clarity and consistency with other DADS waiver program rules.

The proposed amendment to §48.6006, concerning the IPC, expands the provisions of the current rule to address the utilization management and review provisions of Rider 45. Subsection (d) of the proposed amendment describes five requirements that CBA Program services in the IPC must meet in order for DADS to approve the IPC. Subsection (e) of the proposed amendment requires the CBA Program provider to submit certain information to DADS that demonstrates that the CBA Program services in the IPC meet the five requirements described in subsection (d). Subsections (f) and (g) of the proposed amendment govern the procedures for utilization review and state that DADS may conduct utilization review at any time and may deny or reduce services if DADS determines that one or more of the CBA Program services in the IPC do not meet the requirements of subsection (d).

The proposed repeal of §48.6099 eliminates a rule governing exceptions to the CBA Program cost limit. The Centers for Medicare and Medicaid Services has indicated that exceptions to the cost limit may not be granted and, therefore, this rule is no longer necessary. The provisions in §48.6099 covering an individual who was receiving CBA Program services on or before September 1, 2005, at a cost that exceeded the individual cost limit of the CBA Program have been revised to comply with Rider 45 and are included in proposed new §40.1, published elsewhere in this issue of the *Texas Register*.

### FISCAL NOTE

Gordon Taylor, DADS Chief Financial Officer, has determined that, for the first five years the proposed amendments and repeal are in effect, enforcing or administering the amendments and repeal does not have foreseeable implications relating to costs or revenues of state or local governments.

### SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed amendments and repeal will not have an adverse economic effect on small businesses or micro-businesses, because the proposal places no new requirements on small businesses or micro-businesses.

### PUBLIC BENEFIT AND COSTS

Barry Waller, DADS Assistant Commissioner for Provider Services, has determined that, for each year of the first five years the amendments and repeal are in effect, the public benefit expected as a result of enforcing the amendments and repeal is that DADS procedures for addressing situations in which an individual cannot be served within the individual cost limit of a waiver program and whose health and safety cannot be ensured in another available living arrangement will be clarified.

Mr. Waller anticipates that there will not be an economic cost to persons who are required to comply with the amendments and repeal. The amendments and repeal will not affect a local economy.

#### TAKINGS IMPACT ASSESSMENT

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

#### PUBLIC COMMENT

Questions about the content of this proposal may be directed to Kristi Guilbeaux at (512) 438-2756 in DADS' Provider Services Division. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-010, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030, or street address 701 West 51st St., Austin, TX 78751; faxed to (512) 438-5759; or e-mailed to [rulescomments@dads.state.tx.us](mailto: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 either (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 010" in the subject line.

### SUBCHAPTER J. COMMUNITY BASED ALTERNATIVES (CBA) PROGRAM

#### 40 TAC §48.6003, §48.6006

#### STATUTORY AUTHORITY

The amendments are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

The amendments affect Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021.

§48.6003. *[Client] Eligibility Criteria.*

(a) In this section, the term "individual" means a person applying for or enrolled in the Community Based Alternatives (CBA) Program, unless the context clearly indicates otherwise.

(b) [(a)] To be determined eligible by the Department of Aging and Disability Services (DADS) for the CBA Program [1915(e) Medicaid waiver program provided as an alternative to care in a nursing facility], an individual [applicant] must:

- (1) be [age] 21 years of age or older [above];
- (2) meet the level-of-care criteria for medical necessity for nursing facility care in accordance with §19.2401 [§19.2409 and

§19.2410] of this title (relating to General Qualifications for Medical Necessity Determinations [and Criteria Specific to a Medical Necessity Determination]);

(3) choose the CBA Program as an alternative to nursing facility services, as described in the Code of Federal Regulations, Title 42, §441.302(d) [meet the requirements for Preadmission Screening and Annual Resident Review (PASARR) and be determined appropriate for nursing facility care];

(4) not be enrolled in another Medicaid waiver program approved by the Centers for Medicare and Medicaid Services (CMS) pursuant to §1915(c) of the Social Security Act and operated by DADS [choose home and community-based waiver services as an alternative to nursing facility placement based on an informed choice with approval conditional on feasible alternatives available under the waiver in accordance with 42 Code of Federal Regulations §441.302(d)(1)];

(5) live in a county not included in a Medicaid managed care area;

(6) [(5)] have an individual plan of care (IPC) with a cost for CBA Program services at or below 200 percent of the reimbursement rate that would have been paid for that same individual to receive nursing facility services considering all other resources, including resources described in §40.1 of this title (relating to Use of General Revenue for Services Exceeding the Individual Cost Limit of a Waiver Program) [for waiver services as specified in §48.6006 of this title (relating to Individual Plan of Care for Waiver Services) whose cost does not exceed 100% of the individual's actual nursing facility payment rate];

(7) have been determined by the Texas Health and Human Services Commission to be financially eligible for Medicaid;

[(6)] meet the financial eligibility criteria for waiver services as specified in §48.6007 of this title (relating to Financial Eligibility Criteria);]

(8) [(7)] have ongoing needs for CBA Program [waiver] services with [whose] projected costs, as indicated on the IPC [Individual Plan of Care], that do not exceed the following maximum service ceilings [set for those services as listed below]:

(A) adaptive aids [Adaptive Aids] and medical supplies [Medical Supplies] service category must not [cannot] exceed \$10,000 per individual per IPC [Individual Plan of Care] year without approval by DADS [the waiver manager];

(B) minor home modifications service category must not [cannot] exceed a lifetime maximum of \$7,500 [\$7500] per individual without approval by DADS, after which minor home modifications must not exceed \$300 per IPC year for maintenance or additional modifications [the waiver manager]; and

(C) respite care must not [cannot] exceed 30 days per individual per IPC [Individual Plan of Care] year without approval by DADS [the waiver manager];

(9) [(8)] receive CBA Program [waiver] services within 30 days after [waiver] eligibility is established;

(10) [(9)] reside [either] in:

(A) the individual's [his] own home;

(B) [or in] a licensed assisted living facility contracted with DADS to provide CBA Program services; or

(C) an adult foster care home contracted with DADS to provide CBA Program [Community Based Alternatives (CBA)] services; [-]



(11) not reside in an institutional setting, including a hospital, a nursing facility, an intermediate care facility for persons with mental retardation, or a facility required to be licensed as an assisted living facility but is not licensed [CBA services will not be delivered to residents of hospitals, nursing facilities, ICF-MR facilities, or unlicensed assisted living facilities]; and

(12) [(10)] meet two or more of the criteria [for nursing home risk, as] specified in the Resident Assessment Instrument-Home Care Assessment for Nursing Home Risk [as revised in April 1996] and summarized as follows:

(A) needs assistance with one or more of the activities of dressing, personal hygiene, eating, toilet use, or bathing;

(B) has a functional decline in the past 90 days;

(C) has a history of a fall two or more times in past 180 days;

(D) has a neurological diagnosis of Alzheimer's disease, head trauma, multiple sclerosis, parkinsonism, or dementia [Head Trauma, Multiple Sclerosis, Parkinsonism, or Dementia];

(E) has a history of nursing facility placement within the last five years;

(F) has multiple episodes of urine incontinence daily; or [and]

(G) goes out of one's residence one or fewer days a week.

(c) [(b)] Enrollment in the CBA Program [Community Based Alternatives (CBA) program] is limited to the number of individuals [participants] approved by CMS [the Centers for Medicare and Medicaid Services (CMS)] or the availability of state funding.

(1) An individual is [Eligible individuals are to be] enrolled from the CBA Program interest list on a "first-come, first-served" basis, except for [individuals who meet] the following [eriteria]:

(A) an individual who is 21 years of age and:

(i) has been receiving [children age 21 who are no longer eligible for the] Medically Dependent Children Program (MDCP) services and is no longer eligible for MDCP; or

(ii) has been receiving nursing services through the Texas Health Steps Program and is no longer eligible for Texas Health Steps Program services; or

(B) an individual described in paragraph (3) of this subsection [children age 21 who have been receiving nursing services through the Texas Health Steps Program and are no longer eligible].

(2) Except for an individual described in paragraph (1)(A) and (B) of this subsection, DADS suspends enrollment of individuals whose names are on the CBA Program interest list into the CBA Program while [program as long as] the census of enrolled individuals [program participants] exceeds funded limits. [For purposes of this section, the census is considered to have exceeded funded limits when DADS determines that the combination of existing caseloads and individuals described in paragraph (1)(A) and (1)(B) of this subsection exceed funded limits within the current budget period.]

(3) An individual receiving services reimbursed through the Texas Medicaid Nursing Facility Program [Individuals residing in a Texas nursing facility who are enrolled in Medicaid] will be approved for the CBA Program if the individual requests [Community Care services if they request] services while residing in the [a Texas] nursing facility and meets [meet] all eligibility criteria for the CBA Program

[Community Care services]. If the individual is discharged from the nursing facility for a community setting before being determined eligible for Medicaid nursing facility services and the CBA Program [Community Care services], the individual will be denied immediate enrollment in the CBA Program [Community Care services unless these services are part of an entitlement program. Upon inquiry to DADS regarding the possibility of nursing facility placement and upon admission to a nursing facility, DADS must make information on Community Care services, including Medicaid waiver services, available to the individual making the inquiry or being admitted to a nursing facility. Upon inquiry of discharge from a nursing facility, DADS must also make information on Community Care services, including Medicaid waiver services, available to the nursing facility resident].

[(e) Participants may be enrolled in only one waiver program at a time.]

[(d) The nursing facility risk criteria will be applied at the time of the first annual re-assessment for current Community Based Alternatives Program participants and at the time of initial enrollment for all new applicants.]

(d) [(e)] An individual [Individuals] transferring from a nursing facility or from MDCP is [the Medically Dependent Children Program are] exempt from subsection (b)(12) [(a)(10)] of this section.

[(f) A participant must live in a county not included in a managed care service area and meet all other eligibility requirements to be enrolled in CBA.]

§48.6006. Individual Plan of Care [for Waiver Services].

(a) In this section, the term "individual" means a person applying for or enrolled in the Community Based Alternatives (CBA) Program, unless the context clearly indicates otherwise.

(b) A CBA Program provider must coordinate with an interdisciplinary team to develop an individual plan of care (IPC) that is based on assessments conducted in accordance with §48.6020 and §48.6022 of this subchapter (relating to Pre-Enrollment Health Assessment; and Community Based Alternatives Annual Reassessment) and that meets the criteria in subsection (d) of this section.

(c) Before providing CBA Program services in accordance with the IPC, the CBA Program provider must obtain approval from the Department of Aging and Disability Services (DADS).

(d) To be approved by DADS, CBA Program services in the IPC must:

(1) be necessary to protect the individual's health and welfare in the community;

(2) supplement rather than replace the individual's natural supports and other non-CBA Program services and supports for which the individual may be eligible;

(3) prevent the individual's admission to an institution;

(4) be the most appropriate type and amount of services to meet the individual's needs; and

(5) be cost effective.

(e) To demonstrate that the CBA Program services in the IPC meet the requirements described in subsection (d) of this section, the CBA Program provider must submit to DADS the following:

(1) an assessment of the individual supporting the CBA Program services recommended by the CBA Program provider; and

(2) documentation that other sources for adaptive aids and medical supplies are unavailable.

(f) DADS conducts utilization review of an IPC and supporting documentation at any time to determine if the CBA Program services specified in the IPC meet the requirements described in subsection (d) of this section.

(1) The CBA Program provider must submit documentation supporting the IPC to DADS as requested by DADS.

(2) If DADS determines that one or more of the CBA Program services specified in the IPC do not meet the requirements described in subsection (d) of this section, DADS denies or reduces the service, modifies the IPC, and sends written notification to the individual and CBA Program provider.

(g) In addition to the utilization review conducted in accordance with subsection (f) of this section, DADS may conduct utilization reviews of CBA Program providers and CBA Program services based on utilization patterns and trends.

~~[(a) Waiver clients must have an individual plan of care for waiver services developed by the interdisciplinary team as described in the waiver request. The individual plan of care must specify the type of waiver services required to support the individual in the community, the units of waiver services, and their frequency.]~~

~~[(b) The individual plan of care must be signed and dated by the interdisciplinary team prior to implementation. The interdisciplinary team must certify in writing that the waiver services are necessary as an alternative to institutionalization and appropriate to meet the needs of the individual in the community.]~~

~~[(c) The individual plan of care must be approved by the Texas Department of Human Services (DHS) and updated by the interdisciplinary team at least annually.]~~

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 7, 2008.

TRD-200801782

Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: May 18, 2008

For further information, please call: (512) 438-3734



## SUBCHAPTER J. 1915(c) MEDICAID HOME AND COMMUNITY-BASED WAIVER SERVICES FOR AGED AND DISABLED ADULTS WHO MEET CRITERIA FOR ALTERNATIVES TO NURSING FACILITY CARE

### 40 TAC §48.6099

*(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Department of Aging and Disability Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

#### STATUTORY AUTHORITY

The repeal is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

The repeal affects Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021.

§48.6099. *Providing CBA Services When Costs Exceed the Individual Cost Limit.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 7, 2008.

TRD-200801783

Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: May 18, 2008

For further information, please call: (512) 438-3734



## SUBCHAPTER J. COMMUNITY BASED ALTERNATIVES (CBA) PROGRAM

### 40 TAC §§48.6021, 48.6022, 48.6078

The Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), amendments to §48.6021, concerning delay of pre-enrollment home health assessment; §48.6022, concerning Community Based Alternatives (CBA) annual reassessment; and §48.6078, concerning billable units, in Chapter 48, Community Care for Aged and Disabled, Subchapter J, which is being renamed Community Based Alternatives (CBA) Program.

#### BACKGROUND AND PURPOSE

The purpose of the amendments is, in part, to implement rule changes necessitated by a project under the direction of HHSC that will replace the state case-mix system for provider payments, which is based on the Texas Index for Level of Effort (TILE) model, with the federal case-mix system, which is based on the Resource Utilization Group (RUG) model. The TILE-to-RUG project implements Texas Health and Safety Code, §§242.221 et seq, which requires DADS to use an automated system for nursing facility reimbursement and an assessment form designed by the United States Health Care Financing Administration (now the Centers for Medicare and Medicaid Services). As allowed by Texas Health and Safety Code, §242.221(b), DADS and HHSC have elected to add other components of the state Medicaid program, such as the CBA Program, to the automated system of reimbursement and, therefore, to require use of an assessment form similar to the form on which nursing facility residents are assessed. As a

result, DADS will replace its Client Assessment, Review and Evaluation (CARE) form (also known as Form 3652) with an assessment based on the federal Minimum Data Set (MDS) assessment for making medical necessity determinations and calculating the RUG. For the purpose of this rule, the community-based assessment is termed the "medical necessity and level of care assessment."

#### SECTION-BY-SECTION SUMMARY

The proposed amendment to §48.6021 replaces a reference to the CARE form with a more generic term. The amendment also adjusts the grammatical structure of the rule to provide clarity.

The proposed amendment to §48.6022 replaces a reference to the CARE form with a more generic term. It also updates the time frame for submitting the form and an individual's service plan to reflect current practice.

The proposed amendment to §48.6078 replaces a reference to a procedure under the TILE model with a more generic reference to "level of care."

#### FISCAL NOTE

Gordon Taylor, DADS Chief Financial Officer, has determined that, for the first five years the proposed amendments are in effect, enforcing or administering the amendments does not have foreseeable implications relating to costs or revenues of state or local governments.

#### SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed amendments will not have an adverse economic effect on small businesses or micro-businesses, because the amendments impose no new requirements that would cause them to alter their business practices.

#### PUBLIC BENEFIT AND COSTS

Barry Waller, DADS Assistant Commissioner for Provider Services, has determined that, for each year of the first five years the amendments are in effect, the public benefit expected as a result of enforcing the amendments is that DADS rules will provide accurate requirements for CBA providers. The amendment, which requires providers to conduct assessments of individuals served in the community on a form similar to the form on which nursing facility residents are assessed, will allow for better comparison of services in Texas to services in other states and provide for more streamlined and integrated business processes. These improvements will in turn lead to opportunities for improved services for DADS' consumers.

Mr. Waller anticipates that there will not be an economic cost to persons who are required to comply with the amendments. 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 Gilbert Estrada at (512) 438-2578 in DADS' Provider Services Division. Written comments on the proposal may be submitted

to Texas Register Liaison, Legal Services-014, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030, or street address 701 West 51st St., Austin, TX 78751; faxed to (512) 438-5759; or e-mailed to [rulescomments@dads.state.tx.us](mailto: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 either (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 014" in the subject line.

#### STATUTORY AUTHORITY

The amendments are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Health and Safety Code, §242.226, which authorizes the adoption of rules necessary to improve the efficiency of the reimbursement process for the state Medicaid system and maximize the automated reimbursement system's capabilities.

The amendments affect Texas Government Code, §531.0055 and §531.021; Texas Human Resources Code, §161.021; and Texas Health and Safety Code, §242.226.

*§48.6021. Delay of Pre-Enrollment Home Health Assessment.*

(a) A home and community support services agency (HCSSA) must [The only valid reasons for the Home and Community Support Services (HCSS) agency to not] complete the pre-enrollment home health assessment within the time period described in §48.6020 of this chapter (relating to Pre-Enrollment Home Health Assessment), unless [14 days for routine applicants or by the negotiated date for priority applicants are that]:

(1) (No change.)

(2) there is a delay in getting the medical necessity and level of care assessment [Client Assessment, Review, and Evaluation form] signed by the physician.

(b) The HCSSA [HCSS agency] must notify the case manager of a delay in obtaining the physician's signature which would prevent the HCSSA [HCSS agency] from meeting the time frame for completion of the pre-enrollment home health assessment as follows [by]:

(1) For priority referrals, the HCSSA must orally notify [verbally notifying] the case manager no later than 24 hours before the negotiated assessment completion date[-; if it is a priority referral,-] of the delay in obtaining the physician's signature and submit a [- The agency must submit written documentation on the] Case Information form to the case manager within two working days after [Texas Department of Human Services (DHS) workdays of] the oral [verbal] notification, documenting the reason for the delay. [-; and]

(2) For routine referrals, the HCSSA must submit [submitting] the Case Information form documenting the reason for the delay to the case manager no later than 24 hours before the end of the 14-day time frame allowed [for routine referrals and documenting the reason for the delay].

§48.6022. *Community Based Alternatives Annual Reassessment.*

The home and community support services [Home and Community Support Services] agency must complete and return the Individual Service Plan (ISP) attachments and the medical necessity and level of care assessment [Client Assessment, Review, and Evaluation form] to the case manager's office during the second [between the fifth and the 20th day of the fourth] month before the month the ISP expires [expiration of the individual service plan (ISP)], according to reassessment due dates listed in Appendix XIX of the *Community Based Alternatives Provider Manual* [Community Based Alternatives manual] (CBA Reassessment Packet Due Dates).

§48.6078. *Billable Units.*

The following activities may be billed as Community Based Alternatives (CBA) services by a home and community support services agency [Home and Community Support Services agencies]:

(1) Nursing services:

(A) - (E) (No change.)

(F) time spent [in] performing the annual reassessment or level of care [Texas Index Level of Effort] resets which include actual participant contact and documentation of assessment forms and care plan;

(G) time spent [in] performing assessments and developing written specifications for adaptive aids; and

(H) (No change.)

(2) - (7) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 7, 2008.

TRD-200801803

Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: May 18, 2008

For further information, please call: (512) 438-3734



## CHAPTER 50. §1915(c) CONSOLIDATED WAIVER PROGRAM

The Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), amendments to §50.4, concerning eligibility criteria; §50.10, concerning additional eligibility criteria related to level of care; and §50.16, concerning the individual service plan (ISP); and proposes the repeal of §50.48, concerning utilization review; and §50.50, concerning the provision of services when costs exceed the individual cost limit, in Chapter 50, §1915(c) Consolidated Waiver Program.

### BACKGROUND AND PURPOSE

The purpose of the amendments is, in part, to implement the 2008-09 General Appropriations Act (Article II, Department of Aging and Disability Services, Rider 45, H.B. 1, 80th Legislature, Regular Session, 2007), concerning waiver program cost limits. Rider 45 places an individual's annual cost limit for Consolidated Waiver Program (CWP) services at, as applicable: (1) 200 percent of the estimated annualized per capita cost of providing services in an intermediate care facility for persons with mental retardation (ICF/MR); (2) 50 percent of the reimbursement rate that would have been paid for that same individual under age 21 to receive services in a nursing facility; or (3) 200 percent of the reimbursement rate that would have been paid for that same individual age 21 or over to receive services in a nursing facility. However, a recent communication from the Centers for Medicare and Medicaid Services states that the waiver cannot have cost limits that vary depending upon a person's age. Therefore, the proposal uses the higher of the two cost limits described in (2) and (3). Rider 45 also authorizes DADS, under certain conditions, to use general revenue to pay for services that exceed the cost limit; requires DADS to use general revenue to continue to provide services to a person who was receiving waiver program services, such as CWP services, on September 1, 2005, at a cost that exceeded the waiver program's cost limit; and requires DADS to employ utilization management and utilization review practices as necessary to ensure that the appropriate scope and level of services are provided to an individual receiving services through a waiver program.

The purpose of the amendments and repeal is also to implement rule changes necessitated by a project under the direction of HHSC that will replace the state case-mix system for provider payments, which is based on the Texas Index for Level of Effort (TILE) model, with the federal case-mix system, which is based on the Resource Utilization Group (RUG) model. The transition to the RUG model affects the Texas Nursing Facility Program, as well as community-based waiver programs, including CWP, which serve individuals who have a determination of medical necessity for nursing facility care.

Furthermore, the amendments are proposed to update agency names and terminology, to correct cross-references, and to reorganize the structure of the rules for clarity and consistency with other DADS programs operated in accordance with §1915(c) of the federal Social Security Act.

### SECTION-BY-SECTION SUMMARY

The proposed amendment to §50.4 deletes references to the TILE payment rate and establishes the new cost limits for CWP services. The amendment also: (1) provides a cross-reference to 40 TAC §40.1 proposed as a new section elsewhere in this issue of the *Texas Register*, which governs the use of general revenue, under certain conditions, to pay for services that exceed the cost limit; (2) replaces references to the Texas Department of Human Services or DHS with references to the Department of Aging and Disability Services or DADS; (3) revises a reference to TDMHMR (the former Texas Department of Mental Health and Mental Retardation); (4) deletes references to slot allocations; and (5) updates the rule cross-references for Level of Care I and Level of Care VIII criteria.

The proposed amendment to §50.10 deletes a reference to the cost limit for individuals under age 21 in subsection (a)(2), because the cost limit is now referenced in the proposed amendment to §50.4. The proposed amendment also updates terminology to reflect current usage and updates the rule cross-reference for Level of Care VIII criteria.

The proposed amendment to §50.16, concerning the ISP, expands the provisions of the current rule to address the utilization management and review provisions of Rider 45. Subsection (d) of the proposed amendment describes five requirements that CWP services in the ISP must meet in order for DADS to approve the ISP. Subsection (e) of the proposed amendment requires the CWP provider to submit certain information to DADS that demonstrates that the CWP services in the ISP meet the five requirements described in subsection (d). Subsections (f) and (g) of the proposed amendment govern the procedures for utilization review and state that DADS may conduct utilization review at any time and may deny or reduce services if DADS determines that one or more of the CWP services in the ISP do not meet the requirements of subsection (d).

The proposed repeal of §50.48 eliminates a reference to the TILE rate and allows for the placement of utilization review requirements in the proposed amendment to §50.16.

The proposed repeal of §50.50 eliminates a rule governing exceptions to the CWP cost limit. The Centers for Medicare and Medicaid Services has indicated that exceptions to the cost limit may not be granted and, therefore, this rule is no longer necessary. The provisions in §50.50 covering an individual who was receiving CWP services on or before September 1, 2005, at a cost that exceeded the CWP individual cost limit have been revised to comply with Rider 45 and are included in proposed new §40.1, published elsewhere in this issue of the *Texas Register*.

#### FISCAL NOTE

Gordon Taylor, DADS Chief Financial Officer, has determined that, for the first five years the proposed amendments and repeal are in effect, enforcing or administering the amendments and repeal does not have foreseeable implications relating to costs or revenues of state or local governments.

#### SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed amendments and repeal will not have an adverse economic effect on small businesses or micro-businesses, because the proposal places no new requirements on small businesses or micro-businesses.

#### PUBLIC BENEFIT AND COSTS

Barry Waller, DADS Assistant Commissioner for Provider Services, has determined that, for each year of the first five years the amendments and repeal are in effect, the public benefit expected as a result of enforcing the amendments and repeal is that DADS procedures for addressing situations in which an individual cannot be served within the individual cost limit of a waiver program and whose health and safety cannot be ensured in another available living arrangement will be clarified.

Mr. Waller anticipates that there will not be an economic cost to persons who are required to comply with the amendments and repeal. The amendments and repeal will not affect a local economy.

#### TAKINGS IMPACT ASSESSMENT

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

#### PUBLIC COMMENT

Questions about the content of this proposal may be directed to Kristi Guilbeaux at (512) 438-2756 in DADS' Provider Services Division. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-010, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030, or street address 701 West 51st St., Austin, TX 78751; faxed to (512) 438-5759; or e-mailed to [rulescomments@dads.state.tx.us](mailto: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 either (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 010" in the subject line.

#### 40 TAC §§50.4, 50.10, 50.16

#### STATUTORY AUTHORITY

The amendments are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

The amendments affect Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021.

#### §50.4. [~~Participant~~] Eligibility Criteria.

(a) To be determined eligible by the [Texas] Department of Aging and Disability [Human] Services (DADS) [~~(DHS)~~] for the Consolidated Waiver Program (CWP) [services], an applicant or participant must:

- (1) live in the pilot area;
- (2) have been determined by the Texas Health and Human Services Commission (HHSC) to be financially eligible for Medicaid [meet the financial eligibility criteria as defined in §50.6 of this title (relating to Financial Eligibility Criteria)];
- (3) not be enrolled in another [participate in other §1915(e) Medicaid] waiver program [programs];
- (4) have an individual service plan (ISP) with a cost for CWP services at or below one of the following individual cost limits considering all other resources, including resources described in §40.1 of this title (relating to Use of General Revenue for Services Exceeding the Individual Cost Limit of a Waiver Program): [for home and community-based services developed by the interdisciplinary team (IDT). The individual service plan (ISP) for home and community-based services must specify the type of waiver services required to keep an individual in the community, the units of waiver services, and their frequency and duration as defined in §50.16 of this title (relating to Individual Service Plan)];

(A) 200 percent of the estimated annualized per capita cost of providing services in an intermediate care facility for persons with mental retardation (ICF/MR); or

(B) 200 percent of the reimbursement rate that would have been paid for that same individual to receive services in a nursing facility;

{(5) have an ISP for home and community-based services with an estimated annual cost that does not exceed;}

{(A) 125% of the average aggregate cost of intermediate care facilities for individuals with mental retardation (ICF-MR) Level I, V, VI, and VIII for individuals who meet the ICF-MR level of care in accordance with §50.8(a)(2) of this title (relating to Individual Level-of-Care Criteria); or}

{(B) 150% of the individual's actual Texas Index for Level of Effort (TILE) payment rate for individuals with a nursing facility level of care in accordance with §50.8(a)(1) of this title (relating to Individual Level-of-Care Criteria);}

(5) {(6)} have been determined by DADS:

(A) to meet the level-of-care criteria as described in §50.8(a)(1) of this chapter (relating to Individual Level of Care Criteria) [§50.8 of this title (relating to Individual Level-of-Care Criteria)]; or

(B) to qualify for:

(i) the ICF/MR Level of Care (LOC) I, as described in §9.238 of this title (relating to Level of Care I Criteria); or

(ii) the ICF/MR LOC VIII, as described in §9.239 of this title (relating to ICF/MR Level of Care VIII Criteria);

(6) {(7)} have ongoing needs for CWP [waiver] services with [whose] projected costs, as indicated in [on] the ISP, that do not exceed the following maximum service ceilings [that follow]:

(A) adaptive aids and medical supplies service category must not [cannot] exceed \$10,000 per individual per ISP [plan] year without approval by DADS [with DHS maintaining the right to exception];

(B) minor home modifications service category:

(i) must not [cannot] exceed \$7,500 [7500] per individual per seven [7] years until the individual is 21 years of age without approval by DADS; and [age 21; then the minor home modifications service category cannot exceed \$7500 (lifetime maximum) with a maximum of \$300 for repairs per ISP year thereafter;]

(ii) must not exceed a lifetime maximum of \$7,500 per individual without approval by DADS for an individual 21 years of age or older, after which minor home modifications must not exceed \$300 per ISP year for maintenance or additional modifications;

(C) respite care must not [cannot] exceed 45 days per individual per ISP year without approval by DADS [with DHS maintaining the right to exception]; and

(D) dental services must not [care cannot] exceed \$1,000 per individual [1000] per ISP year;

(7) {(8)} receive CWP [waiver] services within 30 days after CWP [waiver] eligibility is determined;

(8) {(9)} meet the re-evaluation of institutional level-of-care criteria as performed annually by DADS [DHS] using the same criteria as used initially;

(9) {(10)} reside in:

(A) the applicant's or participant's [his] own home; [;]

(B) [in] a licensed assisted living facility contracted with DADS to provide CWP services; [;]

(C) [in] an adult foster care home contracted with DADS to provide CWP services; [;]

(D) a 24-hour residential habilitation contracted with DADS to provide CWP services;

(E) a [or] family surrogate services setting contracted with DADS [DHS] to provide CWP services; [;] or

(F) [in] a foster home that meets the requirements for foster homes in accordance with 40 TAC §700.1501 (relating to Decision on Foster Home Applications); [(concerning Foster and Adoptive Home Development). CWP services will not be delivered to residents of hospitals, nursing facilities, ICF-MR facilities, or unlicensed assisted living facilities unless the facility is exempt in accordance with §50.30 of this title (relating to 24-Hour Residential Habilitation) as pertains to provider requirements for 24-hour residential habilitation; and]

(10) not reside in an institutional setting, including a hospital, a nursing facility, an ICF/MR, or a facility required to be licensed as an assisted living facility but is not licensed; and

(11) choose CWP [waiver] services as an alternative to institutional care.

(b) A preadmission level of care assessment expires 120 calendar days from its issuance. For a participant [participants who are] enrolled in CWP [the waiver program] within 30 calendar days of discharge from an institution, the current level-of-care assessment may be used for enrollment and is valid until the expiration date on the approved ISP.

(c) Enrollment into CWP [this waiver program] is limited to the number of individuals [participants] approved by the Centers for Medicare and Medicaid Services (CMS) or the availability of state funding [and funded by the State of Texas].

{(d) Enrollment in the pilot is restricted to 200 participants with the following slot allocation:}

{(1) 50 slots for adults who meet the requirements for nursing facility care from the Community Based Alternatives (CBA) interest list;}

{(2) 50 slots for children who meet the requirements for nursing facility care from the Medically Dependent Children Program (MDCP) interest list;}

{(3) 25 slots for adults with mental retardation who meet the requirements for ICF-MR care level I from the Home and Community Based Services (HCS) interest list;}

{(4) 25 slots for children with mental retardation who meet the requirements for ICF-MR care level I from the HCS interest list;}

{(5) 25 slots for adults with related conditions or developmental disabilities who meet the requirements for ICF-MR care level VIII from the CLASS interest list, with one of these slots specifically targeted to an individual who is deaf-blind with multiple disabilities from the Deaf Blind Multiple Disabilities (DBMD) interest list; and}

{(6) 25 slots for children with related conditions or developmental disabilities who meet the requirements for ICF-MR care level VIII from the CLASS interest list, with one of these slots specifically targeted to an individual who is deaf-blind with multiple disabilities from the DBMD interest list.}

~~{(e) If the funding for CWP changes, the ratios for slot allocation will remain the same.}~~

~~{(f) For purposes of slot allocation, HCS means TDMHMR waiver currently operating in the pilot area.}~~

~~{(g) An individual receiving services reimbursed through the Texas Medicaid Nursing Facility Program [who resides in a Texas nursing facility and is enrolled in Medicaid] will be approved for CWP [Community Care services] if the individual requests services while residing in the [a Texas] nursing facility and meets all eligibility requirements for CWP [Community Care services].}~~

~~{(4) If the individual is discharged into the community before being determined eligible for CWP [to receive nursing facility Medicaid and Community Care services], the individual will be denied immediate enrollment in CWP. [Community Care services unless:]}~~

~~{(A) The individual is next in line to fill a CWP slot as outlined in §50.32 of this title (relating to Maintenance of Interest Lists) and there is an opening within the number approved by CMS with available state funding; or}~~

~~{(B) The individual has requested Community Care services that are part of an entitlement program.}~~

~~{(2) Upon admission to or discharge from the nursing facility, DHS must make information on Community Care services, including Medicaid waiver services, available to the nursing facility resident.}~~

#### *§50.10. Additional Eligibility Criteria Related to Level of Care.*

(a) An individual who meets [Individuals who meet] the level-of-care criteria for medical necessity for nursing facility care in accordance with §50.8(a)(1) of this chapter [title] (relating to Individual Level of Care Criteria) must also [meet the following requirements]:

(1) meet two or more of the criteria for nursing home risk, as specified in the Resident Assessment Instrument Home Care Assessment for Nursing Home Risk [as revised in April 1996 in accordance with §48.6003(10)(A-G) of this title (relating to Client Eligibility Criteria Nursing Home Risk)], unless the individual [except for the following individuals who are exempt from meeting the nursing home risk criteria if]:

(A) is transferring to the Consolidated Waiver Program (CWP) from a nursing facility; or

(B) is applying for or receiving §1915(c) waiver services before the individual's [their] 21st birthday; and

(2) if under 21 years of age, [;]

~~{(A) [the participant must] access services through the Comprehensive Care Program. [; and]}~~

~~{(B) yearly Consolidated Waiver Program services are limited to 50% of the cost ceiling in §50.4(a)(5)(B) of this title (relating to Participant Eligibility Criteria)}~~

(b) An individual who meets Level of Care VIII criteria, as described in §9.239 of this title (relating to ICF/MR Level of Care VIII Criteria) [Individuals who meet the level-of-care criteria for an intermediate care facility for the mentally retarded with related conditions (ICF-MR/RC Level VIII) in accordance with §50.8(a)(2)(A) of this title (relating to Individual Level of Care Criteria)] and who wishes [wish] to fill a slot [slots] in the program designated for people who are deaf blind [deaf-blind] with multiple disabilities must provide medical documentation that verifies the existence of deaf blindness with multiple disabilities.

#### *§50.16. Individual Service Plan (ISP).*

(a) In this section, the term "individual" means a person applying for or enrolled in the Consolidated Waiver Program (CWP), unless the context clearly indicates otherwise.

(b) A CWP provider must coordinate with an interdisciplinary team to develop an individual service plan (ISP) that is based on an assessment of the individual and that meets the criteria in subsection (d) of this section.

(c) Before providing CWP services in accordance with the ISP, a CWP provider must obtain approval from the Department of Aging and Disability Services (DADS).

(d) To be approved by DADS, CWP services in the ISP must:

(1) be necessary to protect the individual's health and welfare in the community;

(2) supplement rather than replace the individual's natural supports and other non-CWP services and supports for which the individual may be eligible;

(3) prevent the individual's admission to an institution;

(4) be the most appropriate type and amount of services to meet the individual's needs; and

(5) be cost effective.

(e) To demonstrate that the CWP services in the ISP meet the requirements described in subsection (d) of this section, the CWP provider must submit to DADS the following:

(1) an assessment of the individual supporting the CWP services recommended by the CWP provider; and

(2) documentation that other sources for adaptive aids and medical supplies are unavailable.

(f) DADS conducts utilization review of an ISP and supporting documentation at any time to determine if the CWP services specified in the ISP meet the requirements described in subsection (d) of this section.

(1) The CWP provider must submit documentation supporting the ISP to DADS as requested by DADS.

(2) If DADS determines that one or more of the CWP services specified in the ISP do not meet the requirements described in subsection (d) of this section, DADS denies or reduces the service, modifies the ISP, and sends written notification to the individual and CWP provider.

(g) In addition to the utilization review conducted in accordance with subsection (f) of this section, DADS may conduct utilization reviews of CWP providers and CWP services based on utilization patterns and trends.

~~{(a) Waiver participants must have a person-directed individual service plan (ISP) for waiver services developed by the interdisciplinary team (IDT) as described in the waiver request.}~~

~~{(b) The IDT members must sign and date the ISP prior to implementation of the plan. The IDT members must certify in writing that the waiver services are necessary as an alternative to institutionalization and appropriate to meet the needs of the individual in the community.}~~

~~{(c) The Texas Department of Human Services (DHS) must approve and the IDT must update the ISP at least annually.}~~

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 7, 2008.

TRD-200801784

Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: May 18, 2008

For further information, please call: (512) 438-3734



#### 40 TAC §50.48, §50.50

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Aging and Disability Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

#### STATUTORY AUTHORITY

The repeal is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

The repeal affects Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021.

§50.48. *Utilization Review.*

§50.50. *Providing CWP Services When Costs Exceed the Individual Cost Limit.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 7, 2008.

TRD-200801785

Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: May 18, 2008

For further information, please call: (512) 438-3734



#### 40 TAC §50.28

The Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), an amendment to §50.28, concerning housing options in assisted living/residential care services, in Chapter 50, §1915(c) Consolidated Waiver Program.

#### BACKGROUND AND PURPOSE

The purpose of the amendment is to implement Senate Bill 1318, 80th Legislature, Regular Session, 2007, which amended Texas Health and Safety Code, §247.069. Section 247.069 requires

residential care programs, including the Consolidated Waiver Program (CWP), to provide consumers with the opportunity to choose an assisted living facility that meets construction-related licensing standards without regard to the number of units in the facility, if the consumers are advised of all other community-based service options. Senate Bill 1318 removed the specific facility requirements from §247.069, and, therefore, the specific facility requirements need to be removed from the rule.

#### SECTION-BY-SECTION SUMMARY

The proposed amendment to §50.28 removes the specific facility requirements listed in subsection (d).

#### FISCAL NOTE

Gordon Taylor, DADS Chief Financial Officer, has determined that, for the first five years the proposed amendment is in effect, enforcing or administering the amendment does not have foreseeable implications relating to costs or revenues of state or local governments.

#### SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed amendment will have no adverse economic effect on small businesses or micro-businesses, because the amendment imposes no new requirements that would cause them to alter their business practices.

#### PUBLIC BENEFIT AND COSTS

Barry Waller, DADS Assistant Commissioner for Provider Services, has determined that, for each year of the first five years the amendment is in effect, the public benefit expected as a result of enforcing the amendment is that DADS rules will reflect current statutory requirements and that individuals receiving CWP services in non-apartment settings will be given a choice of living in a larger assisted living facility.

Mr. Waller anticipates that there will not be an economic cost to persons who are required to comply with the amendment. The amendment will not affect a local economy.

#### TAKINGS IMPACT ASSESSMENT

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

#### PUBLIC COMMENT

Questions about the content of this proposal may be directed to Claudia Mansbridge at (512) 438-3444 in DADS' Provider Services Division. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-029, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030, or street address 701 West 51st St., Austin, TX 78751; faxed to (512) 438-5759; or e-mailed to [rulescomments@dads.state.tx.us](mailto: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 either (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 029" in the subject line.



## STATUTORY AUTHORITY

The amendment is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Health and Safety Code, §247.069, which provides consumer choice for assisted living in community care programs.

The amendment affects Texas Government Code, §531.0055 and §531.021; Texas Human Resources Code, §161.021; and Texas Health and Safety Code, §247.069.

§50.28. *Housing Options in Assisted Living/Residential Care Services.*

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

(d) A residential care non-apartment setting is a licensed assisted living facility that has living units that do not meet either the definition of an assisted living apartment or a residential care apartment. A living unit must not exceed double occupancy. ~~[The facility must be:]~~

~~{(1) a freestanding building with a licensed capacity of 16 or fewer beds; or}~~

~~{(2) a building that:}~~

~~{(A) has never been licensed by the Department of Aging and Disability Services as anything other than an assisted living facility;}~~

~~{(B) is not physically connected to a nursing facility licensed under Texas Health and Safety Code, Chapter 242;}~~

~~{(C) was constructed before September 1, 2005; and}~~

~~{(D) meets all other requirements of this chapter.}~~

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 3, 2008.

TRD-200801747

Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: May 18, 2008

For further information, please call: (512) 438-3734



## CHAPTER 51. MEDICALLY DEPENDENT CHILDREN PROGRAM

### SUBCHAPTER A. INTRODUCTION

#### 40 TAC §51.103

The Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), an amendment to §51.103, concerning definitions, in Chapter 51, Medically Dependent Children Program (MDCP).

#### BACKGROUND AND PURPOSE

The purpose of the amendment is to implement a rule change necessitated by a project under the direction of HHSC that will replace the state case-mix system for provider payments, which is based on the Texas Index for Level of Effort (TILE) model, with the federal case-mix system, which is based on the Resource Utilization Group (RUG) model. The TILE-to-RUG project implements Texas Health and Safety Code, §§242.221 et seq, which requires DADS to use an automated system for nursing facility reimbursement and an assessment form designed by the United States Health Care Financing Administration (now the Centers for Medicare and Medicaid Services). As allowed by Texas Health and Safety Code, §242.221(b), DADS and HHSC have elected to add other components of the state Medicaid program, such as MDCP, to the automated system of reimbursement and, therefore, to require use of an assessment form similar to the form on which nursing facility residents are assessed. The reference in §51.103(13) to an individual's TILE score will not be applicable under the RUG system and, therefore, needs to be revised.

The amendment also updates terminology in response to House Bill 2426, 80th Legislature, Regular Session, 2007, which amended the Texas Occupations Code, Chapter 301, and changed the name of the Board of Nurse Examiners for the State of Texas (BNE) to the Texas Board of Nursing.

#### SECTION-BY-SECTION SUMMARY

The amendment to §51.103(8) revises the definition of "BNE" so that references in the chapter to the BNE will mean the Texas Board of Nursing. The proposal also amends the definitions in §51.103(30), (35), and (41) to update references to the BNE.

The amendment to §51.103(13) revises the definition of "cost ceiling" to eliminate references to an individual's TILE score and to the specific percentage of the nursing facility reimbursement rate that is associated with an individual's cost ceiling. The percentage was revised in the 2008-2009 General Appropriations Act (Article II, Department of Aging and Disability Services, Rider 45, House Bill 1, 80th Legislature, Regular Session, 2007) and is better placed in a section other than the definitions section. An amendment to §51.203, proposed elsewhere in this issue of the *Texas Register*, includes the revised percentage of the nursing facility reimbursement rate that is associated with an individual's cost ceiling.

The definition of "TILE" in §51.103(49) is deleted from the section, because it is now an obsolete term and is no longer used in Chapter 51.

#### FISCAL NOTE

Gordon Taylor, DADS Chief Financial Officer, has determined that, for the first five years the proposed amendment is in effect, enforcing or administering the amendment does not have foreseeable implications relating to costs or revenues of state or local governments.

#### SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed amendment will not have an adverse economic effect on small businesses or micro-businesses, because the amendment imposes no new requirements that would cause them to alter their business practices.

#### PUBLIC BENEFIT AND COSTS

Barry Waller, DADS Assistant Commissioner for Provider Services, has determined that, for each year of the first five years the amendment is in effect, the public benefit expected as a result of enforcing the amendment is that DADS' rules will reflect accurate terminology and provide accurate information to MDCP providers.

Mr. Waller anticipates that there will not be an economic cost to persons who are required to comply with the amendment. The amendment will not affect a local economy.

#### TAKINGS IMPACT ASSESSMENT

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

#### PUBLIC COMMENT

Questions about the content of this proposal may be directed to Lynn Cooper at (512) 438-3519 in DADS' Provider Services Division. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-013, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030, or street address 701 West 51st St., Austin, TX 78751; faxed to (512) 438-5759; or e-mailed to [rulescomments@dads.state.tx.us](mailto: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 either (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 013" in the subject line.

#### STATUTORY AUTHORITY

The amendment is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Health and Safety Code, §242.226, which authorizes the adoption of rules necessary to improve the efficiency of the reimbursement process for the state Medicaid system and maximize the automated reimbursement system's capabilities.

The amendment affects Texas Government Code, §531.0055 and §531.021; Texas Human Resources Code, §161.021; and Texas Health and Safety Code, §242.226.

#### §51.103. Definitions.

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

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

(8) BNE--~~Formerly, this referred to the~~ Board of Nurse Examiners for the State of Texas. It now refers to the Texas Board of Nursing.

(9) - (12) (No change.)

(13) Cost ceiling--The maximum dollar amount available to an individual for MDCP services per IPC year[- ~~which is based on 63% of the nursing facility rate associated with the individual's TILE score~~].

(14) - (29) (No change.)

(30) LVN--Licensed vocational nurse. A person licensed by the Texas Board of Nursing [BNE] or who holds a license from another state recognized by the Texas Board of Nursing [BNE] to practice vocational nursing in Texas.

(31) - (34) (No change.)

(35) Practitioner--A physician currently licensed in Texas, Louisiana, Arkansas, Oklahoma, or New Mexico; a physician assistant currently licensed in Texas; or an RN approved by the Texas Board of Nursing [BNE] to practice as an advanced practice nurse.

(36) - (40) (No change.)

(41) RN--Registered nurse. A person licensed by the Texas Board of Nursing [BNE] or who holds a license from another state recognized by the Texas Board of Nursing [BNE] to practice professional nursing in Texas.

(42) - (48) (No change.)

~~[(49) TILE--Texas Index for Level of Effort. The system used to identify the intensity of the care needs of a person in a Texas nursing facility and in MDCP.]~~

(49) ~~[(50)]~~ Transition assistance services--One-time service provided to a Medicaid-eligible resident of a nursing facility located in Texas to assist the resident in moving from the nursing facility into the community to receive MDCP services.

(50) ~~[(51)]~~ Working day--Any day except Saturday, Sunday, a state holiday, or a federal holiday.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 7, 2008.

TRD-200801804

Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: May 18, 2008

For further information, please call: (512) 438-3734



## CHAPTER 51. MEDICALLY DEPENDENT CHILDREN PROGRAM

The Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability

Services (DADS), an amendment to §51.203, concerning eligibility requirements; new §51.409, concerning utilization review; and the repeal of §51.239, concerning the provision of services when costs exceed the individual cost ceiling, in Chapter 51, Medically Dependent Children Program.

#### BACKGROUND AND PURPOSE

The purpose of the amendment, new section, and repeal is to implement the 2008-09 General Appropriations Act (Article II, Department of Aging and Disability Services, Rider 45, H.B. 1, 80th Legislature, Regular Session, 2007), concerning waiver program cost limits. Rider 45 places an individual's annual cost limit for Medically Dependent Children Program (MDCP) services at 50 percent of the reimbursement rate that would have been paid for the same individual to receive services in a nursing facility; authorizes DADS, under certain conditions, to use general revenue to pay for services that exceed the cost limit; requires DADS to use general revenue to continue to provide services to a person who was receiving waiver program services, such as MDCP services, on September 1, 2005, at a cost that exceeded the waiver program's cost limit; and requires DADS to employ utilization management and utilization review practices as necessary to ensure that the appropriate scope and level of services are provided to an individual receiving services through a waiver program.

#### SECTION-BY-SECTION SUMMARY

The proposed amendment to §51.203 implements Rider 45 provisions by: (1) changing the cost limit from 63 percent of the reimbursement rate that would have been paid for the same individual to receive services in a nursing facility (currently in §51.101(13)) to 50 percent of the reimbursement rate that would have been paid for the same individual to receive services in a nursing facility; and (2) providing a cross-reference to 40 TAC §40.1 proposed as a new section elsewhere in this issue of the *Texas Register*, which governs the use of general revenue, under certain conditions, to pay for services that exceed the cost limit.

Proposed new §51.409 states that DADS may conduct utilization reviews of MDCP providers and MDCP services based on utilization patterns and trends to implement Rider 45's requirement that DADS ensure that the appropriate scope and level of services are provided to an individual receiving services through a waiver program.

The proposed repeal of §51.239 eliminates a rule governing exceptions to the MDCP cost ceiling. The Centers for Medicare and Medicaid Services has indicated that exceptions to the cost ceiling may not be granted and, therefore, this rule is no longer necessary. The provisions in §51.239 covering an individual who was receiving MDCP services on or before September 1, 2005, at a cost that exceeded the MDCP individual cost ceiling have been revised to comply with Rider 45 and are included in proposed new §40.1, published elsewhere in this issue of the *Texas Register*.

#### FISCAL NOTE

Gordon Taylor, DADS Chief Financial Officer, has determined that, for the first five years the proposed amendment, new section, and repeal are in effect, enforcing or administering the amendment, new section, and repeal does not have foreseeable implications relating to costs or revenues of state or local governments.

#### SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed amendment, new section, and repeal will not have an adverse economic effect on small businesses or micro-businesses, because the proposal places no new requirements on small businesses or micro-businesses.

#### PUBLIC BENEFIT AND COSTS

Barry Waller, DADS Assistant Commissioner for Provider Services, has determined that, for each year of the first five years the amendment, new section, and repeal are in effect, the public benefit expected as a result of enforcing the amendment, new section, and repeal is that DADS procedures for addressing situations in which an individual cannot be served within the individual cost limit of a waiver program and whose health and safety cannot be ensured in another available living arrangement will be clarified.

Mr. Waller anticipates that there will not be an economic cost to persons who are required to comply with the amendment, new section, and repeal. The amendment, new section, and repeal will not affect a local economy.

#### TAKINGS IMPACT ASSESSMENT

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

#### PUBLIC COMMENT

Questions about the content of this proposal may be directed to Kristi Guilbeaux at (512) 438-2756 in DADS' Provider Services Division. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-010, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030, or street address 701 West 51st St., Austin, TX 78751; faxed to (512) 438-5759; or e-mailed to [rulescomments@dads.state.tx.us](mailto: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 either (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 010" in the subject line.

### SUBCHAPTER B. ELIGIBILITY, ENROLLMENT, AND SERVICES

#### DIVISION 1. ELIGIBILITY

##### 40 TAC §51.203

##### 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 Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

The amendment affects Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021.

*§51.203. Eligibility Requirements.*

To be eligible to participate in MDCP, a person must:

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

(4) meet the financial Medicaid eligibility criteria described in Texas Administrative Code, Title 1, [4 TAC] Chapter 358 (relating to Medicaid Eligibility), based on the person's income and resources [of the individual];

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

(7) have an IPC with a cost for MDCP services at or below 50 percent of the reimbursement rate that would have been paid for the same individual to receive nursing facility services considering all other resources, including resources described in §40.1 of this title (relating to Use of General Revenue for Services Exceeding the Individual Cost Limit of a Waiver Program) [that a practitioner has signed]; and

(8) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 7, 2008.

TRD-200801786

Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: May 18, 2008

For further information, please call: (512) 438-3734



### DIVISION 3. SERVICES

#### 40 TAC §51.239

*(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Department of Aging and Disability Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

#### STATUTORY AUTHORITY

The repeal is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

The repeal affects Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021.

*§51.239. Providing MDCP Services When Costs Exceed the Individual Cost Ceiling.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 7, 2008.

TRD-200801787

Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: May 18, 2008

For further information, please call: (512) 438-3734



### SUBCHAPTER D. PROVIDER REQUIREMENTS

#### DIVISION 1. CONTRACTING REQUIREMENTS

#### 40 TAC §51.409

#### STATUTORY AUTHORITY

The new section 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 Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

The new section affects Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021.

*§51.409. Utilization Review.*

DADS may conduct utilization reviews of MDCP providers and MDCP services based on utilization patterns and trends.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 7, 2008.

TRD-200801788

Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: May 18, 2008

For further information, please call: (512) 438-3734



## CHAPTER 60. CONTRACTING TO PROVIDE PROGRAMS OF ALL-INCLUSIVE CARE FOR THE ELDERLY (PACE)

### 40 TAC §60.16

The Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), an amendment to §60.16, concerning medical necessity assessments, in Chapter 60, Contracting to Provide Programs of All-Inclusive Care for the Elderly (PACE).

#### BACKGROUND AND PURPOSE

The purpose of the amendment is to implement a rule change necessitated by a project under the direction of HHSC that will replace the state case-mix system for provider payments, which is based on the Texas Index for Level of Effort (TILE) model, with the federal case-mix system, which is based on the Resource Utilization Group (RUG) model. The TILE-to-RUG project implements Texas Health and Safety Code, §§242.221 et seq, which requires DADS to use an automated system for nursing facility reimbursement and an assessment form designed by the United States Health Care Financing Administration (now the Centers for Medicare and Medicaid Services). As allowed by Texas Health and Safety Code, §242.221(b), DADS and HHSC have elected to add other components of the state Medicaid program, such as PACE, to the automated system of reimbursement and, therefore, to require use of an assessment form similar to the form on which nursing facility residents are assessed. As a result, DADS will replace its Client Assessment, Review and Evaluation (CARE) form (also known as Form 3652) with forms based on the federal Minimum Data Set (MDS) assessment for making medical necessity determinations and calculating the RUG. For the purpose of this rule, the community-based assessment is termed "the medical necessity and level of care assessment."

#### SECTION-BY-SECTION SUMMARY

The amendment replaces references to the CARE form and to the TILE assessment with references to the medical necessity and level of care assessment. It also corrects outdated references to the Texas Department of Human Services (DHS) and replaces them with references to either DADS or to HHSC, as appropriate.

#### FISCAL NOTE

Gordon Taylor, DADS Chief Financial Officer, has determined that, for the first five years the proposed amendment is in effect, enforcing or administering the amendment does not have foreseeable implications relating to costs or revenues of state or local governments.

#### SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed amendment will not have an adverse economic effect on small businesses or micro-businesses, because the amendment imposes no new requirements that would cause them to alter their business practices.

#### PUBLIC BENEFIT AND COSTS

Barry Waller, DADS Assistant Commissioner for Provider Services, has determined that, for each year of the first five years the amendment is in effect, the public benefit expected as a result of

enforcing the amendment is that DADS rules will provide accurate requirements for PACE providers. The amendment, which requires providers to conduct assessments of individuals served in the community on a form similar to the form on which nursing facility residents are assessed, will allow for better comparison of services in Texas to services in other states and provide for more streamlined and integrated business processes. These improvements will in turn lead to opportunities for improved services for DADS' consumers.

Mr. Waller anticipates that there will not be an economic cost to persons who are required to comply with the amendment. The amendment will not affect a local economy.

#### TAKINGS IMPACT ASSESSMENT

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

#### PUBLIC COMMENT

Questions about the content of this proposal may be directed to Pam Lovell at (512) 438-2489 in DADS' Provider Services Division. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-012, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030, or street address 701 West 51st St., Austin, TX 78751; faxed to (512) 438-5759; or e-mailed to [rulescomments@dads.state.tx.us](mailto: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 either (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 012" in the subject line.

#### STATUTORY AUTHORITY

The amendment is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Health and Safety Code, §242.226, which authorizes the adoption of rules necessary to improve the efficiency of the reimbursement process for the state Medicaid system and maximize the automated reimbursement system's capabilities.

The amendment affects Texas Government Code, §531.0055 and §531.021; Texas Human Resources Code, §161.021; and Texas Health and Safety Code, §242.226.

§60.16. *Medical Necessity Assessments.*

(a) The provider agency must complete a medical necessity and level of care assessment [Client Assessment and Review Evaluation (CARE) form] based on the client's total needs.

(b) The provider agency must electronically transmit ~~or mail~~ the medical necessity and level of care assessment [CARE form] to the agency with which the Texas Health and Human Services Commission (HHSC) [Department of Human Services (DHS)] contracts for medical necessity determinations.

(c) The provider agency must enroll any eligible applicant within 60 calendar days after ~~of~~ the date of the medical necessity and level of care assessment [CARE form].

(d) The provider agency must complete another medical necessity and level of care assessment [CARE form] and submit it to the agency with which HHSC [DHS] contracts for medical necessity determinations 12 months after the initial assessment.

(1) If the client meets the state's medical necessity criteria and the client has an irreversible or progressive diagnosis, or a terminal illness that could reasonably be expected to result in death in the next six months, and the Department of Aging and Disability Services (DADS) [DHS] determines that there is no reasonable expectation of improvement or significant change in the client's condition because of severity of a chronic condition or the degree of impairment of functional capacity, DADS [DHS] will permanently waive the annual recertification requirement and the client may be deemed to be continually eligible for PACE. The medical necessity and level of care assessment [CARE form] must have sufficient documentation to substantiate the client's prognosis and the client's functional capacity.

(2) In addition, if DADS [DHS] determines that a PACE client no longer meets the medical necessity criteria for nursing facility care, the client may be deemed to continue to be eligible for PACE until the next annual reassessment, if, in the absence of PACE services, it is reasonable to expect that the client would meet the nursing facility medical necessity criteria within the next six months.

(e) The provider agency's licensed nurse must complete the medical necessity and level of care assessment [CARE form] for the provider agency. The licensed nurse must be registered with the agency with which HHSC [DHS] contracts for medical necessity determinations as having, within the last two years, received and passed a state-approved [Texas Health and Human Services Commission approved] training on the medical necessity and level of care assessment [Texas Index for Level of Effort (TILE) assessment].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 7, 2008.

TRD-200801805

Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: May 18, 2008

For further information, please call: (512) 438-3734



## CHAPTER 83. AREA AGENCY ON AGING ADMINISTRATIVE REQUIREMENTS

### 40 TAC §§83.1, 83.2, 83.11

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Aging and Disability Services or in the Texas Register*

*office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), the repeal of §83.1, concerning area agency on aging administrative responsibilities, §83.2, concerning area agency on aging fiscal responsibilities, and §83.11, concerning ombudsman services, in Chapter 83, Area Agency on Aging Administrative Requirements.

#### BACKGROUND AND PURPOSE

HHSC, on behalf of DADS, is proposing new rules that govern area agencies on aging (AAAs) and implementation of the Older Americans Act of 1965, as amended in 2006, elsewhere in this issue of the *Texas Register*. As part of the proposal to rewrite and reorganize the AAA rules in Chapter 85, DADS proposes to repeal obsolete rules in Chapter 83 that are no longer required in the rule base.

#### SECTION-BY-SECTION SUMMARY

The repeal of §83.1 deletes the requirements governing administrative responsibilities, including requirements related to AAA structure, accountability, contracted provider review, targeting, uniform telephone listings, identification of facilities, and emergency management.

The repeal of §83.2 deletes the requirements governing fiscal responsibilities, including requirements related to purchases, independent audit, an indirect costs allocation plan, disallowance of costs, recapture of payments, budget submissions, contracting, service match, program income, adequate proportion, and ombudsman maintenance of effort.

The repeal of §83.11 deletes the requirements governing ombudsman services, including requirements related to eligibility, access of managing local ombudsmen, responsibilities of contractors to operate local ombudsman entities, complaint process, certification program, and responsibilities of certified volunteer ombudsmen.

#### FISCAL NOTE

Gordon Taylor, DADS Chief Financial Officer, has determined that, for the first five years after the repeal, there are no foreseeable implications relating to costs or revenues of state or local governments.

#### SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed repeal will have no adverse economic effect on small businesses or micro-businesses, because the repeal applies only to AAAs, which are public or private nonprofit agencies or organizations. A small or micro-business is defined, in part, as a legal entity that is formed for the purpose of making a profit.

#### PUBLIC BENEFIT AND COSTS

Gary Jessee, DADS Assistant Commissioner for Access and Intake, has determined that, for each year of the first five years after the repeal, the public benefit expected as a result of repealing the sections is to accommodate the reorganization of AAA rules in Chapter 85, resulting in clearer, more up-to-date rules.

Mr. Jessee anticipates that there will not be an economic cost to persons who are affected by the repeal. The repeal will not affect a local economy.

## TAKINGS IMPACT ASSESSMENT

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

## PUBLIC COMMENT

Questions about the content of this proposal may be directed to Toni Packard at (512) 438-4290 in DADS' Access and Intake Division, Area Agencies on Aging Section. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-045, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030, or street address 701 West 51st St., Austin, TX 78751; faxed to (512) 438-5759; or e-mailed to [rulescomments@dads.state.tx.us](mailto: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 either (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 045" in the subject line.

## STATUTORY AUTHORITY

The repeal is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

The repeal implements Texas Government Code, §531.0055, and Texas Human Resources Code, §161.021.

§83.1. *Area Agency on Aging Administrative Responsibilities.*

§83.2. *Area Agency on Aging Fiscal Responsibilities.*

§83.11. *Ombudsman Services.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 7, 2008.

TRD-200801810

Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: May 18, 2008

For further information, please call: (512) 438-3734



## CHAPTER 84. GENERAL SERVICE REQUIREMENTS

**40 TAC §§84.1 - 84.3, 84.5 - 84.9, 84.11, 84.13, 84.15, 84.17, 84.19, 84.21, 84.23**

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Aging and Disability Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), the repeal of Chapter 84, General Service Requirements, consisting of §84.1, concerning general service requirements; §84.2, concerning services definitions; §84.3, concerning transportation service requirements for the elderly; §84.5, concerning nutrition service requirements; §84.6, concerning participant assessment; §84.7, concerning homemaker service requirements; §84.8, concerning data management; §84.9, concerning personal assistance service requirements; §84.11, concerning health promotion requirements; §84.13, concerning adult day care service requirements; §84.15, concerning emergency response service standards; §84.17, concerning in-home service requirements for frail older adults; §84.19, concerning residential repair services; §84.21, concerning senior center requirements; and §84.23, concerning respite voucher program.

## BACKGROUND AND PURPOSE

HHSC, on behalf of DADS, is proposing new rules that govern area agencies on aging (AAAs) and implementation of the Older Americans Act of 1965, as amended in 2006, elsewhere in this issue of the *Texas Register*. As part of the proposal to rewrite and reorganize the AAA rules in Chapter 85, DADS proposes to repeal obsolete rules in Chapter 84 that are no longer required in the rule base.

## SECTION-BY-SECTION SUMMARY

The repeal of §84.1 deletes general service requirements for subcontractors of AAAs, including requirements related to eligibility, confidentiality of records, complaint and appeals procedures, recordkeeping, reporting, contributions, insurance, facilities, and contractor and subcontractor responsibilities for compliance.

The repeal of §84.2 deletes the service definitions for the chapter.

The repeal of §84.3 deletes the requirements for providing transportation services to the elderly, including requirements related to transit provider requirements, methods of service delivery, training, and personal use of vehicles.

The repeal of §84.5 deletes the requirements for providing congregate and home-delivered nutrition services, including requirements related to menus, modified diets, meal packaging, training, and complaints.

The repeal of §84.6 deletes the requirements for participant assessment services, including a description of service activities and requirements related to recordkeeping and monitoring.

The repeal of §84.7 deletes the requirements for AAAs in providing homemaker services, including a description of service activities and staff qualifications.

The repeal of §84.8 deletes the requirements for data management services.

The repeal of §84.9 deletes the requirements for AAAs in providing personal assistance services, including a description of service activities.

The repeal of §84.11 deletes the requirements for AAAs in providing health services, including a description of service activities.

The repeal of §84.13 deletes the requirements for AAAs in providing adult day services.

The repeal of §84.15 deletes the requirements for AAAs in providing emergency response services (ERS), including requirements related to staffing and maintenance of records.

The repeal of §84.17 deletes the requirements for AAAs in providing in-home services for frail older adults, including a description of service activities and requirements related to program participant eligibility.

The repeal of §84.19 deletes the requirements for AAAs in providing residential repair services, including the purpose of the service, a description of approved services, and prohibited activities.

The repeal of §84.21 deletes the requirements for senior centers, including the operation of the physical facility and the designation of focal points.

The repeal of §84.23 deletes the requirements for AAAs in implementing a respite voucher program, including targeting requirements and caregiver responsibilities.

#### FISCAL NOTE

Gordon Taylor, DADS Chief Financial Officer, has determined that, for the first five years after the repeal, there are no foreseeable implications relating to costs or revenues of state or local governments.

#### SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed repeal will have no adverse economic effect on small businesses or micro-businesses, because the repeal applies only to AAAs, which are public or private nonprofit agencies or organizations. A small or micro-business is defined, in part, as a legal entity that is formed for the purpose of making a profit.

#### PUBLIC BENEFIT AND COSTS

Gary Jessee, DADS Assistant Commissioner for Access and Intake, has determined that, for each year of the first five years after the repeal, the public benefit expected as a result of repealing the sections is to accommodate the reorganization of AAA rules in Chapter 85, resulting in clearer, more up-to-date rules.

Mr. Jessee anticipates that there will not be an economic cost to persons who are affected by the repeal. The repeal will not affect a local economy.

#### TAKINGS IMPACT ASSESSMENT

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

#### PUBLIC COMMENT

Questions about the content of this proposal may be directed to Toni Packard at (512) 438- 4290 in DADS' Access and Intake Division, Area Agencies on Aging Section. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-045, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030, or street address 701 West 51st St., Austin, TX 78751; faxed to (512) 438-5759; or e-mailed to [rulescomments@dads.state.tx.us](mailto: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 either (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 045" in the subject line.

#### STATUTORY AUTHORITY

The repeal is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

The repeal implements Texas Government Code, §531.0055, and Texas Human Resources Code, §161.021.

- §84.1. *General Service Requirements.*
- §84.2. *Services Definitions.*
- §84.3. *Transportation Service Requirements for the Elderly.*
- §84.5. *Nutrition Service Requirements.*
- §84.6. *Participant Assessment.*
- §84.7. *Homemaker Service Requirements.*
- §84.8. *Data Management.*
- §84.9. *Personal Assistance Service Requirements.*
- §84.11. *Health Promotion Requirements.*
- §84.13. *Adult Day Care Service Requirements.*
- §84.15. *Emergency Response Service Standards.*
- §84.17. *In-Home Service Requirements for Frail Older Adults.*
- §84.19. *Residential Repair Services.*
- §84.21. *Senior Center Requirements.*
- §84.23. *Respite Voucher Program.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 7, 2008.

TRD-200801811

Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: May 18, 2008

For further information, please call: (512) 438-3734





## CHAPTER 85. IMPLEMENTATION OF THE OLDER AMERICANS ACT

The Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), new Chapter 85, Implementation of the Older Americans Act, consisting of Subchapter A, §85.2, concerning definitions; Subchapter C, §§85.201, 85.202, and 85.208, concerning AAA administrative requirements; Subchapter D, §§85.301 - 85.310, concerning Older Americans Act services; and Subchapter E, §85.401, concerning Long-Term Care Ombudsman Program.

### BACKGROUND AND PURPOSE

The proposed rules in new Chapter 85 describe the services provided by and the administrative and fiscal responsibilities of the 28 area agencies on aging (AAAs) in the state of Texas. A AAA is a public or private nonprofit agency or organization, designated by DADS in accordance with the Older Americans Act, §305(a)(2)(A), that develops and implements an area plan to provide services to program participants.

The new rules are proposed in order to rewrite and reorganize DADS rules so that they are easier for AAAs and the public to use and understand. The proposal will reorganize current AAA requirements into new subchapters, clarify and update rule language to reflect current agency practice, correct rule cross-references, and ensure that the rules that govern AAAs are more consistent with other DADS rules, including those rules that relate to services similar to those provided by a AAA. In particular, the new rules contain provisions that permit a AAA to provide homemaker services as a consumer directed service, a practice already in place.

Further, the new rules are proposed to comply with changes to the Older Americans Act of 1965, as amended in 2006. Specifically, the new rules permit a grandparent, step-grandparent, or relative by blood, marriage, or adoption who is 55 years of age or older and caring for a child or an individual with a disability to receive respite voucher services if other eligibility criteria are met. The previous federal law required the grandparent, step-grandparent, or relative to be 60 years of age or older and be caring for a child 18 years of age or younger. The rules also contain a reference to the new targeting requirement in the Older Americans Act for a AAA to give priority to older individuals at risk for institutional placement. In addition, the new rules more accurately reflect the requirements of the Ombudsman Program set forth in §711 and §712 of the Older Americans Act.

In a related proposal, HHSC, on behalf of DADS, proposes to repeal obsolete and duplicative rule language in Chapters 83, 84, and 100 of this title elsewhere in this issue of the *Texas Register*.

### SECTION-BY-SECTION SUMMARY

Proposed new §85.2 contains the definitions for the chapter; the definitions were previously located in §84.2.

Proposed new §85.201 describes the administrative responsibilities of a AAA, including the requirements related to the structure of a AAA; the procedures for a AAA to review a subcontractor's programs; and the requirements to report abuse, neglect, or exploitation of a program participant.

Proposed new §85.202 describes the fiscal responsibilities of a AAA, including the responsibilities related to the purchase of

goods and services, and the requirements for audits, Indirect Cost Allocation Plans, and service and administrative match.

Proposed new §85.208 describes the requirements for the provision of data management.

Proposed new §85.301 describes the requirements for the provision of transportation services, including requirements related to program participant eligibility and service provider operations.

Proposed new §85.302 establishes the requirements for the provision of nutrition services, including requirements related to program participant eligibility, facilities and food services, meal costs, menus, delivery of home-delivered meals, training of service provider staff persons, and political activity at congregate meal sites.

Proposed new §85.303 describes the requirements for the provision of participant assessment services, including requirements related to the provision of services, conducting an assessment and reassessment, and authorization of services.

Proposed new §85.304 describes the requirements for the provision of homemaker services, including a description of the types of activities that qualify as homemaker services, prohibited activities, and staffing qualifications. In addition, this new section permits a AAA to provide homemaker services as an agency-managed service or a consumer-directed service, or as both.

Proposed new §85.305 describes the requirements for the provision of personal assistance services, including a description of the types of activities that qualify as personal assistance services and prohibited activities.

Proposed new §85.306 describes the requirements for the provision of adult day services, and states that adult day services consist of nursing services, physical rehabilitative services, nutrition services, socialization activities, and transportation services.

Proposed new §85.307 describes the requirements for emergency response services, including that a licensed vendor must provide such services, and includes requirements relating to program participant eligibility, service activities, prerequisites to service, system checks, and equipment maintenance.

Proposed new §85.308 describes the requirements for residential repair services, states that a AAA must enter into a vendor agreement for the provision of residential repair services, and includes a description of activities that qualify as residential repair services.

Proposed new §85.309 describes the requirements for senior centers, community facilities used for the organization and provision of a broad spectrum of services for persons 60 years of age or older, and includes requirements related to operation of a senior center, political activity and religious activity at a center, change in ownership, and insurance requirements.

Proposed new §85.310 describes the requirements for respite voucher services, including requirements relating to program participant eligibility, targeting, application process, and qualifications of a respite provider.

Proposed new §85.401 describes the requirements for the Long-Term Care Ombudsman Program, including requirements related to qualifications of a certified ombudsman, access to residents and records, disclosure of information, volunteer program management, and specific services provided through the program.

### FISCAL NOTE

Gordon Taylor, DADS Chief Financial Officer, has determined that, for the first five years the proposed new sections are in effect, enforcing or administering the new sections does not have foreseeable implications relating to costs or revenues of state or local governments.

#### SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed new sections will not have an adverse economic effect on small businesses or micro-businesses, because the rules apply only to AAAs, which are public or private nonprofit agencies or organizations. A small or micro-business is defined, in part, as a legal entity that is formed for the purpose of making a profit.

#### PUBLIC BENEFIT AND COSTS

Gary Jessee, DADS Assistant Commissioner for Access and Intake, has determined that, for each year of the first five years the new sections are in effect, the public benefit expected as a result of enforcing the new sections is DADS' rules will be compliant with the Older Americans Act of 1965, as amended in 2006. In addition, the rewritten AAA rules will be easier for AAAs and the public to use and understand.

Mr. Jessee anticipates that there will not be an economic cost to persons who are required to comply with the new sections. The new sections will not affect a local economy.

#### TAKINGS IMPACT ASSESSMENT

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

#### PUBLIC COMMENT

Questions about the content of this proposal may be directed to Toni Packard at (512) 438-4290 in DADS' Access and Intake Division, Area Agencies on Aging Section. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-045, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030, or street address 701 West 51st St., Austin, TX 78751; faxed to (512) 438-5759; or e-mailed to [rulescomments@dads.state.tx.us](mailto: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 either (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 045" in the subject line.

### SUBCHAPTER A. DEFINITIONS

#### 40 TAC §85.2

##### STATUTORY AUTHORITY

The new section is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules

governing the delivery of services to persons who are served or regulated by DADS.

The new section implements Texas Government Code, §531.0055, and Texas Human Resources Code, §161.021.

##### §85.2. Definitions.

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

(1) AAA--An area agency on aging (commonly referred to as a "triple A"). A public or private nonprofit agency or organization, designated by DADS in accordance with the Older Americans Act, §305(a)(2)(A), that develops and implements an area plan.

(2) Adult--A person who is 18 years of age or older.

(3) Alarm call--A signal transmitted from an electronic monitoring system to a service provider's response center indicating a program participant needs immediate assistance.

(4) Area plan--A plan developed and implemented by a AAA for its planning and service area that establishes a comprehensive and coordinated system of services in accordance with the Older Americans Act, §306(a).

(5) Business day--Any day except a Saturday, Sunday, or legal holiday listed in Texas Government Code, §662.021.

(6) Certified ombudsman--A certified staff ombudsman or a certified volunteer ombudsman.

(7) Certified staff ombudsman--A person who:

(A) meets the qualifications described in §85.401(g)(1) of this chapter (relating to Long-Term Care Ombudsman Program);

(B) is employed by or is contracting with a AAA or nonprofit organization designated in accordance with §85.401(b) of this chapter; and

(C) performs activities for the AAA or designated nonprofit organization to implement the Long-Term Care Ombudsman Program.

(8) Certified volunteer ombudsman--A person who:

(A) meets the qualifications described in §85.401(g)(1) of this chapter;

(B) is not employed by or contracting with a AAA or nonprofit organization designated in accordance with §85.401(b) of this chapter; and

(C) voluntarily performs activities for the AAA or designated nonprofit organization to implement the Long-Term Care Ombudsman Program.

(9) Contract--A binding agreement between a AAA and a subcontractor obligating the subcontractor to take responsibility for the complete implementation and administration of a service described in this chapter, including determining which individuals are eligible to receive such a service and providing the service to such individuals.

(10) Child--A person who is under 18 years of age.

(11) Cost reimbursement--Payment of actual costs incurred for goods or services.

(12) DADS--The Department of Aging and Disability Services. DADS is the sole state agency (also referred to as the "state unit on aging") designated in accordance with the Older Americans Act, §305(a)(1).

(13) Day--A calendar day, unless otherwise specified.

(14) Direct purchase--When items or services are obtained from a vendor.

(15) Disability (except when such term is used in the phrase "severe disability")--A disability attributable to mental or physical impairment, or a combination of mental and physical impairments, that results in substantial functional limitations in one or more of the following areas of major life activity:

- (A) self-care;
- (B) receptive and expressive language;
- (C) learning;
- (D) mobility;
- (E) self-direction;
- (F) capacity for independent living;
- (G) economic self-sufficiency;
- (H) cognitive functioning; and
- (I) emotional adjustment.

(16) Electric monitoring system--The equipment used to allow a program participant to call an ERS vendor for assistance in the event of an emergency. Such equipment includes an alert bracelet or necklace that can be activated by the program participant and the signal box to receive the call from the program participant.

(17) ERS--Emergency response services.

(18) Fixed unit rate--A negotiated cost for a service, cost per program participant, or cost per event set forth in a contract or vendor agreement, that remains the same until the contract or vendor agreement is renegotiated, regardless of the amount of services provided, the number of program participants served, or the number of events that occur.

(19) Friendly visitor--A volunteer for a AAA or nonprofit organization designated in accordance with §85.401(b) of this chapter who:

- (A) is not a certified ombudsman or ombudsman intern;
- (B) meets the qualifications described in §85.401(g)(2) of this chapter; and
- (C) performs activities to further the mission of the Long-Term Care Ombudsman Program such as visiting residents and coordinating social activities.

(20) Legally authorized representative--A person authorized by law to act on behalf of a person with regard to a matter described in this chapter, and may include:

- (A) a parent, guardian, or managing conservator of a minor;
- (B) the guardian of an adult;
- (C) an agent to whom authority to make health care decisions is delegated under a medical power of attorney in accordance with state law; or
- (D) the representative of a deceased person.

(21) Local ombudsman entity--A AAA or other entity designated by DADS to provide services in the Long-Term Care Ombudsman Program in accordance with the Older Americans Act, §712(a)(5)(A).

(22) LTC facility--Long-term care facility. A nursing facility licensed or required to be licensed in accordance with Texas Health and Safety Code, Chapter 242, and Chapter 19 of this title (relating to Nursing Facility Requirements for Licensure and Medicaid Certification) or an assisted living facility licensed or required to be licensed in accordance with Texas Health and Safety Code, Chapter 247, and Chapter 92 of this title (relating to Licensing Standards for Assisted Living Facilities).

(23) Means testing--Using a person's income and resource data.

(24) Office--The Office of the State Long-Term Care Ombudsman. A division of DADS established to oversee the statewide implementation of the Long-Term Care Ombudsman Program.

(25) Older Americans Act--A federal law enacted to establish and fund a comprehensive service system for persons 60 years of age or older.

(26) Ombudsman intern--A person who is being trained to be a certified volunteer ombudsman in accordance with DADS Ombudsman Certification Training Manual but has not been approved by the Office to be a certified volunteer ombudsman.

(27) Planning and service area--A geographical area, consisting of one or more counties, for which DADS designates one AAA to develop and implement an area plan.

(28) Program participant--A person receiving a service described in this chapter.

(29) Resident--A person who resides in an LTC facility.

(30) Responder--A person identified by the program participant or designated by the AAA who will respond to an alarm call by a program participant.

(31) Service provider--A subcontractor or a vendor.

(32) Severe disability--A severe, chronic disability attributable to mental or physical impairment, or a combination of mental and physical impairments, that:

- (A) is likely to continue indefinitely; and
- (B) results in substantial functional limitation in three or more of the major life activities specified in paragraph (15)(A) - (I) of this section.

(33) Staff person--Personnel, including a full-time and part-time employee, contractor, and intern, but excluding a volunteer.

(34) State Long-Term Care Ombudsman--The person designated by DADS to be the administrator of the Office.

(35) Subcontractor--The party with whom a AAA enters into a contract.

(36) System check--Activating the call button of an electronic monitoring system to test the system.

(37) Variable unit rate--A negotiated cost for a service, cost per program participant, or cost per event set forth in a contract or vendor agreement that may change depending on the criteria and conditions set forth in the contract or vendor agreement.

(38) Vendor agreement--A binding agreement between a AAA and a vendor obligating the vendor to provide goods or services to individuals determined eligible by the AAA for such goods or services as part of the AAA's implementation and administration of a service described in this chapter.

(39) Vendor--The party with whom a AAA enters into a vendor agreement.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 7, 2008.

TRD-200801806

Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: May 18, 2008

For further information, please call: (512) 438-3734



## SUBCHAPTER C. AAA ADMINISTRATIVE REQUIREMENTS

### 40 TAC §§85.201, 85.202, 85.208

#### STATUTORY AUTHORITY

The new sections are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

The new sections implement Texas Government Code, §531.0055, and Texas Human Resources Code, §161.021.

#### §85.201. AAA Administrative Responsibilities.

(a) Purpose. This section:

(1) establishes the responsibilities of a AAA in developing and maintaining an organized and efficient system of administration that demonstrates accountability and compliance with state and federal law and with all terms and conditions of the contract it enters into with DADS; and

(2) applies to a service under the Older Americans Act provided to a program participant that is funded, in whole or in part, by DADS.

(b) Structure of a AAA.

(1) A AAA must:

(A) reflect its organizational structure through job descriptions, staffing plans, area plans, and organizational charts that demonstrate its ability to effectively administer Older Americans Act programs and other programs funded by DADS;

(B) identify a person as a director or manager of the AAA;

(C) if a director or manager position becomes vacant, ensure that a qualified staff person is assigned to perform the duties of the director or manager until the position is filled;

(D) budget all positions based on the projected percentage of time to be spent performing the duties of an identified service;

(E) maintain documentation to support the actual time spent performing the duties of an identified service; and

(F) comply with the *Service Definitions for Area Agencies on Aging* available at [www.dads.state.tx.us](http://www.dads.state.tx.us) for all services funded by DADS.

(2) In accordance with the Older Americans Act, §306(a)(6)(D), a AAA must establish an advisory council that:

(A) continually advises the AAA on all matters relating to the development and administration of and operations conducted under the area plan; and

(B) consists of persons who are 60 years of age or older (including minority persons and persons residing in rural areas) who are program participants or who are eligible to participate in programs under the Older Americans Act, family caregivers of such individuals, representatives of persons 60 years of age or older, service providers, representatives of the business community, local elected officials, providers of veterans' health care, if appropriate, and the general public.

(3) A AAA must ensure that its board members, employees, advisory committee members, and volunteers are not subject to a conflict of interest, as described in subparagraph (A) of this paragraph, in fact or perception, and notify DADS in accordance with DADS Program Instruction AAA - PI 500 *Conflicts of Interest*, when potential conflicts of interest occur.

(A) A conflict of interest includes:

(i) having a substantial financial interest, directly or indirectly, in the profits of any entity from which services or goods are contracted or otherwise procured by the AAA; and

(ii) deriving a personal profit, directly or indirectly, from any entity that would conflict in any manner or degree with the performance of responsibilities of the board member, employee, advisory committee member, or volunteer.

(B) A AAA must comply with §85.401(i) of this chapter (relating to Long-Term Care Ombudsman Program).

(C) A AAA must include a requirement in a request for proposal (RFP) for services for older persons and requests for vendor enrollment that any potential conflicts of interest be identified in the RFP or vendor enrollment response. The notification of potential conflicts of interest must include:

(i) the person and the nature for which a potential conflict of interest exists; and

(ii) the relationship to any current or former board member, current or former aging advisory committee member, or current or former employee.

(c) Compliance with laws, rules, regulations, and other requirements. A AAA must comply with applicable federal and state laws, rules, and regulations, standards, and instructions, including:

(1) the Older Americans Act of 1965, as authorized in 2006;

(2) state laws regarding the financial operation of a AAA;

(3) 45 Code of Federal Regulations (CFR) §1321.67;

(4) 45 CFR §92.25;

(5) Uniform Grant Management Standards;

(6) Office of Management and Budget Circulars; and

(7) DADS Program Instructions.

(d) Accountability.

(1) A AAA must:

(A) maintain financial and programmatic systems capable of producing expenditure reports, cost center analyses, budgets, and state and federal reports;

(B) develop and implement written policies and procedures to back up automated information systems and continually update virus protection software to prevent the loss or corruption of program and financial data;

(C) meet programmatic and fiscal performance targets as outlined in the approved budget, as amended, within a five percent variance; and

(D) submit fiscal and programmatic reports required by DADS in a timely, complete, and accurate manner.

(2) A request for an extension to submit fiscal and programmatic reports must be submitted in writing to the AAA Help Desk at DADS on or before the date and time the reports are due.

(3) DADS may grant up to two requests for an extension per report per federal fiscal year. A AAA may be granted no more than a total of eight extensions per federal fiscal year. The length of an extension is negotiated, as much as possible, but DADS makes the final decision regarding extensions.

(4) A AAA must comply with the terms of all applicable interagency agreements, including those agreements legislatively mandated or to which DADS and the AAA are parties.

(e) Review of subcontractors.

(1) A AAA must review a subcontractor's programs and fiscal activities on a regular and systematic basis. Reviews must be conducted through a desk audit or by on-site review. A AAA must conduct a risk assessment annually to determine the necessity of an on-site review if it conducts an on-site review less than annually for all subcontractors.

(2) A AAA must conduct an annual customer satisfaction survey of program participants utilizing the process furnished by DADS.

(3) A AAA must comply with the requirements specified in §81.13 of this title (relating to Compliance with Contractor Responsibilities, Rewards and Sanctions) when imposing sanctions against a subcontractor for noncompliance with a contract.

(4) A AAA may develop requirements for a subcontractor in addition to those listed in paragraphs (1) - (3) of this subsection.

(f) Targeting. A AAA must ensure, in providing a service described in Subchapter D of this chapter (relating to Older Americans Act Services), that priority is given to persons:

(1) described in the Older Americans Act, §306(a)(4)(B)(i); and

(2) who have an unmet need for such a service.

(g) Means testing. A AAA must not use means testing for purposes of determining a person's eligibility to receive services, in accordance with the Older Americans Act, §315(b)(3).

(h) Confidentiality.

(1) A AAA must comply with all applicable state and federal laws, rules, and regulations related to the confidentiality of pro-

gram participant information, including 45 CFR §1321.51, 45 CFR Part 164, and §85.401(k) of this chapter.

(2) A AAA must:

(A) keep the records of a program participant in a secure, locked facility when not in use by authorized personnel; and

(B) limit access to program participant records maintained in computer information systems through acceptable computer security practices, including password protection.

(i) Satisfaction with services. A AAA must, at least annually, give a program participant an opportunity to express his or her level of satisfaction with the services provided.

(j) Grievances. A AAA must:

(1) implement grievance procedures in accordance with §81.19 of this title (relating to Grievance Procedures for Participants in Older Americans Act Programs); and

(2) inform a program participant of the grievance procedures.

(k) Service participation. A AAA must not require a program participant to be a member in a specific private organization, group, association, or fraternal organization as a condition of receiving services, which includes permitting services to be provided in an organization's facility to which admission is limited to members of the organization.

(l) Contributions. A AAA:

(1) must provide a program participant with an opportunity to contribute toward the cost of the services the program participant receives;

(2) must not require a program participant to contribute toward the cost of services the program participant receives;

(3) may provide a program participant with a contribution schedule that suggests a contribution amount based on the income ranges of the program participant population, but may not determine a program participant's income using a means test;

(4) must protect the privacy of a program participant with respect to the program participant's contribution;

(5) must establish appropriate procedures to safeguard and account for all contributions made; and

(6) must use all program participant contributions to support or expand services for which the program participant contributed, in accordance with applicable state and federal laws, rules, and regulations.

(m) Facilities. A AAA must ensure that facilities in which services are provided are in compliance with applicable local building codes and ordinances and applicable state and federal laws, rules, and regulations.

(n) Tobacco policy. A AAA must prohibit the use of tobacco during the hours of operation of and in areas designated for Older Americans Act programs.

(o) Insurance. A AAA must maintain insurance that protects the health and safety of its employees and of program participants and complies with all applicable state and federal laws, rules, and regulations.

(p) Records. A AAA:

(1) must develop, maintain, and retain records in accordance with the Uniform Grant Management Standards, Subpart C;

(2) must establish written procedures to adequately ensure proper development, maintenance and retention of all financial records, supporting documents, statistical records and all other records relating to its performance;

(3) must maintain all records for a minimum of five years following the end of the federal fiscal year to which the record pertains and until any pending litigation, claim or audit findings, issuance or proposed disallowed costs or other disputes have been resolved;

(4) must maintain all records at a designated central location regardless of whether the AAA has one or multiple locations; and

(5) must give DADS, the Comptroller General of the United States, and the State of Texas, through any authorized representatives, access to its records, including:

(A) financial records such as contracts, general ledgers, invoices, accounts payable, and accounts receivable;

(B) program participant records unless specifically prohibited by law;

(C) other documents related to DADS funded programs; and

(D) any other records not directly related to the AAA if the purpose of such access is to review charges to any indirect costs pool.

(q) Service provider compliance. A AAA must ensure that a service provider complies with requirements described in subsections (f) - (p) of this section.

(r) Contingency plan. A AAA must have a written plan ensuring continuity of services to a program participant in the event a service provider is unable to provide a service.

(s) Designation of focal points. A AAA must comply with the Older Americans Act, §306(a)(3)(A) and (B) regarding designation of focal points.

(t) Visibility.

(1) A AAA must use the logo designed by DADS (illustrated in paragraph (2) of this subsection) to ensure a uniform, statewide symbol for AAAs.

(2) A AAA must use the logo on all printed material it develops.

Figure: 40 TAC §85.201(t)(2)

(u) AAA contact information.

(1) A AAA must publicize its contact information through a variety of media such as telephone directories, resource directories, the Internet, and other outreach tools for persons who reside in any geographical area that lies in whole or in part in the planning and service area served by the AAA.

(2) Contact information must begin with the words "area agency on aging" and must include the host agency, as applicable. A AAA must ensure that a telephone call to the AAA is answered "area agency on aging."

(v) Phrase for printed material. A AAA must cite DADS as the primary funding source using the phrase "Funded by the Department of Aging and Disability Services" or "Funded in part by Department of Aging and Disability Services" on all printed material.

(w) Identification of a AAA facility. A AAA must prominently display a sign outside its primary place of business that:

(1) adheres to local ordinances concerning signs; and

(2) conforms to the requirements in subsection (t) of this section.

(x) Emergency management.

(1) When a disaster occurs, a AAA must notify DADS of its need to provide for emergency management activities, provide information to DADS regarding the impact of the disaster on the older population in its service area, provide emergency management services in accordance with current Administration on Aging disaster relief guidelines, and collect pertinent data necessary to submit reimbursement requests for disaster services.

(2) A AAA must consult with the appropriate agencies that have an interest or role in meeting the needs of persons 60 years of age or older to plan for the occurrence and aftermath of natural, civil defense, or man-made disasters. To accomplish this, a AAA must:

(A) develop an emergency disaster plan in accordance DADS requirements;

(B) require by contract or vendor agreement that a service provider develop plans for emergency management; and

(C) provide technical assistance as necessary to service provider staff persons regarding emergency management activities.

(y) Reporting abuse, neglect, or exploitation.

(1) A AAA must instruct its staff persons and representatives to report allegations of abuse, neglect, or exploitation of a program participant to the Department of Family and Protective Services (DFPS) in accordance with Texas Human Resources Code, Chapter 48. A report must be made by calling 1-800-252-5400 or by following the instructions available at [www.txabusehotline.org](http://www.txabusehotline.org).

(2) The AAA must take appropriate corrective action if:

(A) a staff person does not report an allegation of abuse, neglect, or exploitation of a program participant in accordance with Texas Human Resources Code, Chapter 48; or

(B) DFPS confirms abuse, neglect, or exploitation of a program participant by a staff person of the AAA.

(z) Emergency services. A AAA must instruct all of its staff persons to call 911 or another local emergency hotline for fire-fighting, police, medical, or other emergency services, as appropriate, in the event of an emergency involving a program participant.

(aa) Reporting waste, abuse, or fraud.

(1) A AAA must instruct its staff persons and representatives to report allegations of waste, abuse, or fraud, as defined in 1 TAC §371.1601 (relating to Definitions), regarding a service described in subsection (a)(2) of this section. A report must be made to:

(A) the Texas Health and Human Services Commission (HHSC), Office of the Inspector General, in accordance with the HHSC instructions available at [www.hhs.state.tx.us](http://www.hhs.state.tx.us); and

(B) DADS by calling 1-800-436-6184.

(2) The Office of the Inspector General investigates reports of waste, abuse, or fraud in accordance with 1 TAC, Chapter 371, Subchapter G.

(bb) Ethical conduct.

(1) A AAA must ensure that its staff persons and representatives conduct themselves in an ethical manner.

(2) A AAA staff person may not:

(A) engage in inappropriate treatment of a program participant or person seeking services;

(B) withhold or suppress a complaint or report against the AAA or DADS;

(C) retain or distribute program participant information for personal gain;

(D) obtain a certification by fraud or deceit; or

(E) knowingly participate in the preparation of false or misleading program participant information.

(3) A AAA must instruct all staff persons and representatives to report allegations of unethical conduct, as described in paragraph (2) of this subsection, to DADS' AAA Section Manager.

(cc) Service provider compliance. A AAA must ensure that a service provider complies with the requirements described in subsections (y), (z), (aa)(1)(A), and (bb) of this section.

(dd) Complaints. A AAA must ensure that a service provider:

(1) on or before initiation of a service described in Subchapter D of this chapter, informs a program participant, in writing, of the procedure by which the program participant may file a complaint regarding such service;

(2) obtains and maintains documentation of receipt of the complaint procedure by the program participant;

(3) date stamps receipt of a written complaint;

(4) documents receipt of an oral complaint, with the date of receipt and a narrative of the allegations;

(5) investigates each complaint and responds, in writing, to the program participant regarding the results of the investigation in a timely manner; and

(6) maintains a written log of complaints filed by program participants that is accessible to the AAA and contains the following information:

(A) the date of the service provider's receipt of the complaint;

(B) the name of the person who filed the complaint;

(C) a description of the nature of the complaint;

(D) the name of the staff person who conducted the investigation of the complaint;

(E) the names of persons who were contacted during the investigation of the complaint;

(F) the outcome of the complaint; and

(G) the date final action was taken by the service provider in response to the complaint.

§85.202. AAA Fiscal Responsibilities.

(a) Purpose. This section establishes the fiscal responsibilities of a AAA, including responsibilities related to purchases of goods and services, audits, costs allocation plans, and service and administrative match.

(b) Purchases of goods and services.

(1) A AAA is permitted to enter into contracts and vendor agreements for the purchase of goods and services.

(2) Except as provided in paragraph (3) of this subsection, a AAA must comply with competitive bidding procedures in selecting

a subcontractor through the use of formal bidding, informal bidding, or competitive proposals, as appropriate. A AAA must document its compliance with the competitive bidding procedures.

(3) A AAA may select a subcontractor using sole source procurement in accordance with 45 Code of Federal Regulations (CFR) §92.36(d)(4) if the award of a contract is not feasible using competitive bidding.

(4) When purchasing goods and services from a service provider, a AAA must use one of the following cost determination methodologies in accordance with DADS requirements:

(A) cost reimbursement;

(B) fixed unit rate; or

(C) variable unit rate.

(5) A AAA may make a direct purchase of a service for a program participant on an individual basis in accordance with §83.19 of this title (relating to Direct Purchase of Services (DPS)).

(6) A AAA must reference in a contract and vendor agreement the state rules relating to the services being provided by the subcontractor or the vendor.

(7) A AAA must include in a contract a requirement that subcontractors have an accounting system that identifies all costs for each specific service being purchased or provided and that complies with 45 CFR, Part 1321.

(8) All purchases of services, materials, equipment, and goods made by a AAA with grant funds must meet the criteria of allowability as set forth in, as applicable, the Uniform Grant Management Standards, as adopted by the Governor's Office of Budget and Planning, including the Office of Management and Budget (OMB) Circulars A-87 and A-122 and 45 CFR, Chapter 92.

(9) All purchases made by a AAA must be evidenced by receipt of the service or merchandise or issuance of a purchase contract, voucher, or other legal document that binds both parties to the transaction, no later than the last day of the grant period for which funds have been budgeted and encumbered.

(10) If the service or merchandise has not been received by the last day of the grant period as described in paragraph (9) of this subsection, a AAA must have received the service or merchandise and made payment for such before the due date of the closeout report for the grant period for which funds have been budgeted and encumbered.

(11) A AAA must ensure that a service provider complies with the requirements described in paragraphs (8) - (10) of this subsection.

(c) Independent audit.

(1) A AAA must ensure that an independent certified public accounting firm performs an audit in accordance with:

(A) the standards for financial and compliance audits contained in the Standards for Audit of Governmental Organizations, Programs, Activities, and Functions, issued by the U.S. General Accounting Office;

(B) the Single Audit Act;

(C) OMB Circular A-133, *Audits of States, Local Governments, and Nonprofit Organizations*, as applicable;

(D) the Uniform Grant Management Standards; and

(E) generally accepted accounting principles.

(2) A AAA must provide DADS and the Office of Inspector General of the Health and Human Services Commission with a report of the audit conducted in accordance with paragraph (1) of this subsection within 30 days following receipt of such report or within nine months following the end of the AAA's fiscal year that the audit covers, whichever is earlier.

(3) A AAA must ensure that an audit of a subcontractor is performed by an independent certified public accounting firm in accordance with OMB Circular A-133 and review the report of the audit performed.

(d) Indirect Cost Allocation Plan.

(1) To demonstrate compliance with the Uniform Grant Management Standards, a AAA for which DADS is not the designated state coordinating agency must submit to DADS an Indirect Cost Allocation Plan approval letter from the state coordinating agency or federal cognizant agency.

(2) A AAA for which DADS is the designated state coordinating agency must submit, in accordance with the Uniform Grant Management Standards and DADS requirements, an Indirect Cost Allocation Plan to DADS for its approval.

(e) Unallowable costs.

(1) Unallowable costs made by a AAA, as defined in OMB Circulars A-87 and A-122, and other applicable state and federal laws, rules, and regulations, may be identified:

(A) by the public accounting firm that performed an audit of the AAA in accordance with subsection (c)(1) of this section; or

(B) by DADS:

(i) as the result of monitoring of the AAA or because of information contained in the audit report described in subsection (c)(2) of this section; or

(ii) if a AAA fails to obtain an audit of a subcontractor in accordance with subsection (c)(3) of this section.

(2) The AAA is liable to DADS for any unallowable costs identified in accordance with paragraph (1) of this subsection.

(3) If DADS determines a AAA has unallowable costs, DADS sends the AAA a Letter of Notification of Disallowance with Intent to Recover Costs by certified or registered mail, requesting the AAA to resolve all findings and unallowable costs within six months of receipt of the letter, in accordance with OMB Circular A-133, unless an extension is granted by DADS.

(f) Refunding of payments.

(1) A AAA may be required to refund to DADS:

(A) unallowable costs identified in accordance with subsection (e) of this section; or

(B) amounts paid to the AAA in excess of those earned by the AAA.

(2) Refunds may be made by the AAA by making payment to DADS or by DADS withholding payments to be made to the AAA.

(3) A AAA that has made a refund to DADS in accordance with paragraph (1) of this subsection waives all rights to such funds and must not receive any of the funds as part of a future allocation.

(g) Capital expenditures. A AAA must comply with and ensure that a service provider complies with capital expenditure guidelines set forth in the Uniform Grant Management Standards, OMB Cir-

culars A-87 and A-122, and requirements developed by DADS, as applicable.

(h) Budget submissions.

(1) A AAA must submit to DADS, on an annual basis and in accordance with DADS requirements, a budget that supports an approved area plan.

(2) A AAA may submit an amended budget that supports an approved area plan in accordance with DADS requirements.

(i) Service and administrative match.

(1) A AAA must;

(A) provide funds and in-kind contributions, in accordance with the Older Americans Act, §304, to match the expenditures of federal funds made to DADS for the cost of providing goods and services; and

(B) ensure that an appropriate portion of funds or in-kind contributions is generated to match the federal fund expenditure based on the cost of services it provides.

(2) The valuation of services or goods as reported as in-kind must be based on fair market value.

(3) A AAA may use state general revenue to match funds appropriated under Title III, Part E of the Older Americans Act.

(4) A AAA must not use state general revenue to match administrative funds.

(j) Program income. A AAA must administer and ensure that a service provider administers program income as described in DADS Program Instruction AAA - PI-305 *Administering Program Income*.

(k) Adequate proportion.

(1) In accordance with the Older Americans Act, §306(a)(2), a AAA must expend funds appropriated under Title III, Part B of the Older Americans Act to meet an adequate proportion requirement, as determined by DADS, for:

(A) access services;

(B) in-home services; and

(C) legal assistance.

(2) A AAA may request, in writing, by September 30 of each year, that DADS waive or revise the adequate proportion requirement for any of the categories of services listed in paragraph (1) of this subsection for the next federal fiscal year, in accordance with the Older Americans Act, §306(c).

(A) The AAA must demonstrate to DADS there are sufficient services available in the requested category to meet the need for such services.

(B) A AAA must submit a separate request for each category of service for which a waiver is sought.

(3) A AAA must comply with DADS instructions regarding adequate expenditures for the Medication Management Program funds appropriated under the Older Americans Act, Title III, Part D.

(l) Caregiver support program limitation. In accordance with the Older Americans Act, §373(g)(2)(C), a AAA may not use more than 10 percent of the funds appropriated under Title III, Part E of the Older Americans Act for the Caregiver Support Program for program participants 55 years of age and older who are providing primary care for children 18 years of age or younger.



(m) Administrative services. A AAA that elects to utilize state general revenue for administrative services may not supplant existing federal funds appropriated for such services.

§85.208. Data Management.

(a) Purpose. This section establishes the requirements for data management, a service provided under the Older Americans Act and funded, in whole or in part, by DADS.

(b) Service provider responsibilities. A AAA must perform or ensure that a service provider performs the data management activities described in DADS Program Instruction AAA - PI -312 *Data Management Guide*.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 7, 2008.

TRD-200801807

Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: May 18, 2008

For further information, please call: (512) 438-3734



## SUBCHAPTER D. OLDER AMERICANS ACT SERVICES

### 40 TAC §§85.301 - 85.310

#### STATUTORY AUTHORITY

The new sections are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

The new sections implement Texas Government Code, §531.0055, and Texas Human Resources Code, §161.021.

§85.301. Transportation Services.

(a) Purpose. This section establishes the requirements for transportation services, a service provided under the Older Americans Act and funded, in whole or in part, by DADS.

(b) Eligibility. A AAA must ensure a program participant who receives transportation services is:

(1) 60 years of age and older; or

(2) an informal caregiver authorized to receive transportation services in accordance with the Older Americans Act, §373(b)(5).

(c) Operations.

(1) A AAA must ensure a service provider provides transportation services that:

(A) are for nonemergency purposes;

(B) consist of transporting a program participant to and from activities as specified in the contract or vendor agreement; and

(C) are, as defined in the *Service Definitions for Area Agencies on Aging* available at [www.dads.state.tx.us](http://www.dads.state.tx.us), "demand response," "fixed route," or a combination of both.

(2) A AAA must ensure that in providing transportation services, a service provider:

(A) complies with applicable federal and state laws, rules, and regulations including the Americans with Disabilities Act;

(B) employs or contracts with staff persons who are trained and have current certification in, as applicable, scheduling and dispatching, defensive driving, passenger handling and assistance, first aid and cardiopulmonary resuscitation and operating an automatic external defibrillator, if one is available; and

(C) coordinates efforts to eliminate duplication and maximize resources.

§85.302. Nutrition Services.

(a) Purpose. This section establishes the requirements for nutrition services, a service provided under the Older Americans Act and funded, in whole or in part, by DADS.

(b) Eligibility.

(1) A AAA must ensure that a program participant who receives a congregate meal:

(A) is 60 years of age or older;

(B) meets the eligibility criteria to receive a congregate meal as described in DADS Program Instruction AAA - PI 307 *Nutrition Services Eligibility Requirements for Individuals Under Age 60 and Caregivers*; and

(C) before service initiation and at least every 12 months thereafter, has had a Nutritional Risk Assessment completed by a service provider or a staff person of the AAA.

(2) A AAA must ensure that a program participant who receives a home-delivered meal:

(A) is 60 years of age or older;

(B) meets the eligibility criteria to receive a home delivered meal as described in DADS Program Instruction AAA - PI 307 *Nutrition Services Eligibility Requirements for Individuals Under Age 60 and Caregivers*; and

(C) before service initiation and at least every 12 months thereafter;

(i) has had a Nutritional Risk Assessment completed by a service provider or staff person of the AAA; and

(ii) has had a functional assessment completed by a service provider or staff person of the AAA using the data elements contained in DADS' Form 2060, available at [www.dads.state.tx.us](http://www.dads.state.tx.us), and based on the results of such assessment, meets the minimum requirements in accordance with DADS instructions.

(c) Facilities and food service. A AAA must ensure that a service provider:

(1) complies with 25 TAC, Chapter 229 (relating to Food and Drug) in the preparation, handling, and provision of food; and

(2) provides the AAA a copy of all results from inspections required by state law or rule.

(d) Nutrition Services Incentive Program compliance. A AAA must ensure that a service provider:

(1) complies with the Older Americans Act, §311, relating to the Nutrition Services Incentive Program; and

(2) includes only eligible meals (that is, meals delivered to program participants who meet the criteria described in subsection (b) of this section) in reports related to the Nutrition Services Incentive Program.

(e) Meal costs. A AAA must ensure that a service provider:

(1) posts the cost of a meal for purposes of cost recovery as described in paragraph (2) of this subsection;

(2) recovers, at a minimum, the cost of a meal that is not an eligible meal as defined in DADS Program Instruction AAA - PI 307 Nutrition Services Eligibility Requirements for Individuals Under Age 60 and Caregiver; and

(3) keeps payments for ineligible meals separate from contributions from program participants.

(f) Service days. A AAA must ensure that a service provider:

(1) provides meals in accordance with the Older Americans Act, §331 and §336; and

(2) obtains, in accordance with DADS Program Instruction AAA-PI 300 Older Americans Act Nutrition Waiver Requests, prior approval from the AAA and DADS if service frequency is less than five days per week.

(g) Meal requirements. A AAA must ensure that a service provider complies with the Older Americans Act, §339(2)(A), relating to compliance with the current Dietary Guidelines for Americans and Dietary Reference Intakes.

(h) Menus.

(1) A AAA must ensure that, for each meal included on the menu and listed allowable substitutions, a service provider obtains:

(A) approval, in writing, from a dietitian consultant that the meal meets one-third of the recommended dietary allowance as referenced in the Dietary Reference Intakes for a person 60 years of age or older and the current Dietary Guidelines for Americans as required by the Older Americans Act, §339(2)(A); and

(B) the written approval before the date the meal is served.

(2) The dietitian consultant required by paragraph (1) of this subsection must:

(A) be a licensed dietitian in accordance with Texas Occupations Code, Chapter 701;

(B) be a registered dietitian with the Commission on Dietetic Registration/American Dietetic Association; or

(C) have a baccalaureate degree with major studies in food and nutrition, dietetics, or food service management.

(3) A AAA must ensure that a service provider's planned menus provide for variety in flavor, consistency, texture, and temperature.

(i) Standard recipes. A AAA must ensure that a service provider plans and manages food production through the use of standardized recipes adjusted to yield the number of servings needed and to provide for consistency in quality and documented nutrient content of food prepared.

(j) Modified diets.

(1) A AAA must permit a service provider to deviate from the standard menu pattern for therapeutic medical diets as required by the participant's medical condition as documented by a physician.

(2) A AAA may allow a service provider to provide therapeutic medical diets based on the service provider's ability to do so.

(k) Emergency or inclement weather or service frequency less than five days a week. If a service provider delivers frozen, chilled, or shelf-stable meals for emergency or inclement weather situations, or if the service provider's service frequency is less than five days per week, a AAA must ensure that the service provider:

(1) delivers the meals only if the program participant has sanitary and safe conditions for storing, thawing, and reheating the meals;

(2) determines the meals can be safely handled by the program participant or another available person if the participant is unable to safely handle the meal; and

(3) complies with the DADS Program Instruction AAA - PI 300 Older Americans Act Nutrition Waiver Requests.

(l) Meal packaging. A AAA must ensure that a service provider:

(1) uses supplies and carriers to package and transport hot foods separately from cold foods;

(2) uses enclosed meal carriers used to transport easily damaged trays or containers of hot or cold foods to protect such food from contamination, crushing, or spillage and equips the meal carriers with insulation or supplemental hot or cold sources as is necessary to maintain safe temperatures; and

(3) complies with the following in packaging meals:

(A) seals the meal container to prevent moisture loss or spillage to the outside of the container;

(B) maintains a safe temperature of the packaged meal throughout transport;

(C) uses a container designed with compartments to separate food items for visual appeal and to minimize spillage between compartments; and

(D) uses a container a program participant can easily open.

(m) Holding time. A AAA must ensure that a service provider does not allow more than four hours to expire from the time the cooking or reheating of food is completed and the time the food is served to the program participant.

(n) Delivery of home-delivered meals.

(1) A AAA must ensure that a service provider:

(A) delivers meals between 10:30 a.m. and 1:30 p.m.;

(B) keeps meals that are prepared and packaged for delivery at the following temperatures:

(i) 40 degrees Fahrenheit or below for cold food items; and

(ii) 135 degrees Fahrenheit or above for hot food items;

(C) does not leave meals unattended at the program participant's residence; and

(D) develops written procedures:

(i) ensuring meals are safe and sanitary for the program participant;

(ii) requiring follow-up with a program participant who was not available when a meal delivery was attempted on the same day the attempt was made; and

(iii) ensuring a significant change in a program participant's physical or mental condition or environment is reported to the service provider and appropriate action taken by the service provider on the same day the service provider is notified of the change.

(2) A AAA may reimburse a service provider for a maximum of two attempted but unsuccessful meal deliveries per program participant per month.

(o) Training.

(1) A AAA must ensure that a service provider provides at least one hour of training to a staff person or volunteer of a service provider who is involved in the administration or provision of nutrition services before the staff person or volunteer assumes duties. The training topics must include:

(A) program participant confidentiality;

(B) procedures used in handling emergency situations involving program participants;

(C) sanitary methods used in serving and delivering meals;

(D) general knowledge and basic techniques of working with a person 60 years of age or older and a person with a disability; and

(E) personal hygiene.

(2) A AAA must ensure that a service provider provides the following training to a staff person or volunteer of a service provider who is involved only in the administration of nutrition services before the staff person or volunteer assumes duties:

(A) the training described in paragraph (1) of this subsection; and

(B) one hour of training on the content and implementation of applicable forms, rules, procedures, and policies of DADS, the AAA, and the service provider relating to the administration or provision of nutrition services.

(3) A AAA must ensure that a service provider provides at least two hours of training to a food service supervisor before the supervisor assumes duties. Training topics must include:

(A) personal hygiene;

(B) food storage, preparation and service, including prevention of food borne illness;

(C) equipment cleaning before, during, and after meal service;

(D) selection of proper utensils and equipment for transporting and serving foods;

(E) automatic and manual dishwashing procedures; and

(F) accident prevention.

(4) In addition to the training required by paragraph (3) of this subsection, a AAA must ensure that a service provider provides at least six hours of training to a food service supervisor no later than 30 days after the supervisor assumes duties. Training topics must include:

(A) practical procedures for food preparation, storage, and serving;

(B) portion control of food in appropriate dishes;

(C) use of standardized recipes;

(D) nutritional needs and meal pattern requirements of older program participants to be served; and

(E) quality control of:

(i) flavor;

(ii) consistency;

(iii) texture;

(iv) temperature; and

(v) appearance (including the use of garnishes).

(5) A AAA must ensure that the service provider's food service supervisor complies with 25 TAC §229.163 (relating to Management and Personnel).

(6) A AAA must ensure that a service provider documents the provision of training required by paragraphs (1) - (4) of this subsection. The documentation must include the names of the staff person or volunteer being trained and the trainer; the topics covered; and the date, time, and length of the training.

(7) A AAA must ensure that a service provider has an adequate number of staff persons available during the time congregate meals are provided who are certified in:

(A) first aid;

(B) cardiopulmonary resuscitation; and

(C) operating an automatic external defibrillator, if one is available.

(p) Nutrition outreach. A AAA must ensure that a service provider develops and maintains a written outreach plan giving priority to persons described in the Older Americans Act, §306(a)(1).

(q) Nutrition education. In accordance with the Older Americans Act, §339(2)(J), a AAA must ensure that a program participant is provided with nutrition screening, nutrition education, and if appropriate, nutrition assessment and counseling.

(r) Political activity. A AAA must ensure that a service provider does not:

(1) use a congregate meal site for political campaigning except in those instances where a representative from each political party running in the campaign is given an equal opportunity to participate; or

(2) distribute political materials at a congregate meal site.

(s) Religious activities and prayer. A AAA must ensure that a service provider does not:

(1) allow a prayer or other religious activity to be officially sponsored, led, or organized by a nutrition site staff person; or

(2) prohibit a program participant from praying silently or audibly at a congregate meal site if the program participant so chooses.

(t) Monitoring.

(1) A AAA must monitor:

(A) a subcontractor providing nutrition services in accordance with §85.201(e) of this chapter (relating to AAA Administrative Responsibilities); and

(B) a vendor providing nutrition services in accordance with §83.19(f) of this title (relating to Direct Purchase of Service (DPS)).

(2) A AAA must ensure that the Department of State Health Services or the local health authority, as applicable, or the service provider monitors a food preparation site, at least annually, to determine whether the requirements of this section have been followed.

(3) A AAA must ensure that the service provider submits the written report of such monitoring to the AAA.

(u) Weather-related emergencies, fire, and other disasters. A AAA must ensure that a service provider:

(1) keeps facilities and equipment available for emergencies and disasters, in accordance with a plan developed by the service provider, that gives priority to program participants 60 years of age or older;

(2) adopts written procedures ensuring the availability of food for program participants in emergencies and disasters; and

(3) promptly notifies the Department of State Health Services and the AAA of a food-borne disease outbreak, (that is, two or more cases of a similar illness resulting from the ingestion of a common food).

(v) Subcontracting by a service provider. A AAA must require a service provider to obtain written approval from the AAA before the service provider contracts with any entity for meal preparation or service delivery.

#### §85.303. Participant Assessment Services.

(a) Purpose. This section establishes the requirements for participant assessment services, a service provided under the Older Americans Act and funded, in whole or in part, by DADS.

(b) Provision of services.

(1) Except as provided in paragraph (2) of this subsection, a AAA must enter into a vendor agreement for the provision of participant assessment services.

(2) Regarding nutrition services described in §85.302 of this subchapter (relating to Nutrition Services), a AAA may contract with a nutrition services subcontractor for the provision of participant assessment services.

(c) Service activities. Assessment services include only those activities that directly relate to the initial assessment of an individual seeking a service funded under the Older Americans Act and reassessment of a program participant. Such activities may include travel to and from the home of the individual seeking services or program participant for the purpose of conducting an assessment or reassessment.

(d) Assessment and reassessment. A AAA must conduct or ensure that a service provider conducts:

(1) a multidimensional assessment of an individual seeking services funded under the Older Americans Act to determine the type of service an individual needs; and

(2) a reassessment of a program participant to determine the effectiveness of the services provided and whether there is a need for services to continue.

(e) Authorization. Before a vendor conducts an assessment or reassessment as described in subsection (d) of this section, a AAA must ensure that the vendor obtains prior written authorization from the AAA.

#### §85.304. Homemaker Services.

(a) Purpose. This section establishes the requirements for homemaker services, a service provided under the Older Americans Act and funded, in whole or in part, by DADS.

(b) Eligibility. A AAA must ensure that a program participant who receives homemaker services is:

(1) 60 years of age or older; and

(2) functionally impaired in the ability to perform instrumental activities of daily living as described in DADS Program Instruction AAA - PI 310 *Activities of Daily Living/Instrumental Activities of Daily Living NAPIS Mapping Requirements*.

(c) Type of provider. A AAA may provide homemaker services as an agency managed service or as a consumer directed service, or as both.

(1) Agency managed. Homemaker services that are agency managed are provided only by a vendor.

(2) Consumer directed. Homemaker services that are consumer directed are provided by furnishing vouchers to a program participant, allowing the program participant to select a homemaker, establish a work schedule and payment rate, and provide the homemaker information and training on the program participant's needs.

(d) Informing program participant of options. If a AAA provides homemaker services as both an agency managed service and as a consumer directed service, the AAA must inform a program participant that he or she may choose to receive homemaker services in either of those two ways.

(e) Service authorization. Before homemaker services are provided by a vendor to a program participant, the AAA must ensure that the vendor must obtain prior written authorization for the services from the AAA in accordance with §83.3(o)(2)(B) of this title (relating to System of Access and Assistance).

(f) Homemaker services. Homemaker services include:

(1) cleaning for the program participant, including:

(A) cleaning after a program participant's personal care tasks;

(B) emptying and cleaning a program participant's bedside toilet;

(C) cleaning a program participant's bathroom;

(D) changing a program participant's bed linens and making the program participant's bed;

(E) cleaning the floor of a program participant's living area;

(F) dusting an area used by a program participant;

(G) taking a program participant's trash to an outside receptacle and moving the receptacle to a location for pick-up;

(H) cleaning a program participant's stovetop and counters;

(I) washing a program participant's dishes; and

(J) cleaning a program participant's refrigerator and stove;

- (2) doing a program participant's laundry, including:
  - (A) washing a program participant's laundry by hand or machine;
  - (B) gathering and sorting laundry;
  - (C) loading and unloading the washing machine and dryer in the program participant's residence;
  - (D) using laundromat machines;
  - (E) hanging laundry to dry; and
  - (F) folding and putting away laundry;
- (3) shopping for the program participant, including:
  - (A) preparing a shopping list;
  - (B) going to the store and purchasing or picking up items;
  - (C) picking up medication; and
  - (D) storing the purchased items;
- (4) assisting a program participant in organizing and completing a home management routine;
- (5) performing necessary reading and writing tasks as directed by the program participant;
- (6) preparing meals for the program participant, including:
  - (A) assisting in planning menus that are appropriate for the program participant's needs;
  - (B) shopping for and storing food;
  - (C) preparing and serving meals; and
  - (D) utilizing sanitary practices for handling and preparing food; and
- (7) accompanying a program participant to obtain health care services and other necessary items and services unless prohibited by subsection (g)(7) of this section.
- (g) Prohibited activities. Homemaker services do not include the following:
  - (1) personal assistance services described in §85.305(e)(1) - (2), (4) - (10), and (12) of this subchapter (relating to Personal Assistance Services);
  - (2) repairs to the program participant's residence;
  - (3) pet grooming;
  - (4) yard maintenance;
  - (5) moving heavy objects;
  - (6) performing services for members of the household other than the program participant;
  - (7) transporting the program participant in a vehicle unless proof of liability insurance covering such transportation has been verified, in writing, by the vendor;
  - (8) performing tasks beyond the scope of the service authorization required by subsection (e) of this section;
  - (9) accepting gifts from the program participant;
  - (10) bringing persons to the program participant's residence who are not providing homemaker services to the program participant;

- (11) taking personal property from the program participant's residence; or
- (12) assuming control of the financial or personal affairs of the program participant or his or her estate including serving as power of attorney, guardian, or conservator.
- (h) Staffing qualification requirements for an agency-managed service.
  - (1) A AAA must ensure that a vendor that has a program supervisor for homemaker services requires the program supervisor to:
    - (A) meet one of the following criteria:
      - (i) be a licensed nurse;
      - (ii) have completed two years of full-time study in social or behavioral sciences at an accredited college or university; or
      - (iii) have:
        - (I) a high school diploma or high school equivalency certificate; and
        - (II) have one of the following:
          - (-a-) the equivalent of two years experience as a full-time employee in a supervisory capacity in a health care facility, health care agency, or other health care organization; or
          - (-b-) the equivalent of one year experience as a full-time employee in a supervisory capacity in a health care facility, health care agency, or other health care organization and have completed one year of full-time study in social or behavioral sciences at an accredited college or university; and
    - (B) have experience in:
      - (i) housekeeping or home management; and
      - (ii) meal preparation activities.
  - (2) A AAA must ensure that a vendor requires a homemaker (that is, the person who provides homemaking services to the program participant):
    - (A) to be an adult;
    - (B) to have the ability to follow oral and written instructions and keep records;
    - (C) to have previous experience providing care to a person 60 years of age or older or a disabled adult;
    - (D) to demonstrate competency to perform homemaker services;
    - (E) to not be the spouse or legal guardian of the program participant; and
    - (F) to not live with the program participant.
  - (i) Training and documentation requirements for an agency managed service. A AAA must ensure that a vendor:
    - (1) trains homemakers to recognize and report changes in a program participant's health condition that may require emergency procedures or health services;
    - (2) maintains documentation demonstrating compliance with paragraph (1) of this subsection; and
    - (3) determines the need for, and requires homemakers to receive, other training as appropriate.
  - (j) Information and assistance requirements for a consumer directed service. A AAA must:

(1) give a program participant written information to assist the program participant in performing the following activities:

- (A) interviewing potential homemakers;
- (B) requiring potential homemakers to provide references;
- (C) checking references of homemakers;
- (D) selecting a homemaker who meets the qualifications described in subsection (h)(2) of this section;
- (E) deciding upon, in discussion with the homemaker, an hourly, daily, or weekly rate to be paid to the homemaker;
- (F) informing or training the homemaker on the specific needs of the program participant;
- (G) ensuring proper payment for homemaker services by recording the number of hours or days homemaker is used and the total amount claimed against the voucher;
- (H) ensuring federal tax guidelines for household employees are followed in accordance with IRS Publication 926;
- (I) notifying the AAA if the program participant's address changes;
- (J) monitoring the quality of the homemaker service provided; and
- (K) notifying the AAA if the program provider is dissatisfied with a homemaker; and

(2) assist a program participant in finding a homemaker if such assistance is requested by the program participant.

§85.305. Personal Assistance Services.

(a) Purpose. This section establishes the requirements for personal assistance services, a service provided under the Older Americans Act and funded, in whole or in part, by DADS.

(b) Eligibility. A AAA must ensure that a program participant who receives personal assistance services is:

- (1) 60 years of age or older; and
- (2) functionally impaired in his or her ability to perform activities of daily living as described in DADS Program Instruction AAA - PI - 310 *Activities of Daily Living/Instrumental Activities of Daily Living NAPIS Mapping Requirements.*

(c) Requirement for a licensed vendor to provide services. A AAA must enter into a vendor agreement for the provision of personal assistance services with an entity licensed by DADS as a home and community support services agency in accordance with Chapter 97 of this title (relating to Licensing Standards for Home and Community Support Services Agencies).

(d) Service authorization. Before personal assistance services are provided by a vendor to a program participant, a AAA must ensure that the vendor obtains authorization for the services from the AAA in accordance with §83.3(o)(2)(B) of this title (relating to System of Access and Assistance).

(e) Personal assistance services. Personal assistance services include:

- (1) bathing, which includes:
  - (A) drawing water in sink, basin, or tub;
  - (B) hauling or heating water;
  - (C) laying out supplies;

(D) assisting a program participant in or out of tub or shower;

- (E) sponge bathing and drying a program participant;
- (F) bed bathing and drying a program participant;
- (G) tub bathing and drying a program participant; and
- (H) providing standby assistance for a program participant while the program participant is engaged in bathing activities;

(2) dressing, which includes:

- (A) dressing a program participant;
  - (B) undressing a program participant; and
  - (C) laying out clothes for a program participant;
- (3) meal preparation for a program participant, which includes:

- (A) assisting in planning menus that are appropriate for the program participant's needs;
- (B) cooking a full meal;
- (C) warming prepared food;
- (D) helping prepare meals;
- (E) planning meals; and
- (F) cutting a program participant's food for eating;

(4) feeding a program participant, which includes:

- (A) spoon-feeding or bottle-feeding, but not tube feeding;
- (B) assisting a program participant with using eating and drinking utensils and adaptive devices; and
- (C) providing a program participant with standby assistance or encouragement while the program participant is eating;

(5) exercising by walking with a program participant;

(6) grooming a program participant, which includes:

- (A) caring for teeth;
- (B) shaving, including face, underarms, and legs;
- (C) caring for nails; and
- (D) laying out supplies;

(7) routine hair and skin care, which includes:

- (A) washing a program participant's hair;
- (B) drying a program participant's hair;
- (C) assisting with setting, rolling or braiding a program participant's hair but not cutting or chemical processing of hair;
- (D) combing or brushing a program participant's hair;
- (E) applying nonprescription lotion to a program participant's skin;

- (F) washing hands and face of a program participant;
- (G) applying makeup to a program participant; and
- (H) laying out supplies;

(8) assistance with self-administered medications, which includes:

(A) reminding a program participant to take a medication at the prescribed time;  
(B) opening and closing a medication container;  
(C) pouring a predetermined quantity of liquid to be ingested;  
(D) returning a medication to the proper storage area;  
and  
(E) assisting in reordering medications from a pharmacy;  
(9) toileting, which includes:  
(A) changing a program participant's day briefs;  
(B) changing a program participant's colostomy bag, including emptying the catheter bag;  
(C) assisting a program participant with use of a bedpan, including emptying the bedpan;  
(D) assisting a program participant with the use of a urinal, including emptying the urinal;  
(E) assisting a program participant with feminine hygiene needs;  
(F) assisting a program participant with clothing during toileting;  
(G) assisting a program participant with toilet hygiene, including the use of toilet paper and washing hands;  
(H) changing a program participant's external catheter;  
(I) preparing toileting supplies and equipment but not preparing catheter equipment; and  
(J) providing standby assistance to the program participant during toileting activities;  
(10) transfer or ambulation of the program participant, which includes:  
(A) non-ambulatory movement of a program participant from one stationary position to another but not carrying the program participant;  
(B) adjusting or changing a program participant's position in a bed or chair;  
(C) assisting a program participant in rising from a sitting to a standing position;  
(D) assisting a program participant in positioning for use of a walking apparatus;  
(E) assisting a program participant with putting on and removing leg braces and prostheses for ambulation;  
(F) assisting a program participant with ambulation or using steps;  
(G) assisting a program participant with wheelchair ambulation; and  
(H) providing a program participant with standby assistance while the program participant is engaged in any of the activities listed in subparagraphs (A) - (G) of this paragraph;  
(11) home management (that is, assistance with house-keeping activities supporting the program participant's health and safety), which includes:

(A) changing a program participant's bed linens;  
(B) cleaning a program participant's house;  
(C) laundering a program participant's clothes;  
(D) shopping for a program participant;  
(E) storing purchased items for a program participant;  
and  
(F) washing a program participant's dishes; and  
(12) escorting a program participant to obtain health care services and other necessary items and services except as prohibited by subsection (f)(6) of this section;  
(f) Prohibited activities. Personal assistance services do not include the following activities:  
(1) repairing a program participant's home;  
(2) grooming a program participant's pet;  
(3) moving heavy objects such as furniture for a program participant;  
(4) maintaining a program participant's yard;  
(5) performing services for members of a program participant's household other than the program participant;  
(6) transporting a program participant in a vehicle unless proof of liability insurance covering such transportation has been verified, in writing, by the vendor;  
(7) performing tasks not assigned by the supervisor of the provider of personal assistance services;  
(8) accepting gifts from a program participant;  
(9) bringing persons to a program participant's home who are not providing personal assistance services to the program participant;  
(10) taking personal property from a program participant's home; or  
(11) assuming control of the financial or personal affairs of a program participant or of his or her estate, including serving as power of attorney, guardian, or conservator.  
(g) Qualifications. A AAA must ensure that a person providing personal assistance services does not live with the program participant.  
§85.306. Adult Day Services.  
(a) This section establishes the requirements for adult day services, a service provided under the Older Americans Act and funded, in whole or in part, by DADS.  
(b) Eligibility. A AAA must ensure that a program participant who receives adult day services:  
(1) is:  
(A) 60 years of age or older; and  
(B) at least moderately impaired in the ability to perform instrumental or ordinary activities of daily living; or  
(2) is qualified to receive services under Title III, Part E, of the Older Americans Act.  
(c) Requirement for licensed vendor to provide services. A AAA must enter into a vendor agreement for the provision of adult

day services with an adult day care facility licensed in accordance with §98.11 of this title (relating to Criteria for Licensing).

(d) Service authorization. Before adult day services are provided by a vendor to a program participant, a AAA must ensure that the vendor obtains authorization for the services from the AAA in accordance with §83.3(o)(2)(B) of this title (relating to System of Access and Assistance).

(e) Description of adult day services. Adult day services consist of nursing services, physical rehabilitative services, nutrition services, socialization activities, and transportation services.

(1) Nursing services. Nursing services must include:

(A) assessing, observing, evaluating, and documenting a program participant's health condition, and instituting appropriate nursing interventions to stabilize or improve a program participant's condition or prevent complications;

(B) assisting a program participant with self-administered medications including, but not limited to, ordering, maintaining, or administering the medications as directed by physician's orders;

(C) assisting a program participant with medical treatments, as directed by physician's orders;

(D) counseling a program participant on the program participant's health needs and involving family members and caregivers in the discussions regarding immediate and long-term health goals; and

(E) providing or supervising personal day services to enable a program participant to restore, maintain, or improve the ability to perform activities of daily living and instrumental activities of daily living as defined in DADS Program Instruction AAA-PI-310 *Activities of Daily Living/Instrumental Activities of Daily Living NAPIS Mapping Requirements*.

(2) Physical rehabilitative services. Physical rehabilitative services must include:

(A) restorative nursing; and

(B) group and individual exercises, including range of motion exercises.

(3) Nutrition services. Nutrition services must include:

(A) one hot meal served between the hours of 10:30 a.m. and 1:30 p.m. that:

(i) is suitable in quantity and adequacy to attain and maintain nutritional requirements, including those of a special needs program participant; and

(ii) consists of at least two ounces of meat, one-half cup of fruit or vegetables, one cup of milk, and two servings of bread;

(B) special diets as required by a program participant's plan of care;

(C) a supplementary mid-morning and mid-afternoon snack;

(D) dietary counseling and nutrition education for a program participant and family member; and

(E) assisting with meals, if necessary, for program participants with hand deformities, paralysis, hand tremors, or trouble chewing, including:

(i) grinding meats and mashing vegetables; and

(ii) spoon feeding, bread buttering, and opening containers such as milk or juice.

(4) Socialization activities. Socialization activities are community interaction, cultural enrichment, educational, recreational, or other social activities held in the vendor's facility or in the community in a planned program to meet the social needs and interests of a program participant. A AAA must ensure that a service provider:

(A) provides at least three social activities each day; and

(B) posts a monthly activity calendar in a visible location at least one week in advance of the activities listed.

(5) Transportation services.

(A) Transportation services must include:

(i) round trip transportation to a vendor's facility from a program participant's residence; and

(ii) round trip transportation from a vendor's facility to physician ordered and other medical appointments if it is necessary for a program participant to attend such therapies or appointments while at the facility.

(B) If a vendor does not provide transportation directly, it must arrange for transportation from another person or organization.

(C) A vehicle used for transportation services must be properly operated and maintained and have proper heating and cooling systems to maintain reasonable temperature levels inside the vehicle.

(f) Staff qualifications. A AAA must ensure that staff persons of a service provider meet the qualifications described in §98.62(a) of this title (relating to Program Requirements).

§85.307. Emergency Response Services.

(a) Purpose. This section establishes the requirements for ERS, a service provided under the Older Americans Act and funded, in whole or in part, by DADS.

(b) Eligibility. A AAA must ensure that a program participant who receives emergency response services:

(1) is 60 years of age or older;

(2) meets at least one of the following criteria:

(A) lives alone;

(B) is routinely alone for eight or more hours during a 24-hour period; or

(C) lives with an incapacitated person who is not able to call for help or otherwise assist in an emergency;

(3) lives in a place other than an LTC facility, personal care home, foster care setting, or any other institutional setting where 24-hour supervision is available; and

(4) is at risk, such as being prone to falling or having an existing medical condition that may be life-threatening if the program participant does not receive immediate assistance.

(c) Requirement for licensed vendor to provide services. A AAA must enter into a vendor agreement for the provision of ERS with an entity licensed:

(1) by the Public Security Bureau of the Texas Department of Public Safety as an alarms systems company; or

(2) by the Department of State Health Services as a personal emergency response system provider.



(d) Service authorization. Before ERS are provided by a vendor to a program participant, a AAA must ensure that the vendor obtains authorization for the services from the AAA in accordance with §83.3(o)(2)(B) of this title (relating to System of Access and Assistance).

(e) Service activities. A AAA must ensure that the vendor:

(1) coordinates and oversees the installation and management of the electronic monitoring system;

(2) initiates services within 14 days after the service effective date on the authorization, unless prohibited by factors beyond its control such as a natural disaster; and

(3) if a program participant is not available to receive services during the time frame described in paragraph (2) of this subsection, initiates services within 72 hours after being notified the program participant is available.

(f) Responder requirements.

(1) A AAA must, before emergency response services are initiated, obtain or must ensure that a vendor obtains from the program participant as many names, as possible, of persons who will serve as responders.

(2) A AAA must designate or must ensure that a vendor designates public service personnel as the responder of last resort for each program participant.

(g) Prerequisites to service. A AAA must ensure that, before initiating ERS, a vendor:

(1) ensures the program participant:

(A) has the capacity to properly operate the electronic monitoring system;

(B) has a telephone with a private line, if the electronic monitoring system requires a private line to function properly; and

(C) signs a release statement allowing a responder to make a forced entry into the program participant's residence to respond to an activated alarm call when there are no other means of entering the residence;

(2) installs the electronic monitoring system;

(3) trains a program participant on the use of the electronic monitoring system, including:

(A) demonstrating to the program participant how the system works; and

(B) demonstrating to the program participant how to activate an alarm call; and

(4) explains to a program participant:

(A) that the program participant must participate in a system check each month;

(B) that the program participant must contact a service provider if:

(i) the program participant's telephone number or address changes; or

(ii) one or more of the program participant's responders changes;

(C) that the program participant must not willfully abuse or damage the electronic monitoring system;

(D) that a responder may forcibly enter a program participant's residence if necessary; and

(E) the procedures for filing a grievance against a service provider.

(h) Program participant file. A AAA must ensure that a vendor maintains a file for each program participant that includes:

(1) the name, telephone number, address, and medical condition of the program participant;

(2) the name and telephone number of the program participant's physician;

(3) the name and telephone number of each responder;

(4) a record of all completed and attempted system checks;

(5) a record of each alarm call;

(6) a copy of all required notices sent to the AAA;

(7) a signed release as required by subsection (g)(1)(C) of this section;

(8) the program participant's acknowledgment the equipment belongs to the vendor;

(9) if applicable, documentation showing approval from the AAA for the continuation of ERS after the time period authorized in accordance with subsection (d) of this section; and

(10) if applicable, documentation stating that service delivery was suspended and the reason for the suspension.

(i) Service delivery. A AAA must ensure that a vendor authorized to provide ERS:

(1) is available and able to respond to an alarm call from a program participant 24 hours a day, seven days a week; and

(2) in response to an alarm call:

(A) attempts to contact the program participant, within one minute of the call, to verify an emergency exists before contacting a responder;

(B) immediately contacts a responder if:

(i) the program participant verifies there is an emergency; or

(ii) the vendor is unable to reach the program participant;

(C) documents an alarm call at the time it is received and after it is resolved and includes:

(i) the name of the program participant;

(ii) the date and time an alarm call is received, recorded in hours, minutes, and seconds;

(iii) the time a monitor called the program participant in response to an alarm call, recorded in hours, minutes, and seconds;

(iv) the name of the contacted responder;

(v) a brief description of the incident; and

(vi) a statement of how the incident was resolved;

(3) notifies the responder within 24 hours after becoming aware of a significant change in the program participant's condition; and

(4) notifies the AAA, in writing, of any significant change in a program participant's environment within seven days after becoming aware of the change, including:

(A) a change of address; and

(B) a change in the circumstances described in subsection (b)(2) of this section.

(j) System checks. A AAA must ensure that a vendor:

(1) conducts a system check by activating the call button to test the electronic monitoring system at least once during each calendar month;

(2) documents a completed system check, including the date and time of a completed system check;

(3) completes a system check three times on three different days within one week if a system check fails to activate the electronic monitoring system;

(4) contacts a responder or caregiver (other than public service personnel) to conduct a system check if the vendor is unable to complete a system check after three attempts to schedule with the program participant; and

(5) if unable to conduct a system check, notifies the AAA in writing within 10 days after:

(A) the date and time of each attempted system check;

(B) the date and time of each attempt to contact a responder other than public service personnel; and

(C) the reason the program participant was unable to participate.

(k) Equipment maintenance. A AAA must ensure that a vendor:

(1) replaces or repairs faulty equipment in the program participant's electronic monitoring system within one business day after learning of the faulty equipment if the program participant is available to permit such repair or replacement;

(2) if the program participant is not available as described in paragraph (1) of this subsection, replaces or repairs the equipment as soon as the program participant is available;

(3) instructs the program participant or caregiver in replacing a battery;

(4) visits a program participant's residence to check the electronic monitoring system equipment within five business days after the equipment has registered five or more "low battery" signals in a 72-hour period and replaces the defective battery during the visit, if necessary; and

(5) documents and maintains a record of each instance of faulty equipment and low battery signal and includes in the documentation:

(A) the date the vendor became aware of the faulty equipment or low battery signal;

(B) the equipment or subscriber number;

(C) a description of the problem; and

(D) the date the entire equipment or a part of it was repaired or replaced.

(l) Suspension and termination of services. A AAA must ensure that a vendor:

(1) suspends services before the end of the authorization period and removes the equipment from a program participant's residence, if the vendor becomes aware that:

(A) the program participant moves to an area where the vendor does not provide services or that is not in the AAA's planning and service area;

(B) the program participant is admitted to an LTC facility, personal care home, foster care setting, or any other institutional setting where 24-hour supervision is available;

(C) the program participant moves to a noninstitutional residence and the requirements in subsection (b)(2) of this section are not met;

(D) the program participant dies; or

(E) the program participant requests for services to be terminated; and

(2) if services are suspended and equipment removed from a program participant's residence in accordance with paragraph (1) of this subsection:

(A) notifies the AAA within the next business day after such removal; and

(B) sends a case information form requesting service termination to the AAA within seven days after the notification.

(m) Special reporting considerations. A AAA must ensure that a vendor notifies the AAA of any of the following events within one business day of learning that:

(1) a program participant activated:

(A) four false alarms that result in a response by fire department, police, sheriff, or ambulance personnel within a six-month period; or

(B) 20 false alarms of any kind within a six-month period;

(2) the program participant is away from the residence or is unable to participate in the service delivery for three consecutive months or more; or

(3) the program participant is no longer able to operate the electronic monitoring system properly.

§85.308. Residential Repair Services.

(a) Purpose. This section establishes the requirements for residential repair services, a service provided under the Older Americans Act and funded, in whole or in part, by DADS.

(b) Eligibility. A AAA must ensure that a program participant who receives residential repair services:

(1) is 60 years of age or older;

(2) lives in a residence that requires repair or modification to enhance or address:

(A) energy efficiency;

(B) structural integrity; or

(C) the health and safety of the program participant.

(c) Requirement for vendor to provide services. A AAA must enter into a vendor agreement for the provision of residential repair services.

(d) Service authorization. Before residential repair services are provided by a vendor to a program participant, a AAA must ensure

that the vendor obtains authorization for the services from the AAA in accordance with §83.3(o)(2)(B) of this title (relating to System of Access and Assistance).

(e) Intent of services. A AAA must ensure that the residential repairs made by a vendor are essential for maintaining the health, safety, and independence of the program participant living in the residence.

(f) Unit of service. The unit of service of residential repair services is one residence receiving services totaling no more than \$5,000 within the current federal fiscal year. A AAA may exceed the \$5,000 limit if it has prior written approval from DADS.

(g) Descriptions of residential repair services.

(1) Structural services. Structural services are any repairs to the structure of the residence considered necessary to the health and safety of the program participant.

(2) Accessibility modifications. Accessibility modifications are structural adaptations to meet the needs of a program participant who has a disabling condition.

(3) Electrical services. Electrical services are replacement, repair, and installation of essential electrical wiring or fixtures including telephone wiring.

(4) Plumbing services. Plumbing services are replacement, repair, and installation of essential plumbing lines or fixtures.

(5) Weatherization services. Weatherization services are repairs and modifications or purchase of supplies that protect a residence from the effects of the weather, conserve energy, or provide alternative energy sources to heat or cool.

(6) Safety and security modification. Safety and security modifications are measures taken to prevent accidents, fires, or intrusion into a dwelling and the repair, modification, treatment, or removal of safety hazards in the residence.

(7) Essential appliances. Essential appliances are appliances necessary to sustain a healthy environment and independent living.

(h) Rental units. If the residence in which a program participant is living is not owned by the program participant, a AAA must obtain a signed agreement from the owner authorizing the services before services are provided.

(i) Prohibited activities. Residential repair services do not include the following activities:

(1) construction, repair, or maintenance of outbuildings such as garages, carports, animal shelters, or greenhouses;

(2) installation, repair, or maintenance of nonessential appliances and fixtures; and

(3) beautification of property or other activities that are strictly for cosmetic purposes.

(j) Services completed before payment. A AAA must ensure that before payment is made for residential repair services one of the following occurs:

(1) the program participant acknowledges, in writing, the services have been completed; or

(2) the AAA has confirmed by an on-site visit that the services have been completed.

§85.309. Senior Centers.

(a) Purpose. This section establishes the requirements for senior centers, a service provided under the Older Americans Act and funded, in whole or in part, by DADS.

(b) Senior center services. As provided in the Older Americans Act, §102(36), a senior center is a community facility used for the organization and provision of a broad spectrum of services for persons 60 years of age or older, which may include provision of health (including mental health); social, nutritional, and educational services; and the provision of facilities for recreational activities.

(c) Operations. A AAA must ensure that a service provider of a senior center:

(1) complies with applicable local building codes and ordinances and applicable state and federal laws, rules, and regulations including the Americans with Disabilities Act and the Rehabilitation Act of 1973, Section 504;

(2) establishes the senior center in an area central to and easily accessible by program participants;

(3) conducts fire prevention inspections on a monthly basis using a trained senior staff person or volunteer of the service provider;

(4) posts a copy of the latest fire prevention inspection report in a conspicuous place in the senior center and files the report at the senior center for review by the AAA;

(5) keeps doors, outside stairs, and fire escapes free from obstruction and in proper condition;

(6) has basic first aid supplies at the senior center available and maintained, clearly marked, and accessible to all senior center staff persons and program participants;

(7) has an adequate number of service center staff persons available at the center, during the time the center is open to the public, who are certified in:

(A) first aid;

(B) cardiopulmonary resuscitation; and

(C) operating an automatic external defibrillator, if one is available; and

(8) develops written policies and procedures regarding senior center operations and makes them available to senior center staff persons and program participants.

(d) Political activity. A AAA must ensure that a service provider does not:

(1) use a senior center for political campaigning except in those instances where a representative from each political party running in the campaign is given an equal opportunity to participate; or

(2) distribute political materials at a senior center.

(e) Religious activities and prayer. A AAA must ensure that a service provider does not:

(1) allow a prayer or other religious activity to be officially sponsored, led, or organized by a senior center staff person or volunteer; or

(2) prohibit a program participant from praying silently or audibly at a senior center if the program participant so chooses.

(f) Inventory. A AAA must maintain an accurate inventory of senior centers that were renovated, acquired, or constructed, in whole or in part, with funds provided by DADS.

(g) Change in ownership or purpose of a senior center.

(1) A AAA must ensure that:

(A) a grantee of funds from DADS to purchase or construct a senior center notifies the AAA, in writing, of the purchase or construction of the center within 30 days after such purchase or completion; and

(B) a grantee of funds described in subparagraph (A) of this paragraph and any successor owner of the senior center:

(i) notifies the AAA, in writing, of:

(I) a change in the ownership of the senior center; or

(II) a change in the purpose of the senior center from the purpose for which it was purchased or constructed; and

(ii) makes such notification 30 days before the change described in clause (i) of this subparagraph.

(2) A AAA must notify DADS if, within 10 years after purchase of or 20 years after completion of construction of a senior center, either of the following occurs:

(A) the owner of a senior center ceases to be a public or nonprofit private agency or organization; or

(B) there is a change in the purpose of the senior center from the purpose for which it was purchased or constructed.

(3) The notice required by paragraph (2) of this subsection must be in writing and be given to DADS within 10 days after a AAA is notified of the occurrence.

(4) If, within 10 years after the purchase of a senior center or 20 years after the completion of construction of a senior center, either of the conditions described in paragraph (2) of this subsection occurs, the United States Government is entitled to recover from the owner of the senior center an amount to be determined by the Older Americans Act, §312.

(h) Insurance. A AAA must ensure that the owner or operator of a senior center maintains insurance coverage for total replacement cost of the center and for the contents of a center funded by DADS.

§85.310. Respite Voucher Services.

(a) Purpose. This section establishes the requirements for respite voucher services, a service provided under the Older Americans Act and funded, in whole or in part, by DADS.

(b) Description of services. Respite voucher services are the provision of vouchers to a program participant to allow the program participant to select a respite provider, establish a work schedule and payment rate, and provide the respite provider information and training on the program participant's needs.

(c) Eligibility.

(1) In accordance with the Older Americans Act, §372, a AAA must ensure that a program participant who receives respite voucher services is:

(A) an adult who is an informal provider of in-home and community care for an individual who:

(i) is 60 years of age or older; and

(I) is unable to perform at least two activities of daily living without substantial human assistance, including verbal reminding, physical cueing, or supervision; or

(II) due to a cognitive or other mental impairment, requires substantial supervision because the individual behaves

in a manner that poses a serious health or safety hazard to the individual or another person; or

(ii) has Alzheimer's disease or a related disorder with neurological and organic brain dysfunction; or

(B) a person who is 55 years of age or older who:

(i) is a grandparent, step-grandparent, or relative by blood, marriage, or adoption of an individual with a disability or a child;

(ii) is the primary caregiver for the individual with a disability or the child because the individual's or child's biological or adoptive parents are unable or unwilling to serve as the primary caregiver; and

(iii) lives with the individual with a disability or the child; and

(I) has a legal relationship to the individual or the child, such as guardianship; or

(II) is caring for the individual or the child informally.

(2) An adult who is paid by a person or entity to provide caregiving services to an individual described in paragraph (1) of this subsection is not eligible to receive respite voucher services in regard to the same individual.

(d) Targeting. In the provision of respite voucher services a AAA must ensure that:

(1) priority is given to persons described in §85.201(f) of this chapter (relating to AAA Administrative Responsibilities);

(2) for persons described in subsection (c)(1)(A)(ii) of this section, priority is given to persons who provide care for individuals who are 60 years of age or older with Alzheimer's disease or a related disorder with neurological and organic brain dysfunction; and

(3) for persons described in subsection (c)(1)(B) of this section, priority is given to persons who provide care for children with severe disabilities.

(e) Application process. A AAA must:

(1) implement an application process to allow a person to apply for respite voucher services;

(2) process the applications received, including verifying that the requirement described in subsection (c)(1)(A) or (c)(1)(B) of this section are met; and

(3) notify the applicant of whether or not the application is approved.

(f) Information for program participants. A AAA must give a program participant written information to assist the program participant in performing the following activities:

(1) interviewing potential respite providers;

(2) requiring potential respite providers to provide references;

(3) checking references of respite providers;

(4) selecting a qualified respite provider in accordance with subsection (g) of this section;

(5) deciding upon, in discussion with the respite provider, an hourly, daily, or weekly rate to be paid to the provider;

(6) informing or training the respite provider on the specific needs of the program participant;

(7) ensuring proper payment for respite voucher services by recording the number of hours or days of respite used and the total amount claimed against the voucher;

(8) ensuring federal tax guidelines for household employees are followed in accordance with IRS Publication 926;

(9) notifying the AAA if the program participant's address changes;

(10) monitoring the quality of the respite voucher services provided; and

(11) notifying the AAA if the program provider is dissatisfied with a respite provider.

(g) Qualifications of a respite provider. A respite provider selected by a program participant:

(1) must be an adult;

(2) may be, except as provided in paragraph (3) of this subsection, any person or entity, including a family member or friend of the program participant or a licensed adult day care facility; and

(3) must not:

(A) be the spouse or legal guardian of the program participant; or

(B) live with the program participant.

(h) Assistance in finding a respite provider. A AAA must assist a program participant in finding a respite provider if such assistance is requested by the program participant.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 7, 2008.

TRD-200801808

Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: May 18, 2008

For further information, please call: (512) 438-3734



## SUBCHAPTER E. LONG-TERM CARE OMBUDSMAN PROGRAM

### 40 TAC §85.401

#### STATUTORY AUTHORITY

The new section is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

The new section implements Texas Government Code, §531.0055, and Texas Human Resources Code, §161.021.

*§85.401. Long-Term Care Ombudsman Program.*

(a) Purpose. This section establishes the requirements of the Long-Term Care Ombudsman Program, a program established under the Older Americans Act, §712 and funded, in whole or in part, by DADS.

(b) Designation. DADS designates AAAs as local ombudsman entities. A AAA may contract with a nonprofit organization to perform the duties of the local ombudsman entity, as described in this section, in the AAA's planning and service area.

(c) Description of program. The Long-Term Care Ombudsman Program provides services to protect the health, safety, welfare, and rights of residents. Such services include investigating and resolving complaints made by or on behalf of such residents, providing assistance and information to persons in choosing an LTC facility, and promoting a variety of means to ensure that residents' rights are protected, including conducting training programs and supporting the development of resident and family councils that advise LTC facilities.

(d) Eligibility.

(1) Except as provided in paragraph (2) of this subsection, a AAA must ensure that a program participant who receives services from the Long-Term Care Ombudsman Program is a resident and 60 years of age or older.

(2) A AAA may respond to a complaint of a resident who is under 60 years of age if such response:

(A) benefits the residents of that facility or residents of other LTC facilities who are 60 years of age or older; and

(B) will not significantly diminish the effectiveness of the Long-Term Care Ombudsman Program in assisting residents who are 60 years of age or older.

(e) Managing local ombudsman. A AAA must appoint a certified staff ombudsman to act as a managing local ombudsman. The managing local ombudsman must:

(1) oversee the administration of the Long-Term Care Ombudsman Program in the AAA's planning and service area; and

(2) be the primary contact for the local ombudsman entity.

(f) Adequate number of certified ombudsman. In order to implement the Long-Term Care Ombudsman Program as described in this section, a AAA:

(1) must have an adequate number of certified ombudsmen; and

(2) may have friendly visitors.

(g) Qualifications for certified ombudsmen and friendly visitors.

(1) A person may be a certified ombudsman only if:

(A) the person has not been convicted of an offense listed under Texas Health and Safety Code, §250.006;

(B) the person successfully completes a certification training provided by the AAA in accordance with DADS Ombudsman Certification Training Manual;

(C) for a certified volunteer ombudsman, the person successfully completes an internship in accordance with DADS Ombudsman Procedures Manual;

(D) the AAA recommends to the Office, in writing, using DADS *Certified Ombudsman Application*, that the person be approved as a certified ombudsman;

(E) the Office signs the DADS Certified Ombudsman Application approving the person to be a certified ombudsman; and

(F) the person completes continuing education provided by the AAA in accordance with DADS Ombudsman Procedures Manual.

(2) A person may be a friendly visitor only if the person successfully completes an orientation provided by the AAA in accordance with DADS Ombudsman Procedures Manual.

(h) Access to residents and records.

(1) In accordance with §19.413 of this title (relating to Access and Visitation Rights) and §92.801 of this title (relating to Access to Residents and Records by the Long-Term Care Ombudsman Program), a representative of the Office, as described in subsection (r) of this section, is entitled to immediate access to a resident.

(2) In accordance with §19.413 of this title and §92.801 of this title a certified ombudsman and a staff person of the Office are entitled to access:

(A) the medical and social records of a resident, if the certified ombudsman or staff person of the Office has the consent of the resident or the legally authorized representative of the resident;

(B) the medical and social records of a resident 60 years of age or older, if such access is necessary to investigate a complaint made to the Long-Term Care Ombudsman Program and:

(i) the resident is unable to consent to access and has no legally authorized representative; or

(ii) the following circumstances occur:

(I) the legal guardian of the resident refuses to give consent for access to the records;

(II) the certified ombudsman or staff person of the Office has reasonable cause to believe that the guardian is not acting in the best interest of the resident; and

(III) the certified ombudsman or staff person of the Office obtains the approval of the State Long-Term Care Ombudsman to access the records without the guardian's consent; and

(C) to the administrative records, policies and documents of the LTC facility to which the residents or general public have access.

(i) Conflict of interest and identity of certain relationships.

(1) A AAA must ensure that a certified ombudsman, an ombudsman intern, and a member of the immediate family of the managing local ombudsman are not subject to a conflict of interest.

(2) A conflict of interest includes the following:

(A) having a direct involvement in the licensing or certification of an LTC facility or of a home and community support services agency (HCSSA) licensed to provide home health services or hospice services in accordance with Chapter 97 of this title (relating to Licensing Standards for Home and Community Support Services Agencies);

(B) having an ownership or investment interest (represented by equity, debt, or other financial relationship) in an LTC facility or a HCSSA licensed to provide home health services or hospice services in accordance with Chapter 97 of this title;

(C) being employed by, or participating in the management of, an LTC facility or a HCSSA licensed to provide home health services or hospice services in accordance with Chapter 97 of this title;

(D) receiving, or having the right to receive, directly or indirectly, remuneration (in cash or in kind) under a compensation arrangement with an owner or operator of an LTC facility or a HCSSA licensed to provide home health services or hospice services in accordance with Chapter 97 of this title; and

(E) a certified ombudsman or ombudsman intern having a relative who is a resident in or an employee of an LTC facility in which the certified ombudsman or ombudsman intern provides Long-Term Care Ombudsman Program services.

(3) a conflict of interest described in paragraph (2)(A) - (D) of this subsection exists only if an LTC facility is in a AAA's planning and service area or a HCSSA is providing services to an LTC facility in a AAA's planning and service area.

(4) A AAA must specify, in writing, the mechanisms to:

(A) identify and remove conflicts of interest; and

(B) identify and address, if necessary, a familial or personal relationship that a certified ombudsman or ombudsman intern has with:

(i) a staff person of an LTC facility in the AAA's planning and service area; or

(ii) a staff person of DADS.

(j) Complaints. A AAA must:

(1) ensure that a person is allowed to make a complaint about circumstances that may adversely affect the health, safety, welfare, or rights of a resident in the following ways:

(A) in writing, including by electronic mail;

(B) in person; and

(C) by telephone, either by:

(i) a toll-free telephone number established by the AAA; or

(ii) acceptance by the AAA of a collect telephone call;

(2) initiate a complaint if the AAA becomes aware of circumstances that may adversely affect the health, safety, welfare, or rights of a resident;

(3) unless a complaint is initiated by the AAA in accordance with paragraph (2) of this subsection, respond to the person who makes a complaint, within two business days after receipt of the complaint or sooner, if possible, if the complaint presents an emergency situation;

(4) require a certified ombudsman to initiate an investigation of a complaint as soon as practicable after receipt of the complaint;

(5) require a certified ombudsman to investigate and resolve a complaint in a fair and objective manner; and

(6) report information about complaints to DADS in accordance with instructions promulgated by the Office.

(k) Disclosure of information.

(1) A AAA may disclose confidential information regarding a resident, including the identity of a resident, only if:

(A) the resident or legally authorized representative consents to the disclosure in writing;

(B) the resident or legally authorized representative consents to the disclosure orally and the consent is documented by a

certified ombudsman, in writing, at the time the oral consent is given; or

(C) the disclosure is required by court order.

(2) A AAA may disclose the identity of a person who files a complaint only if:

(A) the complainant, or legally authorized representative of the complainant, consents to the disclosure in writing;

(B) the complainant, or legally authorized representative consents to the disclosure orally and the consent is documented by a certified ombudsman, in writing, at the time the oral consent is given; or

(C) the disclosure is required by court order.

(3) A AAA must disclose Long-Term Care Ombudsman Program information, other than the information described in paragraphs (1) and (2) of this subsection, in accordance with Texas Government Code, Chapter 552 (the Public Information Act).

(l) Representation of residents. A AAA may represent the interests of a resident before government agencies and seek administrative, legal, and other remedies to protect the health, safety, welfare, and rights of the resident, if requested by a resident or another person on behalf of the resident.

(m) Review of proposed laws, regulations, and policies. A AAA may review and comment on existing and proposed laws, regulations, and other government policies and actions that pertain to the rights and well-being of a resident; and facilitate the ability of the public to comment on the laws, regulations, policies, and actions.

(n) Community relations. A AAA must:

(1) ensure that the local Ombudsman entity is visible within a AAA's planning and service area;

(2) coordinate with public and private organizations to involve residents in the community;

(3) be a knowledgeable resource about:

(A) community services and supports for residents;

(B) LTC facilities (including having information about facility operations and Ombudsman complaint history) without recommending a specific facility;

(C) DADS regulatory system regarding LTC facilities; and

(D) resident-centered care (that is, care based on a resident's needs, choices, and preferences);

(4) provide training to LTC facility staff regarding quality of care provided to residents as requested by a facility;

(5) support the development of resident and family councils in LTC facilities; and

(6) coordinate with DADS Regulatory Services, at least quarterly, and the Department of Family and Protective Services, as needed, to resolve issues regarding LTC facility operations and the quality of care for and the quality of life of residents.

(o) Recruitment, supervision, and retention of certified volunteer ombudsmen. If a AAA determines that certified volunteer ombudsmen are needed, the AAA must:

(1) determine the number of certified volunteer ombudsmen needed to comply with DADS performance measures;

(2) make a good faith effort to recruit the number of certified volunteer ombudsmen needed;

(3) ensure that a certified volunteer ombudsman meets the qualifications described in subsection (g) of this section and is not subject to a conflict of interest as described in subsection (i) of this section;

(4) supervise and routinely communicate with a certified volunteer ombudsman to:

(A) monitor performance;

(B) support effective volunteer conduct; and

(C) identify training needs; and

(5) promote retention of a certified volunteer ombudsman by:

(A) providing continuing education in accordance with subsection (g)(1)(F) of this section;

(B) providing recognition and motivational activities;

(C) conducting annual evaluations; and

(D) conducting exit evaluations for a certified volunteer ombudsman leaving volunteer service.

(p) Grievance procedures for certified volunteer ombudsmen and friendly visitors. A AAA must have a process that:

(1) allows a certified volunteer ombudsman or friendly visitor to file a grievance with the AAA regarding the Long-Term Care Ombudsman Program; and

(2) requires a staff person of the AAA to review and resolve the grievance.

(q) Compliance with documents of the Office. A AAA must comply with the following documents promulgated by the Office:

(1) DADS Ombudsman performance measures;

(2) DADS Ombudsman Procedures Manual;

(3) DADS Program Instructions; and

(4) DADS Ombudsman Certification Training Manual.

(r) Representatives of the Office. In accordance with Texas Human Resources Code, §101.051(4), DADS designates the following persons as representatives of the Office:

(1) staff persons of the Office;

(2) certified ombudsmen; and

(3) ombudsman interns.

(s) Contractor compliance. If a AAA contracts with a non-profit organization as described in subsection (b) of this section, the AAA must ensure that the organization complies with the requirements for a AAA described in this section.

(t) Ombudsman maintenance of effort.

(1) A AAA must comply with the Older Americans Act, §306(a)(9) regarding adequate expenditures for the Long-Term Care Ombudsman Program.

(2) A AAA may request, in writing, by September 30 of each year, that DADS waive the requirement described in paragraph (1) of this subsection for the next federal year.

(3) DADS may grant such a request if the AAA demonstrates adequate justification.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 7, 2008.

TRD-200801809

Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: May 18, 2008

For further information, please call: (512) 438-3734



## CHAPTER 92. LICENSING STANDARDS FOR ASSISTED LIVING FACILITIES

### SUBCHAPTER I. ACCESS TO RESIDENTS AND RECORDS BY THE LONG-TERM CARE OMBUDSMAN PROGRAM

#### 40 TAC §92.801

The Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), new §92.801, concerning access to residents and records by the Long-Term Care Ombudsman Program, in new Subchapter I, Chapter 92, Licensing Standards for Assisted Living Facilities.

#### BACKGROUND AND PURPOSE

The purpose of the new section is to update DADS rules to be consistent with §712(b) of the Older Americans Act of 1965, as amended in 2006. Section 712(b) requires the State to ensure that certified ombudsmen and staff of the Office of the State Long-Term Care Ombudsman have appropriate access to residents of assisted living facilities and to the residents' records when necessary to investigate complaints. Currently, DADS rules do not require an assisted living facility to allow certified ombudsmen access to residents or to a resident's record, although access is authorized in federal law. The proposal will clarify the rights of residents in assisted living facilities and the responsibilities of an assisted living facility under the federal law.

#### SECTION-BY-SECTION SUMMARY

The proposed new section states that a resident of an assisted living facility has the right to be visited by, and a facility must provide immediate access to any resident to, a representative of the Office of the State Long-Term Care Ombudsman. Subsection (b) of the new section describes the records and documents to which a certified ombudsman has access.

The new section cross-references two rules in Chapter 85 (§85.2 and §85.401) that are proposed elsewhere in this issue of the *Texas Register*. Proposed new §85.2 defines a certified ombudsman as a certified staff ombudsman or a certified volunteer ombudsman. Proposed new §85.401(r) defines a representative of the Office of the State Long-Term Care Ombudsman as a staff person of the Office, a certified ombudsman, or an ombudsman intern.

#### FISCAL NOTE

Gordon Taylor, DADS Chief Financial Officer, has determined that, for the first five years the proposed new section is in ef-

fect, enforcing or administering the new section does not have foreseeable implications relating to costs or revenues of state or local governments.

#### SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed new section will not have an adverse economic effect on small businesses or micro-businesses, because the new section imposes no new obligations on facilities that would require them to alter their business practices.

#### PUBLIC BENEFIT AND COSTS

Veronda Durden, DADS Assistant Commissioner for Regulatory Services, has determined that, for each year of the first five years the new section is in effect, the public benefit expected as a result of enforcing the new section is that DADS rules will be in compliance with federal law, that a resident's right to access a representative of the Office of the State Long-Term Care Ombudsman Program will be clarified, and a facility's responsibility to allow access to residents and residents' records by the State Long-Term Care Ombudsman will be in rule.

Ms. Durden anticipates that there will not be an economic cost to persons who are required to comply with the new section. The new section 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 Hannah Ndika at (512) 438-2133 in DADS' Regulatory Services Division. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-016, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030, or street address 701 West 51st St., Austin, TX 78751; faxed to (512) 438-5759; or e-mailed to [rulescomments@dads.state.tx.us](mailto: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 either (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 016" in the subject line.

#### STATUTORY AUTHORITY

The new section 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 Health and Safety Code, Chapter 247, which authorizes DADS to license and regulate assisted living facilities.



The new section implements Texas Government Code, §531.0055; Texas Human Resources Code, §161.021; and Texas Health and Safety Code, §§247.001 - 247.069.

§92.801. Access to Residents and Records by the Long-Term Care Ombudsman Program.

(a) A resident has the right to be visited by, and a facility must provide immediate access to any resident to, a representative of the Office of the State Long-Term Care Ombudsman (the Office), as described in §85.401(r) of this title (relating to Long-Term Care Ombudsman Program).

(b) A facility must allow a certified ombudsman, as defined in §85.2 of this title (relating to Definitions), and a staff person of the Office access:

(1) to the medical and social records of a resident, if the certified ombudsman or staff person of the Office has the consent of the resident or the legally authorized representative of the resident;

(2) to the medical and social records of a resident 60 years of age or older, in accordance with the Older Americans Act, §712(b); and

(3) to the administrative records, policies, and documents of the facility to which the facility residents or general public have access.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 7, 2008.

TRD-200801814

Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: May 18, 2008

For further information, please call: (512) 438-3734



## CHAPTER 93. EMPLOYEE MISCONDUCT REGISTRY (EMR)

The Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), the repeal of Chapter 93, Employee Misconduct Registry (EMR), consisting of §§93.1 - 93.4, 93.11 - 93.13, 93.21 - 93.23, 93.31 - 93.34, 93.41 - 93.48, and 93.61 - 93.63; and proposes new Chapter 93, Employee Misconduct Registry (EMR), consisting of §93.1, concerning purpose; §93.2, concerning definitions; §93.3, concerning employment and registry information; §93.4, concerning investigations; §93.5, concerning DADS investigates: notice to employee of reportable conduct; §93.6, concerning DADS investigates: informal review; §93.7, concerning DADS investigates: notice of opportunity for formal hearing; §93.8, concerning entering information in the EMR; and §93.9, concerning removing information from the EMR.

### BACKGROUND AND PURPOSE

The purpose of the new sections and repeal is to update DADS rules to be consistent with Senate Bill (SB) 1318, 80th Legislature, 2007, which amended Texas Health and Safety Code, §142.009, to give the responsibility for investigating allegations of abuse, neglect, and exploitation of children by home and community support services agency employees to DADS. Part of the

implementation of this new responsibility requires the reorganization of DADS' rules governing the EMR, established in accordance with Texas Health and Safety Code, Chapter 253.

The proposal rewrites and reorganizes the EMR rules to be clearer and easier for the public to use and understand and changes the format to be more consistent with other Health and Human Services Enterprise rules. The proposal also adds and updates definitions, updates agency names, and corrects rule cross-references.

### SECTION-BY-SECTION SUMMARY

The proposed new rules in §§93.1 - 93.9 update agency names, rewrite and reorganize rule language, and correct rule cross-references.

Proposed new §93.2 updates definitions, adds a definition for "child," and amends the definition of "facility" by adding hospice inpatient units and hospice residential units.

Proposed new §93.3 states that a facility or agency must check the EMR and the Nurse Aide Registry (NAR) to determine if an applicant for employment is listed as unemployable, states that a facility or agency must not employ a person listed in the EMR or NAR as unemployable, and requires facilities and agencies to provide information about the EMR to employees.

Proposed new §93.4 sets out the allegations of reportable conduct that DADS is responsible for investigating to add that DADS is responsible for the investigation of allegations of reportable conduct and provision of due process for a home and community support services agency employee who provides services to a child.

Proposed new §93.5 describes the procedures DADS follows to provide notice to an employee after an investigation in which DADS determines evidence exists to indicate that the employee has committed a reportable act.

Proposed new §93.6 describes the procedures DADS follows if an employee requests an informal review.

Proposed new §93.7 describes the procedures and timeline that DADS follows to provide an employee with the notice of opportunity for a formal hearing and states that if the employee does not respond to the written notice and does not request a formal hearing, the reportable conduct is recorded in the EMR.

Proposed new §93.8 describes the procedures DADS follows and the information DADS enters in the EMR.

Proposed new §93.9 describes DADS' procedures for removing an employee's name from the EMR.

The repeal of §§93.1 - 93.4, 93.11 - 93.13, 93.21 - 93.23, 93.31 - 93.34, 93.41 - 93.48, and 93.61 - 93.63 is part of rewriting and reorganizing the EMR rules.

### FISCAL NOTE

Gordon Taylor, DADS Chief Financial Officer, has determined that, for the first five years the proposed new sections and repeal are in effect, enforcing or administering the new sections and repeal does not have foreseeable implications relating to costs or revenues of state or local governments.

### SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed new sections and repeal will not have an adverse economic effect on small busi-

nesses or micro-businesses, because the proposal does not place any new requirements on small businesses or micro-businesses.

## PUBLIC BENEFIT AND COSTS

Veronda Durden, DADS Assistant Commissioner for Regulatory Services, has determined that, for each year of the first five years the new sections and repeal are in effect, the public benefit expected as a result of enforcing the new sections and repeal is that DADS' rules will reflect changes to Texas Health and Safety Code, Chapters 142 and 253, made by SB 1318. The rewritten EMR rules will be easier for the public to use and understand.

Ms. Durden anticipates that there will not be an economic cost to persons who are required to comply with the new sections and repeal. The new sections and repeal will not affect a local economy.

## TAKINGS IMPACT ASSESSMENT

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

## PUBLIC COMMENT

Questions about the content of this proposal may be directed to Jennifer Morrison at (512) 438-4624 in DADS' Regulatory Services Division. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-001, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030, or street address 701 West 51st St., Austin, TX 78751; faxed to (512) 438-5759; or e-mailed to [rulescomments@dads.state.tx.us](mailto: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 either (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 001" in the subject line.

## 40 TAC §§93.1 - 93.9

The new sections are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code, Chapter 253, which authorizes DADS to administer the EMR.

The new sections implement Texas Government Code, §531.0055, Texas Human Resources Code, §161.021, and Texas Health and Safety Code, §§253.001 - 253.010.

### §93.1. Purpose.

This chapter implements Texas Health and Safety Code, Chapter 253, Employee Misconduct Registry, to track findings of reportable conduct by an unlicensed employee of a facility or agency regulated by DADS.

### §93.2. Definitions.

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

(1) Administrative law judge--A SOAH attorney who conducts formal hearings.

(2) Agency--An entity that is licensed by DADS under Texas Health and Safety Code, Chapter 142, Home and Community Support Services, or a person exempt from licensing under Texas Health and Safety Code, §142.003(a)(19), which includes a Home and Community-based Services Program provider.

(3) Child--A person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes.

(4) Commissioner--The commissioner of DADS.

(5) DADS--The Department of Aging and Disability Services.

(6) Employee--A person who:

(A) works for an agency or facility;

(B) provides personal services, active treatment, or any other personal services to a resident or consumer of the facility or to an individual receiving agency services;

(C) performs services for the agency or facility and is not licensed or certified to perform those services; and

(D) is not a certified nurse aide working at a nursing facility.

(7) EMR--Employee Misconduct Registry.

(8) Facility--A facility licensed by DADS, including a hospice inpatient unit or hospice residential unit, or an adult foster care provider that contracts with DADS.

(9) Formal hearing--A hearing held by SOAH to determine whether an employee has committed reportable conduct in a facility or agency.

(10) IR--Informal review. An opportunity for an employee to dispute a finding of reportable conduct by providing testimony and supporting documentation to an impartial DADS staff person.

(11) Reportable conduct--

(A) abuse or neglect that causes or may cause death or harm to a resident or consumer of a facility or to an individual receiving agency services;

(B) sexual abuse of a resident or consumer of a facility or of an individual receiving agency services;

(C) financial exploitation of a resident or consumer of a facility or of an individual receiving agency services in the amount of \$25 or more; or

(D) emotional, verbal, or psychological abuse that causes harm to a resident or consumer of a facility or to an individual receiving agency services.

(12) SOAH--State Office of Administrative Hearings. A state agency responsible for conducting formal hearings for other state agencies, including DADS.

### §93.3. Employment and Registry Information.

(a) Before a facility or agency hires an employee, the facility or agency must check the EMR and the Nurse Aide Registry (NAR) (governed by the Omnibus Budget Reconciliation Act of 1987) to determine if the applicant for employment is listed as unemployable.

(b) A facility or agency must not employ a person listed in the EMR or NAR as unemployable.

(c) A facility or agency must provide information about the EMR to all employees. The information must:

- (1) be in writing; and
- (2) state that persons listed in the EMR are not employable.

(d) The EMR applies to an employee of a facility or agency, which includes:

- (1) a nursing facility;
- (2) a licensed intermediate care facility for persons with mental retardation or a related condition;
- (3) an assisted living facility;
- (4) an adult foster care provider;
- (5) an adult day care facility;
- (6) a home and community support services agency licensed under Texas Health and Safety Code, Chapter 142; and
- (7) a person exempt from licensing under Texas Health and Safety Code, §142.003(a)(19).

§93.4. Investigations.

DADS is responsible for the investigation of allegations of reportable conduct and provision of due process for:

- (1) a facility employee; and
- (2) a home and community support services agency employee who provides services to a child.

§93.5. DADS Investigates: Notice to Employee of Reportable Conduct.

(a) After an investigation in which DADS determines evidence exists to indicate that an employee has committed a reportable act, DADS staff send the employee a written notice that includes:

- (1) a brief summary of the findings and facts on which the findings are based;
- (2) the employee's right to an IR to dispute the findings;
- (3) notice that the request for an IR must be made no later than 10 calendar days after the date the employee receives the written notice; and
- (4) the address and contact information for the local DADS regional office.

(b) An employee may dispute these findings by requesting an IR within the required time frame to request an IR.

§93.6. DADS Investigates: Informal Review.

(a) If an employee requests an IR, DADS sets a date to allow the employee to dispute the findings by providing testimony, in person or by telephone, to an impartial Regulatory Services Division staff person at the local DADS regional office.

(1) If the staff person does not uphold the findings, DADS does not record the employee's name or related information in the EMR.

(2) If the staff person upholds the findings, DADS notifies the employee of the results and the process continues.

(b) If the employee does not request an IR, or fails to appear for a requested IR, DADS notifies the employee of the results and the process continues.

§93.7. DADS Investigates: Notice of Opportunity for Formal Hearing.

(a) After the informal review process is completed, DADS staff review the findings and supporting documentation and send the employee a written notice that includes:

- (1) a brief summary of the findings;
- (2) the employee's right to a formal hearing on the reportable conduct;
- (3) notice that the request for hearing must be made in writing no later than 30 calendar days after the date the employee receives the written notice; and
- (4) the address and contact information for the Health and Human Services Commission Hearings Division.

(b) If the employee does not request a formal hearing, the employee's name and related information is recorded in the EMR.

(c) An employee may request a formal hearing conducted in accordance with the Health and Human Services Commission's formal hearing procedures in Title 1, Texas Administrative Code, Chapter 357, Subchapter I.

(d) If an employee requests a hearing, the employee is granted a formal hearing on the incident of reportable conduct before an administrative law judge at SOAH.

(e) The administrative law judge issues a proposal for decision finding that the employee either did or did not commit reportable conduct.

(f) The commissioner or the commissioner's designee reviews the proposal for decision and issues a final order.

§93.8. Entering Information in the EMR.

(a) DADS records an employee's name and related information in the EMR:

- (1) when all due process procedures are completed and a finding of reportable conduct is substantiated by DADS;
- (2) as required by Texas Health and Safety Code, §253.0075, when DADS receives notice of substantiated findings from the Department of Family and Protective Services; and
- (3) if an agency of another state or the federal government finds that an employee has committed an act that constitutes reportable conduct, DADS may make a record in the EMR of the employee's name, the employee's address, the employee's social security number, the name of the facility, the address of the facility, the date of the act, and a description of the act.

(b) The following information is entered in the EMR:

- (1) the employee's name;
- (2) the employee's address;
- (3) the employee's social security number;
- (4) the name of the facility or agency;
- (5) the address of the facility or agency;
- (6) the date of the act of reportable conduct; and
- (7) a description of the act of reportable conduct.

§93.9. Removing Information from the EMR.

DADS may remove an employee's name from the EMR if the employee requests the entry of information be reconsidered, and DADS deter-

mines that the employee does not meet the requirements for listing in the EMR.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 3, 2008.

TRD-200801740

Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: May 18, 2008

For further information, please call: (512) 438-3734



## SUBCHAPTER A. INTRODUCTION

### 40 TAC §§93.1 - 93.4

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Aging and Disability Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The repeal is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

The repeal implements Texas Government Code, §531.0055, and Texas Human Resources Code, §161.021.

§93.1. *What is the purpose of this chapter?*

§93.2. *What do certain words and terms in this chapter mean?*

§93.3. *What is the EMR?*

§93.4. *To whom does the EMR apply?*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 3, 2008.

TRD-200801741

Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: May 18, 2008

For further information, please call: (512) 438-3734



## SUBCHAPTER B. EMR USE REQUIREMENTS

### 40 TAC §§93.11 - 93.13

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Aging and Disability Services or in the Texas Register*

*office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The repeal is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

The repeal implements Texas Government Code, §531.0055, and Texas Human Resources Code, §161.021.

§93.11. *What are facilities and agencies required to do before hiring a new employee?*

§93.12. *Can facilities and agencies employ a person who is listed on the EMR or the Nurse Aide Registry as unemployable?*

§93.13. *What information are facilities and agencies required to provide to employees?*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 3, 2008.

TRD-200801742

Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: May 18, 2008

For further information, please call: (512) 438-3734



## SUBCHAPTER C. PROCESS FOR FACILITY REFERRALS

### 40 TAC §§93.21 - 93.23

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Aging and Disability Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The repeal is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

The repeal implements Texas Government Code, §531.0055, and Texas Human Resources Code, §161.021.

§93.21. *How does the process begin for a facility employee referred to the EMR?*

§93.22. *Who is responsible for the investigation and provision of due process to facility employees referred to the EMR?*

§93.23. *What happens when DHS receives a report that a facility employee has committed reportable conduct?*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 3, 2008.

TRD-200801743

Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: May 18, 2008

For further information, please call: (512) 438-3734



## SUBCHAPTER D. PROCESS FOR AGENCY REFERRALS

### 40 TAC §§93.31 - 93.34

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Aging and Disability Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The repeal is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

The repeal implements Texas Government Code, §531.0055, and Texas Human Resources Code, §161.021.

§93.31. *How does the process begin for an agency employee referred to the EMR?*

§93.32. *Who is responsible for the investigation and due process of agency employees referred to the EMR?*

§93.33. *What happens when the Texas Department of Protective and Regulatory Services receives a report that an agency employee has committed reportable conduct?*

§93.34. *What happens when DHS receives a notice of substantiated findings of reportable conduct from the Texas Department of Protective and Regulatory Services?*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 3, 2008.

TRD-200801744

Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: May 18, 2008

For further information, please call: (512) 438-3734



## SUBCHAPTER E. DETERMINATION OF REPORTABLE CONDUCT, INFORMAL REVIEW, AND FORMAL HEARING FOR FACILITY REFERRALS

### 40 TAC §§93.41 - 93.48

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Aging and Disability Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The repeal is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

The repeal implements Texas Government Code, §531.0055, and Texas Human Resources Code, §161.021.

§93.41. *What happens once reportable conduct is determined and the facility employee is referred to the EMR?*

§93.42. *How does a facility employee dispute DHS's finding of reportable conduct?*

§93.43. *What happens when a facility employee requests an informal review?*

§93.44. *What happens if the facility employee does not respond to the notice letter and does not request an informal review?*

§93.45. *Is the facility employee offered any further opportunities to dispute the finding(s) of reportable conduct?*

§93.46. *What happens if the facility employee does not respond to the notice letter and does not request a formal hearing?*

§93.47. *What happens when a facility employee requests a formal hearing?*

§93.48. *What happens if the administrative law judge finds that the facility employee committed reportable conduct?*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 3, 2008.

TRD-200801745

Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: May 18, 2008

For further information, please call: (512) 438-3734



## SUBCHAPTER F. RECORDABLE INFORMATION IN THE EMR

### 40 TAC §§93.61 - 93.63

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Aging and Disability Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The repeal is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

The repeal implements Texas Government Code, §531.0055, and Texas Human Resources Code, §161.021.

§93.61. *What must occur before DHS may record an employee's name in the EMR?*

§93.62. *What information is recorded in the EMR?*

§93.63. *Is it possible to remove an employee's name from the EMR once it is listed?*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 3, 2008.

TRD-200801746

Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: May 18, 2008

For further information, please call: (512) 438-3734



## CHAPTER 100. MISCELLANEOUS SUBCHAPTER A. OPERATION OF THE TEXAS DEPARTMENT ON AGING

### 40 TAC §100.1, §100.3

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Aging and Disability Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), the repeal of §100.1, concerning operation of the Texas Department on Aging, and §100.3, concerning governing documents, in Chapter 100, Miscellaneous.

#### BACKGROUND AND PURPOSE

HHSC, on behalf of DADS, is proposing new rules that govern area agencies on aging (AAAs) and implementation of the Older Americans Act of 1965, as amended in 2006, elsewhere in this issue of the *Texas Register*. As part of the proposal to rewrite and reorganize the AAA rules in Chapter 85, DADS proposes to repeal obsolete rules in Chapter 100 that are no longer required

in the rule base. The rules proposed for repeal also concern the former Texas Department on Aging, the functions of which have transferred to DADS.

#### SECTION-BY-SECTION SUMMARY

The repeal of §100.1 deletes obsolete AAA definitions, including the Texas Department on Aging's mission statement, scope of responsibilities, standards governing private donors, charges for copies of public records, and interagency agreements.

The repeal of §100.3 deletes obsolete rules that reference the Texas Department on Aging's governing documents.

#### FISCAL NOTE

Gordon Taylor, DADS Chief Financial Officer, has determined that, for the first five years after the repeal, there are no foreseeable implications relating to costs or revenues of state or local governments.

#### SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed repeal will have no adverse economic effect on small businesses or micro-businesses, because the repeal applies only to AAAs, which are public or private nonprofit agencies or organizations. A small or micro-business is defined, in part, as a legal entity that is formed for the purpose of making a profit.

#### PUBLIC BENEFIT AND COSTS

Gary Jessee, DADS Assistant Commissioner for Access and Intake, has determined that, for each year of the first five years after the repeal, the public benefit expected as a result of repealing the sections will be to remove obsolete rules from DADS' rule base, resulting in clearer, more up-to-date rules.

Mr. Jessee anticipates that there will not be an economic cost to persons who are affected by the repeal. The repeal will not affect a local economy.

#### TAKINGS IMPACT ASSESSMENT

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

#### PUBLIC COMMENT

Questions about the content of this proposal may be directed to Toni Packard at (512) 438-4290 in DADS' Access and Intake Division, Area Agencies on Aging Section. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-045, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030, or street address 701 West 51st St., Austin, TX 78751; faxed to (512) 438-5759; or e-mailed to [rulescomments@dads.state.tx.us](mailto: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 either (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 045" in the subject line.

#### STATUTORY AUTHORITY

The repeal is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

The repeal implements Texas Government Code, §531.0055, and Texas Human Resources Code, §161.021.

*§100.1. Operation of the Texas Department on Aging.*

*§100.3. Governing Documents.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 7, 2008.

TRD-200801812

Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: May 18, 2008

For further information, please call: (512) 438-3734

◆ ◆ ◆

# 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 4. AGRICULTURE

### PART 1. TEXAS DEPARTMENT OF AGRICULTURE

#### CHAPTER 19. QUARANTINES AND NOXIOUS AND INVASIVE PLANTS

##### SUBCHAPTER V. MEXICAN FRUIT FLY QUARANTINE

###### 4 TAC §§19.500 - 19.508

The Texas Department of Agriculture withdraws the emergency adoption of new §§19.500 - 19.508 which appeared in the April 11, 2008, issue of the *Texas Register* (33 TexReg 2877).

Filed with the Office of the Secretary of State on April 4, 2008.

TRD-200801762

Dolores Alvarado Hibbs

General Counsel

Texas Department of Agriculture

Effective date: April 4, 2008

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



## TITLE 19. EDUCATION

### PART 2. TEXAS EDUCATION AGENCY

#### CHAPTER 109. BUDGETING, ACCOUNTING, AND AUDITING

##### SUBCHAPTER C. ADOPTIONS BY REFERENCE

###### 19 TAC §109.41

The Texas Education Agency withdraws the proposed amendments to §109.41 which appeared in the November 30, 2007, issue of the *Texas Register* (32 TexReg 8650).

Filed with the Office of the Secretary of State on April 7, 2008.

TRD-200801830

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Effective date: April 7, 2008

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



## TITLE 25. HEALTH SERVICES

### PART 1. DEPARTMENT OF STATE HEALTH SERVICES

#### CHAPTER 417. TDMHMR AND FACILITY RESPONSIBILITIES

##### SUBCHAPTER G. VOLUNTEER AND COMMUNITY ENGAGEMENT

###### 25 TAC §417.307

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services, withdraws the proposed new §417.307, concerning Volunteer Services State Council (VSSC), which appeared in the December 7, 2007, issue of the *Texas Register* (32 TexReg 9092).

Filed with the Office of the Secretary of State on April 4, 2008.

TRD-200801758

Lisa Hernandez

General Counsel

Department of State Health Services

Effective date: April 4, 2008

For further information, please call: (512) 458-7111 x6972





# 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 358. MEDICAID ELIGIBILITY

##### SUBCHAPTER D. RESOURCES

###### 1 TAC §358.432, §358.444

The Texas Health and Human Services Commission (HHSC) adopts an amendment to §358.432, concerning Home Equity Treatment and adopts new §358.444, concerning Medicaid Treatment of Qualified Long-Term Care Partnership Program Insurance Policies. Section 358.444 is adopted without changes to the proposed text as published in the December 28, 2007, issue of the *Texas Register* (32 TexReg 9892) and will not be republished. New §358.432 is adopted with one minor correction to delete the word "or" erroneously included in subsection (b)(2). The text of the rule will be republished.

###### Background and Justification

The amendment to Chapter 358 was undertaken as a result of Section 2, Senate Bill 22, 80th Legislature, Regular Session, 2007, to be consistent with Section 6024 of the federal Deficit Reduction Act of 2005 (Pub. L. No. 1096-171). These amendments implement a Long-Term Care Partnership Program which will enable individuals who purchase certain approved private long-term care insurance policies to have a dollar-for-dollar exclusion of their resources in an amount equal to the insurance benefits paid on behalf of the individual in determining eligibility for medical assistance.

The Health and Human Services Council voted to support the adoption of the proposed rule and amendments at its February 29, 2008 meeting.

HHSC held a public hearing on January 14, 2008. One individual, an insurance and investment broker representing himself, testified in support of the proposed rules.

###### Comments and Responses

HHSC received comments on the amendment from two advocacy groups - the Texas Legal Services Center and the National Academy of Elder Law Attorneys (NAELA), as well as comments from two individual attorneys. A summary of the comments and HHSC's responses follow.

Comment: Two commenters stated that the proposed rule changes do not mention the Medicaid Estate Recovery Program (MERP). A related comment was that the proposed rules fail to include the dollar-for-dollar exemption for MERP provided in the Deficit Reduction Act of 2005 (DRA). Another commenter stated that the rule must address estate recovery.

Response: HHSC has made no changes to the proposed rules because of the comments. The new rule and amendments address only the Medicaid eligibility issues related to the program. Issues of Medicaid Estate Recovery are addressed in the Department of Aging and Disability Services (DADS) Medicaid Estate Recovery rules.

Comment: Two commenters stated that the agency should expand the language "receives additional resources" in §358.444(3)(C) to "receives or acquires any additional countable resources, except that a disregard as set forth in this section cannot offset or reduce an individual's equity interest in the individual's home which exceeds \$500,000 pursuant to §358.432(e) of this title" to avoid confusion within the agency as well as with the public, to develop confidence in the new program, to avoid conflict, for judicial economy and to avoid lawsuits. In a related comment, an individual stated that the agency should clarify the phrase "receives additional resources" in §358.444(3)(C) to "additional countable resources" to avoid confusion within the agency as well as with the public, to avoid conflict, for judicial economy and to avoid lawsuits.

Response: HHSC has made no changes to the proposed rules because of the comments. Section 358.444(1)(D) defines the "resource disregard" as the total equity value of non-exempt resources (under rules governing Medicaid eligibility) that are disregarded in determining eligibility for Medicaid and this definition in the proposed rule addresses the concerns raised by the commenters. In addition, the proposed amendment to §358.432 Home Equity Treatment, in particular §358.432(e), already states that the Long-Term Care Partnership disregard cannot offset or reduce such a home equity interest, so no further clarification is needed.

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

###### §358.432. Home Equity Treatment.

(a) For individuals who are determined eligible for medical assistance with respect to nursing facility services or other long-term care services as described in the Social Security Act (SSA) §1917(c)(1) (codified at 42 U.S.C 1396p(c)(1)) based on an application filed on or after January 1, 2006--

(1) Despite any other provision of the Social Security Act (SSA) §1917 (codified at 42 U.S.C 1396p), subject to paragraph (2) of this subsection and subsection (b) of this section, the individual shall not be eligible for such assistance if the individual's equity interest in the individual's home exceeds \$500,000.

(2) The dollar amounts specified in this paragraph shall be increased, beginning with 2011, from year to year based on the percentage increase in the consumer price index for all urban consumers (all items; United States city average), rounded to the nearest \$1,000.

(b) Subsection (a) of this section shall not apply with respect to an individual if--

(1) The spouse of such individual, or

(2) Such individual's child who is under age 21, or is blind or permanently and totally disabled as defined in SSA §1614 (codified at 42 U.S.C 1382c), is lawfully residing in the individual's home.

(c) Nothing in this section shall be construed as preventing an individual from using a reverse mortgage or home equity loan to reduce the individual's total equity interest in the home.

(d) HHSC may waive subsection (a) of this section in the case of demonstrated hardship consistent with the guidelines set forth by the Secretary of the United States Department of Health and Human Services.

(e) A Long-Term Care Partnership Program disregard set forth in §358.444 of this title (relating to Medicaid Treatment of Qualified Long Term Care Partnership Program Insurance Policies) cannot offset or reduce home equity interest for the purposes of subsection (a)(1) of this section.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 2, 2008.

TRD-200801732

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Effective date: April 22, 2008

Proposal publication date: December 28, 2007

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



## TITLE 4. AGRICULTURE

### PART 1. TEXAS DEPARTMENT OF AGRICULTURE

#### CHAPTER 19. QUARANTINES AND NOXIOUS AND INVASIVE PLANTS

##### SUBCHAPTER U. ASIAN CITRUS PSYLLID QUARANTINE

###### 4 TAC §§19.410 - 19.413

The Texas Department of Agriculture (the department) adopts new §§19.410 - 19.413, concerning a quarantine for the Asian citrus psyllid, *Diaphorina citri* Kuwayama. Section 19.413 is adopted with changes to the proposed text as published in the February 22, 2008, issue of the *Texas Register* (33 TexReg 1475). Sections 19.410 - 19.412 are adopted without changes and will not be republished.

The new sections are adopted to prevent the artificial spread of the Asian citrus psyllid both in the non-infested counties of Texas and into the non-citrus producing states of the United

States. The new sections prohibit movement of the Asian citrus psyllid host plants into citrus-producing states of the United States. Movement of the host plants in the non-infested counties of Texas and into non-citrus producing states of the United States requires application of prescribed insecticidal treatments. The Asian citrus psyllid is a relatively new pest in Texas. A statewide survey conducted by the Texas A&M University scientists in 2006 - 2007 showed presence of this psyllid in 32 Texas counties. The psyllid causes damage to citrus crops primarily by transmitting the pathogen, which causes one of the most damaging diseases of citrus called citrus greening. This disease is not known to occur in Texas; however, it occurs in the state of Florida. New §19.400 defines the quarantined pest. New §19.411 designates the infested areas subjected to the quarantine. New §19.412 lists the articles subject to the quarantine. New §19.413 prescribes requirements for movement of the quarantined articles from the quarantined area to a free (non-infested) area.

No comments were received on the proposal.

The new sections are adopted under the Texas Agriculture Code, §71.001, which authorizes the department to establish a quarantine for an infested area against an in-state pest if it determines that the pest is dangerous and is not widely distributed in this state; and §71.007, which authorizes the department to adopt rules as necessary to protect agricultural and horticultural interests, including rules to provide for specific treatment of a grove or orchard or of infested or infected plants, plant products, or substances.

###### §19.413. Restrictions.

(a) General. While fresh fruit is not a quarantined article, fruit moved from areas quarantined for the Asian citrus psyllid to citrus producing areas where the Asian citrus psyllid is not present (Alabama, American Samoa, Arizona, California, Louisiana, Northern Mariana Islands, Puerto Rico, Virgin Islands, and those areas of Texas not quarantined for the psyllid) must have been cleaned using normal packing-house procedures. Quarantined articles originating from quarantined areas are prohibited entry into or through free areas of Texas, except as provided in subsection (b) of this section.

(b) Exceptions. To be eligible to move from quarantined areas, quarantined articles must meet the following requirements.

(1) Requirements to move from quarantined areas of Texas to free areas of Texas.

(A) Quarantined articles must be treated using products approved by the United States Environmental Protection Agency (EPA) and the department for use in nurseries. Persons applying treatments must follow the product label, its applicable directions, and restrictions and precautions, including statements pertaining to Worker Protection Standards;

(B) All quarantined articles must be treated with a drench containing imidacloprid as the active ingredient within 30 days prior to shipping and also be treated with a foliar spray with a product containing, either acetamiprid, chlorpyrifos, or fenpropathrin as the active ingredient within 10 days prior to movement. The drench and foliar spray must be applied at the rate designated for the Asian citrus psyllid on the product. Additional active ingredients may be approved upon consultation with the United States Department of Agriculture (USDA);

(C) In the case of fresh curry leaf (*Bergera (=Murraya) koenigii*) leaves intended for consumption, instead of the treatments specified in subparagraph (B) of this paragraph, the leaves must

be treated prior to the movement in accordance with the Animal and Plant Health Inspection Service's (APHIS) treatment schedule T101-n-2 (methyl bromide fumigation treatment for external feeding insects on fresh herbs) at the times and rates specified in the treatment manual and safeguarded until export. This information can be found on page 5-2-28 of the treatment manual, located on-line at: [http://www.aphis.usda.gov/import\\_export/plants/manuals/ports/downloads/treatment\\_pdf/05\\_02\\_t100schedules.pdf](http://www.aphis.usda.gov/import_export/plants/manuals/ports/downloads/treatment_pdf/05_02_t100schedules.pdf); and

(D) Any person engaged in the business of growing or handling quarantined articles must enter into a compliance agreement with the department if the quarantined articles are to be moved to free areas of Texas.

(2) Requirements to move from quarantined areas of Texas to other states.

(A) The quarantined articles may not be moved to Alabama, American Samoa, Arizona, California, Louisiana, Northern Mariana Islands, and the Virgin Islands of the United States.

(B) Businesses must enter into a compliance agreement with APHIS to move quarantined articles to states and territories other than those listed in subparagraph (A) of this paragraph.

(C) Compliance agreements may be arranged by contacting a local office of the Plant Protection and Quarantine (PPQ), APHIS in Texas or the Texas State Plant Health Director, PPQ-APHIS at 903 San Jacinto Blvd., Suite 270, Austin, Texas 78701.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 4, 2008.

TRD-200801753

Dolores Alvarado Hibbs

Deputy General Counsel

Texas Department of Agriculture

Effective date: April 24, 2008

Proposal publication date: February 22, 2008

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



## TITLE 19. EDUCATION

### PART 2. TEXAS EDUCATION AGENCY

#### CHAPTER 61. SCHOOL DISTRICTS

##### SUBCHAPTER AA. COMMISSIONER'S

##### RULES ON SCHOOL FINANCE

###### 19 TAC §61.1010

The Texas Education Agency (TEA) adopts the repeal of §61.1010, concerning school finance. The repeal is adopted without changes to the proposal as published in the February 8, 2008, issue of the *Texas Register* (33 TexReg 1051) and will not be republished. The section addresses standards for school district administrative cost ratios. The repeal is necessary due to the repeal of the section's authorizing statute, Texas Education Code (TEC), §42.201.

TEC, §42.201, required the TEA to determine annually administrative cost ratios for school districts, to notify districts of the standards for determining these ratios, to identify districts whose

administrative cost ratios exceeded the calculated ratios, and to notify these districts that they must reduce their administrative costs. Statute also required the agency to deduct funds from a district's tier one allotments if the district failed to reduce its administrative costs to the required level. The commissioner exercised rulemaking authority to adopt 19 TAC §61.1010, Standards for School District Administrative Cost Ratios, effective April 20, 1994.

Senate Bill 900, 78th Texas Legislature, Regular Session, 2003, repealed TEC, §42.201, and, therefore, removed the statutory authority for the rule.

The adopted repeal of 19 TAC §61.1010 implements the statutory change.

The TEA has determined that the adopted repeal will have no adverse economic effect 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 February 8, 2008, and ended March 9, 2008. No public comments were received regarding the proposed repeal.

The repeal is adopted under Senate Bill 900, 78th Texas Legislature, Regular Session, 2003, which repealed the section's authorizing statute, Texas Education Code, §42.201.

The repeal implements Senate Bill 900, 78th Texas Legislature, Regular Session, 2003.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 7, 2008.

TRD-200801825

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Effective date: April 27, 2008

Proposal publication date: February 8, 2008

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



## CHAPTER 74. CURRICULUM REQUIREMENTS

### SUBCHAPTER C. OTHER PROVISIONS

#### 19 TAC §74.35

The State Board of Education (SBOE) adopts new §74.35, concerning additional requirements for high school health classes. The new section is adopted without changes to the proposed text as published in the February 8, 2008, issue of the *Texas Register* (33 TexReg 1064) and will not be republished. The adopted new section requires school districts and open-enrollment charter schools to incorporate instruction in parenting awareness into any course meeting a requirement for a health education credit, using the materials approved by the SBOE.

House Bill 2176, 80th Texas Legislature, 2007, added Texas Education Code, §28.002(p), which requires the SBOE, in conjunction with the Office of the Attorney General, to develop a parenting and paternity awareness program that school districts will be required to use in the high school health curriculum. This pro-

gram must address parenting skills and responsibilities, including child support and other legal rights; and relationship skills, including money management, communication skills, and marriage preparation. In high schools that do not have a family violence prevention program, skills relating to the prevention of family violence must be included.

The adopted new 19 TAC §74.35, Additional Requirements for High School Health Classes, outlines school district and open-enrollment charter school requirements for implementation of this program. The adopted new rule establishes that SBOE-approved materials must be used, specifies that local school health advisory councils must assist in ensuring that local community values are reflected in the district's health instruction, stipulates that school districts may add elements but must include specific areas of instruction, addresses instances where health education credit courses are taken prior to Grade 9, and establishes that the requirements begin with the 2008 - 2009 school year.

The materials for the parenting and paternity awareness program were approved by the SBOE at the January 2008 meeting. These materials will be provided to school districts and open-enrollment charter schools at no charge.

The Texas Education Agency has determined that the adopted amendment will have no adverse economic effect for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

No comments were received regarding the proposed new section.

In accordance with the Texas Education Code, §7.102(f), the SBOE approved this rule action for final adoption by a vote of more than two-thirds of its members to specify an effective date earlier than the beginning of the 2008 - 2009 school year. The earlier effective date will allow adequate time for districts to add necessary elements to the curriculum for health classes. The effective date of the adopted new section is 20 days after filing as adopted.

The new section is adopted under the Texas Education Code, §28.002(p), as added by House Bill 2176, 80th Texas Legislature, 2007, which authorizes the SBOE, in conjunction with the Office of the Attorney General, to develop a parenting and paternity awareness program that a school district shall use in the district's high school health curriculum.

The new section implements the Texas Education Code, §28.002(p).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 7, 2008.

TRD-200801822

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Effective date: April 27, 2008

Proposal publication date: February 8, 2008

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



## CHAPTER 105. FOUNDATION SCHOOL PROGRAM

### SUBCHAPTER BB. COMMISSIONER'S RULES CONCERNING STATE AID ENTITLEMENTS

#### 19 TAC §105.1014

The Texas Education Agency (TEA) adopts the repeal of §105.1014, concerning state aid entitlements. The repeal is adopted without changes to the proposal as published in the February 8, 2008, issue of the *Texas Register* (33 TexReg 1067) and will not be republished. The section addresses state reimbursement for electric utility restructuring. The adopted repeal is necessary due to the repeal of the section's authorizing statute, Texas Utilities Code, §39.901, and expiration of the rule.

Texas Utilities Code, §39.901, required the TEA to provide supplemental state aid to school districts experiencing a decline in taxable property values because of electric utility restructuring. The commissioner exercised rulemaking authority to adopt 19 TAC §105.1014, State Reimbursement for Electric Utility Restructuring, effective December 2, 2001.

Senate Bill 1652, 79th Texas Legislature, Regular Session, 2005, repealed Texas Utilities Code, §39.901, and, therefore, removed the statutory authority for the rule. In addition, 19 TAC §105.1014(c) specifies an expiration date of August 31, 2007, for the section.

The adopted repeal of 19 TAC §105.1014 implements the statutory change and removes an expired rule.

The TEA has determined that the adopted repeal will have no adverse economic effect 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 February 8, 2008, and ended March 9, 2008. No public comments were received regarding the proposed repeal.

The repeal is adopted under Senate Bill 1652, 79th Texas Legislature, Regular Session, 2005, which repealed the section's authorizing statute, Texas Utilities Code, §39.901.

The repeal implements Senate Bill 1652, 79th Texas Legislature, Regular Session, 2005.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 7, 2008.

TRD-200801826

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Effective date: April 27, 2008

Proposal publication date: February 8, 2008

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



## CHAPTER 129. STUDENT ATTENDANCE

## SUBCHAPTER B. STUDENT ATTENDANCE ACCOUNTING

### 19 TAC §129.22

The State Board of Education (SBOE) adopts the repeal of §129.22, concerning court-related students. The repeal is adopted without changes to the proposed text as published in the February 8, 2008, issue of the *Texas Register* (33 TexReg 1067) and will not be republished. The section establishes provisions relating to absences for specific students. The adopted repeal is necessary to reflect statutory changes resulting from House Bill (HB) 2455, 80th Texas Legislature, 2007.

HB 2455, 80th Texas Legislature, 2007, amended the TEC, §25.087, authorizing excused absences for required court appearances. The amended statute allows such an absence to be counted as a day of compulsory attendance and counted in average daily attendance.

Section 129.22, Court-Related Students, addresses excused absences for students referred to a juvenile court for delinquent conduct or conduct indicating a need for supervision and students referred to the Texas Department of Human Services or a county or local welfare unit for abuse or neglect. This section is repealed because the TEC, §25.087, as amended by HB 2455, 80th Texas Legislature, 2007, provides the statutory authority for excused absences for court-related appearances by students.

The adopted repeal of 19 TAC §129.22 eliminates the potential for conflict with statute regarding court appearances by students.

The Texas Education Agency has determined that the adopted repeal will have no adverse economic effect for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

No comments were received regarding the proposed repeal.

In accordance with the Texas Education Code, §7.102(f), the SBOE approved this rule action for final adoption by a vote of more than two-thirds of its members to specify an effective date earlier than the beginning of the 2008-2009 school year. The earlier effective date is necessary to eliminate duplicate provisions for excused absences in a timely manner to avoid potential conflicts. The effective date of the adopted repeal is 20 days after filing as adopted.

The repeal is adopted under HB 2455, 80th Texas Legislature, 2007, which amended the TEC, §25.087, to address student absences for required court appearances. Therefore, the repeal of 19 TAC §129.22 is necessary to eliminate the potential for conflict with statute.

The repeal implements HB 2455, 80th Texas Legislature, 2007, and Texas Education Code, §25.087.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 7, 2008.

TRD-200801823

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Effective date: April 27, 2008

Proposal publication date: February 8, 2008

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



## SUBCHAPTER AA. COMMISSIONER'S RULES

### 19 TAC §129.1025

The Texas Education Agency (TEA) adopts an amendment to §129.1025, concerning student attendance accounting. The amendment is adopted without changes to the proposed text or handbook as published in the February 8, 2008, issue of the *Texas Register* (33 TexReg 1068) and will not be republished. The section adopts by reference the annual student attendance accounting handbook. The handbook provides student attendance accounting rules for school districts and charter schools. The adopted amendment adopts by reference the *2007-2008 Student Attendance Accounting Handbook*.

Legal counsel with the TEA has recommended that the procedures contained in each annual student attendance accounting handbook be adopted as part of the Texas Administrative Code. This decision was made in 2000 as a result of a court decision challenging state agency decision making via administrative letters/publications. Given the statewide application of the attendance accounting rules and the existence of sufficient statutory authority for the commissioner of education to adopt by reference the student attendance accounting handbook, staff proceeded with formal adoption of rules in this area. The intention is to annually update the rule to refer to the most recently published student attendance accounting handbook.

Each annual student attendance accounting handbook provides school districts and charter schools with the Foundation School Program (FSP) eligibility requirements of all students, prescribes the minimum requirements of all student attendance accounting systems, lists the documentation requirements for attendance audit purposes, specifies the minimum standards for systems that are entirely functional without the use of paper, and details the responsibilities of all district personnel involved in student attendance accounting. The TEA distributes FSP resources under the procedures specified in each current student attendance accounting handbook. The final version of the student attendance accounting handbook is published on the TEA website each June/July. A supplement, if necessary, is also published on the TEA website.

The adopted amendment to 19 TAC §129.1025 adopts by reference the student attendance accounting handbook for the 2007-2008 school year. Data from previous school years will continue to be subject to the student attendance accounting handbook as the handbook existed in those years.

Significant changes to the *2007-2008 Student Attendance Accounting Handbook* include the addition of information relating to the following sections.

In section 3, on general attendance requirements, information relating to the following has been added: (1) students ages 21 to 25 are eligible for state funding if they are attempting to complete requirements for a high school diploma; (2) absences for court

appearances are excused absences; (3) absences for students playing taps at a veteran's funeral are excused absences; and (4) the board of trustees of a school district may adopt a policy requiring a student who voluntarily enrolls or attends school after his or her 18th birthday to attend until the end of the school year.

In section 5, on career and technical education, information relating to the following has been added: school districts must offer three or more programs of study in at least three different clusters to be eligible for career and technology funding.

In section 6, on bilingual/English as a second language (ESL) education, information relating to the following has been added: (1) limited English proficient students will be provided instruction in mathematics, science, health, and social studies both in their home language and in English; (2) students may be served in an approved program under an exception to the Spanish bilingual program for six consecutive years and under an exception to the ESL program for one year; (3) students may be served in an approved bilingual program in a language other than Spanish for as long as the State Board for Educator Certification does not have a certificate for that language; (4) bilingual education or ESL program eligible days present may not be claimed when students in these programs are placed in disciplinary settings for more than five consecutive days if the same type of bilingual or ESL program services are not provided; and (5) students may earn state credit for English for Speakers of Other Languages.

In section 7, on prekindergarten, information relating to the following has been added: children who are or ever have been in foster care are eligible for prekindergarten attendance.

In section 9, on pregnancy related services (PRS), information relating to the following has been added: (1) students receiving PRS and returning to campus on a temporary, limited basis to take the TAKS test can be credited with receiving a maximum of one hour of PRS compensatory education home instruction (CEHI) for each day they are on campus and involved in TAKS testing; (2) students receiving PRS and provided the TAKS test in the home can be credited with receiving a maximum of one hour of PRS CEHI for each day they test at home; (3) students receiving PRS and receiving TAKS tutoring, taking practice tests, etc., cannot be credited for CEHI; and (4) students receiving PRS must have a doctor's approval to be involved in TAKS testing on campus.

In section 10, on nontraditional schools, information relating to the following has been added: (1) students who are 21 years of age or older and are admitted for the purpose of completing the requirements of a high school diploma are not eligible for placement in a disciplinary alternative education program (DAEP) or juvenile justice alternative education program (JJAEP), but will have their admission revoked for conduct that would require or authorize placement in a DAEP or JJAEP for a student under the age of 21; (2) the commissioner of education can waive certain requirements established by state law or the State Board of Education if it directly benefits the students' education, except as provided in the provisions of TEC, §7.056(e) and (f), regarding criminal misconduct or restrictions imposed by state or federal law; (3) an alternative campus for at-risk students must serve pre- and post-adjudicated students, homeless students, or students who previously resided or currently reside in a residential placement facility in the district; (4) school districts must adopt consistent procedures for determining serious or persistent misbehavior violating the student code of conduct for students in an alternative education program; (5) each school district that is in a county with a population greater than 125,000 and the county's

juvenile board shall annually enter into a joint memorandum of understanding (MOU); and (6) academically, the mission of a JJAEP shall be to enable students to perform at grade level.

In addition to changes related to these requirements and allowances, a new section on nontraditional programs has been included in the handbook to provide student attendance guidelines for the High School Equivalency Program and the Optional Flexible School Day Program.

The TEA has determined that the adopted amendment will have no adverse economic effect 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 February 8, 2008, and ended March 9, 2008. No public comments were received on the proposed amendment.

The amendment is adopted under the Texas Education Code, §42.004, which authorizes the commissioner of education, in accordance with rules of the State Board of Education, to take such action and require such reports consistent with Texas Education Code, Chapter 42, as may be necessary to implement and administer the Foundation School Program.

The amendment implements the Texas Education Code, §42.004.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 7, 2008.

TRD-200801827

Cristina De La Fuente-Valadez  
Director, Policy Coordination  
Texas Education Agency

Effective date: April 27, 2008

Proposal publication date: February 8, 2008

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



## CHAPTER 157. HEARINGS AND APPEALS

### SUBCHAPTER D. INDEPENDENT HEARING EXAMINERS

#### 19 TAC §157.41

The State Board of Education (SBOE) adopts an amendment to §157.41, concerning independent hearing examiners. The new section is adopted without changes to the proposed text as published in the February 15, 2008, issue of the *Texas Register* (33 TexReg 1220) and will not be republished. The section establishes certification criteria for independent hearing examiners. The adopted amendment requires that independent hearing examiners submit fingerprints for the purpose of obtaining criminal history reports and updates the continuing education requirements.

Section 157.41 specifies certification criteria such as license required, experience, continuing education, and annual recertification for independent hearing examiners. The examiners preside over due process hearings involving terminations, suspensions without pay, and nonrenewal of term employment contracts. The examiners also develop findings of fact and conclusions of law,

which are referred to the school district board of trustees. The board of trustees reviews and votes on recommendations.

The enactment of Senate Bill 9, 80th Texas Legislature, 2007, establishes a program for obtaining the criminal histories of individuals who come into close proximity to students. The amendment to 19 TAC §157.41, Certification Criteria for Independent Hearing Examiners, is adopted in subsection (c) to notify independent hearing examiners that they will be required to provide criminal history in a manner specified by the commissioner of education. Criminal histories are now most often obtained through the submission of fingerprints. In addition, the adopted amendment specifies the subject areas in subsection (f) that satisfy the continuing legal education requirement in civil trial advocacy to ensure that the examiners receive training in evidence, civil procedure, and legal writing. This responds to concerns expressed about the skills of some independent hearing examiners in conducting hearings.

Subsequent to the January 2008 SBOE meeting, notice of the proposed amendment to 19 TAC §157.41 was filed with the *Texas Register*, initiating the official public comment period. The proposal was also provided to the State Office of Administrative Hearings (SOAH), as required by the TEC, 21.252. Following is a summary of the comment received and corresponding SBOE response regarding the proposed amendment.

Comment. The SOAH chief administrative law judge commented in favor of the proposal.

Response. The SBOE agrees.

No other comments were received regarding the proposed amendment.

In accordance with the Texas Education Code, §7.102(f), the SBOE approved this rule action for final adoption by a vote of more than two-thirds of its members to specify an effective date earlier than the beginning of the 2008-2009 school year. The earlier effective date is necessary to implement the latest policy in a timely manner. The effective date of the adopted amendment is 20 days after filing as adopted.

The amendment is adopted under the Texas Education Code, §21.252(a), which requires the SBOE by rule to establish criteria for the certification of independent hearing examiners.

The amendment implements the Texas Education Code, §21.252(a).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 7, 2008.

TRD-200801824

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Effective date: April 27, 2008

Proposal publication date: February 15, 2008

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



## TITLE 22. EXAMINING BOARDS

## PART 6. TEXAS BOARD OF PROFESSIONAL ENGINEERS

### CHAPTER 131. ORGANIZATION AND ADMINISTRATION

#### SUBCHAPTER F. ADMINISTRATION

##### 22 TAC §131.81

The Texas Board of Professional Engineers adopts an amendment to §131.81, concerning Definitions, without changes to the proposed text as published in the December 7, 2007, issue of the *Texas Register* (32 TexReg 9003) and will not be republished.

The adopted amendment includes two terms that were not part of the definitions previously. The adopted rule adds language to allow engineers to use an electronic seal and an electronic signature for sealing their work as the procedures are described in the Texas Engineering Practice Act. This change allows an engineer to scan their signature and affix it to documents. This modification is intended to assist engineers in transmitting work electronically. The amendment is adopted in conjunction with adopted amendments to §§137.31, 137.33, 137.35, 137.37, and 139.35, published elsewhere in this issue of the *Texas Register*.

No comments were received regarding adoption of the amendment.

The amendment is adopted pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and by-laws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state and Occupations Code §1001.401 which outlines sealing requirements.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 7, 2008.

TRD-200801769

Dale Beebe Farrow, P.E.

Executive Director

Texas Board of Professional Engineers

Effective date: April 27, 2008

Proposal publication date: December 7, 2007

For further information, please call: (512) 440-7723



### CHAPTER 137. COMPLIANCE AND PROFESSIONALISM

#### SUBCHAPTER B. SEALING REQUIREMENTS

##### 22 TAC §137.31

The Texas Board of Professional Engineers (TBPE) adopts an amendment to §137.31, concerning Seal Specifications, with changes to the proposed text as published in the December 7, 2007, issue of the *Texas Register* (32 TexReg 9007). The text of the rule will be republished.

The adopted rule adds language to allow engineers to use an electronic seal and an electronic signature for sealing their work

as the procedures are described in the Texas Engineering Practice Act. This change allows an engineer to scan their signature and affix it to documents. This modification is intended to assist engineers in transmitting work electronically. The amendment is adopted in conjunction with adopted amendments to §§131.81, 137.33, 137.35, 137.37, and 139.35, published elsewhere in this issue of the *Texas Register*.

The TBPE received comments regarding the group of published rules. One comment was a suggestion by an individual of including additional wording for clarification regarding the ink and impression seal. The proposed language was reviewed by legal counsel and determined to be non-substantive and the Board approved the change. A concern was expressed by an individual that security may be compromised if the proposed rule language was adopted and the TBPE language requires engineers to maintain security of their electronic files.

The amendment is adopted pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and by-laws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state and Occupations Code §1001.401 which outlines sealing requirements.

§137.31. *Seal Specifications.*

(a) Upon issuance of a license, each license holder is required to obtain a seal under the requirements of §133.97 of this title (relating to Issuance of License) and submit an impression of the seal or an electronic seal, and an original or an electronic signature to the Board for Board records.

(b) All physical seals obtained and used by license holders shall be capable of leaving a permanent ink image or permanent impression of the seal attached to the engineering work. The physical and electronic seals shall be of the design illustrated in this paragraph. The physical seals may be one of two different sizes:

(1) a pocket seal (the size commercially designated as 1-5/8-inch seal), or

(2) a desk seal (commercially designated as a two-inch seal).

Figure: 22 TAC §137.31(b)(2) (No change.)

(c) Electronic seals may be of a reduced size provided that the engineer's name and number are clearly legible.

(d) All seals obtained and used by license holders shall contain any given name or initial combination with the surname as currently listed with the Board and in the usual written signature. Nicknames shall not be permitted on a seal in lieu of a given name or initial combination.

(e) Preprinting of blank forms with an engineer's seal, or the use of decal or other seal replicas is prohibited.

(f) When signing an engineering work, the engineer may utilize the designation "P.E." or other terms as described in §137.1 of this chapter (relating to License Holder Designations).

(g) This section does not prevent the reproduction of sealed and signed, original works for distribution.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 7, 2008.

TRD-200801770

Dale Beebe Farrow, P.E.

Executive Director

Texas Board of Professional Engineers

Effective date: April 27, 2008

Proposal publication date: December 7, 2007

For further information, please call: (512) 440-7723



**22 TAC §137.33**

The Texas Board of Professional Engineers adopts an amendment §137.33, concerning Sealing Procedures, without changes to the proposed text as published in the December 7, 2007, issue of the *Texas Register* (32 TexReg 9008) and will not be republished.

The adopted rule adds language to allow engineers to use an electronic seal and an electronic signature for sealing their work as the procedures are described in the Texas Engineering Practice Act. This change allows engineers to scan their signature and affix it to documents. This modification is intended to assist engineers in transmitting work electronically. The amendment is adopted in conjunction with adopted amendments to §§131.81, 137.31, 137.35, 137.37, and 139.35, published elsewhere in this issue of the *Texas Register*.

No comments were received regarding adoption of the rule.

The amendment is adopted pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and by-laws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state and Occupations Code §1001.401 which outlines sealing requirements.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 7, 2008.

TRD-200801771

Dale Beebe Farrow, P.E.

Executive Director

Texas Board of Professional Engineers

Effective date: April 27, 2008

Proposal publication date: December 7, 2007

For further information, please call: (512) 440-7723



**22 TAC §137.35**

The Texas Board of Professional Engineers adopts an amendment to §137.35, concerning Electronic Seals and Electronic Signatures, without changes to the proposed text as published in the December 7, 2007, issue of the *Texas Register* (32 TexReg 9010) and will not be republished.

The adopted rule adds language to allow engineers to use an electronic seal and an electronic signature for sealing their work as the procedures are described in the Texas Engineering Practice Act. This change allows engineers to scan their signature and affix it to documents. This modification is intended to assist engineers in transmitting work electronically. The amendment is adopted in conjunction with adopted amendments to §§131.81,



137.31, 137.33, 137.37, and 139.35, published elsewhere in this issue of the *Texas Register*.

No comments were received regarding adoption of the rule.

The amendment is adopted pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and by-laws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state and Occupations Code §1001.401 which outlines sealing requirements.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 7, 2008.

TRD-200801772

Dale Beebe Farrow, P.E.

Executive Director

Texas Board of Professional Engineers

Effective date: April 27, 2008

Proposal publication date: December 7, 2007

For further information, please call: (512) 440-7723



## 22 TAC §137.37

The Texas Board of Professional Engineers (TBPE) adopts an amendment to §137.37, concerning Sealing Misconduct, without changes to the proposed text as published in the December 7, 2007, issue of the *Texas Register* (32 TexReg 9010) and will not be republished.

The adopted rule adds language to allow engineers to use an electronic seal and an electronic signature for sealing their work as the procedures are described in the Texas Engineering Practice Act. This change allows engineers to scan their signature and affix it to documents. This modification is intended to assist engineers in transmitting work electronically. The amendment is adopted in conjunction with adopted amendments to §§131.81, 137.31, 137.33, 137.35, and 139.35, published elsewhere in this issue of the *Texas Register*.

The TBPE received comments regarding the group of published rules. The Board reviewed comments submitted by Texas Department of Transportation (TxDOT) regarding its interpretation and concerns regarding §137.37(4). The Board held that the approved rule language does not contradict the current procedure in place at TxDOT, and TxDOT's current procedure of using PE's seals stored in electronic files will not violate this subsection.

The amendment is adopted pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and by-laws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state and Occupations Code §1001.401 which outlines sealing requirements.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 7, 2008.

TRD-200801773

Dale Beebe Farrow, P.E.

Executive Director

Texas Board of Professional Engineers

Effective date: April 27, 2008

Proposal publication date: December 7, 2007

For further information, please call: (512) 440-7723



## CHAPTER 139. ENFORCEMENT SUBCHAPTER C. ENFORCEMENT PROCEEDINGS

### 22 TAC §139.35

The Texas Board of Professional Engineers adopts an amendment to §139.35(b), concerning Sanctions and Penalties without changes to the proposed text as published in the December 7, 2007, issue of the *Texas Register* (32 TexReg 9011) and will not be republished.

The adopted change in sanction table modifies the violation for the "Improper use of seal" to include electronic signatures. The amendment is adopted in conjunction with adopted amendments to §§131.81, 137.31, 137.33, 137.35 and 137.37, published elsewhere in this issue of the *Texas Register*.

The adopted rule allows for enforcement action in conjunction with safeguarding the electronic seal and electronic signature in a similar fashion as safeguarding a physical seal. This change relates to the other rule changes and will allow engineers to scan their signature and affix it to documents. This modification is intended to assist engineers in transmitting work electronically. In addition, a typographical error under "Licensing" in the enforcement table has been corrected. For the violation "Fraud or deceit in obtaining a license", the "(a)" has been removed after §1001.452.

No comments were received regarding adoption of the rule.

The amendment is adopted pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and by-laws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state and Occupations Code §1001.401 which outlines sealing requirements.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 7, 2008.

TRD-200801774

Dale Beebe Farrow, P.E.

Executive Director

Texas Board of Professional Engineers

Effective date: April 27, 2008

Proposal publication date: December 7, 2007

For further information, please call: (512) 440-7723



# PART 30. TEXAS STATE BOARD OF EXAMINERS OF PROFESSIONAL COUNSELORS

## CHAPTER 681. PROFESSIONAL COUNSELORS

The Texas State Board of Examiners of Professional Counselors (board) adopts amendments to §§681.1 - 681.16, 681.31, 681.41 - 681.52, 681.71 - 681.73, 681.81 - 681.83, 681.91 - 681.93, 681.101, 681.103, 681.111 - 681.113, 681.121, 681.123 - 681.127, 681.141, 681.142, 681.144 - 681.147, 681.161, 681.162, 681.164 - 681.171, 681.181, 681.182, 681.184, 681.201 - 681.204, and the repeal of §§681.102, 681.122, 681.143, and 681.183, and new §681.102, concerning the licensing and regulation of professional counselors. The amendments to §681.42, 681.51, and 681.166 are adopted with changes to the proposed text as published in the January 18, 2008, issue of the *Texas Register* (33 TexReg 476). The amendments to §§681.1 - 681.16, 681.31, 681.41, 681.43 - 681.50, 681.52, 681.71 - 681.73, 681.81 - 681.83, 681.91 - 681.93, 681.101, 681.103, 681.111 - 681.113, 681.121, 681.123 - 681.127, 681.141, 681.142, 681.144 - 681.147, 681.161, 681.162, 681.164, 681.165, 681.167 - 681.171, 681.181, 681.182, 681.184, 681.201 - 681.204, and the repeal of §§681.102, 681.122, 681.143, and 681.183, and new §681.102 are adopted without changes and, therefore the sections will not be republished.

Government Code, §2001.039, requires that each state agency review and consider for re-adoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 681.1 - 681.16, 681.31, 681.41 - 681.52, 681.71 - 681.73, 681.81 - 681.83, 681.91 - 681.93, 681.101 - 681.103, 681.111 - 681.113, 681.121 - 681.127, 681.141 - 681.147, 681.161, 681.162, 681.164 - 681.171, 681.181 - 681.184, and 681.201 - 681.204 have been reviewed and the board has determined that the reasons for adopting the sections continue to exist in that rules concerning the licensing and regulation of professional counselors are still needed; however, the rules will be amended and adopted with revisions as described in this preamble. The repeals, new and amended sections are the result of the comprehensive rule review undertaken by the board and the board's staff.

In general, each section was reviewed in order to ensure appropriate subchapter, section, and paragraph organization; to ensure clarity; to improve spelling, grammar, and punctuation; to ensure that the rules reflect current legal and policy considerations; to ensure accuracy of legal citations; to eliminate unnecessary catch-titles; to eliminate the repetitive use of long titles for terms that have been assigned short titles by definition; to delete repetitive, obsolete, unenforceable, or unnecessary language; to improve draftsmanship; and to make the rules more accessible, understandable, and usable.

### SECTION-BY-SECTION SUMMARY

In §681.2(6), the definition of "authorized representative" is deleted and redefined in §681.127. Section 681.2(7) - (14) is renumbered due to the deletion of §681.2(6). Section 681.2(8), the definition of counseling-related field is amended to clarify that dance therapy is a non-counseling related field.

Section 681.3 is amended for clarity.

Section 681.4 is amended to require the board to transact business only when a quorum is present.

Sections 681.5 - 681.9 are amended to reflect clarification and update of language.

Section 681.10 is amended to correct the name of the governing agency.

Section 681.11 is amended to revise reimbursement expenses.

Section 681.12 is amended for clarity.

Section 681.13 is amended to expand on non-discriminatory issues.

Section 681.14 amends the rule from biennial to two year for the inactive status fee for consistency throughout the rules.

Section 681.15(a) amends the time periods in which a license should be approved or denied. Sections 681.15(c) and 681.16 reflect clarification and update of language.

Section 681.31(14) is edited to acknowledge that the list of expressive therapies is not inclusive.

In §681.41(e), the rule is edited to state that regardless of setting, the counseling treatment must be in the context of a professional relationship. Section 681.41(g) is edited to allow counseling by use of technological means of communication. Section 681.41(j) is edited to not allow a licensee to promote the licensee's personal business activities to the client. Section 681.41(k) is amended to separate a licensee setting professional boundaries with dual relationships. Section 681.41(l) is amended to clarify a dual relationship and when it could be considered detrimental to the client. In §681.41, subsections (l) - (z) are relettered for conformity.

Section 681.41(m) is edited to require a licensee to request a release from the client in order to discuss the client with the other counselor when the licensee discovers that the client is seeing another counselor. Section 681.41(n) reflects clarification and update of language. Section 681.41(p) is proposed to clarify what type of records needs to be kept.

Section 681.41(q) is amended to shorten the time period a licensee must maintain client files after the last contact with the client. Section 681.41(s)(4) is amended for clarity. Section 681.41(t) is amended and separated into two separate rules for clarity. Section 681.41(u) is added to require the licensee to facilitate the transfer of a client to appropriate care upon termination of a relationship. Section 681.41(w) is amended for clarity. Section 681.41(x) is amended to require a licensee to report the unlicensed practice of counseling to the board. Section 681.41(y) is proposed to add that a licensee shall not participate in any way in the falsification for renewal of a license. Section 681.41(aa) is amended to clarify that the licensee should establish a plan of custody and control of the client's mental health record and the licensee should inform each new client of the plan.

Section 681.42(a) is edited to define the term Mental Health Service Provider. Section 681.42(b)(4) is amended to add that sexual contact can occur more than five years after the termination of the client relationship will not be deemed a violation if the conduct is consensual if certain conditions are met. Section 681.42(c) is deleted and included in §681.42(b). Section 681.42(c) - (g) is renumbered for clarity. Section 681.42(g) amends the time period required to notify the board and prosecuting attorney of abuse of a client.

Sections 681.43 and 681.44 reflect clarification and update of language.

Section 681.45(d)(1) corrects the title to Texas Family Code, Chapter 261.

Section 681.46(g) is amended for clarity and to state that disciplinary action may be taken if a complaint is filed in bad faith.

Section 681.47 is amended to remove the word allowable.

Section 681.48 is amended to remove the term third party.

Section 681.49 is amended to read the licensee shall clearly state the licensee's licensure status on all advertisements or announcements of counseling treatment interventions.

Section 681.50 is amended to change the term subject to participant.

Section 681.51(b) is added to allow the board discretion on issuing a license should the applicant have conduct prior to application that would be a violation of the code of ethics if the person was a licensee.

Section 681.52(a) is amended for clarity.

Section 681.71 removed the statement that "fees associated with the application process are not refundable."

Section 681.72(d) is amended to state hours without a supervisor agreement form on file with the board may not be accepted by the board. Section 681.72(f) is amended for clarity.

Section 681.73(d) is amended to state what exams are required for licensure.

Section 681.81(b) reflects clarification and update of language.

Section 681.82 is amended to remove the word "professional."

Section 681.83 reflects clarification and update of language.

Section 681.91(b) is amended to clarify the board is referring to the practice of counseling in this state. Section 681.91(c) is amended to add the word counseling to the rule. Section 681.91(e) is amended to specify the length of time an initial temporary license is valid. Section 681.91(f) is amended to no longer allow a 36-month extension but allow the intern to request an extension from the board. Section 681.91(h)(2) is amended to specify the name of the required examination. Section 681.91(k) is added to explain what applicants coming from another state are required to submit to the board office for licensure.

Section 681.92(a) is amended for clarity. Section 681.92(b) is amended to state how many hours an intern can earn via technological means of communication. Section 681.92(c) amends the rule to require an "Intern" to gain the require hours and not an "applicant." Section 681.92(f) is deleted as obsolete. Section 681.92(g) is modified to allow 2 interns in a session to be considered individual supervision and three or more to be a group. Section 681.92(h) - (i) letters are changed for clarity. Section 681.92(j) reflects clarification and update of language. Section 681.92(l) is deleted as unnecessary. Section 681.92(k) reflects clarification and update of language.

Section 681.93(d) is amended to reflect changes to §681.83(g) concerning supervisor requirements. Section 681.93(e)(6) is added to require the supervisor to submit the supervised experience documentation form in a timely manner. Section 681.93(h) reflects clarification and update of language. Section 681.93(j) is added to allow for the supervisor status to be denied, revoked, or suspended.

Sections 681.101 and 681.103 reflect clarification and update of language.

New §681.102 concerns the notice of results for examinations.

Section 681.111(a) is revised to clarify the term an initial license is issued for. Section 681.111(b) is revised to designate the board chair as the only signature on the regular and temporary license certificate. Section 681.111(c) is revised to remove the term art therapy specialty. Section 681.111(c) - (g) is renumbered for conformity.

Section 681.112(a)(2) is revised to designate what is required for an applicant to submit for licensure to the board office. Section 681.112(a)(4) is deleted requiring an applicant for a provisional license to submit a letter of sponsorship from a regular license holder. Section 681.112(b) is deleted as unnecessary. Section 681.112(c) is deleted and reworded in §681.112(b). Section 681.112(b) and (e) reflects clarification and update of language. Section 681.112(c) reflect clarification and update of language.

Section 681.113 reflects clarification and update of language.

Section 681.121 amends the rule from biennial to two years for consistency throughout the rules.

Section 681.123(a) is amended to state that the board will send a renewal notice 30 days prior to expiration to the licensee last known address. Section 681.123(b) is amended to require the licensee to renew their license on time whether a renewal notice is received or not. Section 681.123(c) is amended to state that a license will not be renewed until all renewal information is received in the board office. Section 681.123(d) and (e) reflects clarification and update of language.

Section 681.124(b) is modified to allow the late renewal of a license with a penalty if the license is not renewed by the expiration date but within one year. Section 681.124(c) reflects clarification and update of language. Section 681.124(d) is amended to state that the continuing education must be submitted before the license will be renewed.

Section 681.125(e) is amended to require the Jurisprudence exam and continuing education earned while on inactive status. Section 681.125(f) is amended to clarify the date the inactive status will expire. Section 681.125(g) reflects clarification and update of language. Section 681.125(h) amends the rule from biennial to two years for consistency throughout the rules.

Section 681.126(c) reflects clarification and update of language. Section 681.126(d) is added to state that if a licensee request retired status while a complaint is pending, it will be treated as a surrender of the license.

Section 681.127(a) is amended to define "designated representative." Section 681.127(b)(1) is amended to state what the written request is required to contain. Section 681.127(b)(2) is deleted as unnecessary. Section 681.127(b)(2) - (6) is renumbered for conformity. Section 681.127(b)(2) - (6) changes "authorized" to "designated" to match §681.127(a).

Section 681.141(a) reflects clarification and update of language. Section 681.141(c) is amended to require 4 hours of ethics every two years with the Texas Jurisprudence exam counting as one hour of ethics. Section 681.141(e) is modified to state the Texas Jurisprudence exam is required each renewal period. Section 681.141(f) is added to require three hours of continuing education in supervision practices for all board approved supervisors as part of their 24 hours of continuing education each renewal period.

Section 681.142(a) - (b) reflect clarification and update of language. Section 681.142(c) is added to require that continuing education courses must be within the required content areas or directly related to the continued development of the profession of counseling skills.

Section 681.144(a) is separated into two subsections (a) and (b) and modified for clarity. Section 681.144(b) is added as a separate rule from §681.144(a) for clarity. Section 681.144(c) - (i) is relettered based on the new subsection (b) and modified for clarity.

Section 681.145 is amended to reflect the two-year renewal cycle and 24 hours of continuing education requirement.

Section 681.146 reflects the changes to the way a licensee will report continuing education when selected for audit.

Section 681.147 reflects clarification and update of language.

Section 681.161(a) is amended to require a complaint to be filed in writing to the board office. Section 681.161(j) is amended to require the board to periodically send out pending status letters of open complaints. Section 681.161(k) is deleted as unnecessary.

Section 681.162(a) is amended to add administrative penalties to disciplinary actions. Section 681.162(b) and (c) is amended to remove requiring the notice to be mailed by certified mail.

Section 681.164 reflects clarification and update of language.

Section 681.165 revises the title of the rule.

Section 681.166 is amended to allow the Executive Director to set time limits for testimony during an informal conference and not require that the complainant or client be present during the informal conference. Section 681.166(f) is deleted stating the complainant may be informed of the informal conference. Section 681.166(f) - (v) is relettered for conformity. Section 681.166(f) is amended to require at least one member of the complaints committee to be present at the informal conference. Section 681.166(k) is amended to allow the complaints committee member or the executive director to exclude anyone from all or part of the informal conference. Due to a board staff comment, the following change was made. Concerning Section 681.166(k), the word "of" was inserted after the word "part".

Section 681.167(a) is amended for clarity. Section 681.167(b) is deleted as unnecessary.

Section 681.168(d), is modified to state that if a license is surrendered during the course of an investigation, the surrender is considered a final disciplinary action and may be considered for denial upon reapplication for licensure.

Section 681.169 is amended to modify the section title and reference the provisions of Senate Bill 228 (2007, 80th Legislature) relating to the denial of license renewal of a license holder who has failed to pay child support or failed to comply with the terms of an order providing for the possession of or access to a child in new subsection (i).

Section 681.170(b) is modified for clarity.

Section 681.171(a) is modified to revise the title of the rule.

Section 681.181 is amended to remove the reference to Texas, as it is defined in §681.2(3) definitions, of this code.

Section 681.182(b) - (d) is amended to remove the reference to Texas, as it is defined in §681.2(3) definitions, of this code.

Section 681.183 is deleted as repetitive.

Section 681.184(b) is amended to refer to the board and not department for final orders.

Section 681.201 is amended to remove the reference to Texas, as it is defined in §681.2(3) definitions, of this code.

Section 681.202 reflects clarification and update of language.

Section 681.203 title is changed for proper spelling.

Section 681.204 reflects clarification and update of language.

Sections 681.102 Grading; 681.122 Staggered Renewals; and 681.143 Process for Applying for Programs are repealed.

#### COMMENTS

The board received the following comments on the proposed rules during the comment period and the board's response follows each comment. The commenters were the Texas Counseling Association and individuals who were for/against the rules.

Comment: There were 2 comments regarding §681.2(8) concerning adding the term "psychotherapy" to be accepted as a counseling related field.

Response: The board disagrees. The term psychotherapy is specifically included in the definition of professional counseling as defined in Texas Occupations Code, §503.003.

Comment: There were 2 comments regarding §681.2(8) concerning adding the use of energy/healing as a counseling related field.

Response: The board disagrees. The board does not recognize this as a counseling related field.

Comment: There were 2 comments regarding changing the term marriage and family therapy to marital, couple and family therapy. This term would better fit some of the counseling programs offered.

Response: The board disagrees. Most degrees awarded are Marriage and Family Therapy degrees.

Comment: There were 5 comments regarding §681.13(a) requesting to add sexual orientation to the list of non-discriminatory issues.

Response: The board disagrees. The rule is consistent with other state laws and there will be no change at this time.

Comment: There were 2 comments regarding §681.41(j) concerning a licensee not promoting their personal or business activities to a client. The commenter feels the rule is too restrictive.

Response: The board disagrees. Promoting such activities present a danger of creating a dual relationship and may cause fragile clients to believe that failure to participate in such business activities will damage the therapeutic relationship with the licensee. There will be no change at this time.

Comment: There were 3 comments regarding §681.41(q) in support of the change in record retention from 7 years past the age of 18 to 5 years from last client contact.

Response: The board agrees. No changes were made based on these comments.

Comment: One commenter disagreed with the change regarding §681.41(q) concerning records retention for minors and only retaining them for 5 years.

Response: The board disagrees. The rule change is not a prohibition against retaining records. It will be at the counselor's discretion to retain the records for over the required 5 years.

Comment: There were 2 comments regarding §681.42(a)(1) concerning the board authority to require other individuals, licensed or not, to report sexual misconduct.

Response: The board disagrees. The rules require that only Licensed Professional Counselors (LPC) have a duty to report. The rule is defining the types of individuals the LPC should report if they are informed of such conduct.

Comment: There were 3 comments regarding §681.42(g)(1) concerning a licensee reporting sexual misconduct of another licensee within one business day. The commenters feel the time limit is too restrictive and compliance would be too difficult.

Response: The board agrees. The rule has been changed to three business days.

Comment: There were 6 comments regarding §681.51(b) concerning the board's ability to take disciplinary action against an applicant or licensee for conduct prior to licensure that would have been a violation of the code of ethics if the person was licensed. The commenters feel it is outside the board's authority.

Response: The board agrees in part. Changes were made to §681.51(b) based on the comments.

Comment: There were 3 comments regarding §681.91(f) concerning no longer allowing a 36 month extension of a temporary license but allowing the intern to request an extension of the license on a case by case basis. There was a typographical error in the preamble, which contradicted the rule as proposed.

Response: The board clarified this issue. The rule is correct as proposed and adopted. The preamble has been corrected to clarify the rule.

Comment: There were 2 commenters in agreement with §681.92(g) regarding the number of interns that qualify as an individual supervision session. This will allow the supervisor to deliver a more efficient supervisory experience.

Response: The board agrees. No changes were made based on this comment.

Comment: One commenter agreed with the addition of §681.93(j) concerning disciplinary action against an LPC supervisor in relation to their role as a supervisor that is distinct from their practice of professional counseling.

Response: The board agrees. No changes were made based on this comment.

Comment: There were 2 comments regarding §681.141(f) concerning required continuing education for LPC supervisors. The commenters supported the rules requiring continuing education for supervisors.

Response: The board agrees. No changes were made based on this comment.

Comment: There were 2 comments regarding §681.162(b) regarding removing the requirement of the board to send notice of hearing by certified mail, return receipt requested. The commenters feel it protects the integrity of the disciplinary process to send the mail certified.

Response: The board disagrees. It is standard operating procedure to send all notices of hearings by certified and regular mail. No changes were made based on these comments.

## SUBCHAPTER A. THE BOARD

### 22 TAC §§681.1 - 681.16

#### STATUTORY AUTHORITY

The amendments are authorized by Texas Occupations Code, §503.203(a), which provides the Texas State Board of Examiners of Professional Counselors with the authority to adopt rules necessary to administer the chapter. Review of the rules implements the Texas Government Code, §2001.039.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 7, 2008.

TRD-200801840

Lisa Hernandez

General Counsel

Texas State Board of Examiners of Professional Counselors

Effective date: April 27, 2008

Proposal publication date: January 18, 2008

For further information, please call: (512) 458-7111 x6972



## SUBCHAPTER B. AUTHORIZED COUNSELING METHODS AND PRACTICES

### 22 TAC §681.31

The amendment is authorized by Texas Occupations Code, §503.203(a), which provides the Texas State Board of Examiners of Professional Counselors with the authority to adopt rules necessary to administer the chapter. Review of the rules implements the Texas Government Code, §2001.039.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 7, 2008.

TRD-200801841

Lisa Hernandez

General Counsel

Texas State Board of Examiners of Professional Counselors

Effective date: April 27, 2008

Proposal publication date: January 18, 2008

For further information, please call: (512) 458-7111 x6972



## SUBCHAPTER C. CODE OF ETHICS

### 22 TAC §§681.41 - 681.52

The amendments are authorized by Texas Occupations Code, §503.203(a), which provides the Texas State Board of Examiners of Professional Counselors with the authority to adopt rules necessary to administer the chapter. Review of the rules implements Government Code, §2001.039.

§681.42. *Sexual Misconduct.*

(a) For the purpose of this section the following terms shall have the following meanings.

(1) "Mental health services provider" means a licensee or any other licensed mental health professional, including a licensed social worker, a chemical dependency counselor, a licensed marriage and family therapist, a physician, a psychologist, or a member of the clergy. Mental health services provider also includes employees of the above or employees of a treatment facility.

(2) Sexual contact means:

(A) deviate sexual intercourse as defined by the Texas Penal Code, §21.01;

(B) sexual contact as defined by the Texas Penal Code, §21.01;

(C) sexual intercourse as defined by the Texas Penal Code, §21.01; or

(D) requests or offers by a licensee for conduct described by subparagraph (A), (B), or (C) of this paragraph.

(3) "Sexual exploitation" means a pattern, practice, or scheme of conduct, which may include sexual contact that can reasonably be construed as being for the purposes of sexual arousal or gratification or sexual abuse of any person. The term does not include obtaining information about a client's sexual history within standard accepted practice while treating a sexual or marital dysfunction.

(4) "Therapeutic deception" means a representation by a licensee that sexual contact with, or sexual exploitation by, the licensee is consistent with, or a part of, a client's or former client's counseling.

(b) A licensee shall not engage in sexual contact with or sexual exploitation of a person who is:

(1) a client as defined in §681.2(7) of this title (relating to Definitions);

(2) an LPC Intern supervised by the licensee; or

(3) a student at an educational institution at which the licensee provides professional or educational services.

(4) Sexual contact that occurs more than five years after the termination of the client relationship will not be deemed a violation of this section if the conduct is consensual, not the result of sexual exploitation, and not detrimental to the client. The licensee must demonstrate that there has been no exploitation in light of all relevant factors, including, but not limited to:

(A) the amount of time that has passed since therapy terminated;

(B) the nature and duration of the therapy;

(C) the circumstances of termination;

(D) the client's personal history;

(E) the client's current mental status;

(F) the likelihood of adverse impact on the client and others; and

(G) any statements or actions made by the therapist during the course of therapy suggesting or inviting the possibility of a post-termination sexual or romantic relationship with the client.

(c) A licensee shall not practice therapeutic deception of a person who is a client as defined in §681.2(7) of this title (relating to Definitions).

(d) It is not a defense under subsections (b) - (c) of this section if the sexual contact, sexual exploitation, or therapeutic deception with the person occurred:

(1) with the consent of the client;

(2) outside the professional counseling sessions of the client; or

(3) off the premises regularly used by the licensee for the professional counseling sessions of the client.

(e) The following may constitute sexual exploitation if done for the purpose of sexual arousal or gratification or sexual abuse of any person:

(1) sexual harassment, sexual solicitation, physical advances, or verbal or nonverbal conduct that is sexual in nature, and:

(A) is offensive or creates a hostile environment, and the licensee knows or is told this; or

(B) is sufficiently severe or intense to be abusive to a reasonable person in the context;

(2) any behavior, gestures, or expressions which may reasonably be interpreted as inappropriately seductive or sexual;

(3) inappropriate sexual comments about or to a person, including making sexual comments about a person's body;

(4) making sexually demeaning comments about an individual's sexual orientation;

(5) making comments about potential sexual performance except when the comment is pertinent to the issue of sexual function or dysfunction in counseling;

(6) requesting details of sexual history or sexual likes and dislikes when not necessary for counseling of the individual;

(7) initiating conversation regarding the sexual problems, preferences, or fantasies of the licensee;

(8) kissing or fondling;

(9) making a request to date;

(10) any other deliberate or repeated comments, gestures, or physical acts not constituting sexual intimacies but of a sexual nature;

(11) any bodily exposure of genitals, anus or breasts;

(12) encouraging another to masturbate in the presence of the licensee; or

(13) masturbation by the licensee when another is present.

(f) Examples of sexual contact are those activities and behaviors described in the Texas Penal Code, §21.01.

(g) A licensee shall report sexual misconduct as follows.

(1) If a licensee has reasonable cause to suspect that a client has been the victim of sexual exploitation, sexual contact, or therapeutic deception by another licensee or a mental health services provider, or if a client alleges sexual exploitation, sexual contact, or therapeutic deception by another licensee or a mental health services provider, the licensee shall report the alleged conduct not later than the third business day after the date the licensee became aware of the conduct or the allegations to:

(A) the prosecuting attorney in the county in which the alleged sexual exploitation, sexual contact or therapeutic deception occurred;

(B) the board if the conduct involves a licensee and any other state licensing agency which licenses the mental health services provider; and

(C) to the appropriate agency listed in §681.45 of this title (relating to Confidentiality and Required Reporting).

(2) Before making a report under this subsection, the reporter shall inform the alleged victim of the reporter's duty to report and shall determine if the alleged victim wants to remain anonymous.

(3) A report under this subsection need contain only the information needed to:

(A) identify the reporter;

(B) identify the alleged victim, unless the alleged victim has requested anonymity;

(C) express suspicion that sexual exploitation, sexual contact, or therapeutic deception occurred; and

(D) provide the name of the alleged perpetrator.

*§681.51. Finding of Misconduct Occurring before Licensure.*

(a) The board may take disciplinary action based upon information received after issuance of a license, if such information would have been the basis for denial of licensure had it been received prior to the issuance of the license.

(b) The board may consider conduct prior to licensure in determining whether an applicant or licensee is fit to practice counseling, including conduct that would have been a violation of the code of ethics if the person was licensed.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 7, 2008.

TRD-200801842

Lisa Hernandez  
General Counsel

Texas State Board of Examiners of Professional Counselors

Effective date: April 27, 2008

Proposal publication date: January 18, 2008

For further information, please call: (512) 458-7111 x6972



## SUBCHAPTER D. APPLICATION PROCEDURES

### 22 TAC §§681.71 - 681.73

The amendments are authorized by Texas Occupations Code, §503.203(a), which provides the Texas State Board of Examiners of Professional Counselors with the authority to adopt rules necessary to administer the chapter. Review of the rules implements the Texas Government Code, §2001.039.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 7, 2008.

TRD-200801843

Lisa Hernandez  
General Counsel

Texas State Board of Examiners of Professional Counselors

Effective date: April 27, 2008

Proposal publication date: January 18, 2008

For further information, please call: (512) 458-7111 x6972



## SUBCHAPTER E. ACADEMIC REQUIREMENTS FOR LICENSURE

### 22 TAC §§681.81 - 681.83

The amendments are authorized by Texas Occupations Code, §503.203(a), which provides the Texas State Board of Examiners of Professional Counselors with the authority to adopt rules necessary to administer the chapter. Review of the rules implements the Texas Government Code, §2001.039.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 7, 2008.

TRD-200801844

Lisa Hernandez  
General Counsel

Texas State Board of Examiners of Professional Counselors

Effective date: April 27, 2008

Proposal publication date: January 18, 2008

For further information, please call: (512) 458-7111 x6972



## SUBCHAPTER F. EXPERIENCE REQUIREMENTS FOR LICENSURE

### 22 TAC §§681.91 - 681.93

The amendments are authorized by Texas Occupations Code, §503.203(a), which provides the Texas State Board of Examiners of Professional Counselors with the authority to adopt rules necessary to administer the chapter. Review of the rules implements the Texas Government Code, §2001.039.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 7, 2008.

TRD-200801845

Lisa Hernandez  
General Counsel

Texas State Board of Examiners of Professional Counselors

Effective date: April 27, 2008

Proposal publication date: January 18, 2008

For further information, please call: (512) 458-7111 x6972



## SUBCHAPTER G. LICENSURE EXAMINATIONS

### 22 TAC §§681.101 - 681.103

The amendments and new rule are authorized by Texas Occupations Code, §503.203(a), which provides the Texas State Board of Examiners of Professional Counselors with the authority to adopt rules necessary to administer the chapter. Review of the rules implements the Texas Government Code, §2001.039.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 7, 2008.

TRD-200801846

Lisa Hernandez  
General Counsel

Texas State Board of Examiners of Professional Counselors

Effective date: April 27, 2008

Proposal publication date: January 18, 2008

For further information, please call: (512) 458-7111 x6972



### **22 TAC §681.102**

The repeal is authorized by Texas Occupations Code, §503.203(a), which provides the Texas State Board of Examiners of Professional Counselors with the authority to adopt rules necessary to administer the chapter. Review of the rules implements the Texas Government Code, §2001.039.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 7, 2008.

TRD-200801847

Lisa Hernandez  
General Counsel

Texas State Board of Examiners of Professional Counselors

Effective date: April 27, 2008

Proposal publication date: January 18, 2008

For further information, please call: (512) 458-7111 x6972



## **SUBCHAPTER H. LICENSING**

### **22 TAC §§681.111 - 681.113**

The amendments authorized by Texas Occupations Code, §503.203(a), which provides the Texas State Board of Examiners of Professional Counselors with the authority to adopt rules necessary to administer the chapter. Review of the rules implements the Texas Government Code, §2001.039.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 7, 2008.

TRD-200801848

Lisa Hernandez  
General Counsel

Texas State Board of Examiners of Professional Counselors

Effective date: April 27, 2008

Proposal publication date: January 18, 2008

For further information, please call: (512) 458-7111 x6972



## **SUBCHAPTER I. REGULAR LICENSE RENEWAL; INACTIVE AND RETIREMENT STATUS**

### **22 TAC §§681.121, 681.123 - 681.127**

The amendments are authorized by Texas Occupations Code, §503.203(a), which provides the Texas State Board of Examiners of Professional Counselors with the authority to adopt rules necessary to administer the chapter. Review of the rules implements the Texas Government Code, §2001.039.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 7, 2008.

TRD-200801849

Lisa Hernandez  
General Counsel

Texas State Board of Examiners of Professional Counselors

Effective date: April 27, 2008

Proposal publication date: January 18, 2008

For further information, please call: (512) 458-7111 x6972



### **22 TAC §681.122**

The repeal is authorized by Texas Occupations Code, §503.203(a), which provides the Texas State Board of Examiners of Professional Counselors with the authority to adopt rules necessary to administer the chapter. Review of the rules implements the Texas Government Code, §2001.039.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 7, 2008.

TRD-200801850

Lisa Hernandez  
General Counsel

Texas State Board of Examiners of Professional Counselors

Effective date: April 27, 2008

Proposal publication date: January 18, 2008

For further information, please call: (512) 458-7111 x6972



## **SUBCHAPTER J. CONTINUING EDUCATION REQUIREMENTS**

### **22 TAC §§681.141, 681.142, 681.144 - 681.147**



The amendments are authorized by Texas Occupations Code, §503.203(a), which provides the Texas State Board of Examiners of Professional Counselors with the authority to adopt rules necessary to administer the chapter. Review of the rules implements the Texas Government Code, §2001.039.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 7, 2008.

TRD-200801851

Lisa Hernandez

General Counsel

Texas State Board of Examiners of Professional Counselors

Effective date: April 27, 2008

Proposal publication date: January 18, 2008

For further information, please call: (512) 458-7111 x6972



## 22 TAC §681.143

The repeal is authorized by Texas Occupations Code, §503.203(a), which provides the Texas State Board of Examiners of Professional Counselors with the authority to adopt rules necessary to administer the chapter. Review of the rules implements the Texas Government Code, §2001.039.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 7, 2008.

TRD-200801852

Lisa Hernandez

General Counsel

Texas State Board of Examiners of Professional Counselors

Effective date: April 27, 2008

Proposal publication date: January 18, 2008

For further information, please call: (512) 458-7111 x6972



## SUBCHAPTER K. COMPLAINTS AND VIOLATIONS

### 22 TAC §§681.161, 681.162, 681.164 - 681.171

The amendments are authorized by Texas Occupations Code, §503.203(a), which provides the Texas State Board of Examiners of Professional Counselors with the authority to adopt rules necessary to administer the chapter. Review of the rules implements the Texas Government Code, §2001.039.

#### §681.166. *Informal Disposition.*

(a) Informal disposition of any complaint or contested case involving a licensee or an applicant for licensure may be made through an informal conference held to determine whether the matters in controversy can be resolved without further proceedings.

(b) The decision to hold a conference shall be within the discretion of the executive director or a member of the complaints committee.

(c) An informal conference shall be voluntary and shall not be a prerequisite to a formal hearing.

(d) The executive director shall establish the time, date and place of the informal conference, and provide written notice to the licensee or applicant. Notice shall be provided no less than 10 working days prior to the date of the informal conference by certified mail, return receipt requested to the last known address of the licensee or applicant. The licensee or applicant may waive the 10-day notice requirement.

(e) The notice shall inform the licensee or applicant of the nature of the alleged violation or the reason for application denial; that the licensee may be represented by legal counsel; that the licensee or applicant may offer the testimony of witnesses and present other evidence as may be appropriate within time limits set by the Executive Director; that the board's legal counsel shall be present; that the licensee's or applicant's attendance and participation is voluntary; and that the informal conference shall be canceled if the licensee or applicant notifies the executive director that he or she or his or her legal counsel will not attend. A copy of the board's rules concerning informal disposition shall be enclosed with the notice of the informal conference.

(f) At least one member of the complaints committee shall be present at an informal conference.

(g) The conference shall be informal and shall not follow the procedures established in this chapter for contested cases and formal hearings.

(h) The licensee, the licensee's attorney, the board's attorney, the executive director and the complaints committee member may question witnesses, make relevant statements, present statements of persons not in attendance, and present such other evidence as may be appropriate.

(i) The board's legal counsel may attend each informal conference. The complaints committee member or executive director may call upon the attorney at any time for assistance in the informal conference.

(j) The licensee shall be afforded the opportunity to make statements that are material and relevant.

(k) The complaints committee member or the executive director may exclude anyone from all or part of the informal conference.

(l) Any written statement submitted by the complainant shall be reviewed at the conference.

(m) At the conclusion of the informal conference, the complaints committee member or the executive director may make recommendations for informal disposition of the complaint or contested case. The recommendations may include any disciplinary action authorized by the Act or this chapter. The complaints committee member may also conclude that the board lacks jurisdiction; conclude that a violation of the Act or this chapter has not been established; order that the investigation be closed; or refer the matter for further investigation.

(n) The licensee or applicant may either accept or reject the recommendations at the informal conference. If the recommendations are accepted, an agreed order shall be prepared by the board office or the board's legal counsel and forwarded to the licensee or applicant. The order may contain agreed findings of fact and conclusions of law. The licensee or applicant shall execute the order and return the signed order to the board office within 10 working days of his or her receipt of the order. If the licensee or applicant fails to return the signed order within the stated time period, the inaction shall constitute rejection of the recommendations.

(o) If the licensee or applicant signs and accepts the proposed recommendations, the agreed order shall be submitted to the complaints committee and the board for approval. Placement of the

agreed order on the committee and board agendas shall constitute only a recommendation for approval by the board.

(p) The identity of the licensee or applicant shall not be made available to the board until after the board has reviewed and accepted the agreed order unless the licensee or applicant chooses to attend the board meeting. The licensee or applicant shall be notified of the date, time, and place of the board meeting at which the proposed agreed order will be considered. Attendance by the licensee or applicant is voluntary.

(q) Upon an affirmative majority vote, the board shall enter an agreed order approving the accepted recommendations. The board may not change the terms of a proposed order but may only approve or disapprove an agreed order unless the licensee or applicant is present at the board meeting and agrees to other terms proposed by the board.

(r) If the board does not approve a proposed agreed order, the licensee or applicant shall be so informed. The matter shall be referred to the executive director for other appropriate action.

(s) A proposed agreed order is not effective until the board has approved the agreed order and the order is signed by the board chair.

(t) A licensee's opportunity for an informal conference under this section shall satisfy the requirement of the Administrative Procedure Act, Texas Government Code, §2001.054(c).

(u) If a licensee who has requested an informal conference fails to appear at the conference and fails to provide notice of the licensee's inability to attend the conference at least 24 hours in advance of the time the conference is scheduled, such action may constitute a withdrawal of the request for a formal hearing.

(v) Refund Order.

(1) The board may order a license holder to pay a refund to a client or other payer as provided in an agreement resulting from an informal settlement conference instead of, or in addition, to imposing an administrative penalty under this chapter.

(2) The amount of a refund ordered as provided in an agreement resulting from an informal settlement conference may not exceed the amount the client or other payer paid to the license holder for a service regulated by this chapter. The board may not require payment of other damages or estimate harm in a refund order.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 7, 2008.

TRD-200801853

Lisa Hernandez

General Counsel

Texas State Board of Examiners of Professional Counselors

Effective date: April 27, 2008

Proposal publication date: January 18, 2008

For further information, please call: (512) 458-7111 x6972



## SUBCHAPTER L. FORMAL HEARINGS

### 22 TAC §§681.181, 681.182, 681.184

The amendments are authorized by Texas Occupations Code, §503.203(a), which provides the Texas State Board of Examiners of Professional Counselors with the authority to adopt rules

necessary to administer the chapter. Review of the rules implements the Texas Government Code, §2001.039.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 7, 2008.

TRD-200801854

Lisa Hernandez

General Counsel

Texas State Board of Examiners of Professional Counselors

Effective date: April 27, 2008

Proposal publication date: January 18, 2008

For further information, please call: (512) 458-7111 x6972



## 22 TAC §681.183

The repeal is authorized by Texas Occupations Code, §503.203(a), which provides the Texas State Board of Examiners of Professional Counselors with the authority to adopt rules necessary to administer the chapter. Review of the rules implements the Texas Government Code, §2001.039.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 7, 2008.

TRD-200801855

Lisa Hernandez

General Counsel

Texas State Board of Examiners of Professional Counselors

Effective date: April 27, 2008

Proposal publication date: January 18, 2008

For further information, please call: (512) 458-7111 x6972



## SUBCHAPTER M. SCHEDULE OF SANCTIONS

### 22 TAC §§681.201 - 681.204

The amendments are authorized by Texas Occupations Code, §503.203(a), which provides the Texas State Board of Examiners of Professional Counselors with the authority to adopt rules necessary to administer the chapter. Review of the rules implements the Texas Government Code, §2001.039.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 7, 2008.

TRD-200801856

Lisa Hernandez

General Counsel

Texas State Board of Examiners of Professional Counselors

Effective date: April 27, 2008

Proposal publication date: January 18, 2008

For further information, please call: (512) 458-7111 x6972



# PART 39. TEXAS BOARD OF PROFESSIONAL GEOSCIENTISTS

## CHAPTER 850. TEXAS BOARD OF PROFESSIONAL GEOSCIENTISTS SUBCHAPTER B. ORGANIZATION

### 22 TAC §850.63

The Texas Board of Professional Geoscientists (TBPG or Board) adopts an amendment to 22 TAC §850.63, concerning the responsibilities of the Board and Executive Director. The amendment is adopted without changes to the proposed text as published in the December 28, 2007, issue of the *Texas Register* (32 TexReg 9908).

The adopted amendment clarifies how notification will be provided to the consumer for the purpose of directing complaints to the Board. The section establishes guidelines requiring license holders to provide notification to the consumer for the purpose of directing complaints to the Board. The amendment changes and simplifies how the notification will be provided to the consumer by eliminating the requirement that notification be provided on a bill for service provided by an individual or entity regulated by the Board.

No public comments were received regarding the amendment.

The amendment is adopted under the Texas Occupations Code §1002.151, which authorizes the Board to adopt and enforce rules consistent with the Texas Geoscience Practice Act and necessary for the performance of its duties. It also corresponds with the Texas Occupations Code §1002.202, regarding the filing of complaints.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 2, 2008.

TRD-200801733  
Vincent Houston  
Acting Executive Director  
Texas Board of Professional Geoscientists  
Effective date: April 22, 2008  
Proposal publication date: December 28, 2007  
For further information, please call: (512) 936-4405



## TITLE 25. HEALTH SERVICES

### PART 1. DEPARTMENT OF STATE HEALTH SERVICES

#### CHAPTER 5. POISON CONTROL CENTERS

##### 25 TAC §5.51, §5.52

The Executive Commissioner of the Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department), adopts amendments to §5.51 and §5.52, concerning regional poison control centers, without changes to the proposed text as published in the Novem-

ber 30, 2007, issue of the *Texas Register* (32 TexReg 8657), and the sections will not be republished.

#### BACKGROUND AND PURPOSE

The amendments are necessary to comply with Health and Safety Code, Chapter 777, which requires the department to adopt rules concerning regional poison control centers.

Government Code, §2001.039, requires that each state agency review and consider for reoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 5.51 and 5.52 have been reviewed and the department has determined that the reasons for adopting the sections continue to exist because rules on this subject are needed.

#### SECTION-BY-SECTION SUMMARY

The amendments to §5.51 and §5.52 update legacy agency names to reflect the post-consolidation operations of the department and the commission. Also, the amendments revise the Amarillo Hospital District as successor to the Northwest Texas Hospital.

#### COMMENTS

The department, on behalf of the commission, did not receive any comments regarding the proposed rules during the comment period.

#### LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the rules, as adopted, have been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

#### STATUTORY AUTHORITY

The amendments are adopted under Health and Safety Code, §777.001, which requires the Department of State Health Services and the Commission on State Emergency Communications to jointly adopt rules designating the region for each poison control center; §777.009 which requires the department and the Commission on State Emergency Communications to jointly adopt rules to establish criteria for awarding grants to regional poison control centers; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. Review of the sections implements Government Code, §2001.039.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 3, 2008.

TRD-200801739  
Lisa Hernandez  
General Counsel  
Department of State Health Services  
Effective date: April 23, 2008  
Proposal publication date: November 30, 2007  
For further information, please call: (512) 458-7111 x6972



CHAPTER 37. MATERNAL AND INFANT  
HEALTH SERVICES  
SUBCHAPTER T. SCHOOL-BASED HEALTH  
CENTERS

**25 TAC §§37.531 - 37.538**

The Executive Commissioner of the Health and Human Services Commission (commission) on behalf of the Department of State Health Services (department) adopts amendments to §§37.531 - 37.538, concerning school-based health centers without changes to the proposed text as published in the November 30, 2007, issue of the *Texas Register* (32 TexReg 8661) and, therefore, the sections will not be republished.

**BACKGROUND AND PURPOSE**

The amendments establish procedures for awarding grants to assist school districts with the costs of operating school-based health centers and to establish standards for the funded centers. School-based health centers are established by a school district or by a school district jointly with a public health agency at one or more campuses in the school district to deliver co-operative health care programs, prevention of emerging health threats that are specific to the district, and conventional (primary) health services for students and their families. The department, formerly the Texas Department of Health, started voluntary funding for school-based health centers in 1993 and in 1999 as authorized by the Appropriations Act of the 76th Legislature, Regular Session, and subsequent appropriations acts, created a competitive grant program and provided start-up funding for two school-based health centers per fiscal year, as required by the appropriations act. These provisions are now in Education Code, Chapter 38.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 37.531 - 37.538 have been reviewed and the department has determined that reasons for adopting the sections exist because rules on this subject are needed.

**SECTION-BY-SECTION SUMMARY**

Amendments to §37.531 and §37.535 clarify the rules by minor word changes. Amendments to §37.352 add a new definition and clarify other definitions. An amendment to §37.533 was made based on changes in appropriations and to allow greater flexibility in awarding grants. An amendment was made to §37.534 to change the title of the rule. Amendments were made to §37.536 to change the title of the rule and to clarify the competitive Request for Proposals process. Amendments were made to §37.537 to change the title of the rule and to clarify the procedures for reviewing proposals. Amendments were made to §37.538 to update the standards for school-based health centers. These updates clarify the use of a local school health advisory council, modify how parents are notified of a child's appointment allowing for different communication methods, clarify the use of funds received through billing for services and update the age group receiving services. Amendments to the standards also add that outcomes focusing on student absenteeism will target students with chronic conditions and revised the components to be included in the annual report.

**COMMENTS**

The department, on behalf of the commission, did not receive any comments regarding the proposed amendments during the comment period.

**LEGAL CERTIFICATION**

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the rules, as adopted, have been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

**STATUTORY AUTHORITY**

The amendments are adopted under the Texas Education Code, §38.063, which requires rules establishing standards for health care centers funded through grants; Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. Review of the rules implements Government Code, §2001.039.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 4, 2008.

TRD-200801764

Lisa Hernandez

General Counsel

Department of State Health Services

Effective date: April 24, 2008

Proposal publication date: November 30, 2007

For further information, please call: (512) 458-7111 x6972



CHAPTER 229. FOOD AND DRUG  
SUBCHAPTER K. TEXAS FOOD  
ESTABLISHMENTS

**25 TAC §§229.172, 229.176 - 229.178**

The Executive Commissioner of the Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department) adopts the amendments to §229.172, §229.176, and §229.177 concerning the accreditation of certified food management programs and the certification of food managers, and new §229.178 concerning the accreditation of food handler programs. The amendments to §229.172, §229.176, and new §229.178 are adopted with changes to the proposed text as published in the December 14, 2007, issue of the *Texas Register* (32 TexReg 9222). The amendment to §229.177 is adopted without changes to the proposed text and, therefore, will not be republished.

**BACKGROUND AND PURPOSE**

The purpose of the amendments to §229.172 and §229.176 is to allow the issuance of the five-year certified food manager certificate in accordance with House Bill 1064 of the 80th Legislature (2007) that exempts the food manager certificate from the two-year renewal required by Health and Safety Code, §12.0112, and certificate fees are amended to reflect the five-year renewal period.

The purpose of the amendment to §229.177 is to reflect the agency name change to the Department of State Health Services and correct a rule reference. The purpose of the new §229.178 is to define the basic food safety training or education required to be included in a department accredited food handler course curriculum.

Government Code, §2001.039, requires that each state agency review and consider for reoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 229.172, 229.176, and 229.177 have been reviewed and the department has determined that reasons for adopting these sections continue to exist because rules on these subjects are needed.

#### SECTION-BY-SECTION SUMMARY

The amendment to §229.172 concerns the accreditation of food management programs, to authorize issuance of five-year Certified Food Manager certificates. The recertification examination is amended to be consistent with §229.176, which establishes a 75 question examination for recertification. The amendment to §229.176 concerns the certification of food managers to authorize issuance of five-year Certified Food Manager certificates. Additional amendments are for consistency with the 2006 Texas Food Establishment Rules listed in Subchapter K. Minor amendments have also been made to correct language, punctuation, and to provide clarity.

The amendment to §229.177 concerns the certification of food managers in areas under the department's permitting jurisdiction. The agency name is changed to reflect the Department of State Health Services and correct one rule reference update.

Adopted new §229.178 is based on Senate Bill 552 of the 80th Legislature regarding the accreditation of basic food safety education and training programs for food handlers. This bill requires the Health and Human Services Commission to adopt rules to define the basic food safety training or education required to be included in a course curriculum. The basic course may not exceed two hours in length and may require a participant to achieve a passing score on an examination.

#### COMMENTS

The department, on behalf of the commission, has reviewed and prepared responses to the comments received regarding the proposed rules during the comment period, which the commission has reviewed and accepts.

The commenters were trade associations, local health jurisdictions, and program providers, including the following: Texas Restaurant Association; Waco-McLennan County Public Health District; City of Huntsville, Health Inspections; Starbucks Coffee Company; Tarrant County Public Health; City of Longview, Environmental Health; City of Beaumont Public Health Department, Environmental Health Division; Learn2Serve; H-E-B Grocery Company; On-Site Services; Nuhealth Food Sanitation Management Program; City of DeSoto; Safe Food 4 U; and Texas Food Handler.com. The commenters were in favor of the rules; however, they suggested recommendations for change as discussed in the summary of comments. One commenter was against the rules.

COMMENT: Concerning §229.172(b)(18) regarding the definition of "qualified instructor", one commenter suggested using the word "approved" versus the word "qualified" instructor.

RESPONSE: The commission disagrees with the commenter because "qualified instructor" meets the criteria established in the rules. No change was made to the rule as a result of this comment.

COMMENT: Concerning §229.172(k)(4) regarding recertification examinations, one commenter suggested that the examination be maintained at 50 questions or reduced to 35 questions.

RESPONSE: The commission disagrees with the commenter as the national standard has been established through the Conference for Food Protection and the commission has determined that 75 questions are necessary to determine candidate competency. No change was made to the rule as a result of this comment.

COMMENT: Concerning §229.172(p)(3) and §229.176(o)(2) regarding the examination packet fee, two commenters objected that there is a fee increase for the packet.

RESPONSE: The commission disagrees as the fee is maintained at \$5.00 per year for each examination packet. There is a change in the collection system; it will change from being a pro-rated system to being a total-paid system. No changes were made to the rules as a result of these comments.

COMMENT: Concerning §229.172(p)(3), one commenter was concerned about increasing the certificate period from two to five years between training.

RESPONSE: The commission disagrees because the amendment changes the training period from six years to five years. The five-year certificate period is a national standard that has been established by the Conference for Food Protection. No change was made to the rule as a result of this comment.

COMMENT: Concerning §229.172(s) and §229.178(i) regarding department audits, two commenters noted an error using the word "date" after the words "based on analysis of" versus "data".

RESPONSE: The commission agrees with the commenters and has replaced the word "date" with the word "data".

COMMENT: Concerning the rules in general, one commenter suggested that there be a lower fee for licensing and examinations for government and non-profit organizations.

RESPONSE: The commission disagrees as the Department of State Health Services has not been given the statutory authority to provide lower fees for government and non-profit organizations. No change was made to the rules as a result of this comment.

COMMENT: Concerning §229.176(o)(1) regarding test site fees, one commenter stated that the fee structure was confusing, regarding licensing requirements when changing the number of test sites. The commenter asked whether going from one category to another category is considered a new license or an amendment to an existing license.

RESPONSE: The commission acknowledges the comment. Changing from one test site to more than one test site is not a licensing amendment, but requires a new license. No changes were made to the rule as a result of this comment.

COMMENT: Concerning §229.176(e)(3), a commenter stated that the last sentence needs minor editorial revisions.

RESPONSE: The commission agrees and corrected the last sentence of subsection (e)(3).

COMMENT: Concerning new §229.178 in general, one commenter suggested that an accredited program provide local health jurisdictions a listing of students taught during a specified time period.

RESPONSE: The commission disagrees because food handler programs will collect the food handlers mailing address for card distribution or replacement purposes. An employment address is not collected as a food handler may live in one health jurisdiction and be employed in another, and also due to the high employment turnover rate of food handlers. No change was made to the rule as a result of this comment.

COMMENT: Concerning new §229.178 in general, one commenter inquired about the impact of this new rule on the food manager certification classes. In addition, the commenter asked if the new rule applies only to food handler classes conducted by local health departments.

RESPONSE: The commission acknowledges the comment. New §229.178 will not impact the food manager certification classes. The new rule will impact those food handler training programs that choose to apply for accreditation. No changes were made to the rule as a result of this comment.

COMMENT: Concerning the title of new §229.178, "Accreditation of Food Handler Programs," one commenter suggested that the title be changed to add the words "Education and Training" before the word "Programs."

RESPONSE: The commission agrees with the commenter and changed the title of new §229.178 to read, "Accreditation of Food Handler Education or Training Programs," to be consistent with Health and Safety Code, §438.0431(a).

COMMENT: Concerning new §229.178(a) regarding the purpose, one commenter recommended the term, "more qualified employee" be removed from the last sentence.

RESPONSE: The commission disagrees because training does provide a "more qualified employee." No change was made to the rule as a result of this comment.

COMMENT: Concerning new §229.178(b)(3) regarding the definition of "food," one commenter suggested that additional food items be added to the existing list.

RESPONSE: The commission disagrees because the definition is consistent with §229.162(36), Subchapter K of this title (relating to Texas Food Establishments). No change was made to the rule as a result of this comment.

COMMENT: Concerning new §229.178(b)(4)(A)(i) regarding the definition of "food establishment," one commenter suggested that the words "if the operation provides food directly" be replaced with the words "that provides food directly."

RESPONSE: The commission disagrees because the definition is consistent with §229.162(40), Subchapter K of this title. No change was made to the rule as a result of this comment.

COMMENT: Concerning new §229.178(b)(5), one commenter recommended that the definition of "food handler" be changed to "food employee" for consistency with §229.162(39), Subchapter K of this title, or delete the word "service" before the word "employee" from the definition.

RESPONSE: The commission disagrees because the definition is consistent with Health and Safety Code, §438.046(b). No change was made to the rule as a result of this comment.

COMMENT: Concerning new §229.178(c)(1)(A) regarding the education or training course curriculum, one commenter suggested removing the phrase "shall include the definition of foodborne illness" because "foodborne illness" is not defined in §229.162, Subchapter K of this title.

RESPONSE: The commission agrees with the commenter and changed the term "foodborne illness" to "foodborne disease outbreak" to be consistent with §229.162(37), Subchapter K of this title. The course curriculum shall include "foodborne disease outbreak" in the list of required food safety principles.

COMMENT: Concerning new §229.178(c)(2) regarding course length, two commenters wanted to extend the length. One commenter suggested that the course length not exceed three hours, and one commenter expressed that the course length can affect the content and amount of detail in the course presentation and can limit student participation.

RESPONSE: The commission disagrees with the commenters because the maximum course length is established by Health and Safety Code, §438.0431(b). No change was made to the rule as a result of these comments.

COMMENT: Concerning new §229.178(c)(2) regarding course length, one commenter suggested that establishing two hours would eliminate any education program to be better than a minimum standard, and suggested the market place to regulate maximums and use the standards to set minimums.

RESPONSE: The commission disagrees with the commenter because the maximum course length is established by Health and Safety Code, §438.0431(b). No change was made to the rule as a result of this comment.

COMMENT: Concerning new §229.178(c)(2) regarding course length, one commenter suggested that there be a minimum course length.

RESPONSE: The commission disagrees with the commenter because the emphasis should be placed on the curriculum content which is established in §229.178(c) of the rule. The accredited program should ensure that the curriculum is taught within the course length established by Health and Safety Code, §438.0431(b). No change was made to the rule as a result of this comment.

COMMENT: Concerning new §229.178(c)(3) regarding the course examination, one commenter stated that there must be a final examination, and suggested that the decision to have a final examination should not be made by the provider. Another commenter suggested that there should be required quizzes or an examination to test the knowledge, comprehension, application, analysis, synthesis, and evaluation of materials.

RESPONSE: The commission disagrees with the commenters because Health and Safety Code, §438.0431(c) states that a program may require a participant to achieve a passing score on an examination to successfully complete the course for certification. No changes were made to the rule as a result of these comments.

COMMENT: Concerning new §229.178(d)(2) regarding reciprocity of food handler training, one commenter suggested that reciprocity should be optional for local jurisdictions.

RESPONSE: The commission disagrees because reciprocity of food handler training is provided in Health and Safety Code, §438.046(b). Section 438.046 applies to all sections of Health

and Safety Code, Subchapter D, Food Service Programs. No change was made to the rule as a result of this comment.

COMMENT: Concerning new §229.178(d)(2) regarding certificate reciprocity, one commenter stated that a lot of control should be left to the jurisdiction as to which courses and companies they would like to have approved in their city or county for reciprocity.

RESPONSE: The commission disagrees because reciprocity of training is provided in Health and Safety Code, §438.046(b). No change was made to the rule as a result of this comment.

COMMENT: Concerning new §229.178(d)(2) regarding training reciprocity, one commenter stated that the rule should apply only to the Department of State Health Services.

RESPONSE: The commission disagrees because the Health and Safety Code, §438.046(b) requires reciprocity of training programs accredited by the department. No change was made to the rule as a result of this comment.

COMMENT: Concerning new §229.178(e) regarding the licensing of an accredited food handler program, one commenter stated that it should be an option to participate in the department program and rules.

RESPONSE: The commission acknowledges the comment. Local health jurisdictions are not required to obtain department accreditation of their food handler training program. However, if a city wants their food handler training program to be accepted through Health and Safety Code, §438.046(b), department accreditation is required. No change was made to the rule as a result of this comment.

COMMENT: Concerning new §229.178(e) regarding the licensing of an accredited food handler program, one commenter stated that their city had been teaching this program for 16 years, and did not want the department to charge them \$600 as required by §229.178(g)(1) to continue with their food handler training program.

RESPONSE: The commission acknowledges the comment. Accreditation of a food handler education or training program is voluntary. The only requirement stated in Health and Safety Code, §438.046(b) is reciprocity for the food service worker's training. No change was made to the rule as a result of this comment.

COMMENT: Concerning new §229.178(g) regarding required licensing of training program fees, one commenter stated this was an increase of costs to local jurisdictions that choose to be accredited.

RESPONSE: The commission acknowledges the comment. The accreditation fee was established for the department to administer the program, which includes maintenance of the registry of course programs. No change was made to the rule as a result of this comment.

COMMENT: Concerning new §229.178(g), one commenter expressed concern regarding new program licensing fees that may affect individuals who take an accredited course and become employed in a local jurisdiction that does not recognize the state accredited course.

RESPONSE: The commission acknowledges the comment. The Health and Safety Code, §438.046(b), states that a local jurisdiction through reciprocity must recognize a state accredited course; therefore, the program accreditation fees would have little impact on an individual who takes an accredited training

course. No change was made to the rule as a result of this comment.

COMMENT: Concerning new §229.178(i) regarding department audits, one commenter suggested that the training be monitored, evaluated, and adjusted on a frequent basis to ensure and maintain effectiveness.

RESPONSE: The commission agrees with the commenter and the department plans to develop monitoring procedures for ensuring compliance. No change was made to the rule as a result of this comment.

#### LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the rules, as adopted, have been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

#### STATUTORY AUTHORITY

The adopted amendments and new rule are authorized by Health and Safety Code, Chapter 438, which provides the Executive Commissioner of the Health and Human Services Commission with authority to adopt rules and guidelines relating to §438.042, food service programs; §438.106, for certification of food managers, and §438.043, for basic food safety accreditation, and §437.0076(b), for certified food manager; and Government Code, §531.0055(e), and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. The review of the rules implements Government Code, §2001.039.

#### *§229.172. Accreditation of Certified Food Management Programs.*

(a) Purpose. This section is intended to provide the framework for accrediting manager level food safety programs in accordance with the Texas Health and Safety Code (HSC), Chapter 438, Subchapter D. A uniform standard governing the accreditation of food safety programs enhances the recognition of reciprocity among regulatory agencies and reduces the expense of duplicate education incurred when food establishment managers work in multiple regulatory jurisdictions. Education of the food establishment manager provides more qualified personnel, thereby reducing the risk of foodborne illness outbreaks caused by improper food preparation and handling techniques.

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

(1) Accredited--A program approved by the department that meets the standards set forth in this section.

(2) Alternative training methods--Training other than classroom, including but not limited to distance learning, computerized training programs, and correspondence courses.

(3) ANSI-CFP Program Accreditation--The American National Standard Institute (ANSI) and the Conference for Food Protection (CFP) accredits programs as outlined in the CFP: Standards for Accreditation of Food Protection Manager Certification Programs.

(4) Certificate--The documentation issued by the department or an organization that administers a department approved examination verifying that an individual has complied with the requirements of this section.

(5) Certification--The process whereby a certificate is issued.

(6) Certified food manager--A person who has demonstrated that they have the knowledge, skills and abilities required to protect the public from foodborne illness by means of successfully completing a food safety examination as described in this section.

(7) Certified food management program--A program accredited by the department that provides food safety education for food establishment managers and administers an approved examination for certification or recertification purposes.

(A) Certification program--A program whose course work consists of a minimum of 14 hours of instruction on food safety topics which may include traditional or alternative methods of training, including distance education, and at least a one-hour proctored department approved examination.

(B) Recertification program--A program whose course work consists of six hours of instruction on food safety topics, which may include traditional or alternative methods of training, including distance education, and a department approved proctored examination.

(8) Continuing education--Documented professional education or activities that provide for the continued proficiency of a certified food management program instructor.

(9) Department--Department of State Health Services.

(10) Examination administrator--An individual or individuals who are designated in writing to the department, by the licensee, who is responsible for administering food manager certification examinations.

(11) Food--A raw, cooked, or processed edible substance, ice, beverage or ingredient used or intended for use or for sale in whole or in part for human consumption, or chewing gum.

(12) Food establishment--

(A) Food establishment means an operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption:

(i) such as a restaurant; retail food store; satellite or catered feeding location; catering operation if the operation provides food directly to a consumer or to a conveyance used to transport people; market; vending location; conveyance used to transport people; institution; or food bank; and

(ii) that relinquishes possession of food to a consumer directly, or indirectly through a delivery service such as home delivery of grocery orders or restaurant takeout orders, or delivery service that is provided by common carriers.

(B) Food establishment includes:

(i) an element of the operation such as a transportation vehicle or a central preparation facility that supplies a vending location or satellite feeding location unless the vending or feeding location is permitted by the regulatory authority; and

(ii) an operation that is conducted in a mobile, stationary, temporary, or permanent facility or location; where consumption is on or off the premises; and regardless of whether there is a charge for the food.

(C) Food establishment does not include:

(i) an establishment that offers only prepackaged foods that are not potentially hazardous;

(ii) a produce stand that only offers whole, uncut fresh fruits and vegetables;

(iii) a food processing plant;

(iv) a kitchen in a private home if only food that is not potentially hazardous is prepared for sale or service at a function such as a religious or charitable organization's bake sale if allowed by law;

(v) an area where food that is prepared as specified in subparagraph (C)(iv) of this paragraph is sold or offered for human consumption;

(vi) a Bed and Breakfast Limited facility as defined in these rules; or

(vii) a private home that receives catered or home-delivered food.

(13) Law--Applicable local, state and federal statutes, regulations and ordinances.

(14) Licensee--The individual, corporation or company that is licensed by the department to operate certified food management programs.

(15) Person--An association, corporation, individual, partnership or other legal entity, government or governmental subdivision or agency.

(16) Proctor--The examination administrator or a person who is designated to assist the examination administrator.

(17) Psychometric--Scientific measurement or quantification of human qualities, traits or behaviors.

(18) Qualified instructor--An individual whose educational background and work experience meet the requirements for approval as a qualified food management program instructor as described in this section.

(19) Reciprocity--Acceptance by state and local regulatory authorities of a Department approved food manager certificate.

(20) Regulatory authority--The local, state, or federal enforcement body or authorized representative having jurisdiction over the food establishment.

(21) Secure--Access limited to the certified food manager licensee or examination administrator.

(22) Single entity--A corporation that educates only its own employees.

(23) Sponsor--An individual designated in writing to the department, by the licensee, as the person responsible for administrative management of the program.

(24) Traceable means--A method of submitting documents, which can be tracked in the event of loss or delay.

(25) Two-Year Renewal Certificate--The certificate issued by the department from May 6, 2004 to April 24, 2008, verifying that a certified food manager has completed the application and submission of fees for renewal of a department issued certificate.

(c) Certified food manager.

(1) Certified food manager responsibilities. Responsibilities of a certified food manager include:

(A) identifying hazards in the day-to-day operation of a food establishment that provides food for human consumption;



(B) developing or implementing specific policies, procedures or standards aimed at preventing foodborne illness;

(C) coordinating training, supervising or directing food preparation activities, and taking corrective action as needed to protect the health of the consumer;

(D) training the food establishment employees on the principles of food safety; and

(E) conducting in-house self-inspections of daily operations on a periodic basis to ensure that policies and procedures concerning food safety are being followed.

(2) Certification by training and food safety examination. To be certified, a food manager must complete an accredited certification or recertification program and pass an examination that has been administered through a department accredited food management program.

(3) Certificate reciprocity. Department issued food management certificates shall be recognized statewide by regulatory authorities as the only valid proof of successful completion of a department accredited food management course.

(4) Certificate availability. The original food manager certificate shall be conspicuously posted at each food establishment.

(d) Licensing of certified food management program licensee. The department shall issue a license of accreditation to each certified food management program licensee who has demonstrated compliance with this section. A license issued under these rules will expire two years from the date of issuance. This license is not transferable on change of ownership, name, or site location.

(1) Application. A person wishing to apply for a certification or recertification certified food management program license shall submit a completed application to the department.

(2) Certified food management program license fee. The completed license application shall include the appropriate non-refundable fee as specified in subsection (p)(1) of this section.

(3) Examination security agreement. The licensee shall submit a signed security agreement for each examination administrator using a department examination.

(4) Sponsor. The licensee may designate a program sponsor as the person responsible for the administrative management of the program.

(5) Qualified instructor. A list of all qualified food management program instructors who plan to teach an accredited certification or recertification course shall be provided to the department. A completed instructor application, along with other necessary documentation must be submitted for all non-qualified instructors.

(6) Training methods. Training methods shall be designated on the application. Documentation must be provided to the department verifying that the time required to complete a training program is equivalent to 14 hours of training for certification and six hours for recertification.

(7) Certification examination. Department approved examination(s) utilized by the certified food protection management programs shall be designated on the completed application.

(e) Licensing of single entity certified food management programs. In addition to the licensing requirements as specified in subsection (d) of this section, a corporation wishing to use a single entity option, which defers course length and topic requirements as specified HSC, §438.043(a), shall submit to the department:

(1) a copy of the course guide; and

(2) an outline of each topic and sub-topics.

(f) Responsibilities of a licensee.

(1) Compliance with certified food management program law and rules. The licensee is responsible for compliance with applicable certified food management program law and rules.

(2) Payment of fees. All fees shall be non-refundable and paid as specified in subsection (p) of this section.

(3) Certified food management program course content. All food management programs must be taught utilizing the training and time requirements in Health and Safety Code (HSC), §438.043(1), (2), and (3).

(4) Change of sponsor. The licensee shall notify the department in writing of the name of the new program sponsor.

(5) Change of examination administrator. The licensee shall submit a signed security agreement for each new examination administrator prior to administering the department examination. New examination administrators must receive instruction on administrative responsibilities for examination security and processing.

(6) Change of qualified instructor. The licensee shall ensure that only a department qualified instructor serves as the instructor for the food management program. All new instructors must complete the application for new instructors that must be submitted by the licensee to the department with the applicable documentation. All new instructors must receive instruction on the applicable law and rules and administrative responsibilities.

(7) Submission of answer sheets. The licensee shall ensure that the answer sheets used for computerized grading shall be submitted to the department by traceable means. The completed answer sheets must be received by the department within seven working days of the examination date.

(g) Requirements for qualification of instructors. The instructors for all food management programs shall be department qualified prior to teaching a class. The instructors for all certified food management programs shall meet the qualifications in these rules. Instructors meeting these qualifications shall be approved for the two-year permit term of the certified food management program licensee. The completed application form shall be submitted to the department through the accredited certified food management program licensee.

(1) New instructors. A completed application for new instructors must be submitted by the program licensee to the department with the following documentation:

(A) the completed and signed application form;

(B) a copy of a valid food management certificate; and

(C) verification of education or experience in food safety documented by one of the following:

(i) an associate or higher college degree from an accredited institution in a major related to food safety or environmental health, evidenced by a copy of the candidate's diploma or transcript;

(ii) five years of food establishment work experience as a food manager verified in an attached resume; or

(iii) two years of regulatory food inspection experience verified in an attached resume.

(2) Nationally accredited program instructors. Nationally accredited program instructors who have met the minimum standards

as set forth by this section shall be given reciprocity when instructing and administering an ANSI-CFP Program Accreditation examination.

(h) Responsibilities of qualified instructors.

(1) Compliance with certified food management program law and rules. All qualified instructors are responsible for compliance with applicable certified food management program law and rules.

(2) Training requirements. All qualified instructors are responsible for instructing the course content as specified in subsection (f)(3) of this section, and meeting the training time requirements as specified in subsection (d)(6) of this section.

(3) Examination administrator. Instructors serving as the examination administrator must complete an examination security agreement prior to administering a department examination.

(i) Requirements for the renewal of qualified instructors. In order to renew an instructor's qualification the program licensee must comply with the requirements of this subsection.

(1) Contact hours for continuing education. Certified food management programs shall submit a renewal application and documentation of five contact hours of continuing education for each instructor during the two-year program license period to maintain qualification as a certified food manager program instructor.

(2) Accepted continuing education topics. Continuing education topics may include areas in food safety or instruction enhancement.

(3) Verification of continuing education. The following may be used for continuing education:

(A) a certificate of completion for a course or seminar with the participant's name, course name, date and number of contact hours earned;

(B) a college transcript with course description; or

(C) other documentation of attendance as approved by the department.

(j) Responsibilities of the examination administrators.

(1) Compliance with certified food management program laws and rules. The examination administrator is responsible for compliance with the certified food management program laws and rules applicable to examination administration.

(2) Examination security agreement. An examination administrator must complete, sign and date a security agreement and submit to the department through the certified food management program licensee. The department may not issue examinations to an examination administrator who does not have a signed security agreement on file with the department.

(3) Examination security. The examination administrator shall provide examination security at the examination site. All security measures shall be met and maintained at all times during examination storage, administration and issuance as described in this section.

(4) Submission of examination booklets and answer sheets. The examination administrator shall submit the examination booklets and answer sheets used for computerized grading via traceable means along with department forms as required. The examination booklets, completed answer sheets and required forms must be received by the department within seven working days of the examination date.

(5) Examination results. Candidates shall be informed of the process for receiving their certificate upon passing the examination.

Candidates shall be informed of the reexamination process, in the event of examination failure.

(6) Replacement process for candidate certificate. Candidates shall be informed of the process for replacing lost or damaged certificates.

(k) Certified food manager certificates.

(1) Certificate issuance. Certified food manager certificates for candidates who complete an accredited program and pass the department examination will be mailed directly to the candidate.

(2) Certificate period. A certified food manager certificate issued by the department under this section shall be valid for five years from the date of passing the examination. All certificates issued prior to the effective date of these rules will expire on the expiration date as stated on the certificate.

(3) Two-year renewal certificate. Food manager certificates issued by the department from May 6, 2004 to April 24, 2008, must be renewed every two years and may be renewed two times.

(4) Recertification. Candidates may become recertified by taking a recertification class and passing a department approved examination, or by passing an examination as described in §229.176(h)(5) of this title (relating to Certification of Food Managers).

(5) Department certificate replacement. An individual requesting a certified food manager certificate replacement must submit a completed written application to the department with the appropriate non-refundable fee. Replacement certificates will bear the same expiration date as the original certificate.

(6) Certification through single entity corporations. Candidates from accredited single entity corporations will receive food management certificates as described in this section, except that the food management certificate shall:

(A) clearly indicate that the certificate is for the single entity only;

(B) be recognized by regulatory authorities for only that single entity; and

(C) not receive reciprocity or recertification.

(l) Department examination criteria. The department examination shall meet accepted psychometric standards for reliability, validity and passing score. The department certification and recertification examinations shall consist of 75 statistically valid questions to be administered at one time following the required training which precedes the examination.

(m) National examination criteria. National food manager examinations recognized by the ANSI-CFP Program Accreditation shall be considered department approved examinations.

(n) Site requirements for administration of the department examination and national examinations. Examination sites utilizing the department examination or a national examination must comply with all legal requirements for safety, health, and accessibility for all qualified candidates. Accommodations, lighting, space, comfort, and workspace for taking the examination must allow all candidates to perform at their highest level of competency. Requirements at each site include but are not limited to:

(1) accessibility in accordance with the requirements of the Americans with Disabilities Act must be available for all qualified examinees;

(2) sufficient spacing between each examinee in the area in which the actual testing is conducted, or other appropriate and effective methods, to preclude any examinee from viewing another candidate's examinations;

(3) acoustics that allow each examinee to hear instructions clearly, using an electronic audio system if necessary;

(4) adequate lighting at each examinee's work space for reading fine print; and

(5) appropriate ventilation and temperature for the health and comfort of examinees.

(o) Department examination administration. Examination administrators shall implement and maintain the following examination administration procedures for a program utilizing the department examination.

(1) Security procedures shall be in place which protect the examination from compromise at all times. The examinations shall be stored and administered under secure conditions and shall be inventoried prior to and immediately following each administration of an examination. The examination may not be duplicated. Candidates shall have access to the examination only during examination administration.

(2) There shall be one proctor for every 35 candidates taking the examination. Proctors shall, by picture identification, confirm the accurate identity of each candidate. The examination administrator shall train and supervise the activities of any proctor(s).

(3) A candidate who speaks English as a second language may use a translation dictionary to translate English into their native language.

(4) An employee or a non-biased volunteer translator may be used as a translator of languages other than English to administer the examination orally. Translators shall be pre-approved by the examination administrator, and shall not compromise the integrity of the examination or the examination results of the candidate.

(5) Each candidate's examination results and personal information shall be held confidential. Such information may be made available only to the examinee and to persons designated in writing by the examinee in a dated document containing the examinee's original signature. The signed document must specify the name(s) of specific individuals the information may be released to and the exact information which may be provided. The department shall only release information in writing and only to appropriately designated and identified person(s).

(6) All completed answer sheets for the department examinations shall:

(A) be submitted by traceable means, and received by the department within seven working days of the examination date for grading and processing;

(B) be submitted in a condition acceptable for immediate scanning. Forms requiring extensive correction shall be returned to the examination administrator ungraded; and

(7) Only the department shall grade the department examination.

(p) Required fees. All fees are payable to the Department of State Health Services and are non-refundable. Fees must be submitted with the appropriate form that relates to the fee category. A current license shall only be issued when all past due fees and late fees are paid for all years of operation in Texas. The fees shall be:

(1) Certified food manager program license fee for initial, renewal, or change of ownership. A program fee shall be \$600 for a two-year license for each certification or recertification program.

(2) Certified food manager program amended license fee. Program amendment fees shall be \$300 for each certification or recertification program.

(3) Examination packet fee. The fee for the department examination shall be \$25 and shall include a manager's certificate valid for five years if the candidate passes the examination. If the candidate fails the department examination, another candidate fee must be submitted to retake the examination.

(4) Two-year renewal certificate fee. The fee for renewal of a two-year certificate issued shall be \$10.

(5) Replacement certificate. A replacement certificate fee for the department examination shall be \$15.

(6) Late fee. Certified food manager licensees submitting a completed renewal application to the department after the expiration date shall pay an additional \$100 as a late fee.

(7) Texas Online Authority fee. For all applications and renewal applications, the department is authorized to collect subscription and convenience fees, in amounts determined by the Texas Online Authority, to recover costs associated with application and renewal application processing through Texas Online.

(q) Department examination related to late fees. Department examinations will not be provided to any licensee that is over 30 days delinquent in renewing a certified food management program license.

(r) Certified food management program registry. The department shall maintain a program registry of all accredited certification and recertification programs. The registry shall be made available on the department website.

(s) Department audits. Examination and classroom audits may be conducted to assess program compliance. Licensee shall allow personnel authorized by the department access for the purposes of an audit. Audits may be based on analysis of data compiled by the department.

(t) Denial, suspension and revocation of program accreditation. An accredited food manager program license may be denied, suspended or revoked for the following reasons:

(1) a licensee, examination administrator or proctor breaches the security agreement;

(2) a licensee is delinquent in payment of fees as described in this section; or

(3) violation of the provisions of this section.

(u) Denial, suspension and revocation procedures. Denial, suspension and revocation procedures under this section shall be conducted in accordance with the Administrative Procedure Act, Government Code, Chapter 2001.

(v) Suspension of License Relating to Child Support and Child Custody.

(1) On receipt of a final court order or attorney general's order suspending a license due to failure to pay child support or for failure to comply with the terms of a court order providing for the possession of or access to a child, the department shall immediately determine if a license has been issued to the obligator named and:

(A) record the suspension of the license in the department's records;

- (B) report the suspension as appropriate; and
- (C) demand surrender of the suspended license.

(2) The department shall implement the terms of a final court or attorney general's order suspending a license without additional review or hearing. The board will provide notice as appropriate to the licensee or to others concerned with the license.

(3) The department may not modify, remand, reverse, vacate, or stay a court or attorney general's order suspending a license issued under the Family Code, Chapter 232, and may not review, vacate, or reconsider the terms of an order.

(4) A licensee who is the subject of a final court or attorney general's order suspending his or her license is not entitled to a refund for any fee paid to the department.

(5) If a suspension overlaps a license renewal period, an individual with a license suspended under this section shall comply with the normal renewal procedures in the Act and this chapter; however, the license will not be renewed until subsections (g) and (h) of this section are met.

§229.176. *Certification of Food Managers.*

(a) Purpose. This section is intended to provide the framework of certification programs for food managers in accordance with Texas Health and Safety Code (HSC), Chapter 438, Subchapter G. Certification of Food Managers supports demonstration of food safety knowledge, thereby reducing the risk of foodborne illness outbreaks caused by improper food preparation and handling techniques.

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

(1) ANSI-CFP Program Accreditation--The American National Standard Institute (ANSI) and the Conference for Food Protection (CFP) accredits programs as outlined in the CFP: Standards for Accreditation of Food Protection Manager Certification Programs.

(2) Certificate--The documentation issued by the department or an organization that administers a department approved examination verifying that an individual has complied with the requirements of this section.

(3) Certification--The process whereby a certificate is issued.

(4) Certified food manager--A person who has demonstrated that he/she has the knowledge, skills and abilities required to protect the public from foodborne illness by means of successfully completing a food safety examination as described in this section.

(5) Certified food manager examination--A department approved examination for food manager certification.

(6) Department--Department of State Health Services.

(7) Examination administrator--An individual or individuals who are designated in writing to the department, by the licensee, who is responsible for administering food manager certification examinations.

(8) Examination site--The physical location at which the department approved examination is administered.

(9) Food--A raw, cooked, or processed edible substance, ice, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption, or chewing gum.

(10) Food establishment--

(A) Food establishment means an operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption:

(i) such as a restaurant; retail food store; satellite or catered feeding location; catering operation if the operation provides food directly to a consumer or to a conveyance used to transport people; market; vending location; conveyance used to transport people; institution; or food bank; and

(ii) that relinquishes possession of food to a consumer directly, or indirectly through a delivery service such as home delivery of grocery orders or restaurant takeout orders, or delivery service that is provided by common carriers.

(B) Food establishment includes:

(i) an element of the operation such as a transportation vehicle or a central preparation facility that supplies a vending location or satellite feeding location unless the vending or feeding location is permitted by the regulatory authority; and

(ii) an operation that is conducted in a mobile, stationary, temporary, or permanent facility or location; where consumption is on or off the premises; and regardless of whether there is a charge for the food.

(C) Food establishment does not include:

(i) an establishment that offers only prepackaged foods that are not potentially hazardous;

(ii) a produce stand that only offers whole, uncut fresh fruits and vegetables;

(iii) a food processing plant;

(iv) a kitchen in a private home if only food that is not potentially hazardous is prepared for sale or service at a function such as a religious or charitable organization's bake sale if allowed by law;

(v) an area where food that is prepared as specified in clause (iv) of this subparagraph is sold or offered for human consumption;

(vi) a Bed and Breakfast Limited facility as defined in these rules; or

(vii) a private home that receives catered or home-delivered food.

(11) Law--Applicable local, state and federal statutes, regulations and ordinances.

(12) Licensee--The individual, corporation, or company that is licensed by the department to administer a department approved examination for food manager certification and complies with the examination site requirements.

(13) Nonprofit organization--A civic or fraternal organization, charity, lodge, association, proprietorship or corporation possessing a 501(C) exemption under the Internal Revenue Code; or religious organizations meeting the definition of "church" under the Internal Revenue Code, §170(b)(1)(A)(I).

(14) Person--An association, corporation, partnership, individual or other legal entity, government or governmental subdivision or agency.

(15) Personal validation question--A question designed to establish the identity of the candidate taking a certified food manager examination by requiring an answer related to the candidate's personal

information such as a driver's license number, address, date of birth, or other similar information that is unique to the candidate.

(16) Proctor--The examination administrator or a person who is designated to assist the examination administrator.

(17) Psychometric--Scientific measurement or quantification of human qualities, traits or behaviors.

(18) Reciprocity--Acceptance by state and local regulatory authorities of a department approved food manager certificate.

(19) Regulatory authority--The local, state, or federal enforcement body or authorized representative having jurisdiction over the food establishment.

(20) Secure--Access limited to the licensee or examination administrator.

(21) Traceable means--A method of mailing documents that can be tracked in the event of loss or delay.

(c) Certified food manager.

(1) Certified food manager responsibilities. Responsibilities of a certified food manager include:

(A) identifying hazards in the day-to-day operation of a food establishment that provides food for human consumption;

(B) developing or implementing specific policies, procedures or standards aimed at preventing foodborne illness;

(C) coordinating training, supervising or directing food preparation activities and taking corrective action as needed to protect the health of the consumer;

(D) training the food establishment employees on the principles of food safety; and

(E) conducting in-house self-inspection of daily operations on a periodic basis to ensure that policies and procedures concerning food safety are being followed.

(2) Certification by a food safety examination. To be certified, a food manager must pass a department approved examination or a national examination recognized by the ANSI-CFP Program Accreditation.

(3) Certificate reciprocity. A certificate issued to an individual who successfully completes a department approved examination shall be accepted as meeting the training and examination requirements under HSC, §438.046(b).

(4) Certificate availability. The original food manager certificate shall be conspicuously posted at each food establishment.

(d) Licensing of certified food manager licensee. The department shall issue a license to certified food manager licensees meeting the requirements of this subsection. A license issued under these rules shall expire two years from the date of issuance. A license is not transferable on change of ownership, name, or change of site location.

(1) Application. Persons wishing to apply for a certified food manager license shall submit a completed application to the department.

(2) Certified food manager licensee fee. The completed license application shall include the appropriate non-refundable fee as specified in subsection (o)(1) of this section.

(3) Examination security agreement. The licensee shall submit a signed security agreement for each examination administrator using a department examination.

(4) Certification examination. Department approved examination(s) utilized by the certified food manager licensee shall be designated on the application.

(5) Number of examination sites utilized. The license application shall indicate the number of examination sites to be utilized under the certified food manager license.

(e) Responsibilities of licensee.

(1) Compliance with food manager laws and rules. The licensee is responsible for compliance with applicable food manager laws and rules.

(2) Payment of fees. All fees shall be non-refundable and paid as specified in subsection (o) of this section.

(3) Change of the examination administrator. The licensee shall submit a signed security agreement by a new examination administrator prior to administering the department examination. New examination administrators must receive instruction on administrative responsibilities for examination security and processing, based on the most current department guidelines.

(4) Submission of answer sheets. The licensee shall ensure that the answer sheets used for computerized grading shall be submitted to the department by traceable means. The completed answer sheets must be received by the department within seven working days of the examination date.

(f) Responsibilities of department examination administrators.

(1) Compliance with food manager laws and rules. The examination administrator is responsible for compliance with the food manager laws and rules applicable to examination administration.

(2) Examination security agreement. An examination administrator must complete, sign and date a security agreement and submit it to the department through the certified food manager licensee. The department may not issue examinations to examination administrators who do not have a signed security agreement on file with the department.

(3) Examination security. The examination administrator shall provide examination security at the examination site. All security measures specified in this section shall be met and maintained at all times during examination storage, administration and issuance.

(4) Submission of examination booklets and answer sheets. The examination administrator shall submit the examination booklets and answer sheets used for computerized grading via traceable means along with department forms as required. The examination booklets, completed answer sheets and required forms must be received by the department within seven working days of the examination date.

(5) Examination results. Candidates shall be informed of the process for receiving their certificate upon passing the examination. Candidates shall be informed of the reexamination process, in the event of examination failure.

(6) Replacement process for candidate certificate. Candidates shall be informed of the process for replacing lost or damaged certificates.

(g) Responsibilities for Internet examination providers.

(1) Compliance with food manager laws and rules. Internet examination providers are responsible for compliance with food manager laws and rules applicable to examination administration.

(2) Examination Security Agreement. Internet examination providers must submit the department security agreement signed by the certified food manager licensee.

(3) Examination Security. Candidates taking Internet examinations shall be advised on the application that outside training materials or assistance shall not be used during administration of the examination and that appropriate measures must be taken to assure that the examination is not compromised.

(h) Certified food manager certificates.

(1) General certificate issuance. Certificates shall be issued by the department or the organization that administers a department approved examination. Certificates issued after successful passage of a department approved examination shall be deemed to meet the requirements for food manager certification.

(2) Department certificate issuance. Certified food manager certificates for candidates who pass the department's examination will be mailed directly to the candidate.

(3) Certificate period. A certified food manager certificate issued by the department shall be valid for five years from the date of passing the examination. All certificates issued prior to the effective date of these rules will expire on the expiration date as stated on the certificate.

(4) Two-year renewal certificate. Food manager certificates issued by the department from May 6, 2004 to April 24, 2008, must be renewed every two years and may be renewed two times.

(5) Recertification. Candidates may become recertified by passing a department approved examination.

(6) Department certificate replacement. An individual requesting a certified food manager certificate replacement must submit a completed written application to the department with the appropriate non-refundable fee. Replacement certificates will bear the same expiration date as the original certificate.

(i) Department examination criteria. The department examination shall meet accepted psychometric standards for reliability, validity and passing score. The department examination shall consist of 75 statistically valid questions to be administered at one time following any voluntary training which may precede the examination.

(j) National examination criteria. National food manager examinations recognized by the ANSI-CFP Program Accreditation shall be considered department approved examinations.

(k) Internet examination criteria. Documentation that Internet examination questions meet accepted psychometric standards for reliability, validity, and passing score shall be submitted to the department. Each candidate shall receive a unique form of the examination with regard to question sequence. Internet examinations shall consist of 75 statistically valid questions that are administered at one time following any voluntary training that may precede the examination.

(l) Site requirements for administration of the department examination and national examinations. Examination sites utilizing the department examination or a national examination must comply with all legal requirements for safety, health, and accessibility for all qualified candidates. Accommodations, lighting, space, comfort, and workspace for taking the examination must allow all candidates to perform at their highest level of competency. Requirements at each site include but are not limited to:

(1) accessibility in accordance with the requirements of the Americans with Disabilities Act must be available for all qualified examinees;

(2) sufficient spacing between each examinee in the area where the actual examination is conducted, or other appropriate and effective methods, to preclude any examinee from viewing other candidates' examinations;

(3) acoustics that allow each examinee to hear instructions clearly, using an electronic audio system if necessary;

(4) adequate lighting at each examinee's workspace for reading fine print; and

(5) appropriate ventilation and temperature for the health and comfort of examinees.

(m) Department examination administration. Examination administrators shall implement and maintain the following examination administration procedures for a program utilizing the department examination:

(1) Security procedures shall be in place, which protect the examination from compromise at all times. The examinations shall be stored and administered under secure conditions and shall be inventoried prior to and immediately following each administration of an examination. The examination may not be duplicated. Candidates shall have access to the examination only during examination administration;

(2) There shall be one proctor for every 35 candidates taking the examination. Proctors shall, by picture identification, confirm the accurate identity of each candidate. The examination administrator shall train and supervise the activities of any proctor(s);

(3) A candidate who speaks English as a second language may use a translation dictionary to translate English into their native language;

(4) An employee or a non-biased volunteer translator may be used as a translator of languages other than English to administer the examination orally. Translators shall be pre-approved by the examination administrator, and shall not compromise the integrity of the examination nor the examination results of the candidate;

(5) Each candidate's examination results and personal information shall be held confidential. Such information may be made available only to the examinee and to persons designated in writing by the examinee in a dated document containing the examinee's original signature. The signed document must specify the name(s) of specific individuals the information may be released to and the exact information which may be provided. The department shall only release information in writing and only to appropriately designated and identified person(s);

(6) All completed answer sheets for the department examinations shall:

(A) be submitted by traceable means, and received by the department within seven working days of the examination date for grading and processing;

(B) be submitted in a condition acceptable for immediate scanning. Forms requiring extensive correction shall be returned to the examination administrator ungraded; and

(7) Only the department shall grade the department examination.

(n) Internet examination administration.

(1) Registration requirements for Internet examinations. The licensee shall register the candidates and require the candidates to:

(A) verify their identity;

- (B) provide responses to ten personal validation questions; and
  - (C) maintain examination security.
- (2) Licensee examination disclosure information. The licensee shall inform the candidate that:
- (A) reference materials shall not be used during the examination;
  - (B) the candidate shall not receive assistance from anyone during the examination; and
  - (C) examination questions may not be replicated in any fashion.
- (3) Personal validation questions. The licensee shall verify a candidate's identity throughout the examination. The personal validation process must include the following elements:
- (A) a minimum of five personal validation questions selected from the ten questions provided during registration shall be incorporated at various times during the examination;
  - (B) the personal validation questions must be randomly generated with respect to time and order;
  - (C) the same personal validation questions shall not be asked more than once during the same examination; and
  - (D) the examination session shall cease and the candidate shall be automatically exited from the examination if a candidate answers a personal validation question incorrectly.
- (4) System support. The licensee of an approved Internet examination must include the following system capabilities and security measures:
- (A) capability to browse or review previously completed examination questions;
  - (B) capability to navigate logically and systematically through the examination;
  - (C) technical support personnel for Internet examination issues;
  - (D) security of personal candidate information in transit and at rest;
  - (E) a back-up and disaster recovery system capability; and
  - (F) assurance that examination data is maintained in a secure and safe environment and readily available to the department.
- (5) Reporting requirements for non-proctored Internet examination administrators. Internet examination administrators who administer examinations in non-proctored locations shall submit a semi-annual report to enable the department to evaluate examination security and system performance. The report shall include:
- (A) statistical data to enable measurement of central tendency, ranges of examination scores, standard deviation, standard error of measurement, and examination cut score;
  - (B) the number of personal validation questions used; and
  - (C) the number of examinations discontinued due to incorrect responses to personal validation questions.

- (6) Time allotment for non-proctored Internet examination providers. Time allotted for administration of non-proctored examinations shall not exceed 90 minutes.
- (o) Required fees. All fees are payable to the Department of State Health Services and are non-refundable. Fees must be submitted with the appropriate form that relates to the fee category. A current license shall only be issued when all past due fees and late fees are paid for all years of operation in Texas. Fees shall be:
- (1) Certified food manager licensee fee. Certified food manager licensee fees shall be valid for a two-year period and shall be based on the number of sites at which the certified food manager licensee administers the examinations based on the following scale:
    - (A) one site:
      - (i) the two-year license fee for initial, renewal, or change of ownership shall be \$400; and
      - (ii) a license fee for a program amendment during the current licensure period shall be \$200;
    - (B) two to ten sites:
      - (i) the two-year license fee for initial, renewal, or change of ownership shall be \$1,000; and
      - (ii) a license fee for a program amendment during the current licensure period shall be \$500;
    - (C) over ten sites:
      - (i) the two-year license fee for initial, renewal, or change of ownership shall be \$2,000; and
      - (ii) a license fee for a program amendment during the current licensure period shall be \$1,000.
  - (2) Examination packet fee. The fee for a department examination packet shall be \$25 and shall include a manager's certificate valid for five years if the candidate passes the examination. If the candidate fails the department examination, another candidate fee must be submitted to retake the examination.
  - (3) Two-year renewal certificate fee. The fee for a two-year renewal certificate shall be \$10.
  - (4) Replacement certificate fee. A replacement certificate fee for the department examination shall be \$15.
  - (5) Late fee. A certified food manager licensee submitting a completed renewal application to the department after the expiration date shall pay an additional \$100 as a late fee.
  - (6) Texas Online Authority fee. For all applications and renewal applications, the department is authorized to collect subscription and convenience fees, in amounts determined by the Texas Online Authority, to recover costs associated with application and renewal application processing through Texas Online.
    - (p) Department examination related to late fees. Department examinations will not be provided to any licensee that is over 30 days delinquent in renewing a license.
    - (q) Certified food manager licensee registry. The department shall maintain a registry of all licensed certified food manager licensees. The registry shall be made available on the department website.
    - (r) Department audits. Audits of certified food manager licensees shall be conducted to assess compliance with these rules. Audits may be based on analysis of data compiled by the department. Li-

censees shall allow personnel authorized by the department access for the purposes of an audit.

(s) Denial, suspension and revocation of certified food manager license. A certified food manager license may be denied, suspended or revoked for the following reasons:

(1) a licensee, examination administrator, or proctor breaches the security agreement;

(2) a licensee is delinquent in payment of fees as described in this section; or

(3) violation of the provisions of this section.

(t) Denial, suspension and revocation procedures. Denial, suspension and revocation procedures under this section shall be conducted in accordance with the Administrative Procedure Act, Government Code, Chapter 2001.

(u) Suspension of License Relating to Child Support and Child Custody.

(1) On receipt of a final court order or attorney general's order suspending a license due to failure to pay child support or for failure to comply with the terms of a court order providing for the possession of or access to a child, the department shall immediately determine if a license has been issued to the obligator named and:

(A) record the suspension of the license in the department's records;

(B) report the suspension as appropriate; and

(C) demand surrender of the suspended license.

(2) The department shall implement the terms of a final court or attorney general's order suspending a license without additional review or hearing. The board will provide notice as appropriate to the licensee or to others concerned with the license.

(3) The department may not modify, remand, reverse, vacate, or stay a court or attorney general's order suspending a license issued under the Family Code, Chapter 232, and may not review, vacate, or reconsider the terms of an order.

(4) A licensee who is the subject of a final court or attorney general's order suspending his or her license is not entitled to a refund for any fee paid to the department.

(5) If a suspension overlaps a license renewal period, an individual with a license suspended under this section shall comply with the normal renewal procedures in the Act and this chapter; however, the license will not be renewed until subsections (g) and (h) of this section are met.

*§229.178. Accreditation of Food Handler Education or Training Programs.*

(a) Purpose. This section is intended to provide the framework for accrediting food safety education or training programs for food handlers in accordance with the Health and Safety Code (HSC), Chapter 438, Subchapter D, §438.0431. A uniform standard governing the accreditation of food handler programs enhances the recognition of reciprocity among regulatory agencies and reduces the expense of duplicate education incurred when food handlers work in multiple regulatory jurisdictions. Education of the food handlers provides more qualified employees, thereby reducing the risk of foodborne illness outbreaks caused by improper food preparation and handling techniques.

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

(1) Accredited food handler program--A program approved by the department that meets the standards set forth in this section.

(2) Department--Department of State Health Services.

(3) Food--A raw, cooked, or processed edible substance, ice, beverage or ingredient used or intended for use or for sale in whole or in part for human consumption, or chewing gum.

(4) Food establishment--

(A) Food establishment means an operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption:

(i) such as a restaurant; retail food store; satellite or catered feeding location; catering operation if the operation provides food directly to a consumer or to a conveyance used to transport people; market; vending location; conveyance used to transport people; institution; or food bank; and

(ii) that relinquishes possession of food to a consumer directly, or indirectly through a delivery service such as home delivery of grocery orders or restaurant takeout orders, or delivery service that is provided by common carriers.

(B) Food establishment includes:

(i) an element of the operation such as a transportation vehicle or a central preparation facility that supplies a vending location or satellite feeding location unless the vending or feeding location is permitted by the regulatory authority; and

(ii) an operation that is conducted in a mobile, stationary, temporary, or permanent facility or location; where consumption is on or off the premises; and regardless of whether there is a charge for the food.

(C) Food establishment does not include:

(i) an establishment that offers only prepackaged foods that are not potentially hazardous;

(ii) a produce stand that only offers whole, uncut fresh fruits and vegetables;

(iii) a food processing plant;

(iv) a kitchen in a private home if only food that is not potentially hazardous is prepared for sale or service at a function such as a religious or charitable organization's bake sale if allowed by law;

(v) an area where food that is prepared as specified in clause (iv) of this subparagraph is sold or offered for human consumption;

(vi) a Bed and Breakfast Limited facility as defined in these rules; or

(vii) a private home that receives catered or home-delivered food.

(5) Food handler--A food service employee who works with unpackaged food, food equipment or utensils, or food contact surfaces.

(6) Law--Applicable local, state and federal statutes, regulations and ordinances.

(7) Licensee--The individual, corporation or company that is licensed by the department to operate certified food handler programs.



(8) Person--An association, corporation, individual, partnership or other legal entity, government or governmental subdivision or agency.

(9) Reciprocity--Acceptance by state and local regulatory authorities of a food handler certificate issued by a department accredited food handler program.

(10) Regulatory authority--The local, state, or federal enforcement body or authorized representative having jurisdiction over the food establishment.

(11) Sponsor--An individual designated in writing to the department, by the licensee, as the person responsible for administrative management of the program.

(c) Food handler education and training program. The department may accredit an education or training program for basic food safety. The program shall include employee knowledge, responsibilities and training as required in the Texas Food Establishment Rules (TFER).

(1) Education or training course curriculum. A food handler training or education course shall include the following basic food safety principles.

(A) Foodborne disease outbreak. Instruction on foodborne disease outbreak shall include the definition of foodborne disease outbreak, the causes and preventive measures, including employee reporting requirements as defined in §229.163 of this title (relating to Management and Personnel).

(B) Good hygienic practices. Instruction on good hygienic practices shall include the procedures as required in §229.163 of this title.

(C) Preventing contamination by employees. Instruction shall include the training as required in §229.164(e)(1)(D) of this title (relating to Food), regarding the training requirements for contact with ready to eat food with their bare hands.

(D) Cross Contamination. Instruction on cross contamination shall include procedures on the prevention of cross-contamination of foods, sanitization methods and corrective actions as required in §229.164 of this title and §229.165 of this title (relating to Equipment, Utensils, and Linens).

(E) Time and temperature. Instruction shall include time and temperature control of foods to limit pathogen growth or toxin production as required in §229.164 of this title.

(2) Course length. The course length may not exceed two hours.

(3) Course examination. A training or education program may require a participant to achieve a passing score on an examination to successfully complete the course.

(4) Internet programs. A program accredited under this section may be delivered through the Internet.

(d) Food handler certificate.

(1) Certificate period. A food handler certificate issued by an accredited food handler program shall be valid for two years.

(2) Certificate reciprocity. Department accredited food handler program issued certificates shall be recognized statewide by regulatory authorities as the valid proof of successful completion of a department accredited food handler program.

(e) Licensing of an accredited food handler program licensee. The department shall issue a license of accreditation to each certified

food handler program licensee who has demonstrated compliance with this section. A license issued under these rules will expire two years from the date of issuance. This license is not transferable on change of ownership, or site location.

(f) Responsibilities of a licensee.

(1) Compliance with certified food handler program law and rules. The licensee is responsible for compliance with applicable certified food handler program law and rules.

(2) Payment of fees. All fees shall be non-refundable and paid as specified in subsection (g) of this section.

(g) Required fees. All fees are payable to the department and are non-refundable. Fees must be submitted with the appropriate completed application that relates to the fee category. A current license shall only be issued when all past due fees and late fees are paid for all years of operation in Texas.

(1) Accredited food handler program license fee for initial, renewal, or change of ownership. A program fee shall be \$600 for a two-year license for each food handler program.

(2) Accredited food handler program amended license fee. Program amendment fees shall be \$300.

(3) Late fee. Accredited food handler program licensees submitting a completed renewal application to the department after the expiration date shall pay an additional \$100 as a late fee.

(4) Texas Online Authority fee. For all applications and renewal applications, the department is authorized to collect subscription and convenience fees, in amounts determined by the Texas Online Authority, to recover costs associated with application and renewal application processing through Texas Online.

(h) Certified food handler program registry. The department shall maintain a program registry of all accredited food handler programs. The registry shall be made available on the department website.

(i) Department audits. Classroom audits may be conducted to assess program compliance. Licensee shall allow personnel authorized by the department access for the purposes of an audit. Audits may be based on analysis of data compiled by the department.

(j) Denial, suspension and revocation of program accreditation. An accredited food handler program license may be denied, suspended or revoked for the following reasons:

(1) a licensee is delinquent in payment of fees as described in this section; or

(2) violation of the provisions of this section.

(k) Denial, suspension and revocation procedures. Denial, suspension and revocation procedures under this section shall be conducted in accordance with the Administrative Procedure Act, Government Code, Chapter 2001.

(l) Suspension of License Relating to Child Support and Child Custody.

(1) On receipt of a final court order or attorney general's order suspending a license due to failure to pay child support or for failure to comply with the terms of a court order providing for the possession of or access to a child, the department shall immediately determine if a license has been issued to the obligor named, and:

(A) record the suspension of the license in the department's records;

(B) report the suspension as appropriate; and

(C) demand surrender of the suspended license.

(2) The department shall implement the terms of a final court or attorney general's order suspending a license without additional review or hearing. The board will provide notice as appropriate to the licensee or to others concerned with the license.

(3) The department may not modify, remand, reverse, vacate, or stay a court or attorney general's order suspending a license issued under the Family Code, Chapter 232, and may not review, vacate, or reconsider the terms of an order.

(4) A licensee who is the subject of a final court or attorney general's order suspending his or her license is not entitled to a refund for any fee paid to the department.

(5) If a suspension overlaps a license renewal period, an individual with a license suspended under this section shall comply with the normal renewal procedures in the Act, and this chapter; however, the license will not be renewed until subsection (g) of this section is met.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 1, 2008.

TRD-200801702

Lisa Hernandez

General Counsel

Department of State Health Services

Effective date: April 24, 2008

Proposal publication date: December 14, 2007

For further information, please call: (512) 458-7111 x6972



## CHAPTER 417. TDMHMR AND FACILITY RESPONSIBILITIES

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 §§417.301 - 417.311 and §§417.313 - 417.316 and new §§417.301 - 417.306 and §417.308, concerning the policies and standards for volunteer engagement and fundraising at state hospitals. The new §417.303 and §417.308 are adopted with changes to the proposed text as published in the December 7, 2007, issue of the *Texas Register* (32 TexReg 9092). The repeal of §§417.301 - 417.311 and §§417.313 - 417.316, and new §§417.301, 417.302, and 417.304 - 417.306 are adopted without changes and, therefore, the sections will not be republished. New §417.307 was published in the same issue, but is being withdrawn and will not be adopted.

### BACKGROUND AND PURPOSE

The repeals, §§417.301 - 417.311 and §§417.313 - 417.316, describe the policies and standards for volunteer engagement, fundraising and solicitation, donations, naming of donations, Volunteer Services Councils (VSCs), and auditing and reporting guidelines. VSC is defined as a 501(c)(3) non-profit organization formed for generating resources on behalf of the state hospital. The repeal will eliminate obsolete rules of the former Texas Department of Mental Health and Mental Retardation that were transferred to the department in September 2004 in compliance

with Acts 2003, 78th Legislature, Regular Session, Chapter 198 (House Bill 2292).

These rules will be replaced by new department volunteer and community engagement rules and three policies: (1) Volunteer and Intern Engagement; (2) Fund-Raising and Solicitation (department wide); and (3) VSCs, which provide an up-to-date, reorganized, and clarified process.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 417.301 - 417.311 and §§417.313 - 417.316 have been reviewed and the department has determined that reasons for adopting the sections do not continue to exist except for parts of §§417.309, 417.311, and 417.313, which have been rewritten into the new rules.

### SECTION-BY-SECTION SUMMARY

The repeal of §§417.301 - 417.311 and §§417.313 - 417.316 is necessary because the internal policies will now provide standards and processes for working with the volunteers and interns; fundraising for the benefit of department programs and clients as well as internal fundraising; and working with the VSCs, private donors, and private organizations.

The new §§417.301 - 417.306 and §417.308 update legacy agency names, agency locations, and definitions. The new §§417.305, 417.306, and 417.308 describe the relationship of donors to the department and employees of the department; relationship of private organizations (VSCs) to the department; and all individuals and groups volunteering or partnering with the department that must abide by all applicable department rules, policies, and procedures. The new §417.307 is withdrawn because the Volunteer Services State Council was abolished on December 27, 2007.

### COMMENTS

The department, on behalf of the commission, did not receive any public comments concerning the proposal during the comment period. However, the department staff on behalf of the commission provided comments and the commission has reviewed and agrees to the following changes that will provide consistency in definitions and delete outdated references.

Concerning the definitions in §417.303(1), "501(c)(3) organization", §417.303(4), "Consumer Affairs", §417.303(6), "Donor", §417.303(8), "Gift", and §417.303(9), "Volunteer Services Council", revisions were made to be consistent with the definitions in the new department policies for Volunteers, Fund-Raising, and Volunteer Services Councils.

The definition of §417.303(10), "Volunteer Services State Council" (VSSC) was deleted, and the new §417.307 pertaining to the VSSC was withdrawn to reflect that the VSSC was abolished on December 27, 2007, which occurred after the rule was proposed. Therefore, the rule is no longer necessary.

Section 417.308 was revised to reflect the department's main telephone number for the contact information.

The title of new Subchapter G was amended to state "Volunteer and Community Engagement" instead of proposed "Community Engagement" because it more accurately reflects the content of the rules.

### 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.

## SUBCHAPTER G. COMMUNITY RELATIONS

**25 TAC §§417.301 - 417.311, 417.313 - 417.316**

### STATUTORY AUTHORITY

The repeal is adopted under Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001; Government Code, Chapter 2109, which governs volunteer programs in a state agency; and Government Code, Chapter 2255, concerning the relationship of a state agency to a private donor or a private organization. The review of the rules implements Government Code, §2001.039.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 4, 2008.

TRD-200801756

Lisa Hernandez

General Counsel

Department of State Health Services

Effective date: April 24, 2008

Proposal publication date: December 7, 2007

For further information, please call: (512) 458-7111 x6972



## SUBCHAPTER G. VOLUNTEER AND COMMUNITY ENGAGEMENT

**25 TAC §§417.301 - 417.306, 417.308**

### STATUTORY AUTHORITY

The new sections are adopted under Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001; Government Code, Chapter 2109, which governs volunteer programs in a state agency; and Government Code, Chapter 2255, concerning the relationship of a state agency to a private donor or a private organization. The review of the rules implements Government Code, §2001.039.

*§417.303. Definitions.*

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

(1) 501(c)(3) organization--An organization recognized by the Internal Revenue Service as a non-profit corporation and granted the right to receive tax deductible contributions under §501(c)(3) of the Internal Revenue Code.

(2) Client--A person receiving services at a state hospital or clinic.

(3) Community relations director--The employee responsible for coordinating a state hospital's community relations functions, volunteer programs, fund-raising, and donations.

(4) Consumer Affairs--The unit within the Center for Consumer and External Affairs whose staff are responsible for providing support to staff for volunteer services councils.

(5) Department--The Department of State Health Services.

(6) Donor--An individual, community group, or business entity who wants to donate a gift to the department.

(7) Employee--An individual who is legally employed to perform work and who is paid a salary or wage by the department.

(8) Gift--A donation of money, property, or in-kind good or in-kind service. This term does not include funding under a federal grant, state grant, or private non-profit organization grant for which the department has made a formal written application and is subject to an agreement between the recipient and the donor relating to the use of the grant.

(9) Volunteer Services Council (VSC)--A 501(c)(3) volunteer organization, including its board, that is formed to generate resources on behalf of a state hospital and clients served.

*§417.308. Department Policies.*

(a) All individuals and groups volunteering or partnering with the department must abide by all applicable department rules, policies, and procedures.

(b) Department policies and forms can be obtained by contacting the Consumer Affairs Unit at the Department of State Health Services at (512) 458-7111.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 4, 2008.

TRD-200801757

Lisa Hernandez

General Counsel

Department of State Health Services

Effective date: April 24, 2008

Proposal publication date: December 7, 2007

For further information, please call: (512) 458-7111 x6972



## TITLE 28. INSURANCE

### PART 1. TEXAS DEPARTMENT OF INSURANCE

#### CHAPTER 7. CORPORATE AND FINANCIAL REGULATION

##### SUBCHAPTER A. EXAMINATION AND FINANCIAL ANALYSIS

###### **28 TAC §7.18**

The Commissioner of Insurance adopts amendments to §7.18, concerning the adoption by reference of the Accounting Practices and Procedures Manual (Manual). The amended section is adopted with a nonsubstantive change to the proposed text

published in the January 25, 2008, issue of the *Texas Register* (33 TexReg 655).

**REASONED JUSTIFICATION.** The adopted amendments are necessary to clarify in §7.18(a) that Texas statutes; Department rules; and directives, instructions, and orders of the Commissioner preempt any contrary provisions in the Manual, and to clarify which Department rules specifically preempt any contrary provisions in the Manual. The amendments are also necessary to adopt in §7.18(c)(1) the new Statements of Statutory Accounting Principle (SSAP) No. 97 as an addition to the Manual. SSAP No. 97 is the only single substantive SSAP adopted by the National Association of Insurance Commissioners (NAIC) in calendar year 2007; it became effective on January 1, 2008. SSAP No. 97 replaces SSAP No. 88 and establishes accounting principles for investments in subsidiary, controlled and affiliated entities (SCA entities). The Manual, which is adopted and published by the NAIC, is a comprehensive guide to statutory accounting principles and contains SSAPs that provide guidance to insurers and health maintenance organizations (HMOs), including accountants employed or retained by these entities, on how to properly record business transactions for the purpose of accurate statutory reporting. SSAPs provide a nationwide standard method of accounting, which most insurers and HMOs are required to use for statutory financial reporting guidance, thus providing a more consistent reporting of financial information for insurers and HMOs. SSAPs provide the source of statutory accounting principles for the Department when examining and analyzing financial reports and for conducting statutory examinations and rehabilitations of insurers and HMOs licensed in Texas, except where otherwise provided by law. Thus, the adopted amendments provide for more consistent and efficient regulation of insurance by providing a single source for accounting guidance. However, SSAPs do not preempt individual state legislative or regulatory authority.

The amendments to §7.18 also adopt in new subsection (c)(2) nonsubstantive modifications to SSAP Nos. 1, 10, 22, 26, 55, 56, 61, 62, 72, and 80. These nonsubstantive modifications, which were made by the NAIC in calendar year 2007, clarify language or change disclosures, appendices, or other material referenced in SSAPs already included in the March 2007 version of the Manual. The amendment to §7.18(c)(3) is necessary to clarify the exception to SSAP No. 96 by specifying that intercompany balances must be settled within 90 days of the period for which the services are being billed; otherwise, such balances shall be non-admitted. The amendments also delete §7.18(c)(5) because it is a transitional provision that relates to certain items expensed on or before December 31, 2000, and thus, is no longer necessary. The amendment to §7.18(d) increases from less than \$5 million to less than \$6 million the amount of annual direct written premiums that will qualify a farm mutual insurance company, statewide mutual assessment company, local mutual aid association, or mutual burial association for exemption from compliance with the Manual. This expanded exemption makes the threshold for the exemption consistent with the "less than \$6 million in annual gross receipts" threshold for defining a small business in accordance with the Government Code §2006.001(2) (Agency Actions Affecting Small Businesses), as amended in HB 3430, 80th Legislature, effective October 1, 2007.

While the Department did not receive any comments on the proposal, the Department, for purposes of clarity, has made a non-substantive change to the proposed text as adopted to remove a redundant phrase in §7.18(a). As adopted, subsection (a) has been revised to remove the language "preempt any contrary pro-

visions in the Manual" that is on the last line of subsection (a) preceding the listing of paragraphs (1) - (6). This language, which is in the existing rule, is redundant of the proposed amendment to subsection (a) that reads: "The department rules that preempt any contrary provisions in the Manual include, but are not limited to. . . ." This minor change, however, does not materially alter issues raised in the proposed rule, introduce new subject matter, or affect persons other than those previously subject to the proposal as originally published.

**HOW THE SECTION WILL FUNCTION.** The adopted amendments to §7.18(a) adopt by reference the March 2007 version of the Manual with deference to Texas statutes and regulations. The adopted version of the Manual includes all SSAPs adopted by the NAIC through December 31, 2006. The adopted amendments to §7.18(c) adopt new SSAP No. 97 in new paragraph (1). The adopted amendments to §7.18(c) also adopt nonsubstantive modifications to the SSAPs in new paragraph (2). Adopted amendments to §7.18(c)(3) clarify the exception to SSAP No. 96 regarding the statutory accounting principles for settlement of intercompany balances. The adopted amendments to §7.18(c) also delete in paragraph (5) the transitional provision that relates to certain items expensed on or before December 31, 2000, because they are no longer necessary. As a result of the addition of new paragraphs (1) and (2) to the existing subsection (c) and the deletion of existing paragraph (5) of subsection (c), the adopted amendments to §7.18(c) redesignate the provisions in existing paragraphs (1) - (6) as paragraphs (3) - (7). The adopted amendment to §7.18(d) increases from less than \$5 million to less than \$6 million the amount of annual direct written premiums that will qualify a farm mutual insurance company, statewide mutual assessment company, local mutual aid association, or mutual burial association for exemption from compliance with the Manual.

**SUMMARY OF COMMENTS AND AGENCY RESPONSE.** The Department did not receive any comments on the published proposal.

**STATUTORY AUTHORITY.** The amendments are adopted under the Insurance Code Chapters 32, 401, 404, 421, 425, 426, 441, 802, 823, 841, 843, 861, 862, and §36.001. Sections 401.051 and 401.056 mandate that the Department examine the financial condition of each carrier organized under the laws of Texas or authorized to transact the business of insurance in Texas and adopt by rule procedures for the filing and adoption of examination reports. Section 404.005(a)(2) authorizes the Commissioner to establish standards for evaluating the financial condition of an insurer. Section 421.001(c) authorizes the Commissioner to adopt each current formula recommended by the NAIC for establishing reserves for each line of insurance. Section 425.162 authorizes the Commissioner to adopt rules, minimum standards, or limitations that are fair and reasonable as appropriate to supplement and implement the Insurance Code Chapter 425 Subchapter C. Section 426.002 provides that reserves required by §426.001 must be computed in accordance with any rules adopted by the Commissioner to adequately protect insureds, secure the solvency of the workers' compensation insurance company, and prevent unreasonably large reserves. Section 441.005 authorizes the Commissioner to adopt reasonable rules as necessary to implement and supplement Chapter 441 of the Insurance Code (Supervision and Conservatorship). Section 32.041 requires the Department to furnish to the companies the required financial statement forms. Section 802.001 authorizes the Commissioner, as necessary to obtain an accurate indication of the company's condition

and method of transacting business, to change the form of any annual statement required to be filed by any kind of insurance company. Section 823.012 authorizes the Commissioner to issue rules and orders necessary to implement the provisions of Chapter 823 of the Insurance Code (Insurance Holding Company Systems). Section 843.151 authorizes the Commissioner to promulgate rules as are necessary to carry out the provisions of Chapter 843 of the Insurance Code (Health Maintenance Organizations). Section 843.155 requires a health maintenance organization to file an annual report with the Commissioner, which shall include a financial statement of the health maintenance organization. Sections 841.004(b), 861.255(b), and 862.001(c) authorize the Commissioner to adopt rules defining electronic machines and systems, office equipment, furniture, machines and labor saving devices, and the maximum period for which each such class may be amortized. Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state

*§7.18. National Association of Insurance Commissioners Accounting Practices and Procedures Manual.*

(a) The purpose of this section is to adopt statutory accounting principles, which will provide insurers and health maintenance organizations, including accountants employed or retained by these entities, guidance as how to properly record business transactions for the purpose of accurate statutory reporting. The March 2007 version of the Accounting Practices and Procedures Manual (Manual) published by the National Association of Insurance Commissioners (NAIC) will be utilized as the guideline for statutory accounting principles in Texas to the extent the Manual does not conflict with provisions of the Insurance Code or rules of the department. The Commissioner reserves all authority and discretion to resolve any accounting issues in Texas. When making a determination on the proper accounting treatment for an insurance or health plan transaction, the Commissioner shall refer to the sources in paragraphs (1) - (6) of this subsection in the respective order of priority listed. The sources in paragraphs (1) - (3) preempt any contrary provisions in the Manual. The department rules that preempt any contrary provisions in the Manual include, but are not limited to: §§3.1501 - 3.1505, 3.1601 - 3.1608, 3.4505(f), 3.6101, 3.6102, 3.7001 - 3.7009, 3.9101 - 3.9106, 3.9401 - 3.9404, 7.7, 7.85 and 11.803 of this title (relating to Annuity Mortality Tables, Actuarial Opinion and Annuities, General Calculation Requirements for Basic Reserves and Premium Deficiency Reserves, Minimum Reserve Standards for Individual and Group Accident and Health Insurance, 2001 CSO Mortality Table, Preferred Mortality Tables, Subordinated Indebtedness, Surplus Debentures, Surplus Notes, Premium Income Notes, Bonds, or Debentures, and Other Contingent Evidences of Indebtedness, Audited Financial Reports, and Investments, Loans, and Other Assets).

- (1) Texas statutes;
- (2) department rules;
- (3) directives, instructions, and orders of the Commissioner;
- (4) the Manual;
- (5) other NAIC handbooks, manuals, and instructions, adopted by the department; and
- (6) Generally Accepted Accounting Practices.

(b) The Commissioner adopts by reference the March 2007 version of the Manual, with the exceptions and additions set forth in subsections (c) and (d) of this section, as the source of accounting

principles for the department when examining financial reports and for conducting statutory examinations and rehabilitations of insurers and health maintenance organizations licensed in Texas, except where otherwise provided by law. This adoption by reference shall be applied to examinations conducted as of January 1, 2008 and thereafter, and also shall be used to prepare all financial statements filed with the department for periods after January 1, 2008.

(c) The Commissioner adopts the following exceptions and additions to the Manual:

(1) In addition to the statements of statutory accounting principles in the Manual, Statement of Statutory Accounting Principles (SSAP) No. 97 regarding accounting for investments in subsidiary, controlled and affiliated entities, adopted by the NAIC on December 2, 2007 and effective January 1, 2008, are adopted by reference and shall be used to prepare all financial statements filed with the department for periods after January 1, 2008. This adoption of SSAP No. 97 effectively replaces SSAP No. 88.

(2) Nonsubstantive modifications to SSAP Nos. 1, 10, 22, 26, 55, 56, 61, 62, 72, and 80 made by the NAIC in calendar year 2007, as follows:

- (A) Ref. No. 2006-09: Accounting for the Gain or Loss on Sale of Real Estate Included in a Leaseback Transition;
- (B) Ref. No. 2007-16: Clarification of SSAP No. 26 for Reporting Investments in Commercial Paper;
- (C) Ref. No. 2007-17: Disclosure of Information about Capital Structure;
- (D) Ref. No. 2005-15: Move INT 03-17 Disclosure to SSAP No. 55;
- (E) Ref. No. 2006-11: Multi-Cendant Reinsurance Agreements;
- (F) Ref. 2006-24: SSAP No. 61 Ceding Commissions;
- (G) Ref. No. 2006-27: Clarify SSAP No. 56, paragraph 20;
- (H) Ref. No. 2006-28: Consider Inclusion of Model Regulation 815 into Appendix A - Excerpts of Model Laws;
- (I) Ref. No. 2006-31: Disclosure Amendment to SSAP No. 10 for Protective Tax Deposits;
- (J) Ref. No. 2007-06: Quarterly Disclosure of Note 25;
- (K) Ref. No. 2007-07: Additional Dividend Disclosure;
- (L) Ref. No. 2007-13: Subsequent Events;
- (M) Ref. No. 2007-15: Disclosures; and
- (N) Ref. No. 2007-33: Subprime Mortgage Disclosure.

(3) Settlement requirements for intercompany transactions are subject to the accounting treatment in Statement of Statutory Accounting Principles (SSAP) No. 96, except that amounts owed to the reporting entity shall be settled by the due date in accordance with the written agreement and the requirements of §7.204 of this title (relating to Commissioner's Approval Required). Intercompany balances shall be settled within 90 days of the period for which the services are being billed; otherwise such balances shall be nonadmitted.

(4) Retrospective premiums must be billed within 60 days of computation and audit premiums must be billed within 60 days of the completion of the audit in determining the beginning date from which

the 90 day period is calculated to determine admissibility of uncollected premium balances under SSAP No. 6.

(5) Electronic machines, constituting a data processing system or systems and operating systems software used in connection with the business of an insurance company acquired after December 31, 2000, may be an admitted asset as permitted by Insurance Code §§841.004, 861.255, 862.001, and any other applicable law and shall be amortized as provided by the Manual. All such property acquired prior to January 1, 2001, may be an admitted asset as permitted by Insurance Code §§841.004, 861.255, 862.001, and any other applicable law, and shall be amortized in full over a period not to exceed ten years.

(6) Furniture, labor-saving devices, machines, and all other office equipment may be admitted as an asset as permitted by the Insurance Code §§841.004, 861.255, 862.001, and any other applicable law and, for such property acquired after December 31, 2000, depreciated in full over a period not to exceed five years. All such property acquired prior to January 1, 2001, may be an admitted asset as permitted by Insurance Code §§841.004, 861.255, 862.001, and any other applicable law, and shall be depreciated in full over a period not to exceed ten years.

(7) All certificates of deposit, of any maturity, may be classified as cash and are subject to the accounting treatment contained in SSAP No. 2, notwithstanding the provisions of SSAP No. 26.

(d) A farm mutual insurance company, statewide mutual assessment company, local mutual aid association, or mutual burial association that has less than \$6 million in annual direct written premiums need not comply with the Manual.

(e) In the event a domestic insurer desires to deviate from the accounting guidance in a Texas statute or any applicable regulation, the insurer shall file a written request for a permitted accounting practice. Such filing shall be made with the Senior Associate Commissioner, Texas Department of Insurance, Mail Code 305-2A, P.O. Box 149104, Austin, Texas 78714-9104 at least 30 days before filing the financial statement affected by the deviated accounting practice. Insurers shall not use deviated accounting practice without the department's prior approval.

(f) This section shall not be construed to either broaden or restrict the authority provided under the Insurance Code to insurers, including health maintenance organizations.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 7, 2008.

TRD-200801837

Gene C. Jarmon

General Counsel and Chief Clerk

Texas Department of Insurance

Effective date: April 27, 2008

Proposal publication date: January 25, 2008

For further information, please call: (512) 463-6327



## TITLE 30. ENVIRONMENTAL QUALITY

### PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

## CHAPTER 213. EDWARDS AQUIFER

Texas Commission on Environmental Quality (commission) adopts amendments to §§213.9, 213.13, 213.14, and 213.26 - 213.28. These sections are adopted *without changes* to the proposed text as published in the November 23, 2007, issue of the *Texas Register* (32 TexReg 8420) and, therefore, will not be republished.

### BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

The purpose of the adopted amendments is to implement legislative changes to Texas Water Code (TWC), §26.0461(b), (d), (e), and (h) and the addition of subsection (d-1) regarding Fees for Edwards Aquifer Plans, as enacted by House Bill 3098, 80th Legislature, 2007. Texas Water Code, §26.0461(b) and (e), as amended, authorizes the commission to assess fees for contributing zone plans. Texas Water Code, §26.0461(d), as amended, and new subsection (d-1), raises the cap on any fee imposed under §26.0461 from \$5,000 to \$6,500 for plans forty acres or less in size and sets a cap of \$13,000 for plans more than forty acres in size. In addition, Texas Water Code, §26.0461(e), as amended, authorizes the commission to base fees imposed under §26.0461 on the type of activity subject to regulation. Lastly, Texas Water Code, §26.0461(h), as amended, provides the commission with flexibility in spending fee revenue for support activities of the Edwards Aquifer Protection Program.

### SECTION BY SECTION DISCUSSION

*Subchapter A, Edwards Aquifer in Medina, Bexar, Comal, Kinney, Uvalde, Hays, Travis, and Williamson Counties*

The adopted amendment to §213.9, Exceptions, increases the fee for submittal of an Edwards Aquifer protection plan exception from \$250 to \$500.

The adopted amendment to §213.13, Fees Related to Requests for Extensions, increases the fee for an Edwards Aquifer protection plan extension from \$100 to \$150.

The adopted amendment to §213.14, Fee Schedule, contains the criteria for calculating the application fee for the review of an Edwards Aquifer protection plan and modifications to a plan. The water pollution abatement plan fee schedule for single-family residential dwellings is revised to reflect seven categories based on size in acres with fees set at \$650 for one single-family dwelling on less than five acres, \$1,500 for multiple single-family dwellings and parks on less than five acres, \$3,000 for five to less than ten acres, \$4,000 for ten to less than forty acres, \$6,500 for forty to less than one hundred acres, \$8,000 for one hundred to less than five hundred acres, and \$10,000 for five hundred acres or greater. The fee schedule for commercial and other sites where regulated activities will occur is also revised to reflect six categories based on size in acres with fees set at \$3,000 for less than one acre, \$4,000 for one to less than five acres, \$5,000 for five to less than ten acres, \$6,500 for ten to less than forty acres, \$8,000 for forty to less than one hundred acres, and \$10,000 for one hundred acres and greater. The cap for fees for organized sewage collection systems and underground and aboveground storage tank facilities is raised to \$6,500.

*Subchapter B, Contributing Zone to the Edwards Aquifer in Medina, Bexar, Comal, Kinney, Uvalde, Hays, Travis, and Williamson Counties*

The adopted amendment to §213.26, Exceptions, increases the fee for submittal of an Edwards Aquifer contributing zone plan exception from \$250 to \$500.

The adopted amendment to §213.27, Contributing Zone Plan Application and Exception Fees, establishes the same criteria for calculating the application fee for the review of an Edwards Aquifer contributing zone plan and modifications to a plan as designated by the adopted amendment to §213.14. The contributing zone plan fee is revised from a flat fee of \$250 regardless of the size of development and the new fee schedule is reflective of the same specific fee categories based on size in acres as designated in amended §213.14 for water pollution abatement plans with the exception of plans for organized sewage collection systems and underground and aboveground storage tank facilities, as these activities are exempt from application requirements in the contributing zone under current rules.

The adopted amendment to §213.28, Fees Related to Requests for Contributing Zone Plan Approval Extensions, increases the fee for submittal of an Edwards Aquifer contributing zone plan extension from \$100 to \$150.

#### FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the rulemaking under the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to §2001.0225 because it does not meet the definition of "a major environmental rule" as defined in the statute. "A major environmental rule" means a rule, the specific intent of which, is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Furthermore, the rulemaking does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: (1) exceed a standard set by federal law, unless the rule is specifically required by state law; (2) exceed an express requirement of state law, unless the rule is specifically required by federal law; (3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or (4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

The amendments to TWC, §26.0461 authorize the commission to base fees on the type of activity subject to regulation, assess fees for contributing zone plans, and raises the maximum fee from \$5,000 to \$6,500 for plans forty acres or less in size. The amendments also set a maximum fee of \$13,000 for plans more than forty acres in size and provide flexibility in the use of spending fee revenue to support the Edwards Aquifer Protection Program. Because the rules are not specifically intended to protect the environment or to reduce risks to human health from environmental exposure, this rulemaking is not a major environmental rule. The amendments to TWC, §26.0461 are not anticipated to 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 the state or a sector of the state. The amendments simply alter the fee structure by increasing the amounts based on the activities regulated. The commission solicited public comment regarding the draft regulatory impact analysis determination during the public comment

period. No comments were received on the draft regulatory impact analysis determination.

#### TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact analysis for this rule pursuant to Texas Government Code, Chapter 2007 to determine whether the adopted rules constitute a taking. The following is a summary of that analysis. The specific purpose of the rulemaking is to amend the regulations set forth in Chapter 213 to adjust the amount of fees imposed for processing plans or amendments to plans subject to review and approval under the commission's Edwards Aquifer rules. The adopted rules substantially advance the stated purpose by increasing the fees as required by statutes. Promulgation and enforcement of these rules will not affect private real property.

Promulgation and enforcement of these rules will not restrict or limit the owner's right to the property that would otherwise exist in the absence of the rulemaking. Owners of property that is used for activities having the potential for polluting the Edwards Aquifer and owners of property that are hydrologically connected to surface water are presently required to submit to the Executive Director for approval an Edwards Aquifer Protection Plan application or an application to modify an approved plan. An owner must also submit an application fee at the time the original application or an application to modify an approved plan is filed. This rulemaking only affects the amount of the fees charged by the commission to review plans under the Edwards Aquifer Protection Program. The adopted rulemaking does not affect a landowner's right in private property because it does not burden nor restrict or limit the owner's right to property. Also, this adopted rulemaking should not reduce the market value by 25% or more beyond that which would otherwise exist in the absence of the regulation. Therefore, this action does not create a burden on any affected private real property.

#### CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the rules and found that they are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the adopted rules are not subject to the Texas Coastal Management Program. The commission solicited public comment regarding the consistency with the coastal management program during the public comment period. No comments were received on the Coastal Management Program.

#### PUBLIC COMMENT

The proposal was published in the November 23, 2007, issue of the *Texas Register* (32 TexReg 8420). The commission held a public hearing on December 10, 2007. The comment period closed on January 7, 2008. There were no attendees at the public hearing. The commission received written public comments from:

Edwards Aquifer Authority (EAA), Save Our Springs Alliance (SOSA), and The Real Estate Council of San Antonio (RECSA).

#### RESPONSE TO COMMENTS

General comments in support of the rule package and amendments to 30 TAC Chapter 213 were received from EAA, SOSA, and RECSA.

The commission appreciates all comments in support of the rule. The commission made no changes to the rule in response to these comments.

SOSA specifically recommended increasing the maximum fee to \$13,000, as provided in HB 3098, rather than the \$10,000 proposed by the commission. In addition, SOSA requested an explanation as to why the commission proposed a fee cap of \$10,000.

Although the commission received the authority to increase fees to a maximum of \$13,000, the commission did not receive a legislative increase in budget appropriation sufficient to justify fees higher than \$10,000, at this time. Fees received in excess of the commission's budget appropriation level would not directly benefit the Edwards Aquifer Protection Program; therefore, no change was made to the rule in response to this comment.

RECSA recommended that the commission: (1) prepare a request for supplemental appropriation; (2) add a licensed civil engineer in the regional offices; (3) provide training for employees involved in the Edwards Aquifer Program; and (4) make yearly accounting of funding and expenses in the Water Resources Account (Fund 154) and Edwards Aquifer Account (Fund 153) available to the public.

In preparation for each legislative session, the TCEQ prepares a Legislative Appropriation Request (LAR) for consideration during the state's budget development process in which the TCEQ consistently requests funding for baseline program costs, in addition to supplemental, or exceptional item, requests. The EAPP currently has three Professional Engineers (PEs) dedicated to the review of Edwards Aquifer plans. Two of the engineers are located in the Austin Regional Office and one is in the San Antonio Regional Office. While the remaining EAPP staff are not PEs, they are knowledgeable of the Edwards Aquifer rule requirements. In addition, the EAPP Technical Guidance Manual (RG-349) is intended to provide assistance in preparation and review of Edwards Aquifer plans. The TCEQ recognizes a need for ongoing staff training and actively pursues additional training opportunities. Lastly, the TCEQ annually prepares an expense report that provides the EAPP expenses incurred by the North Central Texas Area, the Texas Border Area and the Field Operations Support Division. This report is located on the EAPP portion of the TCEQ website. The EAPP will request that additional agency program support funding information be provided by the TCEQ's Budget and Planning Division for inclusion on the website. The commission made no changes to the rule language in response to these comments.

## **SUBCHAPTER A. EDWARDS AQUIFER IN MEDINA, BEXAR, COMAL, KINNEY, UVALDE, HAYS, TRAVIS, AND WILLIAMSON COUNTIES**

### **30 TAC §§213.9, 213.13, 213.14**

#### **STATUTORY AUTHORITY**

The amendments are adopted under Texas Water Code (TWC), §5.102, authorizing the commission to perform any acts authorized by the TWC or other law which are necessary and convenient to the exercise of its jurisdiction and powers; TWC, §5.103, authorizing the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §26.011, authorizing the commission to control the quality of water in the state; TWC, §26.0461, authorizing fees for the Edwards Aquifer

program; TWC, §26.121, prohibiting the discharge of waste into water in the state except as authorized by the commission; and TWC, §26.341, regarding the state policy to protect the quality of groundwater and surface water from pollution by substances in underground and aboveground storage tanks and Texas Health and Safety Code, §366.012, authorizing the commission to "adopt rules governing the installation of on-site sewage disposal systems."

The amendments implement TWC, §§5.102, 5.103, 26.011, 26.0461, 26.121, and 26.341 and Texas Health and Safety Code, §366.012.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 4, 2008.

TRD-200801750

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Effective date: April 24, 2008

Proposal publication date: November 23, 2007

For further information, please call: (512) 239-6091

## **SUBCHAPTER B. CONTRIBUTING ZONE TO THE EDWARDS AQUIFER IN MEDINA, BEXAR, COMAL, KINNEY, UVALDE, HAYS, TRAVIS, AND WILLIAMSON COUNTIES**

### **30 TAC §§213.26 - 213.28**

#### **STATUTORY AUTHORITY**

The amendments are adopted under Texas Water Code (TWC), §5.102, authorizing the commission to perform any acts authorized by the TWC or other law which are necessary and convenient to the exercise of its jurisdiction and powers; TWC, §5.103, authorizing the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §26.011, authorizing the commission to control the quality of water in the state; TWC, §26.0461, authorizing fees for the Edwards Aquifer program; TWC, §26.121, prohibiting the discharge of waste into water in the state except as authorized by the commission; and TWC, §26.341, regarding the state policy to protect the quality of groundwater and surface water from pollution by substances in underground and aboveground storage tanks and Texas Health and Safety Code, §366.012, authorizing the commission to "adopt rules governing the installation of on-site sewage disposal systems."

The amendments implement TWC, §§5.102, 5.103, 26.011, 26.0461, 26.121, and 26.341 and Texas Health and Safety Code, §366.012.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 4, 2008.

TRD-200801751



Robert Martinez  
Director, Environmental Law Division  
Texas Commission on Environmental Quality  
Effective date: April 24, 2008  
Proposal publication date: November 23, 2007  
For further information, please call: (512) 239-6091

◆ ◆ ◆  
**TITLE 31. NATURAL RESOURCES AND  
CONSERVATION**

**PART 2. TEXAS PARKS AND  
WILDLIFE DEPARTMENT**

**CHAPTER 53. FINANCE**

**SUBCHAPTER A. FEES**

**DIVISION 1. LICENSE, PERMIT, AND BOAT  
AND MOTOR FEES**

**31 TAC §53.7**

The Texas Parks and Wildlife Commission adopts an amendment to §53.7, concerning Furbearing Animal Licenses and Permits, without changes to the proposed text as published in the December 21, 2007, issue of the *Texas Register* (32 TexReg 9542).

The amendment reduces the fee for the nonresident wholesale fur dealer's license from \$600 to \$250. The department received a petition for rulemaking requesting that the fee for the nonresident wholesale fur dealer's license be reduced in order to be consistent with similar fees in adjacent states and to attract nonresident fur dealers to Texas, potentially increasing the value of furs in Texas. The department has determined that there is no reason to deny the petitioner's request. Reducing the fee for the nonresident wholesale fur dealer's license from \$600 to \$250 will make Texas fees more consistent with adjacent states. The department believes that the fee reduction will attract nonresident fur dealer to Texas. Department regulations provide that a fur trapper may sell a pelt or carcass only to a licensed wholesale fur dealer. The department has learned that the nonresident fee of \$600 has been a barrier to the purchase of pelts from Texas trappers by nonresident wholesale fur dealers. As a result, the market for pelts from Texas trappers has been limited. By reducing the nonresidents wholesale fur dealer's license fee, the department believes that more nonresident fur dealer will be attracted to Texas and create a larger and more competitive market, thus providing more options for Texas trappers.

The rule as adopted will function by reducing the fee for the nonresident wholesale fur dealer's permit from \$600 to \$250.

The department received two comments opposing adoption of the proposed rules. Both comments expressed a specific rationale or reasoning for opposing adoption. Those comments, accompanied by the department's response to each, are as follows.

One commenter opposed adoption of the rule and stated that fees for nonresidents should be increased, not decreased, and that nonresidents should not be allowed to take wildlife that belongs to the citizens of Texas. The department disagrees with the comment and responds that there is no reason not to offer surplus opportunity to nonresidents and that the nonresident

fur dealer's license authorizes only the purchase and sale of furbearing animals, but does not authorize the take of furbearing animals. No changes were made as a result of the comment.

One commenter opposed adoption of the rule and stated that it is not fair for the residents of the state to have to pay almost as much as the nonresident. The commenter stated that while it is true that more competition may help prices it is not true that better prices mean more money for the state, since every fur purchased by a nonresident buyer is removed from the state. The commenter stated that the state will lose the business and labor dollars paid to handle these furs and that any profit will go to the economy in another state. The department disagrees with the comment and responds that by encouraging fur buyers to come to Texas, the fee reduction is expected to produce more competitive markets for Texas trappers, which should result in higher prices paid for furs in Texas. Generally speaking, most furs purchased in Texas are purchased directly from trappers, who are also in business for profit, and are ultimately re-sold out of state anyway; thus, although competition from nonresidents for furs might have the effect of reducing the profits of resident fur dealers, the increased profits for trappers would be captured by the Texas economy. No changes were made as a result of the comment.

The amendment is adopted under Parks and Wildlife Code, Chapter 71, which authorizes the commission to regulate the taking, possession, propagation, transportation, exportation, importation, sale, and offering for sale of fur-bearing animals, pelts, and carcasses as the commission considers necessary to manage fur-bearing animals or to protect human health or property, and to provide for permit application forms, fees, procedures, and reports.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 2, 2008.

TRD-200801730

Ann Bright

General Counsel

Texas Parks and Wildlife Department

Effective date: April 22, 2008

Proposal publication date: December 21, 2007

For further information, please call: (512) 389-4775

◆ ◆ ◆  
**CHAPTER 65. WILDLIFE  
SUBCHAPTER Q. STATEWIDE FUR-  
BEARING ANIMAL PROCLAMATION**

**31 TAC §65.375**

The Texas Parks and Wildlife Commission adopts an amendment to §65.375, concerning the Statewide Furbearing Animal Proclamation, without changes to the proposed text as published in the December 21, 2007, issue of the *Texas Register* (32 TexReg 9569).

The amendment extends the commercial trapping season for beaver; alters terminology to replace the term "leghold" with the term "foothold;" and makes a nonsubstantive grammatical correction.

The current commercial trapping season for beaver runs from November 1 through March 31. The department received a petition for rulemaking requesting that the commercial season be lengthened to run from September 1 through May 31. The department has determined that beaver are common and found in appropriate habitats throughout Texas. Bridge survey counts reveal beavers at all surveyed bridge locations in the 26 eastern counties where the survey is conducted, indicating the population is relatively widespread. Extending the season will allow trappers and fur harvesters to extract more value from the resource and will not result in waste or depletion of the resource.

The previous rule employed the term "leghold" to identify a type of device used to capture furbearing animals. The department received a petition for rulemaking requesting that the term be replaced with the term "foothold." The amendment effects that change, which is nonsubstantive.

The previous rule text of subsection (c)(2)(D) was not structurally parallel with the other subparagraphs in the paragraph. The amendment nonsubstantively corrects that problem.

The rule as adopted will function by lengthening the commercial trapping season for beaver and by making regulatory terminology clearer and more accurate.

The department received one comment opposing adoption of the proposed rule. The commenter stated that commercial harvest of beavers should not be allowed. The department disagrees with the comment. Parks and Wildlife Code, Chapter 71 specifically provides for the commercial harvest of fur-bearing animals, including beaver. The department also has determined that the rule as adopted will not have any biological implications for wildlife populations. No changes were made as a result of the comments.

The department received one comment supporting adoption of the proposed rule.

The Texas Wildlife Association commented in support of adoption of the proposed rule.

The amendment is adopted under Parks and Wildlife Code, Chapter 71, which authorizes the commission to regulate the taking, possession, propagation, transportation, exportation, importation, sale, and offering for sale of fur-bearing animals, pelts, and carcasses as the commission considers necessary to manage fur-bearing animals or to protect human health or property, and to provide for permit application forms, fees, procedures, and reports.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 2, 2008.

TRD-200801731

Ann Bright

General Counsel

Texas Parks and Wildlife Department

Effective date: April 22, 2008

Proposal publication date: December 21, 2007

For further information, please call: (512) 389-4775



## TITLE 34. PUBLIC FINANCE

# PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

## CHAPTER 20. TEXAS PROCUREMENT AND SUPPORT SERVICES

### SUBCHAPTER C. PROCUREMENT

#### 34 TAC §20.52

The Comptroller of Public Accounts adopts an amendment to §20.52, concerning advisory committees, without changes to the proposed text as published in the February 15, 2008, issue of the *Texas Register* (33 TexReg 1273). This section is being amended to implement House Bill 3560, 80th Legislature Session, 2007, and Government Code, §§2155.080, 2155.081, and 2110.005.

House Bill 3560, §1.06, transferred procurement duties of the former Texas Building and Procurement Commission to the comptroller, including those duties in Government Code, Chapter 2155. Government Code, §2155.080 authorizes the comptroller to establish an advisory committee on procurement. The purpose of the advisory committee on procurement is to represent before the comptroller the state agency purchasing community and the political subdivisions that use the comptroller's purchasing services. Government Code, §2155.081, authorizes the comptroller to establish a vendor advisory committee. The purpose of the vendor advisory committee is to represent before the comptroller the vendor community, to provide information to vendors, and to obtain vendor input on state procurement practices. Government Code, §2110.005, requires a state agency that establishes an advisory committee to state in a rule the purpose and tasks of the committee and the manner in which the committee will report to the agency.

The comptroller is adopting an amendment to these rules to establish these committees as advisory committees to the comptroller, to clarify the purpose and tasks of these committees, and to clarify the comptroller's new role with respect to these committees.

Subsection (a) is being amended to clarify the role of the comptroller in establishing the advisory committees and the applicability of Government Code, Chapter 2110. Subsection (b) is being amended to clarify the functions of the committees, the role of the Director of Texas Procurement and Support Services (TPASS), and the duration of the committees. Subsection (c) is being amended to clarify the purpose, tasks and composition of the advisory committee on procurement. Subsection (d) is being amended to clarify the purpose, tasks and composition of the vendor advisory committee.

No comments were received regarding adoption of the amendment and there were no comments received at the public hearing held March 24, 2008.

This amendment is adopted under Government Code, §2155.080 and §2155.081, which authorize the comptroller to establish the advisory committees; Government Code, §2110.005, which provides that a state agency that establishes an advisory committee shall adopt rules outlining the purpose and tasks of the committee; Government Code, §2152.003, which authorizes the Texas Building and Procurement Commission (and now the comptroller) to adopt rules to administer Subtitle D (State Purchasing and General Services) of Title 10, Government Code; House Bill 3560, §1.01 (amending

Government Code, §2151.003), which provides that a statutory reference to the Texas Building and Procurement Commission means the comptroller in all circumstances except where the provision relates to state buildings, grounds or property or as otherwise provided by law; and House Bill 3560, §1.06 (adding Government Code, §2155.0011) which provides that the powers and duties of the Texas Building and Procurement Commission under Government Code, Chapter 2155, are transferred to the comptroller.

The adoption implements Government Code, §2155.080 and §2155.081.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 4, 2008.

TRD-200801761

Martin Cherry

General Counsel

Comptroller of Public Accounts

Effective date: April 24, 2008

Proposal publication date: February 15, 2008

For further information, please call: (512) 475-0387



## **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 AA. VENDOR PAYMENT**

###### **40 TAC §19.2614**

The Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS), adopts new §19.2614, in Chapter 19, Nursing Facility Requirements for Licensure and Medicaid Certification without changes to the proposed text published in the January 18, 2008, issue of the *Texas Register* (33 TexReg 521).

The new section is adopted to allow a nursing facility to procure a customized power wheelchair (CPWC) for a Medicaid-eligible nursing facility resident. The nursing facility must purchase the CPWC if the need for the CPWC is identified and the nursing facility can receive reimbursement through a DADS prior approval reimbursement system. CPWCs have been available to a Medicaid-eligible nursing facility resident with personal funds as an incurred medical expense.

The addition of CPWCs as a service in the nursing facility Medicaid program is a provision of the settlement agreement in the

lawsuit filed in federal court against HHSC and DADS entitled *LeCompte, et al. v. Hawkins, et al.*, which was settled effective June 29, 2007. The federal Centers for Medicare and Medicaid Services (CMS) has approved a Medicaid state plan amendment to add this service to the nursing facility Medicaid program.

DADS received written comments from the Coalition for Nurses in Advanced Practice. A summary of the comment and the response follow.

Comment: Concerning §19.2614(e)(3) and (o), a commenter requested that DADS amend these subsections to specify that a physician may delegate tasks described in those subsections to a nurse practitioner, clinical nurse specialist, or physician assistant as reflected in 40 TAC §19.1205(c).

Response: The agency agrees that the physician duties referenced in §19.2614(e)(3) and (o) may be delegated in accordance with §19.1205(c) in Subchapter M, Physician Delegation. Section 19.1205(c) is a rule of general applicability which states that any required physician task in a Medicaid nursing facility may be satisfied when performed by a nurse practitioner, clinical nurse specialist, or physician assistant in accordance with applicable state laws, rules, and regulations. A section in Chapter 19 that is limited to physician delegation of specific tasks may give the impression that a physician is not allowed to delegate other tasks described in the chapter. Therefore, the agency declines to make the suggested change at this time.

The new section is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 7, 2008.

TRD-200801815

Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

Effective date: May 1, 2008

Proposal publication date: January 18, 2008

For further information, please call: (512) 438-3734



# 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

General Land Office

### Title 31, Part 1

In accordance with §2001.039 Government Code, the Texas General Land Office (GLO) submits the following Notice of Intent to Review the rules found in 31 TAC, Part 1, Chapter 19 relating to Oil Spill Prevention And Response, including Subchapter A, relating to General Provisions, §§19.1 - 19.6; Subchapter B, relating to Spill Prevention and Preparedness, §§19.11 - 19.14, 19.16, 19.18, 19.20; Subchapter C, relating to Spill Response, §§19.31-19.37, 19.39; Subchapter D, relating to Compensation and Liability, §§19.51 - 19.55; and Subchapter E, relating to Vessels, §§19.60 - 19.63. This review of Chapter 19 is filed in accordance with the General Land Office's Rule Review Plan published in the May 25, 2007, issue of the *Texas Register* (32 TexReg 2883).

Review of the rules under this chapter will determine whether the reasons for adoption of the rules continue to exist. This Notice of Intent to Review of 31 TAC, Part 1, Chapter 19, Oil Spill Prevention and Response, applies to the chapter in its entirety.

The GLO invites suggestions from the public during the review process and will address any comments received. Any questions or comments should be directed to Walter Talley, *Texas Register* Liaison, General Land Office, P.O. Box 12873, Austin, Texas 78711-2873, facsimile number (512) 463-6311 or email to [walter.talley@glo.state.tx.us](mailto:walter.talley@glo.state.tx.us). Written comments must be received no later than thirty (30) days from the date of publication of this notice.

TRD-200801734

Trace Finley

Policy Director

General Land Office

Filed: April 2, 2008



Texas Department of Licensing and Regulation

### Title 16, Part 4

The Texas Department of Licensing and Regulation (Department) files this notice of intent to review and consider for re-adoption, revision, or repeal, Title 16, Texas Administrative Code, Chapter 57, For-Profit Legal Service Contract Companies. This review and consideration is being conducted in accordance with the requirements of Texas Government Code, §2001.039.

An assessment will be made by the Department as to whether the reasons for adopting or readopting these rules continue to exist. Each rule

will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the Department.

Any questions or written comments pertaining to this rule review may be submitted to Caroline Jackson, Legal Assistant, General Counsel's Office, P.O. Box 12157, Austin, Texas 78711, or facsimile: (512) 475-3032, or electronically: [erule.comments@license.state.tx.us](mailto:erule.comments@license.state.tx.us). The deadline for comments is 30 days after publication in the *Texas Register*.

Proposed changes to these rules as a result of the rule review will be published in the Proposed Rules section of the *Texas Register*. The proposed rules will be open for public comment prior to final adoption or repeal by the Department, in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

§57.1. Authority

§57.10. Definitions

§57.21. Registration Requirements--Company

§57.22. Registration Requirements--Sales Representative

§57.23. Registration Requirements--Administrator

§57.25. Registration Requirements--Renewal

§57.70. Responsibilities of Registrants--General

§57.71. Responsibilities of Registrants--Company

§57.72. Responsibilities of Registrant--Sales Representative

§57.80. Fees

§57.90. Administrative Penalties and Sanctions

TRD-200801881

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Filed: April 8, 2008



The Texas Department of Licensing and Regulation (Department) files this notice of intent to review and consider for re-adoption, revision, or repeal, Title 16, Texas Administrative Code, Chapter 70, Industrialized Housing and Buildings. This review and consideration is being conducted in accordance with the requirements of Texas Government Code, §2001.039.

An assessment will be made by the Department as to whether the reasons for adopting or readopting these rules continue to exist. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the Department.

Any questions or written comments pertaining to this rule review may be submitted to Caroline Jackson, Legal Assistant, General Counsel's Office, P.O. Box 12157, Austin, Texas 78711, or facsimile: (512) 475-3032, or electronically: [erule.comments@license.state.tx.us](mailto:erule.comments@license.state.tx.us). The deadline for comments is 30 days after publication in the *Texas Register*.

Proposed changes to these rules as a result of the rule review will be published in the Proposed Rules section of the *Texas Register*. The proposed rules will be open for public comment prior to final adoption or repeal by the Department, in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

§70.1. Authority

§70.10. Definitions

§70.20. Registration of Manufacturers and Industrialized Builders

§70.21. Registration of Design Review Agencies and Third Party Inspection Agencies and Inspectors

§70.22. Criteria for Approval of Design Review Agencies

§70.23. Criteria for Approval of Third Party Inspection Agencies and Inspectors

§70.30. Exemptions

§70.50. Manufacturer's and Builder's Monthly Reports

§70.51. Third Party Inspection Reports

§70.60. Responsibilities of the Department--Plant Certification

§70.61. Responsibilities of the Department--In-plant Inspection

§70.62. Responsibilities of the Local Building Official--Building Site Inspections

§70.63. Council's Responsibilities--Compliance Disputes

§70.64. Responsibilities of the Department--Proprietary Information Protected

§70.65. Responsibilities of the Commissioner--Reciprocity

§70.70. Responsibilities of the Registrants--Manufacturer's Design Package

§70.71. Responsibilities of the Registrants--Manufacturer's Data Plate

§70.72. Responsibilities of the Registrants--Delivery to Other States

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

§70.74. Responsibilities of the Registrations--Alterations

§70.75. Responsibilities of the Registrants--Permit/Owner Information

§70.76. Responsibilities of the Registrants--Proprietary Information Protected

§70.77. Responsibilities of the Registrants--Decals and Insignia for New Construction

§70.78. Responsibilities of the Registrants--General

§70.80. Commission Fees

§70.81. Late Renewal Fees

§70.90. Sanctions--Administrative Sanctions/Penalties

§70.92. Sanctions for Failure to Comply by Design Review Agencies, Third Party Inspection Agencies, and Third Party Inspectors

§70.100. Mandatory Building Codes

§70.101. Amendments to Mandatory Building Codes

§70.102. Use and Construction of Codes

§70.103. Alternate Materials and Methods

§70.120. Intent

TRD-200801882

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Filed: April 8, 2008



The Texas Department of Licensing and Regulation (Department) files this notice of intent to review and consider for re-adoption, revision, or repeal, Title 16, Texas Administrative Code, Chapter 76, Water Well Drillers and Water Well Pump Installers. This review and consideration is being conducted in accordance with the requirements of Texas Government Code, §2001.039.

An assessment will be made by the Department as to whether the reasons for adopting or readopting these rules continue to exist. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the Department.

Any questions or written comments pertaining to this rule review may be submitted to Caroline Jackson, Legal Assistant, General Counsel's Office, P.O. Box 12157, Austin, Texas 78711, or facsimile: (512) 475-3032, or electronically: [erule.comments@license.state.tx.us](mailto:erule.comments@license.state.tx.us). The deadline for comments is 30 days after publication in the *Texas Register*.

Proposed changes to these rules as a result of the rule review will be published in the Proposed Rules section of the *Texas Register*. The proposed rules will be open for public comment prior to final adoption or repeal by the Department, in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

§76.1. Purpose of Rules

§76.10. Definitions

§76.200. Licensing Requirements--General

§76.201. Requirements for Issuance of a License

§76.202. Applications for Licenses and Renewals

§76.203. Examinations

§76.204. License and Apprentice Registration Renewal

§76.205. Registration for Driller and/or Pump Installer Apprenticeship

§76.206. Responsibilities of the Apprentice and Supervising Driller and/or Pump Installer

§76.250. Continuing Education

§76.300. Exemptions

§76.600. Responsibilities of the Department--Certification by the Executive Director  
§76.601. Responsibilities of the Department--General  
§76.602. Responsibilities of the Department--Undesirable water  
§76.650. Advisory Council  
§76.700. Responsibilities of the Licensee--State Well Reports  
§76.701. Responsibilities of the Licensee--Reporting Undesirable Water or Constituents  
§76.702. Responsibilities of the Licensee and Landowner--Well Drilling, Completion, Capping and Plugging  
§76.703. Responsibilities of the Licensee--Standards of Completion for Public Water System Wells  
§76.704. Responsibilities of the Licensee--Marking Vehicles and Equipment  
§76.705. Responsibilities of the Licensee--Representations  
§76.706. Responsibilities of the Licensee--Unauthorized Practice  
§76.708. Responsibilities of the Licensee--Adherence to Manufacturers' Recommended Well Construction Materials and Equipment  
§76.800. Fees  
§76.900. Disciplinary Actions  
§76.1000. Technical Requirements--Locations and Standards of Completion for Wells  
§76.1001. Technical Requirements--Standards of Completion for Water Wells Encountering Undesirable Water or Constituents

§76.1002. Technical Requirements--Standards for Wells Producing Undesirable Water or Constituents  
§76.1003. Technical Requirements--Re-completions  
§76.1004. Technical Requirements--Standards for Capping and Plugging of Wells and Plugging Wells that Penetrate Undesirable Water or Constituent Zones  
§76.1005. Technical Requirements--Standards for Water Wells (Drilled before June 1, 1983)  
§76.1006. Technical Requirements--Water Distribution and Delivery Systems  
§76.1007. Technical Requirements--Chemical Injection, Chemigation, and Foreign Substance Systems  
§76.1008. Technical Requirements--Pump Installation  
§76.1009. Technical Requirements--Variances--Alternative Procedures  
§76.1010. Appeals--Variances  
§76.1011. Memorandum of Understanding between the Texas Department of Licensing and Regulation and the Texas Commission on Environmental Quality  
TRD-200801883  
William H. Kuntz, Jr.  
Executive Director  
Texas Department of Licensing and Regulation  
Filed: April 8, 2008

◆ ◆ ◆

# TABLES & GRAPHICS

---

---

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

---

Figure: 16 TAC §70.100(c)

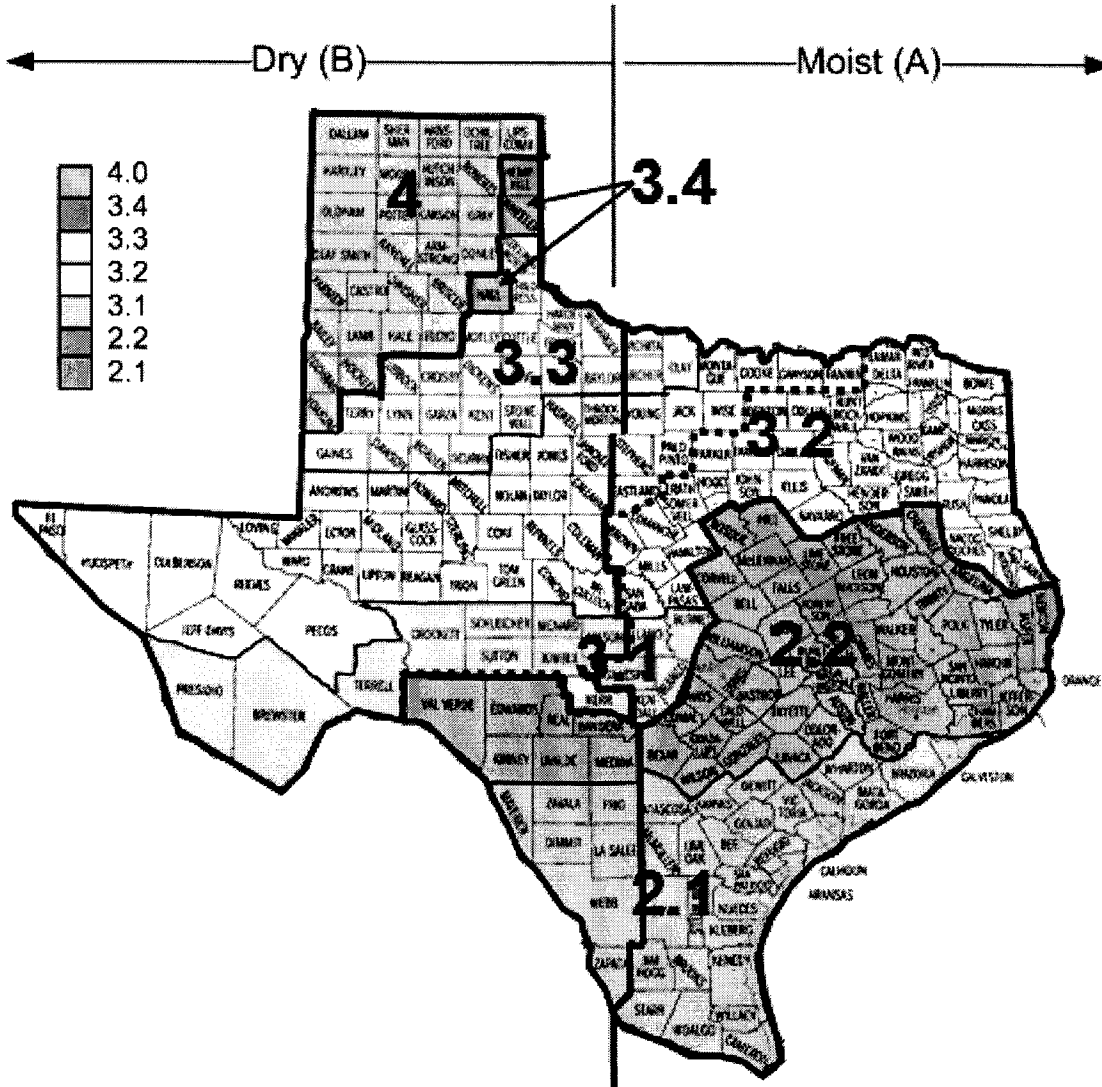
<b>Code Name and Edition</b>	<b>Effective Date of Adoption</b>
<b>2003 Edition of the International Building Code</b>	<b>July 1, 2004</b>
<b>2003 Edition of the International Residential Building Code</b>	<b>July 1, 2004</b>
<b>2003 Edition of the International Plumbing Code</b>	<b>July 1, 2004</b>
<b>2003 Edition of the International Mechanical Code</b>	<b>July 1, 2004</b>
<b>2003 Edition of the International Fuel Gas Code</b>	<b>July 1, 2004</b>
<b>2003 Edition of the International Energy Conservation Code</b>	<b>July 1, 2004</b>
<b>2003 Edition of the International Existing Building Code</b>	<b>July 1, 2004</b>
<b>2002 Edition of the National Electrical Code</b>	<b>July 1, 2004</b>
2000 Edition of the International Building Code	2/20/2002
2000 Edition of the International Residential Code with 2001 Supplement	2/20/2002
2000 Edition of the International Plumbing Code	2/20/2002
2000 Edition of the International Mechanical Code	2/20/2002
2000 Edition of the International Fuel Gas Code	2/20/2002
2000 Edition of the International Energy Conservation Code with 2001 Supplement	2/20/2002
1997 Edition of the Uniform Building Code	2/8/2000
1997 Edition of the Standard Building Code	2/8/2000
1997 Edition of the International Fuel Gas Code	2/8/2000
1997 Edition of the International Plumbing Code	2/8/2000
1998 Edition of the International Mechanical Code	2/8/2000
1998 Edition of the International One and Two Family Dwelling Code	2/8/2000
1998 Edition of the International Energy Conservation Code	2/8/2000
1999 Edition of the National Electrical Code	2/8/2000
1994 Edition of the Uniform Building Code	12/7/1996
1994 Edition of the Standard Building Code	12/7/1996
1996 Edition of the National Electrical Code	12/7/1996
1994 Edition of the Uniform Mechanical Code as published by the International Conference of Building Officials	12/7/1996
1994 Edition of the Standard Mechanical Code	12/7/1996
1995 Edition of the International Plumbing Code	12/7/1996
1994 Edition of the Standard Plumbing Code	12/7/1996
1994 Edition of the Standard Gas Code	12/7/1996
1995 Edition of the CABO One and Two Family Dwelling Code	12/7/1996
1993 Edition of the CABO Model Energy Code	12/6/1994
ASHRAE/IES 90.1-89	12/6/1994
1991 Edition of the Uniform Building Code	5/19/1992
1991 Edition of the Standard Building Code	5/19/1992
1991 Edition of the Uniform Mechanical Code	5/19/1992
1991 Edition of the Standard Mechanical Code	5/19/1992
1991 Edition of the Uniform Plumbing Code	5/19/1992
1991 Edition of the Standard Plumbing Code	5/19/1992
1991 Edition of the Standard Gas Code	5/19/1992
1989 Edition of the CABO One and Two Family Dwelling Code	5/19/1992
1990 Edition of the National Electrical Code	5/13/1991
1988 Edition of the Uniform Building Code	12/27/1988
1988 Edition of the Standard Building Code	12/27/1988
1988 Edition of the Uniform Mechanical Code	12/27/1988
1988 Edition of the Standard Mechanical Code	12/27/1988
1988 Edition of the Uniform Plumbing Code	12/27/1988
1988 Edition of the Standard Plumbing Code	12/27/1988



<b>Code Name and Edition</b>	<b>Effective Date of Adoption</b>
1988 Edition of the Standard Gas Code	12/27/1988
1986 Edition of the CABO One and Two Family Dwelling Code	12/27/1988
1987 Edition of the National Electrical Code	2/1/1988
1985 Edition of the Uniform Building Code with 1986 amendments	2/27/1987
1985 Edition of the Standard Building Code with 1986 amendments	2/27/1987
1985 Edition of the Uniform Mechanical Code with 1986 amendments	2/27/1987
1985 Edition of the Standard Mechanical Code with 1986 amendments	2/27/1987
1985 Edition of the Uniform Plumbing Code with 1986 amendments	2/27/1987
1985 Edition of the Standard Plumbing Code with 1986 amendments	2/27/1987
1985 Edition of the Standard Gas Code with 1986 amendments	2/27/1987
1985 Edition of the Uniform Building Code	7/15/1986
1985 Edition of the Standard Building Code	7/15/1986
1985 Edition of the Uniform Mechanical Code	7/15/1986
1985 Edition of the Standard Mechanical Code	7/15/1986
1985 Edition of the Uniform Plumbing Code	7/15/1986
1985 Edition of the Standard Plumbing Code	7/15/1986
1985 Edition of the Standard Gas Code	7/15/1986
1983 Edition of the CABO One and Two Family Dwelling Code	7/15/1986
1984 Edition of the National Electrical Code	1/1/1986
1982 Edition of the Uniform Building Code	1/1/1986
1982 Edition of the Standard Building Code	1/1/1986
1982 Edition of the Uniform Mechanical Code	1/1/1986
1982 Edition of the Standard Mechanical Code	1/1/1986
1982 Edition of the Uniform Plumbing Code	1/1/1986
1982 Edition of the Standard Plumbing Code	1/1/1986
1982 Edition of the Standard Gas Code	1/1/1986

Figure: 16 TAC §70.101(h)(10)

**Exhibit 1**



**IRC Figure N1101.2 Climate Zones**

**IECC Figure 301.1 Texas Residential Climate Zones**

Figure: 16 TAC §70.101(h)(11)

**Exhibit 2**

**TABLE N1101.2  
CLIMATE ZONES BY STATES AND COUNTIES  
CLIMATE ZONES AND SUB CLIMATE ZONES FOR TEXAS**

ZONE 2							
ANDERSON	2.2	DE WITT	2.1	JIM HOGG	2.1	ORANGE	2.2
ANGELINA	2.2	DIMITT	2.1	JIM WELLS	2.1	POLK	2.2
ARANSAS	2.1	DUVAL	2.1	KARNES	2.1	REAL	2.2
ATASCOSA	2.1	EDWARDS	2.2	KENEDY	2.1	REFUGIO	2.1
AUSTIN	2.2	FALLS	2.2	KINNEY	2.2	ROBERTSON	2.2
BANDERA	2.2	FAYETTE	2.2	KLEBERG	2.1	SAN JACINTO	2.2
BASTROP	2.2	FORT BEND	2.2	LA SALLE	2.1	SAN PATRICIO	2.1
BEE	2.1	FREESTONE	2.2	LAVACA	2.2	STARR	2.1
BELL	2.2	FRIO	2.1	LEE	2.2	TRAVIS	2.2
BEXAR	2.2	GALVESTON	2.1	LEON	2.2	TRINITY	2.2
BOSQUE	2.2	GOLIAD	2.1	LIBERTY	2.2	TYLER	2.2
BRAZORIA	2.1	GONZALES	2.2	LIMESTONE	2.2	UVALDE	2.2
BRAZOS	2.2	GRIMES	2.2	LIVE OAK	2.1	VAL VERDE	2.2
BROOKS	2.1	GUADALUPE	2.2	MADISON	2.2	VICTORIA	2.1
BURLESON	2.2	HARDIN	2.2	MATAGORDA	2.1	WALKER	2.2
CALDWELL	2.2	HARRIS	2.2	MAVERICK	2.1	WALLER	2.2
CALHOUN	2.1	HAYS	2.2	MCLENNAN	2.2	WASHINGTON	2.2
CAMERON	2.1	HIDALGO	2.1	MCMULLEN	2.1	WEBB	2.1
CHAMBERS	2.2	HILL	2.2	MEDINA	2.2	WHARTON	2.1
CHEROKEE	2.2	HOUSTON	2.2	MILAM	2.2	WILLACY	2.1
COLORADO	2.2	JACKSON	2.1	MONTGOMERY	2.2	WILLIAMSON	2.2
COMAL	2.2	JASPER	2.2	NEWTON	2.2	WILSON	2.2
CORYELL	2.2	JEFFERSON	2.2	NUECES	2.1	ZAPATA	2.1
ZONE 3							
ANDREWS	3.2	EL PASO	3.2	KERR	3.1	ROCKWALL	3.2
ARCHER	3.3	ELLIS	3.2	KIMBLE	3.1	RUNNELS	3.2
BAYLOR	3.3	ERATH	3.2	KING	3.3	RUSK	3.2
BLANCO	3.1	FANNIN	3.2	KNOX	3.3	SABINE	3.2
BORDEN	3.3	FISHER	3.2	LAMAR	3.2	SAN AUGUSTINE	3.2
BOWIE	3.2	FOARD	3.3	LAMPASAS	3.2	SAN SABA	3.2
BREWSTER	3.1	FRANKLIN	3.2	LLANO	3.1	SCHLEICHER	3.1
BROWN	3.2	GAINES	3.3	LOVING	3.2	SCURRY	3.3
BURNET	3.1	GARZA	3.3	LUBBOCK	3.3	SHACKELFORD	3.2
CALLAHAN	3.2	GILLESPIE	3.1	LYNN	3.3	SHELBY	3.2
CAMP	3.2	GLASSCOCK	3.2	MARION	3.2	SMITH	3.2
CASS	3.2	GRAYSON	3.2	MARTIN	3.2	SOMERVELL	3.2
CHILDRESS	3.3	GREGG	3.2	MASON	3.1	STEPHENS	3.2
CLAY	3.3	HALL	3.4	MCCULLOCH	3.2	STERLING	3.2
COKE	3.2	HAMILTON	3.2	MENARD	3.1	STONEWALL	3.3
COLEMAN	3.2	HARDEMAN	3.3	MIDLAND	3.2	SUTTON	3.1
COLLIN	3.2	HARRISON	3.2	MILLS	3.2	TARRANT	3.2
COLLINGSWORTH	3.3	HASKELL	3.2	MITCHELL	3.2	TAYLOR	3.2
COMANCHE	3.2	HEMPHILL	3.4	MONTAGUE	3.2	TERRELL	3.1
CONCHO	3.2	HENDERSON	3.2	MORRIS	3.2	TERRY	3.3
COOKE	3.2	HOOD	3.2	MOTLEY	3.3	THROCKMORTON	3.2
COTTLE	3.3	HOPKINS	3.2	NACOGDOCHES	3.2	TITUS	3.2
CRANE	3.2	HOWARD	3.2	NAVARRO	3.2	TOM GREEN	3.2
CROCKETT	3.1	HUDSPETH	3.2	NOLAN	3.2	UPSHUR	3.2

**CLIMATE ZONES AND SUB CLIMATE ZONES FOR TEXAS**

CROSBY	3.3	HUNT	3.2	PALO PINTO	3.2	UPTON	3.2
CULBERSON	3.2	IRION	3.2	PANOLA	3.2	VAN ZANDT	3.2
DALLAS	3.2	JACK	3.2	PARKER	3.2	WARD	3.2
DAWSON	3.3	JEFF DAVIS	3.2	PECOS	3.2	WHEELER	3.4
DELTA	3.2	JOHNSON	3.2	PRESIDIO	3.1	WICHITA	3.3
DENTON	3.2	JONES	3.2	RAINS	3.2	WILBARGER	3.3
DICKENS	3.3	KAUFMAN	3.2	REAGAN	3.2	WINKLER	3.2
EASTLAND	3.2	KENDALL	3.1	RED RIVER	3.2	WISE	3.2
ECTOR	3.2	KENT	3.3	REEVES	3.2	WOOD	3.2
						YOUNG	3.2

**ZONE 4**

ARMSTRONG	DEAF SMITH	HOCKLEY	PARMER
BAILEY	DONLEY	HUTCHINSON	POTTER
BRISCOE	FLOYD	LAMB	RANDALL
CARSON	GRAY	LIPSCOMB	ROBERTS
CASTRO	HALE	MOORE	SHERMAN
COCHRAN	HANSFORD	OCHILTREE	SWISHER
DALLAM	HARTLEY	OLDHAM	YOAKUM

Figure: 16 TAC §70.101(h)(12)

**Exhibit 3****TABLE N1102.2.2 WARM HUMID COUNTIES FOR TEXAS**

ANDERSON	2.2	DUVAL	2.1	KAUFMAN	3.2	RED RIVER	3.2
ANGELINA	2.2	EDWARDS	2.2	KENDALL	3.1	REAL	2.2
ARANSAS	2.1	ELLIS	3.2	KENEDY	2.1	REFUGIO	2.1
ATASCOSA	2.1	ERATH	3.2	KINNEY	2.2	ROBERTSON	2.2
AUSTIN	2.2	FALLS	2.2	KLEBERG	2.1	ROCKWALL	3.2
BANDERA	2.2	FAYETTE	2.2	LA SALLE	2.1	RUSK	3.2
BASTROP	2.2	FORT BEND	2.2	LAMAR	3.2	SABINE	3.2
						SAN	
BEE	2.1	FRANKLIN	3.2	LAMPASAS	3.2	AUGUSTINE	3.2
BELL	2.2	FREESTONE	2.2	LAVACA	2.2	SAN JACINTO	2.2
BEXAR	2.2	FRIO	2.1	LEE	2.2	SAN PATRICIO	2.1
BLANCO	3.1	GALVESTON	2.1	LEON	2.2	SAN SABA	3.2
BOSQUE	2.2	GILLESPIE	3.1	LLANO	3.1	SHELBY	3.2
BOWIE	3.2	GOLIAD	2.1	LIBERTY	2.2	SMITH	3.2
BRAZORIA	2.1	GONZALES	2.2	LIMESTONE	2.2	STARR	2.1
BROWN	3.2	GREGG	3.2	LIVE OAK	2.1	SOMMERVELL	3.2
BRAZOS	2.2	GRIMES	2.2	MADISON	2.2	TARRANT	3.2
BROOKS	2.1	GUADALUPE	2.2	MARION	3.2	TITUS	3.2
BURLESON	2.2	HAMILTON	3.2	MATAGORDA	2.1	TRAVIS	2.2
BURNET	3.1	HARDIN	2.2	MAVERICK	2.1	TRINITY	2.2
CALDWELL	2.2	HARRIS	2.2	MCLENNAN	2.2	TYLER	2.2
CALHOUN	2.1	HARRISON	3.2	MCMULLEN	2.1	UPSHUR	3.2
CAMERON	2.1	HAYS	2.2	MEDINA	2.2	UVALDE	2.2
CHAMBERS	2.2	HENDERSON	3.2	MILAM	2.2	VAL VERDE	2.2
CAMP	3.2	HIDALGO	2.1	MILLS	3.2	VAN ZANDT	3.2
CASS	3.2	HOOD	3.2	MONTGOMERY	2.2	VICTORIA	2.1
CHEROKEE	2.2	HOPKINS	3.2	MORRIS	3.2	WALKER	2.2
COLLIN	3.2	HILL	2.2	NACOGDOCHES	3.2	WALLER	2.2
COLORADO	2.2	HOUSTON	2.2	NAVARRO	3.2	WASHINGTON	2.2
COMAL	2.2	HUNT	3.2	NEWTON	2.2	WEBB	2.1
COMANCHE	3.2	JACKSON	2.1	NUECES	2.1	WHARTON	2.1
CORYELL	2.2	JASPER	2.2	ORANGE	2.2	WILLACY	2.1
DALLAS	3.2	JEFFERSON	2.2	PALO PINTO	3.2	WILLIAMSON	2.2
DELTA	3.2	JIM HOGG	2.1	PANOLA	3.2	WILSON	2.2
DENTON	3.2	JIM WELLS	2.1	PARKER	3.2	WOOD	3.2
DE WITT	2.1	JOHNSON	3.2	POLK	2.2	ZAPATA	2.1
DIMMIT	2.1	KARNES	2.1	RAINS	3.2	ZAVALA	2.1

Figure: 16 TAC §70.101(h)(15)

**Exhibit 4**

**IRC TABLE N1102.1 and IECC TABLE 402.1.1  
INSULATION AND FENESTRATION REQUIREMENTS BY COMPONENT (TEXAS)<sup>a</sup>**

CLIMATE - SUB CLIMATE ZONE	MAX GLAZED AREA TO WALL AREA RATIO	MAX GLAZED FENESTRATION U-FACTOR	MAX SKYLIGHT U-FACTOR <sup>b</sup>	MAX GLAZED FENESTRATION SHGC	MIN CEILING R-VALUE	MIN WOOD FRAME WALL R-VALUE <sup>d</sup>	MASS WALL R-VALUE	MIN FLOOR R-VALUE	MIN BASEMENT WALL R-VALUE	MIN SLAB R-VALUE & DEPTH <sup>e</sup>	MIN CRAWL SPACE WALL R-VALUE
2.1	15	0.75	0.75	0.38	19	13	6	19	0	0	5
	20	0.70	0.75	0.38	30	13	6	19	0	0	5
	25	0.65	0.75	0.35	30	13	6	19	0	0	5
	30	0.54	0.75	0.35	38	13	6	19	0	0	5
2.2	15	0.65	0.75	0.38	30	13	6	19	5	0	6
	20	0.65	0.75	0.38	38	13	6	19	6	0	6
	25	0.54	0.75	0.35	38	13	6	19	8	0	10
	30	0.46	0.75	0.35	38	16, 13 + 3.7 <sup>e</sup>	6	19	8	0	10
3.1	15	0.65	0.65	0.40	30	13	6	19	5	0	6
	20	0.55	0.65	0.40	38	13	6	19	5	0	6
	25	0.54	0.65	0.35	38	13	6	19	8	0	10
	30	0.46	0.65	0.35	38	16, 13 + 3.7 <sup>e</sup>	7	19	8	0	10
3.2	15	0.60	0.65	0.40	30	13	6	19	6	0	7
	20	0.54	0.65	0.40	38	13	6	19	6	0	7
	25	0.51	0.65	0.40	38	16 or 13 + 3.7 <sup>e</sup>	7	19	6	0	7
	30	0.46	0.65	0.38	38	16 or 13 + 3.7 <sup>e</sup>	7	19	6	0	7
3.3	15	0.51	0.65	0.40	30	13	6	19	7	0	8
	20	0.45	0.65	0.40	38	13	6	19	7	0	9
	25	0.40	0.65	0.40	38	16 or 13 + 3.7 <sup>e</sup>	7	19	7	0	9
	30	0.40	0.65	0.40	38	19 or 13 + 8.1 <sup>e</sup>	9	19	7	0	9
3.4	15	0.45	0.60	NR	38	13	6	19	8	5, 2 ft	11
	20	0.37	0.60	NR	38	13	6	19	8	6, 2 ft	13
	25	0.37	0.60	NR	38	19 or 13 + 8.1 <sup>e</sup>	9	19	8	6, 2 ft	13
	30	0.37	0.60	NR	38	19 or 13 + 8.1 <sup>e</sup>	9	30	8	6, 2 ft	13
4	15	0.45	0.60	NR	38	13	8	19	8	5, 2 ft	11
	20	0.37	0.60	NR	38	13	8	19	9	6, 2 ft	13
	25	0.37	0.60	NR	38	19 or 13 + 8.1 <sup>e</sup>	10	19	9	6, 2 ft	13
	30	0.37	0.60	NR	38	19 or 13 + 8.1 <sup>e</sup>	10	30	9	6, 2 ft	13

For SI: 1 foot = 304.8 mm.

- R-values are minimums. U-factors and SHGC are maximums. R-19 shall be permitted to be compressed into a 2 x 6 cavity.
- The fenestration U-factor column excludes skylights. The SHGC column applies to all glazed fenestration.
- R-5 shall be added to the required slab edge R-values for heated slabs.
- The total R-value may be achieved with a combination of cavity insulation and insulating sheathing that covers 100% of the exterior wall.
- The wall insulation may be the sum of the two values where the first value is the cavity insulation and the second value is insulating sheathing. The combination of cavity insulation plus insulating sheathing may be used where structural sheathing covers not more than 25% of the exterior wall area and insulating sheathing is not required where structural sheathing is used. If structural sheathing covers more than 25% of exterior wall area then the wall insulation requirement may only be satisfied with the single insulation value.

Figure: 16 TAC §70.101(h)(16)

**Exhibit 5**

**IRC TABLE N1102.1.2 and IECC TABLE 402.1.3  
EQUIVALENT U-FACTORS<sup>a</sup> (TEXAS)**

Climate-Sub Climate Zone	Max Glazed Area to Wall Area Ratio	Max Glazed Fenestration U-Factor	Max Skylight U-Factor	Max Ceiling U-Factor	Max Wood Frame Wall U-Factor	Max Mass Wall U-Factor	Max Floor U-Factor	Max Basement U-Factor	Max Crawl Space Wall U-Factor
2.1	15	0.75	0.75	0.039	0.082	0.124	0.047	0.360	0.136
	20	0.65	0.75	0.030	0.082	0.124	0.047	0.210	0.100
	25	0.54	0.75	0.030	0.082	0.124	0.047	0.119	0.065
	30	0.46	0.65	0.030	0.071	0.112	0.047	0.119	0.065
2.2	15	0.65	0.75	0.034	0.082	0.124	0.047	0.210	0.100
	20	0.65	0.75	0.030	0.082	0.124	0.047	0.210	0.100
	25	0.54	0.75	0.030	0.082	0.124	0.047	0.119	0.065
	30	0.46	0.75	0.030	0.071	0.124	0.047	0.119	0.065
3.1	15	0.65	0.65	0.034	0.082	0.124	0.047	0.210	0.100
	20	0.55	0.65	0.030	0.082	0.124	0.047	0.210	0.100
	25	0.54	0.65	0.030	0.082	0.124	0.047	0.119	0.065
	30	0.46	0.65	0.030	0.071	0.112	0.047	0.119	0.065
3.2	15	0.51	0.65	0.034	0.082	0.124	0.047	0.179	0.075
	20	0.45	0.65	0.030	0.082	0.124	0.047	0.179	0.075
	25	0.40	0.65	0.030	0.075	0.112	0.047	0.179	0.075
	30	0.40	0.65	0.030	0.061	0.112	0.047	0.179	0.075
3.3	15	0.51	0.65	0.034	0.082	0.124	0.047	0.149	0.061
	20	0.45	0.65	0.030	0.082	0.124	0.047	0.149	0.058
	25	0.40	0.65	0.030	0.075	0.112	0.047	0.149	0.058
	30	0.40	0.65	0.030	0.061	0.094	0.047	0.149	0.058
3.4	15	0.45	0.60	0.030	0.082	0.124	0.047	0.119	0.083
	20	0.37	0.60	0.030	0.082	0.124	0.047	0.119	0.152
	25	0.37	0.60	0.030	0.061	0.094	0.047	0.119	0.152
	30	0.37	0.60	0.030	0.061	0.094	0.033	0.119	0.152
4	15	0.45	0.60	0.030	0.082	0.102	0.047	0.119	0.083
	20	0.37	0.60	0.030	0.082	0.102	0.047	0.089	0.152
	25	0.37	0.60	0.030	0.061	0.087	0.047	0.089	0.152
	30	0.37	0.60	0.030	0.061	0.087	0.033	0.089	0.152

a. Nonfenestration U-factors shall be obtained from measurement, calculation or an approved source.

Figure: 16 TAC §70.101(h)(22)

**Exhibit 6**

**IRC TABLE N1102.3.7 and IECC TABLE 402.3.7 - PRESCRIPTIVE ENVELOPE COMPONENT CRITERIA  
ADDITIONS TO AND REPLACEMENT WINDOWS FOR EXISTING DETACHED  
ONE- AND TWO-FAMILY DWELLINGS<sup>d</sup>**

SUB CLIMATE ZONES	MAXIMUM	MINIMUM					
	Fenestration U-factor	Ceiling R-value <sup>a, e</sup>	Wall R-value <sup>a</sup>	Floor R-value	Basement wall R-value <sup>b</sup>	Slab perimeter R-value	Crawl space wall R-value
2.1	0.75	R-26	R-13	R-11	R-5	R-0	R-5
2.2, 3.1, 3.2, 3.3 and 3.4	0.50	R-30	R-13	R-19	R-8	R-0	R-10
4	0.50	R-38	R-13	R-21	R-10	R-0	R-19

- a. "Ceiling R-value" shall be required for flat or inclined (cathedral) ceilings. Floors over outside air shall meet "Ceiling R-value" requirements.
- b. Basement wall insulation to be installed in accordance with Section 402.2.6.
- c. "Crawl space wall R-value" shall apply to unventilated crawl spaces only. Crawl space insulation shall be installed in accordance with Section 402.2.8.
- d. Sunroom additions shall be required to have a maximum fenestration U-factor of 0.5. in all sub climate zones except sub climate zone 2.1. In all sub climate zones, the minimum ceiling R-value for sunroom additions shall be R-19 and the minimum wall R-value shall be R-13.



**Exhibit 7**

**TABLE 301.1  
CLIMATE ZONES BY STATE, COUNTY AND TERRITORIES**

**TEXAS - Commercial Buildings Only**

**Zone 2 Moist**

Anderson  
Angelina  
Aransas  
Atascosa  
Bastrop  
Bee  
Bell  
Bexar  
Bosque  
Brazoria  
Brazos  
Brooks  
Burleson  
Caldwell  
Calhoun  
Cameron  
Chambers  
Cherokee  
Colorado  
Comal  
Coryell  
De Witt  
Duval  
Falls  
Fayette  
Fort Bend  
Freestone  
Galveston  
Goliad  
Gonzales  
Grimes  
Guadalupe  
Hardin  
Harris  
Hays  
Hidalgo  
Hill  
Houston  
Jackson  
Jasper  
Jefferson  
Jim Hogg  
Jim Wells  
Karnes  
Kenedy  
Kleberg  
Lavaca  
Lee  
Leon  
Liberty  
Limestone  
Live Oak

Madison  
Matagorda  
McLennan  
McMullen  
Milam  
Montgomery  
Newton  
Nueces  
Orange  
Polk  
Refugio  
Robertson  
San Jacinto  
San Patricio  
Starr  
Travis  
Trinity  
Tyler  
Victoria  
Walker  
Waller  
Washington  
Wharton  
Willacy  
Williamson  
Wilson

**Zone 2 Dry**

Bandera  
Dimmit  
Edwards  
Frio  
Kinney  
La Salle  
Maverick  
Medina  
Real  
Uvalde  
Val Verde  
Webb  
Zapata  
Zavala

**Zone 3 Dry**

Andrews  
Baylor  
Borden  
Brewster  
Callahan  
Childress  
Coke  
Coleman  
Collingsworth

Concho  
Cottle  
Crane  
Crockett  
Crosby  
Culberson  
Dawson  
Dickens  
Ector  
El Paso  
Fisher  
Foard  
Gaines  
Garza  
Glasscock  
Hall  
Hardeman  
Haskell  
Hemphill  
Howard  
Hudspeth  
Irion  
Jeff Davis  
Jones  
Kent  
Kerr  
Kimble  
King  
Knox  
Loving  
Lubbock  
Lynn  
Martin  
Mason  
Mcculloch  
Menard  
Midland  
Mitchell  
Motley  
Nolan  
Pecos  
Presidio  
Reagan  
Reeves  
Runnels  
Schleicher  
Scurry  
Shackelford  
Sterling  
Stonewall  
Sutton  
Taylor  
Terrell

Terry  
Throckmorton  
Tom Green  
Upton  
Ward  
Wheeler  
Wilbarger  
Winkler

**Zone 3 Moist**

Archer  
Blanco  
Bowie  
Brown  
Burnet  
Camp  
Cass  
Clay  
Collin  
Comanche  
Cooke  
Dallas  
Delta  
Denton  
Eastland  
Ellis  
Erath  
Fannin  
Franklin  
Gillespie  
Grayson  
Gregg  
Hamilton  
Harrison  
Henderson  
Hood  
Hopkins  
Hunt  
Jack  
Johnson  
Kaufman Kendall  
Lamar  
Lampasas Llano  
Marion  
Mills  
Montague  
Morris  
Nacogdoches  
Navarro  
Palo Pinto  
Panola  
Parker  
Rains

Red River  
Rockwall  
Rusk  
Sabine  
San Augustine  
San Saba  
Shelby  
Smith  
Somervell  
Stephens  
Tarrant  
Titus  
Upshur  
Van Zandt  
Wichita  
Wise  
Wood  
Young

**Zone 4**

Armstrong  
Bailey  
Briscoe  
Carson  
Castro  
Cochran  
Dallam  
Deaf Smith  
Donley  
Floyd  
Gray  
Hale  
Hansford  
Hartley  
Hockley  
Hutchinson  
Lamb  
Lipscomb  
Moore  
Ochiltree  
Oldham  
Parmer  
Potter  
Randall  
Roberts  
Sherman  
Swisher  
Yoakum

**Exhibit 8**

**TABLE 301.1(1) RESIDENTIAL CLIMATE ZONES AND SUB CLIMATE ZONES FOR TEXAS**

ZONE 2							
ANDERSON	2.2	DE WITT	2.1	JIM HOGG	2.1	ORANGE	2.2
ANGELINA	2.2	DIMITT	2.1	JIM WELLS	2.1	POLK	2.2
ARANSAS	2.1	DUVAL	2.1	KARNES	2.1	REAL	2.2
ATASCOSA	2.1	EDWARDS	2.2	KENEDY	2.1	REFUGIO	2.1
AUSTIN	2.2	FALLS	2.2	KINNEY	2.2	ROBERTSON	2.2
BANDERA	2.2	FAYETTE	2.2	KLEBERG	2.1	SAN JACINTO	2.2
BASTROP	2.2	FORT BEND	2.2	LA SALLE	2.1	SAN PATRICIO	2.1
BEE	2.1	FREESTONE	2.2	LAVACA	2.2	STARR	2.1
BELL	2.2	FRIO	2.1	LEE	2.2	TRAVIS	2.2
BEXAR	2.2	GALVESTON	2.1	LEON	2.2	TRINITY	2.2
BOSQUE	2.2	GOLIAD	2.1	LIBERTY	2.2	TYLER	2.2
BRAZORIA	2.1	GONZALES	2.2	LIMESTONE	2.2	UVALDE	2.2
BRAZOS	2.2	GRIMES	2.2	LIVE OAK	2.1	VAL VERDE	2.2
BROOKS	2.1	GUADALUPE	2.2	MADISON	2.2	VICTORIA	2.1
BURLESON	2.2	HARDIN	2.2	MATAGORDA	2.1	WALKER	2.2
CALDWELL	2.2	HARRIS	2.2	MAVERICK	2.1	WALLER	2.2
CALHOUN	2.1	HAYS	2.2	MCLENNAN	2.2	WASHINGTON	2.2
CAMERON	2.1	HIDALGO	2.1	MCMULLEN	2.1	WEBB	2.1
CHAMBERS	2.2	HILL	2.2	MEDINA	2.2	WHARTON	2.1
CHEROKEE	2.2	HOUSTON	2.2	MILAM	2.2	WILLACY	2.1
COLORADO	2.2	JACKSON	2.1	MONTGOMERY	2.2	WILLIAMSON	2.2
COMAL	2.2	JASPER	2.2	NEWTON	2.2	WILSON	2.2
CORYELL	2.2	JEFFERSON	2.2	NUECES	2.1	ZAPATA	2.1
						ZAVALA	2.1
ZONE 3							
ANDREWS	3.2	EL PASO	3.2	KERR	3.1	ROCKWALL	3.2
ARCHER	3.3	ELLIS	3.2	KIMBLE	3.1	RUNNELS	3.2
BAYLOR	3.3	ERATH	3.2	KING	3.3	RUSK	3.2
BLANCO	3.1	FANNIN	3.2	KNOX	3.3	SABINE	3.2
BORDEN	3.3	FISHER	3.2	LAMAR	3.2	SAN AUGUSTINE	3.2
BOWIE	3.2	FOARD	3.3	LAMPASAS	3.2	SAN SABA	3.2
BREWSTER	3.1	FRANKLIN	3.2	LLANO	3.1	SCHLEICHER	3.1
BROWN	3.2	GAINES	3.3	LOVING	3.2	SCURRY	3.3
BURNET	3.1	GARZA	3.3	LUBBOCK	3.3	SHACKELFORD	3.2
CALLAHAN	3.2	GILLESPIE	3.1	LYNN	3.3	SHELBY	3.2
CAMP	3.2	GLASSCOCK	3.2	MARION	3.2	SMITH	3.2
CASS	3.2	GRAYSON	3.2	MARTIN	3.2	SOMERVELL	3.2
CHILDRESS	3.3	GREGG	3.2	MASON	3.1	STEPHENS	3.2
CLAY	3.3	HALL	3.4	MCCULLOCH	3.2	STERLING	3.2
COKE	3.2	HAMILTON	3.2	MENARD	3.1	STONEWALL	3.3
COLEMAN	3.2	HARDEMAN	3.3	MIDLAND	3.2	SUTTON	3.1
COLLIN	3.2	HARRISON	3.2	MILLS	3.2	TARRANT	3.2
COLLINGSWORTH	3.3	HASKELL	3.2	MITCHELL	3.2	TAYLOR	3.2
COMANCHE	3.2	HEMPHILL	3.4	MONTAGUE	3.2	TERRELL	3.1
CONCHO	3.2	HENDERSON	3.2	MORRIS	3.2	TERRY	3.3
COOKE	3.2	HOOD	3.2	MOTLEY	3.3	THROCKMORTON	3.2
COTTLE	3.3	HOPKINS	3.2	NACOGDOCHES	3.2	TITUS	3.2
CRANE	3.2	HOWARD	3.2	NAVARRO	3.2	TOM GREEN	3.2
CROCKETT	3.1	HUDSPETH	3.2	NOLAN	3.2	UPSHUR	3.2
CROSBY	3.3	HUNT	3.2	PALO PINTO	3.2	UPTON	3.2
CULBERSON	3.2	IRION	3.2	PANOLA	3.2	VAN ZANDT	3.2

**TABLE 301.1(1) RESIDENTIAL CLIMATE ZONES AND SUB CLIMATE ZONES FOR TEXAS**

DALLAS	3.2	JACK	3.2	PARKER	3.2	WARD	3.2
DAWSON	3.3	JEFF DAVIS	3.2	PECOS	3.2	WHEELER	3.4
DELTA	3.2	JOHNSON	3.2	PRESIDIO	3.1	WICHITA	3.3
DENTON	3.2	JONES	3.2	RAINS	3.2	WILBARGER	3.3
DICKENS	3.3	KAUFMAN	3.2	REAGAN	3.2	WINKLER	3.2
EASTLAND	3.2	KENDALL	3.1	RED RIVER	3.2	WISE	3.2
ECTOR	3.2	KENT	3.3	REEVES	3.2	WOOD	3.2
						YOUNG	3.2
<b>ZONE 4</b>							
ARMSTRONG		DEAF SMITH		HOCKLEY		PARMER	
BAILEY		DONLEY		HUTCHINSON		POTTER	
BRISCOE		FLOYD		LAMB		RANDALL	
CARSON		GRAY		LIPSCOMB		ROBERTS	
CASTRO		HALE		MOORE		SHERMAN	
COCHRAN		HANSFORD		OCHILTREE		SWISHER	
DALLAM		HARTLEY		OLDHAM		YOAKUM	

Figure: 16 TAC §70.101(j)(8)

**Exhibit 9**

**TABLE 301.2  
WARM HUMID COUNTIES AND TERRITORIES**

**TEXAS - Commercial Buildings Only**

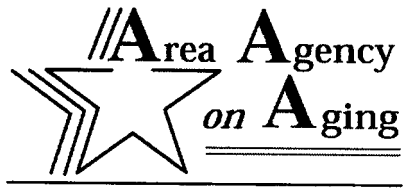
Anderson	Cherokee	Harrison	Limestone	Rusk
Angelina	Colorado	Hays	Live Oak	Sabine
Aransas	Comal	Henderson	Llano	San Augustine
Austin	Coryell	Hidalgo	Madison	San Jacinto
Bastrop	Dallas	Hill	Marion	San Patricio
Bee	Delta	Hood	Matagorda	San Saba
Bell	Denton	Hopkins	McLennan	Shelby
Bexar	De Witt	Houston	McMullen	Smith
Blanco	Duval	Hunt	Milam	Somervell
Bosque	Ellis	Jackson	Mills	Starr
Bowie	Erath	Jasper	Montgomery	Tarrant
Brazoria	Falls	Jefferson	Morris	Titus
Brazos	Fayette	Jim Hogg	Nacogdoches	Travis
Brooks	Fort Bend	Jim Wells	Navarro	Trinity
Brown	Franklin	Johnson	Newton	Tyler
Burleson	Freestone	Karnes	Nueces	Upshur
Burnet	Galveston	Kaufman	Orange	Van Zandt
Caldwell	Gillespie	Kendall	Palo Pinto	Victoria
Calhoun	Goliad	Kenedy	Panola	Walker
Cameron	Gonzales	Kleberg	Parker	Waller
Camp	Gregg	Lamar	Polk	Washington
Cass	Grimes	Lampasas	Rains	Wood
Collin	Guadalupe	Lavaca	Red River	Wharton
Comanche	Hamilton	Lee	Refugio	Willacy
Chambers	Hardin	Leon	Robertson	Williamson
	Harris	Liberty	Rockwall	Wilson

**Exhibit 10**

**TABLE 301.2(1) WARM HUMID COUNTIES FOR TEXAS - RESIDENTIAL**

ANDERSON	2.2	DUVAL	2.1	KAUFMAN	3.2	RED RIVER	3.2
ANGELINA	2.2	EDWARDS	2.2	KENDALL	3.1	REAL	2.2
ARANSAS	2.1	ELLIS	3.2	KENEDY	2.1	REFUGIO	2.1
ATASCOSA	2.1	ERATH	3.2	KINNEY	2.2	ROBERTSON	2.2
AUSTIN	2.2	FALLS	2.2	KLEBERG	2.1	ROCKWALL	3.2
BANDERA	2.2	FAYETTE	2.2	LA SALLE	2.1	RUSK	3.2
BASTROP	2.2	FORT BEND	2.2	LAMAR	3.2	SABINE	3.2
BEE	2.1	FRANKLIN	3.2	LAMPASAS	3.2	SAN AUGUSTINE	3.2
BELL	2.2	FREESTONE	2.2	LAVACA	2.2	SAN JACINTO	2.2
BEXAR	2.2	FRIO	2.1	LEE	2.2	SAN PATRICIO	2.1
BLANCO	3.1	GALVESTON	2.1	LEON	2.2	SAN SABA	3.2
BOSQUE	2.2	GILLESPIE	3.1	LLANO	3.1	SHELBY	3.2
BOWIE	3.2	GOLIAD	2.1	LIBERTY	2.2	SMITH	3.2
BRAZORIA	2.1	GONZALES	2.2	LIMESTONE	2.2	STARR	2.1
BROWN	3.2	GREGG	3.2	LIVE OAK	2.1	SOMMERVELL	3.2
BRAZOS	2.2	GRIMES	2.2	MADISON	2.2	TARRANT	3.2
BROOKS	2.1	GUADALUPE	2.2	MARION	3.2	TITUS	3.2
BURLESON	2.2	HAMILTON	3.2	MATAGORDA	2.1	TRAVIS	2.2
BURNET	3.1	HARDIN	2.2	MAVERICK	2.1	TRINITY	2.2
CALDWELL	2.2	HARRIS	2.2	MACLENNAN	2.2	TYLER	2.2
CALHOUN	2.1	HARRISON	3.2	MCMULLEN	2.1	UPSHUR	3.2
CAMERON	2.1	HAYS	2.2	MEDINA	2.2	UVALDE	2.2
CHAMBERS	2.2	HENDERSON	3.2	MILAM	2.2	VAL VERDE	2.2
CAMP	3.2	HIDALGO	2.1	MILLS	3.2	VAN ZANDT	3.2
CASS	3.2	HOOD	3.2	MONTGOMERY	2.2	VICTORIA	2.1
CHEROKEE	2.2	HOPKINS	3.2	MORRIS	3.2	WALKER	2.2
COLLIN	3.2	HILL	2.2	NACOGDOCHES	3.2	WALLER	2.2
COLORADO	2.2	HOUSTON	2.2	NAVARRO	3.2	WASHINGTON	2.2
COMAL	2.2	HUNT	3.2	NEWTON	2.2	WEBB	2.1
COMANCHE	3.2	JACKSON	2.1	NUECES	2.1	WHARTON	2.1
CORYELL	2.2	JASPER	2.2	ORANGE	2.2	WILLACY	2.1
DALLAS	3.2	JEFFERSON	2.2	PALO PINTO	3.2	WILLIAMSON	2.2
DELTA	3.2	JIM HOGG	2.1	PANOLA	3.2	WILSON	2.2
DENTON	3.2	JIM WELLS	2.1	PARKER	3.2	WOOD	3.2
DE WITT	2.1	JOHNSON	3.2	POLK	2.2	ZAPATA	2.1
DIMMIT	2.1	KARNES	2.1	RAINS	3.2	ZAVALA	2.1

Figure: 40 TAC §85.201(t)(2)



# IN

# ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

## Office of the Attorney General

### Settlement of a Claim for Natural Resource Damages

The State of Texas hereby gives notice of the proposed resolution of an environmental claim for natural resource damages. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed settlement if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate or inconsistent with the requirements of the Law.

Case Title and Court: In re ASARCOLLC, et al., Case No. 05-21207 in the United States Bankruptcy Court for the Southern District of Texas and In re Encycle/Texas, Inc., Case No. 05-21304, in the United States Bankruptcy Court for the Southern District of Texas.

Nature of Suit: The State of Texas filed claims in the above bankruptcies for natural resource damages in Nueces Bay, Corpus Christi Bay, and the Corpus Christi Inner Harbor allegedly caused by the operations of ASARCO and Encycle/Texas at a facility in Corpus Christi, Texas.

Proposed Settlement: The proposed settlement provides for the State of Texas to have an allowed general unsecured claim of \$10,000,000 in the ASARCO Bankruptcy Case and an allowed general unsecured claim of \$15,000,000 in the Encycle Bankruptcy Case.

The Office of the Attorney General will accept written comments relating to this settlement for thirty (30) days from the date of the publication of this notice. Copies of the proposed settlement may be examined at the Office of the Attorney General, 300 W. 15th Street, 10th Floor, Austin, Texas. A copy of the proposed settlement may also be obtained in person or by mail at the above address for the cost of copying. Requests for copies of the judgment and written comments on the proposed judgment should be directed to Jane E. Atwood, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0052.

*For more information regarding this publication, contact Cindy Hodges, Agency Liaison, at (512) 936-1841.*

TRD-200801899

Stacey Napier

Deputy Attorney General

Office of the Attorney General

Filed: April 9, 2008



### Settlement of an Environmental Enforcement Claim

The State of Texas hereby gives notice of the proposed resolution of an environmental enforcement claim brought pursuant to the Texas Water Code. Before the State may settle a judicial enforcement action, pursuant to Section 7.110 of 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 settlement if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Law.

Case Title and Court: In re ASARCOLLC, et al., Case No. 05-21207 in the United States Bankruptcy Court for the Southern District of Texas and In re Encycle/Texas, Inc., Case No. 05-21304, in the United States Bankruptcy Court for the Southern District of Texas.

Nature of Suit: The State of Texas filed claims in the above bankruptcies for enforcement of a consent decree in United States of America and State of Texas v. Encycle/Texas, Inc. and ASARCO LLC, Cause No. H-99-1136 in the United States District Court for the Southern District of Texas (the "Consent Decree"). The Consent Decree settled an enforcement suit against ASARCO and Encycle/Texas concerning alleged waste violations at a former zinc smelter and metals processing facility in Corpus Christi, Texas (the "Facility").

Proposed Settlement: The proposed settlement provides for an allowed general unsecured claim in the total amount of \$10,000,000 for the United States, the State of Texas, and the Encycle Trustee. The claim proceeds will be paid to Encycle/Texas and can only be used for remediation of the Facility.

The Office of the Attorney General will accept written comments relating to this settlement for thirty (30) days from the date of the publication of this notice. Copies of the proposed settlement may be examined at the Office of the Attorney General, 300 W. 15th Street, 10th Floor, Austin, Texas. A copy of the proposed settlement may also be obtained in person or by mail at the above address for the cost of copying. Requests for copies of the judgment and written comments on the proposed judgment should be directed to Jane E. Atwood, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0052.

*For more information regarding this publication, contact Cindy Hodges, Agency Liaison, at (512) 936-1841.*

TRD-200801900

Stacey Napier

Deputy Attorney General

Office of the Attorney General

Filed: April 9, 2008



## Brazos Valley Council of Governments

### Notice of Release of Request for Quote for Child Care Provider Training Services

On April 10, 2008 the Brazos Valley Council of Government (BVCOG) and Workforce Solutions Brazos Valley Board (WSBVB) will release a Request for Quote (RFQ) for child care provider training services. One or more trainers are needed to provide training to child care provider staff in the Brazos Valley (Brazos, Burleson, Grimes, Leon, Madison, Robertson, and Washington counties). Training will take place on specific dates listed in the RFQ, at the Center for Regional Services located at 3991 East 29th Street in Bryan, Texas.

Workforce Solutions Brazos Valley Board will receive responses to the RFQ until 4:00 p.m. May 9, 2008. No responses will be accepted after this deadline. Potential respondents may view and print the RFQ from

the web on [www.bvjobs.org](http://www.bvjobs.org). The contact person for this RFQ is Jonna Murphy, email: [jmurphy@bvcog.org](mailto:jmurphy@bvcog.org), telephone: (979) 595-2800.

TRD-200801749

Tom Wilkinson

Executive Director

Brazos Valley Council of Governments

Filed: April 3, 2008

## Coastal Coordination Council

### 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 March 28, 2008, through April 3, 2008. 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 for this activity extends 30 days from the date published on the Coastal Coordination Council web site. The notice was published on the web site on April 9, 2008. The public comment period for this project will close at 5:00 p.m. on May 9, 2008.

#### FEDERAL AGENCY ACTIONS:

**Applicant: Rush Development, L.P.;** Location: The project is located in West Bay and on a 102-acre tract located between West Bay and FM 3005, west of Bay Harbor subdivision and The Reserve Phase I Subdivision, Galveston Island, Galveston County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled "Sea Isle, Tex.". Approximate UTM coordinates in NAD 27 (meters): Zone 15; Easting: 298100; Northing: 3223500. Project Description: The applicant proposes to mechanically dredge and excavate 35,717 cubic yards of sand from West Bay, adjacent estuarine wetlands, and uplands to construct a 1,433-foot-long channel access area and boat channel, and a 0.48-acre wetland creation area. The boat channel would have a bottom width of 50 feet and a 20- to 26-foot-wide side slope; proposed depths would range from -6 ft MLT at the entrance, to -4 ft MLT at the channel terminus. Approximately 247 linear feet of wave attenuation barrier would be constructed near the channel entrance, including adjacent to an area of existing smooth cordgrass (*Spartina alterniflora*) that would be excavated during channel construction, then replanted with smooth cordgrass transplants. Approximately 1,365 linear feet of bulkhead would be constructed along the eastern side and the end of the proposed boat channel, and 14 boathouses would be constructed within the boat channel. The 35,717 cubic yards of dredged and excavated sand would be placed on on-site uplands and wetlands to raise the grade elevation for the development of a resort subdivision. Within a 2,118-foot-long, 15-foot-wide temporary construction access area extending from FM 3005 to the proposed boat channel area, temporary mats would be used for equipment access across sensitive areas for the duration of construction activities. Upon completion of subdivision construction, the temporarily impacted areas, including 0.32 acres of estuarine wetlands within the temporary construction access area, would be regraded and replanted to return affected areas to preconstruction conditions. The mechanical excavation of the proposed channel access area will impact 0.27 acres of shallow non-vegetated open

water in West Bay, and mechanical excavation of the proposed boat channel will impact 0.71 acres of estuarine wetlands and 2.04 acres of uplands. The proposed construction of the subdivision and related infrastructure will result in the fill of approximately 0.86 acres of jurisdictional estuarine wetlands, 0.37 acres of jurisdictional freshwater wetlands, and 0.76 acres of non-jurisdictional freshwater wetlands (including an excavated cattle stock tank, a ditch/drainage cut to allow water to flow from FM 3005 into the stock tank, and an area that the stock tank overflows into). As compensatory mitigation, the applicant proposes to create 0.48 acres of estuarine wetlands in a wetland creation area excavated from uplands adjacent to the proposed boat channel and planted with smooth cordgrass, and on-site preservation in a conservation easement to be maintained in perpetuity of 52.01 acres of estuarine wetlands, 0.09 acres of freshwater wetlands, and 3.49 acres of uplands. In addition, the applicant proposes to avoid approximately 3.31 acres of freshwater wetlands in the southern portion of the proposed subdivision, establish 20-foot-wide buffers around the wetland areas, and ensure the permanent avoidance of the freshwater wetlands and buffer zone with a deed restriction. CCC Project No.: 08-0105-F1. Type of Application: U.S.A.C.E. permit application #SWG-2007-01273 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 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 is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the applications listed above may be obtained from Ms. Tammy Brooks, Consistency Review Coordinator, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, or [tammy.brooks@glo.state.tx.us](mailto:tammy.brooks@glo.state.tx.us). Comments should be sent to Ms. Brooks at the above address or by fax at (512) 475-0680.

TRD-200801775

Larry L. Laine

Chief Clerk/Deputy Land Commissioner, General Land Office

Coastal Coordination Council

Filed: April 7, 2008

## Comptroller of Public Accounts

### Notice of Request for Proposals

Pursuant to Chapter 2101, Subchapter C, Texas Government Code; Chapter 2254, Subchapter B, Texas Government Code; and Chapter 403, Subchapter C, Texas Government Code, the Comptroller of Public Accounts (Comptroller) announces its Request for Proposals (RFP #184a) from qualified, independent firms to provide consulting services to develop a comprehensive business case including plans, strategies, options, costs and recommendations for the implementation of enterprise resource planning for state agencies and institutions of higher education. The successful respondent will be expected to begin performance of the contract on or about June 17, 2008.

Contact: Parties interested in submitting a proposal should contact Thomas H. Hill, Assistant General Counsel, Contracts, Comptroller of Public Accounts, 111 E. 17th St., RM G-24, Austin, Texas, 78774, telephone number: (512) 305-8673, to obtain a copy of the RFP. The Comptroller will mail copies of the RFP only to those specifically requesting a copy. The RFP will be available for pick-up at the above-referenced address on April 18, 2008, between 10:00 a.m. and 5:00 p.m., Central Zone Time (CZT), and during normal business hours thereafter. The Comptroller will also make the RFP available electronically on the

Electronic State Business Daily after Friday, April 18, 2008, 10:00 a.m. (CZT).

Questions and Non-Mandatory Letters of Intent: All written inquiries, questions, and non-mandatory Letters of Intent to propose must be received at the above-referenced address not later than 2:00 p.m. (CZT) on May 2, 2008. Prospective respondents are encouraged to fax or e-mail non-mandatory Letters of Intent and Questions to (512) 463-3669 or [contracts@cpa.state.tx.us](mailto:contracts@cpa.state.tx.us) to ensure timely receipt. The Letter of Intent must be addressed to Thomas H. Hill, Assistant General Counsel, Contracts, and must contain the information as stated in the corresponding Section of the RFP and be signed by an official of that entity. Non-mandatory Letters of Intent and Questions received after this time and date will not be considered. On or about May 8, 2008, the Comptroller expects to post responses to questions as a revision to the Electronic State Business Daily notice on the issuance of this RFP.

Closing Date: Proposals must be delivered to the Office of the Assistant General Counsel, Contracts, at the location specified above (ROOM G-24) no later than 2:00 p.m. (CZT), on May 19, 2008. Proposals received in ROOM G-24 after this time and date will not be considered regardless of the reason for the late delivery and receipt. Respondents are encouraged to verify and are solely responsible for verifying timely receipt of proposals in that office (ROOM G-24).

Evaluation Criteria: Proposals will be evaluated under the evaluation criteria outlined in the RFP. The Comptroller shall make the final decision on any contract award or awards resulting from this RFP.

The Comptroller reserves the right, in its sole discretion, to accept or reject any or all proposals submitted. The Comptroller is not obligated to award or execute any contracts on the basis of this notice or the distribution of any RFP. The Comptroller shall not pay for any costs incurred by any entity in responding to this notice or the RFP.

The anticipated schedule of events is as follows: Issuance of RFP - April 18, 2008, 10:00 a.m. CZT; Non-Mandatory Letter of Intent to propose and Questions Due - May 2, 2008, 2:00 p.m. CZT; Official Responses to Questions posted - May 8, 2008, or as soon thereafter as practical; Proposals Due - May 19, 2008, 2:00 p.m. CZT, Contract Execution - June 16, 2008, or as soon thereafter as practical; and Commencement of Project Activities - June 17, 2008 or as soon thereafter as practical.

TRD-200801891

Pamela Smith

Deputy General Counsel for Contracts

Comptroller of Public Accounts

Filed: April 9, 2008

## 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 04/14/08 - 04/20/08 is 18% for Consumer<sup>1</sup>/Agricultural/Commercial<sup>2</sup>/credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 04/14/08 - 04/20/08 is 18% for Commercial over \$250,000.

<sup>1</sup>Credit for personal, family or household use.

<sup>2</sup>Credit for business, commercial, investment or other similar purpose.

TRD-200801857

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: April 7, 2008

## Texas Education Agency

### Request for Applications Concerning Early College High School Professional Development Training, School Years 2008-2009 and 2009-2010

Eligible Applicants. The Texas Education Agency (TEA) is requesting applications under Request for Applications (RFA) #701-08-114 from nonprofit organizations, institutions of higher education, and education service centers to provide professional development and training for Texas Early College High Schools. A nonprofit organization, institution of higher education, or education service center must meet all of the following eligibility requirements: (1) the organization must have practical knowledge and experience with the process of high school redesign and reform, preferably as it relates to Early College High School; (2) the organization must be informed by research on effective teaching and learning practices and strategies; and (3) the organization must have experience conducting professional development which incorporates principles of adult learning.

Description. The purpose of this program is to provide professional development and training for Texas Early College High Schools that includes the following major components: (1) mentor training for curriculum and instruction coaches who will be identified by TEA to work with Early College High Schools to increase academic rigor; (2) training in effective campus leadership and instructional practices for Early College High School administrators and teachers; and (3) creation of resources, including a training manual and materials, that will be used to build statewide capacity and allow for replication of best practices from Early College High Schools.

Dates of Project. The Early College High School Professional Development Training program will be implemented during the 2008-2009 and 2009-2010 school years. Applicants should plan for a starting date of no earlier than September 1, 2008, and an ending date of no later than May 31, 2010.

Project Amount. Funding will be provided for one project. The project will receive a maximum of \$175,000 for the 2008-2009 and 2009-2010 school years.

Selection Criteria. Applications will be selected based on the ability of each applicant to carry out all requirements contained in the RFA. Reviewers will evaluate applications based on the overall quality and validity of the proposed grant programs and the extent to which the applications address the primary objectives and intent of the project. Applications must address each requirement as specified in the RFA to be considered for funding. The TEA reserves the right to select from the highest-ranking applications those that address all requirements in the RFA.

The TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs before an application is approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

Requesting the Application. A complete copy of the RFA may be obtained by writing the Document Control Center, Room 6-108, Texas Education Agency, William B. Travis Building, 1701 North Congress



Avenue, Austin, Texas 78701; by calling (512) 463-9304; by faxing (512) 463-9811; or by e-mailing dcc@tea.state.tx.us. Please refer to the RFA number and title in your request. Provide your name, complete mailing address, and phone number including area code. The announcement letter and complete RFA will also be posted on the TEA website at <http://burlleson.tea.state.tx.us/GrantOpportunities/forms>. In the "Select Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view all documents that pertain to this RFA.

Further Information. For clarifying information about the RFA, contact Donnell Bilsky, Division of Discretionary Grants, Texas Education Agency, (512) 463-9269. In order to assure that no prospective applicant may obtain a competitive advantage because of acquisition of information unknown to other prospective applicants, any information that is different from or in addition to information provided in the RFA will be provided only in response to written inquiries. Copies of all such inquiries and the written answers thereto will be posted on the TEA website in the format of Frequently Asked Questions (FAQs) at <http://burlleson.tea.state.tx.us/GrantOpportunities/forms>. In the "Select Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view all documents that pertain to this RFA.

Deadline for Receipt of Applications. Applications must be received in the TEA Document Control Center by 5:00 p.m. (Central Time), Tuesday, June 10, 2008, to be eligible to be considered for funding.

TRD-200801896

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Filed: April 9, 2008

## Texas Commission on Environmental Quality

### Agreed Orders

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 (the Code), §7.075. Section 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. Section 7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **May 19, 2008**. Section 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) 239-1864 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on May 19, 2008**. Written comments may also be sent by facsimile machine to the en-

forcement 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, §7.075 provides that comments on the AOs shall be submitted to the commission in **writing**.

(1) COMPANY: City of Alba; DOCKET NUMBER: 2008-0012-MWD-E; IDENTIFIER: RN101721405; LOCATION: Alba, Wood County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 Texas Administrative Code (TAC) §305.125(1), Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0014451001, Effluent Limitations and Monitoring Requirements Numbers 1, 3, and 6, and the Code, §26.121(a), by failing to comply with the permitted effluent limitations for dissolved oxygen, five-day biochemical oxygen demand (BOD<sub>5</sub>), pH, total suspended solids (TSS), and flow; PENALTY: \$8,000; Supplemental Environmental Project (SEP) offset amount of \$6,400 applied to Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D") - Unauthorized Trash Dump Clean-Up; ENFORCEMENT COORDINATOR: Andrew Hunt, (512) 239-1203; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(2) COMPANY: Aqua Texas, Inc.; DOCKET NUMBER: 2007-1913-PWS-E; IDENTIFIER: RN102685393; LOCATION: Onalaska, Polk County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(q)(1) and (2), by failing to issue a boil water notification to customers of the water system; PENALTY: \$360; ENFORCEMENT COORDINATOR: Christopher Keffer, (512) 239-5610; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(3) COMPANY: City of Childress; DOCKET NUMBER: 2007-1932-MWD-E; IDENTIFIER: RN101612521; LOCATION: Childress County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0010076003, Interim Phase Effluent Limitations and Monitoring Requirements, and the Code, §26.121(a), by failing to comply with the permitted effluent limitations for flow and BOD<sub>5</sub>; and 30 TAC §305.125(1) and TPDES Permit Number WQ0010076003, Monitoring Requirements Number 5, by failing to calibrate the in-line effluent flow meter on an annual basis; PENALTY: \$5,450; ENFORCEMENT COORDINATOR: Andrew Hunt, (512) 239-1203; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(4) COMPANY: Cross Country Water Supply Corporation; DOCKET NUMBER: 2007-1850-PWS-E; IDENTIFIER: RN101439438; LOCATION: China Spring, McLennan County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.41(c)(3)(B), by failing to provide a well casing 18 inches above the elevation of the finished floor of the pump room or the natural ground surface with a minimum of one inch above the sealing block or pump motor foundation block; 30 TAC §290.41(c)(1)(D), by failing to ensure that livestock in pasture are prohibited within 50 feet of a water supply well; 30 TAC §290.41(c)(1)(F), by failing to obtain a sanitary control easement covering land 150 feet of the well; 30 TAC §290.46(f)(2), (3)(D)(ii) and (iv), by failing to keep water system records on file and make them available for commission review; and 30 TAC §290.45(b)(1)(D)(iii) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to provide two or more service pumps having a total capacity of two gallons per minute per connection; PENALTY: \$378; ENFORCEMENT COORDINATOR: Tel Croston, (512) 239-5717; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(5) COMPANY: City of Encinal; DOCKET NUMBER: 2008-0140-MSW-E; IDENTIFIER: RN105025902; LOCATION: Encinal, Webb County, Texas; TYPE OF FACILITY: unauthorized disposal site;

RULE VIOLATED: 30 TAC §330.15(c), by failing to prevent the transportation and disposal of municipal solid waste at an unauthorized facility; PENALTY: \$1,050; ENFORCEMENT COORDINATOR: John Shelton, (512) 239-2563; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(6) COMPANY: Flying J Inc. dba Flying J Travel Plaza Orange; DOCKET NUMBER: 2007-1784-PST-E; IDENTIFIER: RN102056827; LOCATION: Orange, Orange County, Texas; TYPE OF FACILITY: truck stop and convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.10(b), by failing to have the required underground storage tank (UST) records maintained, readily accessible, and available for the inspection; 30 TAC §334.74(l), by failing to investigate a suspected release within 30 days of discovery; 30 TAC §334.6(b)(2), by failing to submit a construction notification form to the TCEQ 30 days prior to the construction activity; and 30 TAC §33.46(g)(1)(H), by failing to ensure that all monitoring wells and observation wells are properly capped, labeled, and secured (or locked) to prevent unauthorized access, tampering, accidental depositing of unauthorized substances, and designed to divert surface runoff away from the well; PENALTY: \$20,500; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5800; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(7) COMPANY: Ghuman Enterprise Inc. dba Amatos Food Mart 3; DOCKET NUMBER: 2007-2021-PWS-E; IDENTIFIER: RN104162300; LOCATION: Conroe, Montgomery County, Texas; TYPE OF FACILITY: convenience store with a public water supply; RULE VIOLATED: 30 TAC §290.121(a), by failing to develop and maintain an up-to-date chemical and microbiological monitoring plan; 30 TAC §290.41(c)(3)(A), by failing to submit well completion data; 30 TAC §290.41(c)(3)(O), by failing to provide an intruder-resistant fence; 30 TAC §290.39(h)(1) and §290.46(n)(1), by failing to prepare and submit detailed "as-built" plans and specifications for commission review and approval; and 30 TAC §290.46(m)(4), by failing to maintain the water system and all related appurtenances in a watertight condition; PENALTY: \$490; ENFORCEMENT COORDINATOR: Andrea Linson-Mgbeoduru, (512) 239-1482; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(8) COMPANY: Jack Neely dba Heights Water Company; DOCKET NUMBER: 2008-0039-PWS-E; IDENTIFIER: RN102676129; LOCATION: Tyler, Smith County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.113(f)(4) and THSC, §341.0315(c), by failing to comply with the maximum contaminant level for total trihalomethanes; PENALTY: \$392; ENFORCEMENT COORDINATOR: Epifanio Villareal, (210) 490-3096; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(9) COMPANY: HILLCROFT GROCERS, L.L.C.; DOCKET NUMBER: 2007-1924-PST-E; IDENTIFIER: RN101432771; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.51(b)(2)(C) and the Code, §26.3475(c)(2), by failing to equip the tank with a valve or other appropriate device designed to automatically shut off the flow of regulated substances into the tank; and 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to monitor USTs for releases; PENALTY: \$7,650; ENFORCEMENT COORDINATOR: Wallace Myers, (512) 239-6580; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(10) COMPANY: JNCHO Inc. dba Comet Cleaners; DOCKET NUMBER: 2006-0932-DCL-E; IDENTIFIER: RN103954442; LOCATION: Fort Worth, Tarrant County, Texas; TYPE OF FACILITY:

dry cleaning drop station; RULE VIOLATED: 30 TAC §337.10(a) and THSC, §374.102, by failing to complete and submit the required registration form; PENALTY: \$889; ENFORCEMENT COORDINATOR: Michael Meyer, (512) 239-4492; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(11) COMPANY: Lake Whitney Resorts, LLC; DOCKET NUMBER: 2007-2005-PWS-E; IDENTIFIER: RN105215651; LOCATION: Whitney, Hill County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.39(m), by failing to provide written notification to the commission of the startup of a new public water system; 30 TAC §290.39(e)(1) and THSC, §341.035(c), by failing to submit engineering reports prior to activating a new public water system; and 30 TAC §290.44(d) and §290.46(r), by failing to operate the system to maintain a minimum pressure of 35 pounds per square inch at all points; PENALTY: \$1,522; ENFORCEMENT COORDINATOR: Epifanio Villareal, (210) 490-3096; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(12) COMPANY: Martin Operating Partnership L.P. and Martin Product Sales LLC; DOCKET NUMBER: 2007-1992-IWD-E; IDENTIFIER: RN102605136; LOCATION: Beaumont, Jefferson County, Texas; TYPE OF FACILITY: wholesale and transport of sulfur and sulfuric acid; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0004074000, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with the permitted effluent limitations for total zinc and TSS; PENALTY: \$34,240; ENFORCEMENT COORDINATOR: Libby Hogue, (512) 239-1165; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(13) COMPANY: City of McAllen; DOCKET NUMBER: 2007-1251-WQ-E; IDENTIFIER: RN102635604; LOCATION: Hidalgo County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0010633004, Permit Conditions Number 2(g), and the Code, §26.121(a)(1), by failing to prevent the unauthorized discharge of untreated wastewater; PENALTY: \$22,400; ENFORCEMENT COORDINATOR: Pamela Campbell, (512) 239-4493; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(14) COMPANY: City of Midway; DOCKET NUMBER: 2007-2018-PWS-E; IDENTIFIER: RN101193274; LOCATION: Midway, Madison County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.44(h)(1)(A), by failing to install a backflow prevention assembly; 30 TAC §290.41(c)(3)(O) and §290.43(e), by failing to provide an intruder-resistant fence; and 30 TAC §290.46(s)(1), by failing to calibrate the well meter at least once every three years; PENALTY: \$1,422; ENFORCEMENT COORDINATOR: Rebecca Clausewitz, (210) 490-3096; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(15) COMPANY: Mimi Hoang Investment Inc. dba Rich Cleaners; DOCKET NUMBER: 2006-1427-DCL-E; IDENTIFIER: RN104411582, RN101637320, and RN104411574; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: dry cleaner drop stations; RULE VIOLATED: 30 TAC §337.11(e) and THSC, §374.102, by failing to renew the registration by completing and submitting the required registration form for Facility's 1, 2, and 3; and 30 TAC §337.14(c) and the Code, §5.702, by failing to pay dry cleaner registration fees and associated late fees; PENALTY: \$3,555; ENFORCEMENT COORDINATOR: Suzanne Walrath, (512) 239-2134; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(16) COMPANY: City of New Home; DOCKET NUMBER: 2007-1263-PWS-E; IDENTIFIER: RN101389146; LOCATION: New Home, Lynn County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.41(c)(3)(K), by failing to seal the wellhead with a gasket or sealing compound and by failing to provide a well casing vent; 30 TAC §290.42(e)(2), by failing to provide the point of application for disinfection ahead of the water storage tank; 30 TAC §290.43(c)(1), by failing to provide a roof vent on the water storage tank in accordance with American Water Works Association standards; 30 TAC §290.43(c)(2), by failing to secure the roof hatch of the ground storage tank; and 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the system's facilities and equipment; PENALTY: \$531; ENFORCEMENT COORDINATOR: Tel Croston, (512) 239-5717; REGIONAL OFFICE: 4630 50th Street, Suite 600, Lubbock, Texas 79414-3520, (806) 796-7092.

(17) COMPANY: Owens Corning Roofing and Asphalt, LLC; DOCKET NUMBER: 2008-0015-AIR-E; IDENTIFIER: RN100222686; LOCATION: Ennis, Ellis County, Texas; TYPE OF FACILITY: asphalt roofing manufacturing plant; RULE VIOLATED: 30 TAC §122.146(2) and THSC, §382.085(b), by failing to submit a permit compliance certification; 30 TAC §122.146(5)(C)(ii) and (iii) and THSC, §382.085(b), by failing to include all necessary information used to assess compliance in the permit compliance certification; and 30 TAC §122.145(2)(C) and THSC, §382.085(b), by failing to submit a deviation report; PENALTY: \$5,000; ENFORCEMENT COORDINATOR: Bryan Elliott, (512) 239-6162; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(18) COMPANY: Reliant Energy Channelview LP; DOCKET NUMBER: 2007-2002-AIR-E; IDENTIFIER: RN100220276; LOCATION: Channelview, Harris County, Texas; TYPE OF FACILITY: electric power cogeneration plant; RULE VIOLATED: 30 TAC §122.143(4) and §122.145(2)(C), Permit Number O-02136, General Terms and Conditions, and THSC, §382.085(b), by failing to submit a semi-annual deviation report; PENALTY: \$2,250; ENFORCEMENT COORDINATOR: John Muennink, (361) 825-3100; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(19) COMPANY: City of Rose City; DOCKET NUMBER: 2007-1817-MLM-E; IDENTIFIER: RN102676269; LOCATION: Orange County, Texas; TYPE OF FACILITY: water treatment plant and public water supply; RULE VIOLATED: 30 TAC §305.125(1) and TPDES Permit Number WQ0014595001, Sludge Provisions, by failing to dispose of water treatment sludge at a TCEQ registered or permitted land application site, commercial land application site, or co-disposal landfill; 30 TAC §305.125(17) and §312.123 and TPDES Permit Number WQ0014595001, Sludge Provisions, Section I.E., by failing to submit annual sludge reports; 30 TAC §319.7(c) and TPDES Permit Number WQ0014595001, Monitoring and Reporting Requirements Number 1, by failing to submit discharge monitoring reports; 30 TAC §305.125(1) and TPDES Permit Number WQ0014595001, Operational Requirements Number 1, by failing to properly operate and maintain all systems of collection, treatment, and disposal; 30 TAC §305.125(1) and TPDES Permit Number WQ0014595001, Operational Requirements Number 2, by failing to comply with all provisions of 30 TAC Chapter 312 concerning water treatment sludge use and disposal; and 30 TAC §290.42(d)(2)(E), by failing to provide a suitable air gap at the filter to the waste connection; PENALTY: \$9,230; ENFORCEMENT COORDINATOR: Tom Jecha, (512) 239-2576; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(20) COMPANY: Sentinel Transportation, LLC; DOCKET NUMBER: 2008-0419-WQ-E; IDENTIFIER: RN105429963; LOCATION: Wichita Falls, Wichita County, Texas; TYPE OF FACILITY: transportation terminal; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a multi-sector general permit; PENALTY: \$700; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(21) COMPANY: City of Sonora; DOCKET NUMBER: 2007-1016-MWD-E; IDENTIFIER: RN102806411; LOCATION: Sutton County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0010545001, Permit Conditions Number 2, and the Code, §26.121(a), by failing to prevent the unauthorized discharge of raw and/or partially treated wastewater; PENALTY: \$8,950; Supplemental Environmental Project (SEP) offset amount of \$8,950 applied to Keep Texas Beautiful; ENFORCEMENT COORDINATOR: Heather Brister, (254) 751-0335; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (915) 655-9479.

(22) COMPANY: Donnie Lewis; DOCKET NUMBER: 2008-0215-WOC-E; IDENTIFIER: RN105379929; LOCATION: Graford, Palo Pinto County, Texas; TYPE OF FACILITY: licensing; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: \$210; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(23) COMPANY: Valero Refining-Texas, L.P.; DOCKET NUMBER: 2007-1960-AIR-E; IDENTIFIER: RN100219310; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: petroleum refinery; RULE VIOLATED: 30 TAC §116.115(c), Air Permit Number 48982, Special Condition Number 12, and THSC, §382.085(b), by failing to retrofit heaters with burners meeting 0.06 pounds of nitrogen oxides per million British thermal units; PENALTY: \$41,500; Supplemental Environmental Project (SEP) offset amount of \$16,600 applied to Houston-Galveston AERCO's Clean Cities/Clean Vehicles Program; ENFORCEMENT COORDINATOR: Rebecca Johnson, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(24) COMPANY: VALLIANI ENTERPRISES INC. dba Greenhouse Citgo; DOCKET NUMBER: 2008-0071-PST-E; IDENTIFIER: RN101909513; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (c)(5)(B)(ii), by failing to timely renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form; 30 TAC §334.8(c)(5)(A)(i) and the Code, §26.3467(a), by failing to make available to the common carrier a valid, current TCEQ delivery certificate; 30 TAC §115.244(1) and (3) and THSC, §382.085(b), by failing to conduct daily and monthly inspections of the Stage II vapor recovery system (VRS); 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II VRS; and 30 TAC §115.242(3) and THSC, §382.085(b), by failing to maintain the Stage II VRS in proper operating condition; PENALTY: \$8,500; ENFORCEMENT COORDINATOR: Steven Lopez, (512) 239-1896; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(25) COMPANY: Zarin, Inc. dba Collins & I-20 Mobil; DOCKET NUMBER: 2007-1951-PST-E; IDENTIFIER: RN102161874; LOCATION: Arlington, Tarrant County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(a)(1)(A) and the Code, §26.3475(c)(1), by failing to provide a method of release detection; 30 TAC §334.48(c), by failing

to conduct effective manual or automatic inventory control procedures; and 30 TAC §334.7(d)(3), by failing to provide an amended UST registration to the agency for any change or additional information regarding USTs; PENALTY: \$11,500; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5800; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-200801867  
Mary R. Risner  
Director, Litigation Division  
Texas Commission on Environmental Quality  
Filed: April 8, 2008



### Notice of Request for Public Comment and Notice of a Public Meeting for an Implementation Plan to Address Low Dissolved Oxygen in the Lake O' the Pines Watershed

The Texas Commission on Environmental Quality (TCEQ or commission) has made available for public comment a draft implementation plan concerning one total maximum daily load (TMDL) for dissolved oxygen in the Lake O' the Pines of the Cypress Creek Basin, located in Camp, Marion, Morris, and Upshur Counties. The TCEQ will conduct a public meeting to receive comments on the draft implementation plan.

Lake O' the Pines (Segment 0403), is included in the State of Texas Clean Water Act, §303(d) list of impaired water bodies. As required by §303(d) of the federal Clean Water Act, one TMDL was developed for dissolved oxygen. The TMDL was adopted by the commission on April 12, 2006, as an update to the State Water Quality Management Plan. Upon adoption by the commission, the TMDL was submitted to the United States Environmental Protection Agency for review and approval. The implementation plan is a flexible tool that the governmental and non-governmental agencies involved in TMDL implementation will use to guide their program management.

The TCEQ will conduct a public meeting on the draft implementation plan for dissolved oxygen in Lake O' the Pines (Segment 0403). The purpose of the public meeting is to provide the public an opportunity to comment on the draft implementation plan. The commission requests comments on each of the major components of the implementation plan: description of control actions and management measures, implementation strategy and tracking, review strategy, and communication strategy. After the public comment period, TCEQ staff may revise the implementation plan, if appropriate. The final implementation plan will then be considered for approval by the commission. Upon approval of the implementation plan by the commission, the final implementation plan and a response to public comments will be made available on the TCEQ Web site.

The public comment meeting will be held on **April 29, 2008, 7:00 p.m., at the Northeast Texas Municipal Water District, 4180 FM 250, Hughes Springs, Texas 75656**. At this meeting the individuals have the opportunity to present oral statements when called upon in order of registration. An agency staff member will give a brief presentation at the start of the meeting and will be available to answer questions before and after all public comments have been received.

Written comments should be submitted to Arthur Talley, Texas Commission on Environmental Quality, Water Programs Division, MC 203, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-1414. All comments must be received by **5:00 p.m., May 17, 2008**, and should reference **Implementation Plan for One Total Maximum Daily Load for Dissolved Oxygen in the Lake O' the Pines, for Segment Number 0403**. For further information regarding this proposed TMDL

implementation plan, please contact Arthur Talley, Water Programs Division, (512) 239-4546 or [atalley@tceq.state.tx.us](mailto:atalley@tceq.state.tx.us). Copies of the draft implementation plan will be available and can be obtained via the commission's Web site at: <http://www.tceq.state.tx.us/implementation/water/tmdl/tmdlcalendar.html> or by calling (512) 239-6682.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the meeting should contact the commission at (512) 239-6682. Requests should be made as far in advance as possible.

TRD-200801870  
Robert Martinez  
Director, Environmental Law Division  
Texas Commission on Environmental Quality  
Filed: April 8, 2008



### Notice of Request for a Public Comment and Notice of a Public Meeting for One Total Maximum Daily Load

The Texas Commission on Environmental Quality (TCEQ or commission) has made available for public comment one draft total maximum daily load (TMDL) for dissolved oxygen in Upper Oyster Creek (Segment 1245) of the Brazos River Basin, located in Fort Bend County. The TCEQ will conduct a public meeting to receive comments on the draft TMDL. This announcement also constitutes notice that the TMDL will become part of the State Water Quality Management Plan upon approval by the United States Environmental Protection Agency (EPA).

Texas is required to develop TMDLs for impaired water bodies included in the State of Texas Clean Water Act, §303(d) list of impaired water bodies. A TMDL is a detailed water quality assessment that provides the scientific foundation to allocate pollutant loads in a certain body of water in order to restore and maintain designated uses.

The TCEQ will conduct a public meeting on the draft TMDL for dissolved oxygen in Upper Oyster Creek (Segment 1245). The purpose of the public meeting is to provide the public an opportunity to comment on the draft TMDL. The commission requests comment on each of the major components of the TMDL: problem definition, endpoint identification, source analysis, linkage between sources and receiving waters, seasonal variation, margin of safety, pollutant loading allocation, public participation, and implementation and reasonable assurances. After the public comment period, TCEQ staff may revise the TMDL, if appropriate. The final TMDL will then be considered by the commission for adoption. Upon adoption of the TMDL by the commission, the final TMDL and a response to all comments will be made available on the TCEQ Web site. The TMDL will then be submitted to EPA Region 6 for approval. Upon approval, the TMDL will be certified as an update to the State of Texas Water Quality Management Plan.

The public comment meeting will be held on **April 22, 2008, 7:00 p.m., at the Eldridge Park Center, 2511 Eldridge Road, Sugar Land, Texas 77478**. At this meeting individuals have the opportunity to present oral statements when called upon in order of registration. An agency staff member will give a brief presentation at the start of the meeting and will be available to answer questions before and after all public comments have been received.

Written comments should be submitted to Jason Leifester, Water Programs Division, Texas Commission on Environmental Quality, MC 203, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-1414. All comments must be received by **5:00 p.m., May 17, 2008**, and should reference **One Total Maximum Daily Load for Dissolved Oxygen in Upper Oyster Creek, for Segment Number 1245**. For further information regarding the draft TMDL, please

contact Jason Leifester, Water Programs Division, at (512) 239-6457 or [jleifest@tceq.state.tx.us](mailto:jleifest@tceq.state.tx.us). Copies of the draft TMDL document will be available and can be obtained via the commission's Web site at: <http://www.tceq.state.tx.us/implementation/water/tmdl/tmdlcalendar.html> or by calling (512) 239-6682.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the meeting should contact the commission at (512) 239-6682. Requests should be made as far in advance as possible.

TRD-200801865

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: April 8, 2008



### Notice of Request for a Public Comment on One Total Maximum Daily Load

The Texas Commission on Environmental Quality (TCEQ or commission) has made available for public comment one draft total maximum daily load (TMDL) for bacteria in Peach Creek (Segment 1803C) of the Guadalupe River Basin, located in Gonzales, Fayette, and Bastrop Counties. The TCEQ will conduct a public meeting to receive comments on the draft TMDL. This announcement also constitutes notice that the TMDL will become part of the State Water Quality Management Plan upon approval by the United States Environmental Protection Agency (EPA).

Texas is required to develop TMDLs for impaired water bodies included in the State of Texas Clean Water Act, §303(d) list of impaired water bodies. A TMDL is a detailed water quality assessment that provides the scientific foundation to allocate pollutant loads in a certain body of water in order to restore and maintain designated uses.

The TCEQ will conduct a public meeting on the draft TMDL for bacteria in Peach Creek (Segment 1803C). The purpose of the public meeting is to provide the public an opportunity to comment on the draft TMDL. The commission requests comment on each of the major components of the TMDL: problem definition, endpoint identification, source analysis, seasonal variation, linkage between sources and receiving waters, margin of safety, pollutant loading allocation, public participation, and implementation and reasonable assurances. After the public comment period, TCEQ staff may revise the TMDL, if appropriate. The final TMDL will then be considered by the commission for adoption. Upon adoption of the TMDL by the commission, the final TMDL and a response to all comments will be made available on the TCEQ Web site. The TMDL will then be submitted to EPA Region 6 for approval. Upon approval, the TMDL will be certified as an update to the State of Texas Water Quality Management Plan.

Written comments should be submitted to Kerry Niemann, Water Programs Division, Texas Commission on Environmental Quality, MC 203, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-1414. All comments must be received by **5:00 p.m., May 17, 2008**, and should reference *One Total Maximum Daily Load for Bacteria in Peach Creek, for Segment Number 1803C*. For further information regarding the draft TMDL, please contact Kerry Niemann, Water Programs Division, at (512) 239-0483 or [kniemann@tceq.state.tx.us](mailto:kniemann@tceq.state.tx.us). Copies of the draft TMDL document will be available and can be obtained via the commission's Web site at: <http://www.tceq.state.tx.us/implementation/water/tmdl/tmdlcalendar.html> or by calling (512) 239-6682.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the meeting should con-

tact the commission at (512) 239-6682. Requests should be made as far in advance as possible.

TRD-200801864

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: April 8, 2008



### Notice of Water Quality Applications

The following notices were issued during the period of March 27, 2008 through April 3, 2008.

The following require the applicants to publish notice in a newspaper. Public comments, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087, **WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THE NOTICE.**

#### INFORMATION SECTION

AQUA DEVELOPMENT INC has applied for a renewal of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014114001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 600,000 gallons per day. The facility is located approximately 4.25 miles northwest of the intersection of SR-336 Loop and Interstate Highway 45; approximately 0.25 miles east of Lake Conroe in Montgomery County, Texas.

CRANE CO has applied for a renewal of TPDES Permit No. WQ0012456001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 5,000 gallons per day. The facility is located immediately west of Johnson Road and approximately 9.8 miles west of the City of Conroe central business district on the southside of Farm-to-Market Road 2854 in Montgomery County, Texas.

FORESTAR (USA) REAL ESTATE GROUP INC has applied to the Texas Commission on Environmental Quality (TCEQ) for a new permit, proposed TPDES Permit No. WQ0014815001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 600,000 gallons per day in the final phase. The draft permit referenced in the first Notice of Application and Preliminary Decision included an effluent limit of 4 mg/l Total Nitrogen. Subsequently, the Water Quality Standards Team provided a revised memo dated March 12, 2008, to supercede the previous recommendations to include a Total Nitrogen limit in the permit. The revised memo states that a Total Nitrogen limit is not required. The facility will be located on the southwest side of State Highway 185, approximately 5,500 feet northwest of its intersection with State Highway 238 in Calhoun County, Texas. The TCEQ Executive Director has reviewed this action for consistency with the Texas Coastal Management Program goals and policies in accordance with the regulations of the Coastal Coordination Council, and has determined that the action is consistent with the applicable CMP goals and policies.

PASADENA REFINING SYSTEM INC which operates the Pasadena Refinery, has applied for a renewal of TPDES Permit No. WQ0000574000, which authorizes the discharge of storm water on an intermittent and flow variable basis via Outfall 001; and storm water and hydrostatic test water on an intermittent and flow variable basis via Outfalls 002 and 003. The facility is located at 111 Red Bluff Road, immediately northeast of the intersection of Red Bluff Road and South Shaver Street, as well as immediately southeast of the

intersection of Red Bluff Road and State Highway 225, in the City of Pasadena, Harris County, Texas.

TEXAS PETROCHEMICALS LP which operates a facility that manufactures butadiene from crude streams used in the production of rubber, has applied for a new permit, proposed TPDES Permit No. WQ0004840000, to authorize the discharge of storm water on an intermittent and variable basis via Outfalls 005, 011, and 201. The facility is located at at the northwest corner of the intersection of FM 366 and Spur 136, Jefferson County, Texas.

If you need more information about these permit applications or the permitting process, please call the TCEQ Office of Public Assistance, toll free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at [www.tceq.state.tx.us](http://www.tceq.state.tx.us). Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-200801898  
LaDonna Castañuela  
Chief Clerk  
Texas Commission on Environmental Quality  
Filed: April 9, 2008

◆ ◆ ◆  
**Texas Ethics Commission**

**List of Late Filers**

Listed below are the names of filers from the Texas Ethics Commission who did not file reports, or failed to pay penalty fines for late reports in reference to the listed filing deadline. If you have any questions, you may contact Robbie Douglas at (512) 463-5800 or (800) 325-8506.

**Deadline: Lobby Activities Report due December 10, 2007**

Claudia Flores Rodas, 10060 Buffalo Speedway, Houston, Texas 77054-1302

**Deadline: Personal Financial Statement due February 11, 2008**

- Sally Baynton, 206 Box Oak, San Antonio, Texas 78230  
Robert Busha, 6912 Blackwood Dr., Dallas, Texas 75231  
Theresa Caballero, 300 E. Main St., Ste. 1136, El Paso, Texas 79901  
Richard J. Cole, 831 1/2 W. 5th, Freeport, Texas 77541  
Alex Cresswell, 3638 Ocee St., Houston, Texas 77063  
David M. Davenport, 19222 Sarah Ann Ct., Humble, Texas 77346  
Walter Dawes, 935 Byrne St. #14, Houston, Texas 77009  
Harold V. Dutton, Jr., 4001 Jewett St., Houston, Texas 77026  
Francisco Javier Estrada, 507 Reynolds St., Laredo, Texas 78040  
Guadalupe A. Gonzalez, 2111 Dorado Dr., Mission, Texas 78573  
John B. Gordon, 1007 Green Meadow, Round Rock, Texas 78664  
Aloysius Hoang, 9527 Almeda Bent Court, Houston, Texas 77075  
Kevin T. Howell, 4402 Prairie Ave., Amarillo, Texas 79109  
Bob Leonard, Jr., 2800 S. Hulan St., Ste. 210, Fort Worth, Texas 76109  
Abel C. Limas, 974 East Harrison, Brownsville, Texas 78520  
Jose Menendez, 518 Townsend House Dr., San Antonio, Texas 78251  
David Murff, 117 S. Commerce St., Centerville, Texas 75833  
Richard A. Olivo, 421-A Executive Center Blvd., El Paso, Texas 79902  
David C. Rankin, 3111 Skyline Dr., Nacogdoches, Texas 75965

Ronald E. Reynolds, 6565 W. Loop South, Ste. 115, Bellaire, Texas 77401

Felix Saldivar, Jr., 3160 Lee Trevino, Ste. 110A, El Paso, Texas 79936

James D. Schull, 1328 Trinity Dr., Benbrook, Texas 76126

Drew Shirley, 1819 Briarton Lane N., Round Rock, Texas 78665

Fausto Sosa, 101 W. Hillside, Ste. 11C, Laredo, Texas 78041

James N. Vickery, 1817 Private Road 1268, Hico, Texas 76457

Michael U. Villarreal, 626 Mission St., San Antonio, Texas 78210

**Deadline: 8-Day Pre-Election Report due February 25, 2008**

Thomas C. Merritt, Alamo PAC Republican Legislative Defenders, 1619 Clarendon, Longview, Texas 75601

James D. Schull, 8507 Hwy. 377 S., Ste. F, Benbrook, Texas 76126

**Deadline: Speaker Candidate Report due March 3, 2008**

Patrick B. Haggerty, P.O. Box 12337, El Paso, Texas 79913

TRD-200801894  
David Reisman  
Executive Director  
Texas Ethics Commission  
Filed: April 9, 2008

◆ ◆ ◆  
**General Land Office**

**Notice of Approval of Coastal Boundary Survey**

Pursuant to §33.136 of the Texas Natural Resources Code, notice is hereby given that Jerry Patterson, Commissioner of the General Land Office, approved a coastal boundary survey filed as Chambers County NRC §33.136 Sketch 6, Sheet 1 and Sheet 2, submitted by William E. Merten, Licensed State Land Surveyor, locating the following shoreline boundaries:

Sheet 1: MHW line along Cedar Bayou at Spur 55 (SH 99), being a portion of the west boundary of the John Steele Survey, A-227; coastal boundary located on 10-25-2007;

Sheet 2: MHW line along Cedar Bayou and Galveston Bay at Oak Point Road, being a portion of the west boundary of the John Ijams Survey, A-15; coastal boundary located on 11-20-2007.

The line depicted on the survey fixes the shoreline for purposes of locating a shoreline boundary, subject to movement landward of that line. This survey is intended to provide pre-project baseline information related to an erosion response activity on coastal public lands. An owner of uplands adjoining the project area is entitled to continue to exercise littoral rights possessed prior to the commencement of the erosion response activity, but may not claim any additional land as a result of accretion, reliction, or avulsion resulting from the erosion response activity.

For a copy of this survey or more information on this matter, contact Bill O'Hara, Director of the Survey Division, Texas General Land Office by phone at (512) 463-5212, email at [bill.ohara@glo.state.tx.us](mailto:bill.ohara@glo.state.tx.us), or fax at (512) 475-4619.

TRD-200801776  
Larry L. Laine  
Chief Clerk, Deputy Land Commissioner  
General Land Office  
Filed: April 7, 2008

◆ ◆ ◆

## Texas Health and Human Services Commission

### Public Notice

The Texas Health and Human Services Commission (HHSC) announces its intent to submit the state's application for a renewal of the State of Texas Access Reform PLUS (STAR+PLUS) program, a 1915(b) waiver program to the Texas State Plan for Medical Assistance under Title XIX of the Social Security Act. The current waiver is scheduled to expire August 31, 2008.

STAR+PLUS is designed for Texans who are elderly or who have a physical or mental disability and qualify for SSI benefits or for Medicaid due to low income to integrate delivery of acute and long-term care services through a managed care system. The program serves approximately 180,000 SSI and SSI-related aged and disabled Medicaid recipients in Atascosa, Bexar, Comal, Guadalupe, Kendall, Medina, and Wilson Counties (Bexar Service Area); Brazoria, Fort Bend, Galveston, Harris, Montgomery, and Waller counties (Harris/Harris Expansion Service Area); Aransas, Bee, Calhoun, Jim Wells, Kleberg, Nueces, Refugio, San Patricio, and Victoria counties (Nueces Service Area); and Bastrop, Burnet, Caldwell, Hays, Lee, Travis and Williamson counties (Travis Service Area).

Participants may choose from four Health Maintenance Organizations (HMOs). The HMO health-care provider networks offer a continuum of care with a wide range of options and increased flexibility to meet individual needs. Consumers who join one of the HMOs also have access to value-added services and flexible benefits. Value-added services are additional health care services that an HMO voluntarily elects to provide to its clients at no additional cost to the state.

The proposed waiver is estimated to result in total cost savings of approximately \$211 million, with approximately \$125 million cost savings in federal funds and \$86 million cost savings in state general revenue. First year savings are approximately \$83 million, with approximately \$49 million cost savings in federal funds and \$34 million in state general revenue. Second year savings are approximately \$128 million, with approximately \$76 million cost savings in federal funds and \$52 million in state general revenue.

HHSC is requesting that the waiver renewal be approved for an additional two year period beginning September 1, 2008.

To obtain copies of the proposed waiver, interested parties may contact Carmen Samilpa-Hernandez, Texas Health and Human Services Commission, P.O. Box 85200, Mail Code H-620, Austin, Texas 78708-5200, phone (512) 491-1128, fax (512) 491-1953, or by e-mail [carmen.samilpa-hernandez@hhsc.state.tx.us](mailto:carmen.samilpa-hernandez@hhsc.state.tx.us).

TRD-200801866

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Filed: April 8, 2008

◆ ◆ ◆

## Department of State Health Services

Licensing Actions for Radioactive Materials

The Department of State Health Services has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables. The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

NEW LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Dallas	Shared PET Imaging INC	L06124	Dallas	00	03/20/08
Throughout Tx	A L Helmcamp Inc	L06148	Buffalo	00	03/12/08

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Allen	Presbyterian Hospital of Allen	L05765	Allen	13	03/25/08
Austin	Columbia St Davids Healthcare System LP DBA South Austin Hospital	L03273	Austin	75	03/28/08
Austin	Austin Heart PA	L04623	Austin	54	03/13/08
Austin	Daughters of Charity Health Services of Austin DBA Seton Medical Center Austin	L02896	Austin	96	03/25/08
Austin	Austin Heart PA	L04623	Austin	55	03/18/08
Austin	Austin Diagnostic Clinic	L05646	Austin	09	03/11/08
Austin	ARA Imaging	L05862	Austin	28	03/13/08
Austin	Austin Radiological Association	L00545	Austin	140	03/19/08
Austin	Austin Radiological Association	L00545	Austin	139	03/12/08
Austin	Heart Hospital IV LP DBA Heart Hospital of Austin	L05215	Austin	28	03/20/08
Beaumont	Exxonmobil Oil Corp	L00603	Beaumont	85	03/27/08
Brownwood	Brownwood Specialty Group DBA BSG Imaging	L05878	Brownwood	05	03/24/08
Corpus Christi	Radiology & Imaging of South Texas LLP DBA Alameda Imaging Center	L05182	Corpus Christi	23	03/26/08
Corpus Christi	Citgo Refining and Chemicals Company LP	L00243	Corpus Christi	40	03/20/08
Corpus Christi	Narain D. Mangla MD PA	L05630	Corpus Christi	04	03/17/08
Dallas	Alliance Imaging Inc	L05336	Dallas	12	03/25/08
Dallas	Criterion Imaging LTD DBA Richardson Diagnostic/Quantum Diagnostic	L05468	Dallas	13	03/12/08
Dallas	Landmark Radiation Dallas LP	L6075	Dallas	05	03/26/08
Dallas	Cardinal Health	L02048	Dallas	127	03/19/08
Dallas	Petnet Solutions Inc	L05193	Dallas	35	03/19/08
Dallas	Methodist Hospitals of Dallas Radiology Services	L00659	Dallas	55	03/20/08
El Paso	Biotech Pharmacy Incorporated	L05335	El Paso	15	03/27/08
El Paso	Desert Imaging	L05626	El Paso	08	03/13/08
El Paso	Border Medical Specialists PA DBA Cancer Treatment Institute	L05973	El Paso	01	03/12/08
Flower Mound	Imaging Specialists Group LTD DBA Imaging Specialists	L05407	Flower Mound	12	03/28/08
Fort Worth	John Peter Smith Hospital	L02208	Fort Worth	64	03/17/08
Fort Worth	Kiewit Texas Construction LP	L04569	Fort Worth	21	03/18/08
Fort Worth	Harris Methodist Fort Worth	L01837	Fort Worth	112	03/25/08
Fort Worth	Tarrant County Cardiology	L04659	Fort Worth	18	03/21/08
Georgetown	St Davids Georgetown Hospital	L03152	Georgetown	39	03/17/08
Grapevine	COR Specialty Associates of North Texas PA	L05576	Grapevine	06	03/24/08
Gruver	Air Products LP	L03181	Gruver	13	03/17/08
Houston	Cardiology Associates	L05500	Houston	09	03/28/08
Houston	Houston Refining LP	L00187	Houston	62	03/28/08
Houston	River Oaks Imaging and Diagnostic LP DBA River Oaks Imaging and Diagnostic	L05455	Houston	14	03/28/08



AMENDMENTS TO EXISTING LICENSES ISSUED CONTINUED:

Location	Name	License #	City	Amend- ment #	Date of Action
Houston	River Oaks Imaging and Diagnostic LP DBA River Oaks Imaging and Diagnostic	L05493	Houston	13	03/28/08
Houston	River Oaks Imaging and Diagnostic LP DBA River Oaks Imaging and Diagnostic	L04342	Houston	56	03/28/08
Houston	Neurology Clinic	L05971	Houston	05	03/20/08
Houston	Northwest Diagnostic Clinic PA	L05814	Houston	05	03/19/08
Houston	Petnet Houston LLC DBA Petnet Houston LLC	L05542	Houston	18	03/28/08
Houston	Nuclear Imaging Services	L05775	Houston	40	03/21/08
Houston	Park Plaza Hospital	L01812	Houston	23	03/19/08
Houston	Heart Care Center of Northwest Houston	L05539	Houston	09	03/24/08
Houston	Texas Southern University	L03121	Houston	25	03/14/08
Houston	TH Healthcare LTD DBA Park Plaza Hospital	L02071	Houston	55	03/12/08
Houston	The Methodist Hospital	L00457	Houston	157	03/17/08
Killeen	Metroplex Health System DBA Metroplex Hospital	L03185	Killeen	30	03/21/08
La Porte	Dow Chemical Company USA Houston Operations	L00510	La Porte	69	03/17/08
Longview	Diagnostic Clinic of Longview PA	L05817	Longview	07	03/25/08
Lubbock	University Medical Center	L04719	Lubbock	98	03/25/08
McKinney	Cancer Center Associates DBA Rena Tarbet Cancer Center	L05952	McKinney	04	03/18/08
Mesquite	Baylor Medical Center of Garland DBA Baylor Diagnostic Imaging Center Mesquite	L04914	Mesquite	22	03/12/08
Midland	Permian Cardiology Associates	L05716	Midland	04	03/17/08
Mont Belvieu	ExxonMobil Chemical	L03119	Mont Belvieu	28	03/28/08
Nacogdoches	Nacogdoches Cardiac Center PA	L05982	Nacogdoches	02	03/19/08
New Braunfels	Christus Santa Rosa Health Care Corporation DBA Christus Santa Rosa Outpatient Imaging	L05995	New Braunfels	03	03/25/08
Odessa	Madhava Agusala MD PA	L05628	Odessa	04	03/17/08
Pasadena	Marathon Pipe Line LLC	L05303	Pasadena	09	03/24/08
Pasadena	Basell USA Inc	L01854	Pasadena	35	03/19/08
Pasadena	CHCA Bayshore LP DBA Bayshore Medical Center	L00153	Pasadena	83	03/27/08
Plainview	Methodist Hospital Plainview DBA Covenant Hospital Plainview	L02493	Plainview	28	03/14/08
Plano	Comprehensive Breast Care Center of Texas Inc DBA Solis Womens Health	L05601	Plano	08	03/21/08
Plano	Cardiovascular Consultants of North Texas DBA Cardiovascular Consultants Plano	L05690	Plano	06	03/17/08
San Angelo	Shannon Medical Center	L02174	San Angelo	57	03/14/08
San Antonio	The University of Texas Health Science Center at San Antonio	L01279	San Antonio	115	03/26/08
San Antonio	Christus Santa Rosa Health Care	L02237	San Antonio	100	03/24/08
San Antonio	VHS San Antonio Imaging Partners LP DBA Baptist M&S Imaging Centers	L04506	San Antonio	64	03/24/08
Seguin	American Biological Technologies Inc	L04265	Seguin	06	03/18/08
Stephenville	Harris Methodist Erath County	L03097	Stephenville	30	03/21/08
Throughout Tx	Brooks Well Servicing Inc	L06003	Alice	02	03/21/08
Throughout Tx	Fugro Consultants Inc	L03875	Austin	22	03/18/08
Throughout Tx	Gulf Coast Weld Spec	L05426	Beaumont	68	03/17/08
Throughout Tx	Gulf Coast Weld Spec	L05426	Beaumont	69	03/25/08
Throughout Tx	Phoenix Non Destructive Testing Co	L04454	Channelview	54	03/13/08
Throughout Tx	IRISNDT Inc	L04769	Deer Park	50	03/17/08
Throughout Tx	Integrity Testing & Inspection Inc	L06027	El Paso	04	03/20/08

AMENDMENTS TO EXISTING LICENSES ISSUED CONTINUED:

Location	Name	License #	City	Amendment #	Date of Action
Throughout Tx	CQC Testing and Engineering LLC	L05802	El Paso	06	03/25/08
Throughout Tx	H & H X-Ray Services Inc	L02516	Flint	70	03/26/07
Throughout Tx	Weatherford International Inc	L04286	Fort Worth	76	03/21/08
Throughout Tx	Recon Petrotechnologies Inc	L06026	Fort Worth	04	03/18/08
Throughout Tx	Geotech Engineering and Testing	L03923	Houston	18	03/27/08
Throughout Tx	H & G Inspection Company Inc DBA Statewide Maintenance Company	L02181	Houston	222	03/20/08
Throughout Tx	HTS Inc Consultants	L02757	Houston	17	03/14/08
Throughout Tx	Weldsonix Inc	L05718	Houston	35	03/18/08
Throughout Tx	Express Energy Services	L06111	Houston	01	03/19/08
Throughout Tx	Alpha Neutronics Inc	L05784	Houston	06	03/19/08
Throughout Tx	Integrated Production Services Inc	L06051	Iowa Park	03	03/19/08
Throughout Tx	Acuren Inspection Inc	L01774	La Porte	242	03/28/08
Throughout Tx	Granite Construction Co	L04923	Lewisville	14	03/27/08
Throughout Tx	Dialog Wireline Services LLC	L06104	Longview	01	03/19/08
Throughout Tx	K C Engineering	L06061	Marble Falls	01	03/13/08
Throughout Tx	Professional Service Industries	L03924	McKinney	24	03/14/08
Throughout Tx	L & G Engineering Laboratory LLC	L05647	Mercedes	07	03/13/08
Throughout Tx	Endeavor Energy Resources LP DBA Jones Wireline Services	L05085	Midland	07	03/20/08
Throughout Tx	Applied Physics and Measurements Inc	L06120	Missouri City	01	03/21/08
Throughout Tx	Apollo Perforators Inc	L03020	Odessa	20	03/19/08
Throughout Tx	Tracerco A Business Unit of Johnson Matthey Inc	L03096	Pasadena	65	03/19/08
Throughout Tx	Quantum Technical Services Inc	L03737	Pasadena	31	03/19/08
Throughout Tx	Arias Associates Inc	L04964	San Antonio	29	03/17/08
Throughout Tx	Arias Associates Inc	L04964	San Antonio	30	03/26/08
Throughout Tx	Zachry Industrial Inc San Antonio	L05230	San Antonio	16	03/25/08
Throughout Tx	Clough Harbour & Associates LLP	L05355	Sanger	22	03/13/08
Throughout Tx	Schlumberger Technology Corp	L01833	Sugar Land	147	03/24/08
Webster	River Oaks Imaging and Diagnostic LP DBA River Oaks Imaging and Diagnostic	L05475	Webster	12	03/28/08
Webster	Beckman Coulter Inc DBA Diagnostic Systems Laboratories Inc	L03084	Webster	36	03/21/08
Webster	Roger C Willette MD PA DBA Space Center Medical Clinic	L05466	Webster	07	03/19/08
Weslaco	Knapp Medical Center	L03290	Weslaco	43	03/24/08

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Bay City	Celenese LTD Bay City Plant	L00246	Bay City	41	03/13/08
Lancaster	Medical Center at Lancaster	L03342	Lancaster	30	03/20/08
Lufkin	Abitibi Consolidated Corp	L03870	Lufkin	19	03/24/08
Stafford Tx	Amar Diagnostics and Imaging LLC	L05934	Stafford	02	03/28/08
Throughout Tx	Knife River Corporation - South	L04095	Waco	21	03/26/08

In issuing new licenses, amending and renewing existing licenses, or approving license exemptions, the Department of State Health Services (department), Radiation Safety Licensing Branch, has determined that the applicant has complied with the applicable provisions of Title 25 Texas Administrative Code (TAC) Chapter 289 regarding radiation control. In granting termination of licenses, the department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC Chapter 289. In denying the application for a license, license renewal or license amendment, the department has determined that the applicant has not met the applicable requirements of 25 TAC Chapter 289.

This notice affords the opportunity for a hearing on written request of a person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. A person affected may request a hearing by writing Richard A. Ratliff, Radiation Program Officer, Department of State Health Services, 1100 West 49<sup>th</sup> Street, Austin, Texas 78756-3189. For information call (512) 834-6688.

TRD-200801895  
Lisa Hernandez  
General Counsel  
Department of State Health Services  
Filed: April 9, 2008

◆ ◆ ◆

## Texas Department of Insurance

### Third Party Administrator Applications

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application of SOUTHWEST BENEFIT ADMINISTRATORS, LLC., a foreign third party administrator. The home office is PHOENIX, ARIZONA.

Application of ONE SOURCE BENEFIT SOLUTIONS, INC., a domestic third party administrator. The home office is EULESS, TEXAS.

Any objections must be filed within 20 days after this notice is published in the *Texas Register*, addressed to the attention of David Moskowitz, MC 305-2E, 333 Guadalupe, Austin, Texas 78701.

TRD-200801901  
Gene C. Jarmon  
Chief Clerk and General Counsel  
Texas Department of Insurance  
Filed: April 9, 2008

◆ ◆ ◆

## Texas Department of Licensing and Regulation

### Public Notice - Updated Criminal Conviction Guidelines

The Texas Commission of Licensing and Regulation ("Commission") provides this public notice that, at their regularly scheduled meeting held March 25, 2008, the Commission adopted the Texas Department of Licensing and Regulation's ("Department") updated Criminal Conviction Guidelines pursuant to Texas Occupations Code, §53.025(a). These guidelines describe the process by which the Department determines whether a criminal conviction renders an applicant an unsuitable candidate for the license, or whether a conviction warrants revocation or suspension of a license previously granted. The guidelines present the general factors that are considered in all cases and the reasons why particular crimes are considered to relate to each type of license issued by the Department.

Acts of the 80th Texas Legislature, House Bill 3064, created the "Discount Health Care Programs Act" by adding a new Chapter 76 to Subtitle C, Title 2 of the Texas Health and Safety Code. House Bill 3064 became effective September 1, 2007, and provides for the registration of discount health care card program operators with each of their programs and for the regulation of these programs' operations. The Discount Health Care Programs Act authorizes the Texas Department of Licensing and Regulation to create a new regulatory structure for discount health care card programs.

Also, Acts of the 80th Texas Legislature, House Bill 2094, created the "Texas Towing Act" by adding a new Chapter 2308 to the Texas Occupations Code. The Texas Towing Act gives the authority to regulate towing companies, tow truck drivers, and tow trucks to the Texas Department of Licensing and Regulation. It also transferred the regulatory authority under Texas Occupations Code, Chapter 2303, Vehicle Storage Facilities, from the Texas Department of Transportation to the Texas Department of Licensing and Regulation.

The updated Criminal Conviction Guidelines include the Discount Health Care Card Program, Tow Truck Operators and Permit Holders, and Vehicle Storage Facility Owners and Employees and will become a part of the overall guidelines that are already in place for other Department programs. The Department presented the guidelines applicable to towing and vehicle storage to the Towing and Storage Advisory Board at their meeting of March 14, 2008, and received recommendation of approval.

A copy of the updated Criminal Conviction Guidelines is posted on the Department's website and may be downloaded at [www.license.state.tx.us](http://www.license.state.tx.us). You may also contact the Enforcement Division at (512) 463-2906 or by email at [enforcement@license.state.tx.us](mailto:enforcement@license.state.tx.us) to obtain a copy of the updated guidelines.

TRD-200801880  
William H. Kuntz, Jr.  
Executive Director  
Texas Department of Licensing and Regulation  
Filed: April 8, 2008

◆ ◆ ◆

## Texas Lottery Commission

### Instant Game Number 1005 "Bonus Break the Bank"

#### 1.0 Name and Style of Game.

A. The name of Instant Game No. 1005 is "BONUS BREAK THE BANK". The play style is "key number match with auto win".

#### 1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1005 shall be \$5.00 per ticket.

#### 1.2 Definitions in Instant Game No. 1005.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, MONEY STACK SYMBOL, \$5.00, \$10.00, \$15.00, \$20.00, \$25.00, \$50.00, \$100, \$500, \$1,000, \$7,500 and \$75,000.

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. 1005 - 1.2D

<b>PLAY SYMBOL</b>	<b>CAPTION</b>
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
<b>MONEYSTACK SYMBOL</b>	<b>WIN\$</b>
\$5.00	FIVE\$
\$10.00	TEN\$
\$15.00	FIFTN
\$20.00	TWENTY
\$25.00	TWY FIV

\$50.00	FIFTY
\$100	ONE HUND
\$500	FIV HUND
\$1,000	ONE THOU
\$7,500	75 HUND
\$75,000	75 THOU

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$5.00, \$10.00, \$15.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$50.00, \$100 or \$500.

H. High-Tier Prize - A prize of \$1,000, \$7,500 or \$75,000.

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 (1005), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 75 within each pack. The format will be: 1005-0000001-001.

K. Pack - A pack of "BONUS BREAK THE BANK" Instant Game tickets contains 75 tickets, packed in plastic shrink-wrapping and fan-folded in pages of one (1). The packs will alternate. One will show the front of ticket 001 and back of 075 while the other fold will show the back of ticket 001 and front of 075.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "BONUS BREAK THE BANK" Instant Game No. 1005 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule, §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "BONUS BREAK THE BANK" Instant Game is determined once the latex on the ticket is scratched off to expose 38 (thirty-eight) Play Symbols. If a player matches any of YOUR NUMBERS play symbols to any LUCKY NUMBERS play symbol within the same game, the player wins prize shown for that number. If a player reveals a "MONEY STACK" play symbol, the player wins the prize shown instantly. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 38 (thirty-eight) 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 38 (thirty-eight) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;
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 38 (thirty-eight) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
17. Each of the 38 (thirty-eight) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

#### 2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets in a pack will not have identical play data, spot for spot.

B. No duplicate non-winning YOUR NUMBERS play symbols on a ticket.

C. No duplicate LUCKY NUMBERS play symbols on a ticket.

D. No more than four matching non-winning prize symbols on a ticket.

E. A non-winning prize symbol will never be the same as a winning prize symbol.

F. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS play symbol (i.e. 5 and \$5).

G. The MONEY STACK (auto win) play symbol will never appear more than once in a game, but may appear once in both games on tickets that win 2 or more times.

H. No YOUR NUMBER play symbol in one game will match a LUCKY NUMBER play symbol in the other game.

#### 2.3 Procedure for Claiming Prizes.

A. To claim a "BONUS BREAK THE BANK" Instant Game prize of \$5.00, \$10.00, \$15.00, \$20.00, \$50.00, \$100 or \$500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required to pay a \$50.00, \$100 or \$500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "BONUS BREAK THE BANK" Instant Game prize of \$1,000, \$7,500 or \$75,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper

identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "BONUS BREAK THE BANK" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. 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 a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education 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 of less than \$600 from the "BONUS BREAK THE BANK" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "BONUS BREAK THE BANK" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any prize not

claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled

to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 15,000,000 tickets in the Instant Game No. 1005. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1005 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$5	1,400,000	10.71
\$10	1,600,000	9.38
\$15	550,000	27.27
\$20	150,000	100.00
\$50	195,000	76.92
\$100	37,500	400.00
\$500	2,000	7,500.00
\$1,000	375	40,000.00
\$7,500	40	375,000.00
\$75,000	21	714,285.71

\*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 3.81. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1005 without advance notice, at which point no further tickets in that game may be sold.

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. 1005, 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-200801858  
 Kimberly L. Kiplin  
 General Counsel  
 Texas Lottery Commission  
 Filed: April 7, 2008

◆ ◆ ◆  
**Texas Parks and Wildlife Department**

Notice of Proposed Real Estate Transaction and Opportunity for Comment

Land Acquisition - Walker County

Huntsville State Park

On May 22, 2008, the Texas Parks and Wildlife Commission (the Commission) will consider the acquisition of four acres adjacent to Huntsville State Park in Walker County. The meeting will start at 9:00 a.m. at 4200 Smith School Road, Austin, Texas. Before taking action, the Commission will take public comment regarding the proposed transaction. Public comment may also 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.state.tx.us or made in person at time of meeting.



TRD-200801885  
Ann Bright  
General Counsel  
Texas Parks and Wildlife Department  
Filed: April 8, 2008



Notice of Proposed Real Estate Transaction and Opportunity  
for Comment

Land Acquisition - Williamson County

Twin Lakes County Park On May 22, 2008, the Texas Parks and Wildlife Commission (the Commission) will consider the acceptance of a transfer of 6.18 acres adjacent to Twin Lakes County Park in Williamson County. Before taking action, the Commission will take public comment regarding the proposed transaction. Public comment may also 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.state.tx.us or made in person at time of meeting.

TRD-200801886  
Ann Bright  
General Counsel  
Texas Parks and Wildlife Department  
Filed: April 8, 2008



Notice of Proposed Real Estate Transaction and Opportunity  
for Comment

Conveyance of Easement - Orange County

Tony Houseman Wildlife Management Area

On May 22, 2008, the Texas Parks and Wildlife Commission (the Commission) will consider a recommendation to the General Land Office to convey a pipeline easement on the Tony Houseman Wildlife Management Area in Orange County to Denbury Green Pipeline - Texas LLC. Before taking action, the Commission will take public comment regarding the proposed transaction. Public comment may also be submitted to Ted Hollingsworth, Land Conservation, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744 or by email at ted.hollingsworth@tpwd.state.tx.us or made in person at time of meeting.

TRD-200801887  
Ann Bright  
General Counsel  
Texas Parks and Wildlife Department  
Filed: April 8, 2008



Notice of Proposed Real Estate Transaction and Opportunity  
for Comment

Land Acquisition - Brewster County

Big Bend Ranch State Park

On May 22, 2008, the Texas Parks and Wildlife Commission (the Commission) will consider the acquisition of a 20-acre inholding at Big Bend Ranch State Park in Brewster County. Before taking action, the Commission will take public comment regarding the proposed transaction. Public comment may also be submitted to Ted Hollingsworth, Land Conservation, Texas Parks and Wildlife

Department, 4200 Smith School Road, Austin, Texas 78744 or by email at ted.hollingsworth@tpwd.state.tx.us or made in person at time of meeting.

TRD-200801888  
Ann Bright  
General Counsel  
Texas Parks and Wildlife Department  
Filed: April 8, 2008



**Texas Department of Public Safety**

Request for Qualifications - 405-IT8-0472 - IT Optimization  
Assistance in the Development of an IT Strategy and  
Implementation Roadmap

PURPOSE

The Texas Department of Public Safety (TXDPS) is seeking to enter into a contract with a vendor to conduct IT Optimization Assistance in the Development of an IT Strategy and Implementation Roadmap. Given a need to understand the benefits of moving from a de-centralized to a more centralized organization, the leadership wants to develop a new IT strategy.

BACKGROUND

The IT strategy will need to use benchmarking and high level agency specific data to baseline the Department's current costs and opportunities. TXDPS has systems that require all elements of IT infrastructure such as Mainframe, Wintel and Unix servers, helpdesk, desktop, applications and network. Having all the areas of IT synchronized to an approved IT plan will be paramount to the long-term success of the organization.

Budget constraints have created employee retention and system maintenance challenges. A clear strategy and plan is key to the organization's success. This plan must include the optimization of all resources such as people, current assets and investment in future IT needs.

It is the vision of Information Management Service (IMS) to advance from a tactical delivery organization to one focused on the delivery of information technology solutions which enable the agency to meet its objectives and mission. This includes the alignment of the IMS organization with the agency major divisions. The new IMS organization must be flexible in its response to issues and structured with IT governance and policy which dictate best practices and efficient delivery of information technology.

In an effort to ensure continued success for the agency, TXDPS has initiated a project to acquire a comprehensive IT strategy, identifying areas where technology could increase the ability of the agency to do business. A road map for building an architectural foundation, along with potential organizational changes that would improve efficiency and process improvements, is also a focus of the project. Finally, specific remedies are requested in areas where possible underinvestment has put the organization behind relative to its peers or other best-in-class organizations. A recommendations roadmap is needed to prioritize actions for TXDPS.

REQUIREMENTS

TX DPS is seeking a vendor to conduct a detailed assessment of the current IT environment and develop an IT Strategy and implementation plan for TXDPS. The scope of this engagement would include:

1. Documented full disclosure of the current IT environment including:
  - \* Technical and operational environment

\* Human Resources, technology, governance, organization, and process

\* Risk associated with current and future technology architecture

2. Develop and deliver a comprehensive Technology Strategy and Plan document for TXDPS that is appropriate for the future IT environment. The Technology Strategy and Plan for TXDPS will be aligned with the needs of the business and includes:

\* The mission and role of IT within the agency, and key linkages between IT and the agency throughout Texas

\* Applications needed to support the needs of the business

\* IT infrastructure needed to support these applications

\* IT organization and governance most appropriate to support this strategy

3. Develop and deliver an implementation roadmap that outlines the key initiatives needed to move TXDPS IT organization from its current state to the desired state as defined by the IT strategy including:

\* The expected return on investments in technology being achieved

\* Service Level Agreement review and development

\* Organizational structure opportunity and threats

\* Staff skill and staffing levels

\* Where are there opportunities to increase the cost efficiency of IT?

\* Review and evaluate sourcing strategies and alternatives

#### PROCUREMENT PROCESS

##### Schedule

The anticipated schedule of events pertaining to this RFQ is as follows:

Posting of the RFQ on the Electronic State Business Daily (ESBD)--April 9, 2008

Texas Register Posting--April 18, 2008

Questions due--April 30, 2008

Official Responses to Questions posted--May 5, 2008

Responses due--May 12, 2008

Contract Execution--May 19, 2008, or as soon thereafter as practical

Inquiries and other Correspondence

Questions concerning this RFQ must be directed in writing only via e-mail to the appropriate TXDPS Point of Contact listed herein. Questions regarding the RFQ must clearly identify which section and paragraph of the RFQ is being referenced. Questions received after April 30, 2008 at 3:00 p.m. will not be answered. Verbal inquiries are not acceptable and will receive no response.

Responses to Inquiries and Addenda

Questions and answers from this RFQ will be posted on the Texas Marketplace, Electronic State Business Daily (ESBD) website at <http://esbd.cpa.state.tx.us/> as time permits, but no later than May 5, 2008 at 5:00 p.m. When contacting the ESBD, Respondents must search under RFQ # 405-IT8-0472.

TXDPS reserves the right in its sole discretion to amend this RFQ to clarify, revise, supplement or delete any provision or to add new provisions. In the event that a revision of the RFQ becomes necessary, addenda will be posted on the Texas Marketplace, Electronic State Business Daily (ESBD) website at <http://esbd.cpa.state.tx.us/>. It is the re-

sponsibility of Respondents to check this site frequently for amendments and/or addenda to the RFQ.

##### TXDPS Point of Contact

Any parties interested in obtaining a complete copy of this RFQ should go to the Electronic State Business Daily (ESBD) website at <http://esbd.cpa.state.tx.us/> and download it or contact the TXDPS Point of Contact listed herein. Any correspondence regarding procurement issues (including cost, responses, etc.) for this RFQ prior to the award of any contract shall be made to the TXDPS Point of Contact listed herein in writing only via e-mail. Specify "RFQ# 405-IT8-0472" in the subject.

TXDPS Point of Contact:

Alfred Ramos, CTPM, Purchaser IV

TEXAS DEPARTMENT OF PUBLIC SAFETY

Accounting & Budget Control - Purchasing

5805 North Lamar Blvd., MSC 0130

Austin, Texas 78752

Phone: (512) 424-2870

Fax: (512) 424-2546

E-mail: [alfred.ramos@txdps.state.tx.us](mailto:alfred.ramos@txdps.state.tx.us)

##### Evaluation Criteria and Scoring

TXDPS will comply with §2254.027 of the Texas Government Code regarding the selection of a consultant. Responses will be evaluated under the evaluation criteria outlined in the complete RFQ posted on the Electronic State Business Daily (ESBD) website at <http://esbd.cpa.state.tx.us/>. TXDPS reserves the right to accept or reject any or all proposals submitted. TXDPS is not obligated to execute a contract on the basis of this notice or the distribution of any RFQ. TXDPS shall not pay for any costs incurred by any entity in responding to this Notice or the RFQ.

TRD-200801879

Thomas A. Davis, Jr.

Director

Texas Department of Public Safety

Filed: April 8, 2008

## ◆ ◆ ◆ Public Utility Commission of Texas

### Announcement of Application for an Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on April 4, 2008, for an amendment to a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Friendship Cable of Texas, Inc. d/b/a Suddenlink Communications for an Amendment to a State-Issued Certificate of Franchise Authority, Project Number 35537 before the Public Utility Commission of Texas.

The requested amended CFA service area includes the City Limits of Baytown, Bogata, and Clarksville, 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 1-888-782-8477. Hearing- and speech-impaired individuals with text tele-

phone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 35537.

TRD-200801876  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: April 8, 2008



#### Announcement of Application for an Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on April 4, 2008, for an amendment to a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Comcast of Houston, LLC for An Amendment to a State-Issued Certificate of Franchise Authority, Project Number 35543 before the Public Utility Commission of Texas.

The requested amended CFA service area includes the City Limits of Baytown, 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 1-888-782-8477. Hearing- and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 35543.

TRD-200801878  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: April 8, 2008



#### Notice of Amended Application for Waiver from Requirements

Notice is given to the public of an amended application filed on March 21, 2008 with the Public Utility Commission of Texas (commission) for waiver from the requirements in P.U.C. Substantive Rule §26.420(f)(3)(B).

Docket Style and Number: Application of Hill Country Long Distance Telephone Cooperative, Inc., d/b/a Hill Country Long Distance for Waiver to Apply Safe-Harbor Percentage to Calculate Texas Universal Service Fund (TUSF) Assessment Pursuant to P.U.C. Substantive Rule §26.420(f)(3)(B). Docket Number 35421.

The Application: Hill Country Long Distance requests that the commission grant it a permanent waiver from the requirements contained in P.U.C. Substantive Rule §26.420(f)(3)(A) to allow Hill Country Long Distance to use the commission-ordered safe-harbor TUSF assessment methodology to calculate TUSF assessments. On March 21, 2008, Hill Country filed additional information to amend the application in response to Commission Staff's recommendation. The deadline to comment on this application is extended to May 2, 2008.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas by May 2, 2008, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing- and speech-impaired individuals with text telephone (TTY) may contact the com-

mission at (512) 936-7136 or use Relay Texas (toll-free) at 1-800-735-2989. All comments should reference Docket Number 35421.

TRD-200801862  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: April 7, 2008



#### Notice of Application for Amendment to Certificated Service Area Boundary

Notice is given to the public of an application filed on April 4, 2008, with the Public Utility Commission of Texas for an amendment to a certificated service area boundary.

Docket Style and Number: Application of Guadalupe Valley Telephone Cooperative, Inc. to Amend a Certificate of Convenience and Necessity for a Minor Boundary Amendment Between the Sabina Exchange and Verizon SW Boerne Exchange. Docket Number 35535.

The Application: The application is being filed to amend the boundary between Guadalupe Valley Telephone Cooperative, Inc.'s (GVTC) Sabina exchange and Verizon SW's Boerne exchange. The proposed boundary change is being made to encompass all of the Esparanza Subdivision into GVTC's Sabina exchange so that the entire subdivision will be served by GVTC. Verizon SW has provided a letter of concurrence endorsing this proposed change.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas by April 25, 2008, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 35535.

TRD-200801873  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: April 8, 2008



#### Notice of Application for Sale, Transfer, or Merger

Notice is given to the public of a joint application for sale, transfer, or merger filed with the Public Utility Commission of Texas on April 3, 2008, pursuant to the Public Utility Regulatory Act, TEXAS UTILITY CODE ANNOTATED §14.101 and §37.154 (Vernon 2007 & Supplement 2007) (PURA).

Docket Style and Number: Application of South Texas Electric Cooperative, Inc. and Medina Electric Cooperative, Inc. for Sale, Transfer, or Merger, Docket Number 35528.

The Application: This transaction involves transfer of ownership responsibilities from Medina Electric Cooperative, Inc. to South Texas Electric Cooperative, Inc. for all transmission line, switching station, and step down substation assets, including associated property rights, communications equipment, control buildings, and any other equipment installed for the operation and maintenance of transmission line and station equipment. This transaction includes the transfer of certificated facilities. No distribution service territories are affected by the transfer and no Medina Electric Cooperative, Inc. distribution line or "down-line" distribution equipment is being transferred.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call 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 at (512) 936-7136 or use Relay Texas (toll-free) at 1-800-735-2989. All correspondence should refer to Docket Number 35528.

TRD-200801859  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: April 7, 2008



#### Notice of Application for Service Area Exception Within Wilson County, Texas

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on April 3, 2008, for an amendment to certificated service area for a service area exception within Wilson County, Texas.

Docket Style and Number: Application of Guadalupe Valley Electric Cooperative, Inc. to Amend a Certificate of Convenience and Necessity for Electric Service Area Exception within Wilson County. Docket Number 35532.

The Application: Guadalupe Valley Electric Cooperative, Inc. (GVEC) filed an application for a service area boundary exception to allow GVEC to provide service to a specific customer located within the certificated service area of CPS Energy.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas no later than April 25, 2008, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 35532.

TRD-200801872  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: April 8, 2008



#### Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on April 2, 2008, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA).

Docket Title and Number: Application of USFon, Inc. for a Service Provider Certificate of Operating Authority, Docket Number 35522 before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone service, ADSL, ISDN, HDSL, SDSL, Optical Services, T1-Private Line, Fractional T1, other broadband services, and mobile services.

Applicant's requested SPCOA geographic area includes the area of Texas currently served by all Local Access and Transport Areas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than April 23, 2008. Hearing- and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 35522.

TRD-200801861  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: April 7, 2008



#### Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on April 3, 2008, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA).

Docket Title and Number: Application of iNetworks Group, Inc. for a Service Provider Certificate of Operating Authority, Docket Number 35529 before the Public Utility Commission of Texas.

Applicant intends to provide T1-Private Line and Dedicated Internet Access.

Applicant's requested SPCOA geographic area includes the entire State of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than April 23, 2008. Hearing- and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 35529.

TRD-200801874  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: April 8, 2008



#### Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on April 3, 2008, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA).

Docket Title and Number: Application of Dabney/Strawn, LLC d/b/a Cybertel for a Service Provider Certificate of Operating Authority, Docket Number 35530 before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone service, ADSL, SS-DSL, Optical Services, T1-Private Line, Switch 56 KBPS, Frame Relay, Fractional T1, long distance, and wireless services.

Applicant's requested SPCOA geographic area includes the entire State of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326,

Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than April 23, 2008. Hearing- and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 35530.

TRD-200801875  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: April 8, 2008

◆ ◆ ◆  
**Notice of Application for Service Provider Certificate of Operating Authority**

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on April 4, 2008, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA).

Docket Title and Number: Application of Voice Runner, Inc. for a Service Provider Certificate of Operating Authority, Docket Number 35541 before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone service, ADSL, ISDN, HDSL, SDSL, RADSL, VDSL, Optical Services, T1-Private Line, Switch 56 KBPS, Frame Relay, Fractional T1, long distance, wireless, and international calling.

Applicant's requested SPCOA geographic area includes the geographic area of the entire State of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than April 23, 2008. Hearing- and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 35541.

TRD-200801877  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: April 8, 2008

◆ ◆ ◆  
**Notice of Application for Waiver from Requirements**

Notice is given to the public of an application filed on February 26, 2008 and amended on March 25, 2008, with the Public Utility Commission of Texas for waiver from the requirements in P.U.C. Substantive Rule §26.420(f)(3)(B).

Docket Style and Number: Application of Eastex Telecom Investments, L.P. d/b/a Eastex Long Distance for Waiver to Apply Safe-Harbor Percentage to Calculate Texas Universal Service Fund (TUSF) Assessment Pursuant to P.U.C. Substantive Rule §26.420(f)(3)(B). Docket Number 35405.

The Application: Eastex is a new provider of long distance telephone service in Texas and is registered as an interexchange carrier with the commission. Eastex states that it has elected to use the safe-harbor percentage approved by the commission for its classification of service provided and will be submitting its compliance tariff in to reflect the safe-harbor methodology. Eastex requests that the commission grant it a permanent waiver from the requirements contained in P.U.C. Substan-

tive Rule §26.420(f)(3)(A) to allow Eastex to use the commission-ordered safe-harbor TUSF assessment methodology to calculate TUSF assessments.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas by April 30, 2008, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing- and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 35405.

TRD-200801860  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: April 7, 2008

◆ ◆ ◆  
**Notice of Filing for Approval of the Provision of Non-Emergency 311 Service**

Notice is given to the public of the filing, on March 24, 2008, with the Public Utility Commission of Texas (commission) of an application for Administrative Approval to Provide Non-Emergency 311 Service for City of Lubbock pursuant to P.U.C. Substantive Rule §26.127 and AT&T's Texas' existing General Exchange Tariff, Section 47.

Docket Style and Number: Application of Southwestern Bell Telephone Company d/b/a AT&T Texas (AT&T Texas) for Administrative Approval to Provide Non-Emergency 311 Service for City of Lubbock; Docket Number 35484.

The Application: As a certified telecommunications utility (CTU), AT&T Texas seeks approval on behalf of City of Lubbock to provide Non-Emergency 311 (NE311) service to its residents within the city limits of City of Lubbock, Texas and portions of surrounding communities in AT&T Texas' certificated area. NE311 is available to local government entities to provide to their residents an easy to-remember number to call for access to non-emergency services. By implementing NE311 service, communities can improve 911 response times for those callers with true emergencies. Each local government entity that elects to implement 311 will determine the types of non-emergency calls that will be handled by their 311 call center.

Persons who wish to comment on this administrative filing should notify the Public Utility Commission of Texas, by May 19, 2008. Requests for further information should be mailed to the Public Utility Commission of Texas, at P.O. Box 13326, Austin, Texas 78711-3326, or you may call the commission's Office of Customer Protection 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 at (512) 936-7136 or toll free 1-800-735-2989.

TRD-200801871  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: April 8, 2008

◆ ◆ ◆  
**Request for Proposals to Conduct Audits of Lifeline Providers Receiving Support from the Texas Universal Service Fund**

The Public Utility Commission of Texas (commission or PUCT) is issuing a Request for Proposals (RFP) for audit services. The vendor will perform audits of Telecommunication Service Providers receiving dis-

bursements from the Texas Universal Service Fund (TUSF). This RFP is being undertaken pursuant to the commission's statutory responsibility as provided for in the Public Utility Regulatory Act (PURA) §§14.001, 14.201, and 55.015.

To be considered, the proposals must arrive at the PUCT on or before the deadline stated on the RFP. This deadline is available on the PUCT website ([www.puc.state.tx.us](http://www.puc.state.tx.us)). The vendor must be prepared to begin providing services on or around July 21, 2008.

Entities that meet the definition of a historically underutilized business (HUB), as defined in Chapter 2161, Texas Government Code, §2161.001, are encouraged to submit a proposal.

**Project Description.** The selected vendor(s) will be responsible for determining whether a TSP receiving Lifeline disbursements from the TUSF is in compliance with laws and regulations. The purpose of the audits is to ensure that only eligible low-income customers and households identified by the PUCT's Low-Income Discount Administrator are receiving the Lifeline telephone discount and that the requested disbursement rate did not exceed the statutory maximum rate. The scope of the audits will include determining whether the TSP has adequate internal controls over its participation in the Lifeline Service program, determining if TSPs are following PUCT established procedures and guidelines, and determining whether there are areas where the operations of the TSP could be improved to provide the PUCT additional assurance that the Lifeline Service Program is operating in compliance with the Public Utility Regulatory Act and PUCT Substantive Rules.

**Selection Criteria.** The PUCT shall make the selection and award on the basis of the proposer's demonstrated knowledge, competence, and qualifications to provide the requested services as evidenced by the following:

- \* Proposer's description of its plan to provide the services;
- \* Proposer's understanding of the issues related to this engagement;
- \* Proposer's understanding of the scope of this engagement;
- \* Proposer's qualifications;
- \* Proposer's previous history, if any, working with the PUCT;
- \* Proposer's response to conflicts of interest, if any;
- \* Proposer's financial capability;
- \* Proposer's compensation;
- \* Proposer's references; and
- \* Proposer's HUB status and use of HUB subcontractors.

All other factors being equal, preference will be given to a proposer who is incorporated in Texas, whose principal place of business is in the state, or who has an established physical presence in the state.

**Requesting the Proposal.** A complete copy of the RFP may be obtained by written request to Cindy Wilson, Purchaser, Public Utility Commission of Texas, William B. Travis Building, 1701 North Congress Avenue, Austin, TX 78701, or by fax (512) 936-7058, or email at [purchasing@puc.state.tx.us](mailto:purchasing@puc.state.tx.us). You may also download the RFP from the PUCT website at <http://www.puc.state.tx.us/about/procurement/index.cfm> and from the Electronic Business Daily website at <http://esbd.cpa.state.tx.us>.

**Deadline for Receipt of Proposals.** Proposals must be received on or before the deadline stated on the RFP in the Public Utility Commission of Texas Central Records. Proposals received after the deadline will not be considered. Proposals may be received in Central Records between 9:00 a.m. and 5:00 p.m., Monday through Friday, except on holidays.

In determining the time and date of receipt, the commission will rely solely on the time/date stamp of Central Records.

TRD-200801897  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: April 9, 2008

## Stephen F. Austin State University

### Notice of Consultant Contract Amendment

In compliance with the provisions of Chapter 2254, Subchapter B, Texas Government Code, Stephen F. Austin State University furnishes this notice of amendment of the University's contract with consultant Carolyn Norton, 104 Oak Valley St., Lufkin, TX 75904. The original contract was in the sum of \$24,124.98 plus font software expenses, with a beginning date of October 1, 2007 and ending date of August 31, 2008. The contract will be amended to include graphic design and layout for an additional edition of the university magazine for an amount not to exceed \$20,000.

No documents, films, recording, or reports of intangible results will be required to be presented by the outside consultant.

For further information, please call Andy Kesling at (936) 468-2605.

TRD-200801760  
R. Yvette Clark  
General Counsel  
Stephen F. Austin State University  
Filed: April 4, 2008

## The Texas A&M University System

### Request for Qualifications

#### RFQ01 COMM-8-006 Communications Consultant

The Texas A&M University System is accepting proposals and intends to enter into an Agreement with a consultant to perform the duties of communications consultant including but not limited to providing direction for the development and implementation of a national communications campaign to proactively promote critical research and academic projects to the public and national media; and to provide general communications advice and consultation as requested.

The Request for Qualifications (RFQ) documentation may be obtained by contacting: Don Barwick, HUB and Procurement Manager, System Office of HUB and Procurement Programs, The Texas A&M University System, 200 Technology Way, Ste. 1267, College Station, Texas 77845 or e-mail at [dbarwick@tamu.edu](mailto:dbarwick@tamu.edu).

The Texas A&M University System Communications Office requires the services of an outside consultant with the experience, expertise, and contacts to proactively promote activities and accomplishments related to scientific and medical research and advances in technology, health-care, and training among the System's various constituents, including national media.

The A&M System will base its choice on demonstrated competence, knowledge, and qualifications and on the reasonableness of the proposed fee for the services; and if other considerations are equal give preference to a consultant whose principal place of business is in the state or who will manage the consulting contract wholly from an office in the state.

Proposals must be received on or before 2:00 p.m. CDT on May 5, 2008.

TRD-200801752  
Don Barwick  
HUB and Procurement Manager  
The Texas A&M University System  
Filed: April 4, 2008

◆ ◆ ◆

## Texas Department of Transportation

Aviation Division - Addendum 1 Request for Proposal for Aviation Architectural/Engineering Design-Build Services

In the April 11, 2008, issue of the *Texas Register* (33 TexReg 3076), the Texas Department of Transportation, Aviation Division, published a request for proposal for aviation architectural/engineering design-build services for Arlington Municipal Airport Terminal Building. The following is published for clarification.

**Addendum #1** to Texas Department of Transportation Aviation Division Request for Proposal for Aviation Services, Project Number Tx-DOT CSJ No. 08TBARLNG, New Airport Terminal at Arlington Municipal Airport:

1. The Request for Proposals is changed to a **Request for Qualifications** in accordance with Local Government Code, Chapter 271, §271.119.
2. The outcome of the **Request for Qualifications** will be the selection of a design-build team that will include both a constructor and an aviation professional architectural/engineering firm. The selection of the design-build team will be made based solely on the qualifications of the team.
3. The project is located at 5000 South Collins Street, Arlington, Texas 76018.
4. The budget for this project is \$4.57 million and the scope includes demolition of the existing terminal facility, the design and construction of a new terminal building, vehicular parking to support the facility, and realignment of the access road from the new terminal to South Collins Street.
5. The new terminal building must include, as a minimum, the following components:
  - a. Administrative office space for the Airport Manager, Assistant Airport Manager, and Clerk
  - b. File room
  - c. Employee break room
  - d. Operations office
  - e. Conference room for a minimum of 20 people
  - f. Lobby and reception area
  - g. Accessible bathroom facilities
  - h. Lease space for aviation businesses
  - i. Flight planning area
  - j. Vault for the runway lighting system
6. Information about the proposed aviation design professional(s) and the design schedule must be provided on Form AVN-550.
7. Information about the constructor and other information needed to evaluate the proposals are to be submitted in the bound supplement.

**The supplement is not to exceed 16 pages, exclusive of binders. (NOTE: This is increased from 10 pages.)**

8. The project will be executed in two phases. Phase 1 will consist of a contract for the development of a facility programming document and design documents. When the design documents are to a point where a guaranteed maximum price can be established for the construction, the contract will be amended to include the construction phase.

TRD-200801863  
Joanne Wright  
Deputy General Counsel  
Texas Department of Transportation  
Filed: April 7, 2008

◆ ◆ ◆

## Aviation Division - Requests for Proposals for Professional Services

The Texas Department of Transportation (TxDOT) intends to engage aviation professional services firm pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT will solicit and receive proposals for professional services for obstruction surveys for multiple airports, to the current standards listed in FAA AC 150/5300-13 Change 12, Appendix 16.

TxDOT CSJ No.: **08OBSURVY**

The Aviation Division of TxDOT intends to enter into two to three contracts with prime providers to perform professional obstruction surveying services. Work will be performed at various locations within the 254 counties of the state of Texas.

Interested firms shall prepare a proposal according to the following criteria:

The criteria and points will be based on the following:

1. No more than one typed page describing general qualifications of the company including years of operation, types of surveys successfully completed, evidence of timely completion of projects, certifications held, and other data pertinent to the company in general. **30 points**
2. No more than three typed pages detailing staff who will be utilized under this project and their qualifications and experience. **20 points**
3. No more than one typed page listing equipment owned or controlled (leased) by the company for use under this project. **10 points**
4. No more than three typed pages describing the process and method utilized to perform obstruction surveys as required to be performed under this project. **30 points**
5. List of at least five references, and list of 10 most recent completed obstruction surveys. TxDOT Aviation Division staff may not be used as references. **10 points**

There is no DBE goal.

### **Services to be Provided by the Consultant:**

The selected consultants shall prepare an Obstruction Survey for each runway consisting of the digital orthorectified imagery, Unified Data Delivery Format (UDDF) file acceptable to FAA and NGS, and a map of the area in AutoCAD 2004 or 2007 using TxDOT standards, which meet the standards in the Federal Aviation Administration's (FAA) No. 405 "Standards for Aeronautical Surveys," including regional revisions, and Advisory Circular (AC) 150/5300-13 "Airport Design", currently Change 12, Appendix 16. The UDDF shall be certified by a registered professional land surveyor. The consultant will also complete the forms "Airport Data Form" and "Airport Design Standards -

Instrument Approach Procedures" to accompany the UDDF file. All information required in the FAA checklist and application for new approaches shall be included in the UDDF and accompanying forms. The UDDF file and forms will be completed to a level that will allow the UDDF to be approved by FAA and NGS and the forms to be accepted by TxDOT.

The area map will be completed using the standardized layer structure, line types, and plot styles supplied by TxDOT. The completed draft AutoCAD 2004 or 2007 files shall be transmitted on a CD to TxDOT in final form upon acceptance of the UDDF by NGS and FAA. The data forms shall be submitted in Word and PDF formats, signed by the surveyor.

The survey map and UDDF will be completed in a period of 120 days for each airport location, not inclusive of review times by the FAA and TxDOT.

Five completed, unfolded copies of the proposal **must be received** by TxDOT Aviation Division at 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704 no later than May 12, 2008, 4:00 p.m. Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Amy Slaughter.

Consultant selection will be made by a committee composed of Aviation Division staff members. The final selection by the committee will generally be made following the completion of a review of proposals. The committee will review all proposals and rate and rank each. All firms will be notified and the top rated firms will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews of the top rated firms if the committee deems it necessary. In such case, selection will be made following interviews. The committee reserves the right to reject any and all proposals and to conduct new professional services selection procedures.

If there are any procedural questions, please contact Amy Slaughter, Grant Manager, or the designated Project Manager, Keith Snodgrass for technical questions at 1-800-68-PILOT (74568).

TRD-200801755

Joanne Wright

Deputy General Counsel

Texas Department of Transportation

Filed: April 4, 2008



## University of North Texas Health Science Center

### Notice of Request for Information (RFI) for Outside Legal Services Related to Intellectual Property Matters

The University of North Texas System (UNT System) requests information from law firms interested in representing its component institution the University of North Texas Health Science Center at Fort Worth (UNTHSC) in intellectual property matters. This RFI is issued to establish (for the time frame beginning September 1, 2008 to August 31, 2009) a referral list from which UNT System, by and through its Office of General Counsel, will select appropriate counsel for representation on specific intellectual property matters as the need arises.

Description: The UNT System comprises one health institution and two academic institutions located in three cities in Texas. Research activities and other educational pursuits at UNTHSC produce intellectual property that is carefully evaluated for protection and licensing to commercial entities. Subject to approval by the Office of the Attorney General (OAG) for the State of Texas, UNTHSC will engage outside counsel to prepare, file, prosecute, and maintain patent applications in

the United States and other countries; secure copyright protection for computer software; and to prepare, file and prosecute applications to register trademarks and service marks in the United States and other countries. UNTHSC also will engage outside counsel from time to time to pursue litigation against infringers of these intellectual property rights and to handle other related matters. The UNT System invites responses to this RFI from qualified firms for the provision of such legal services under the direction and supervision of UNT System's Office of General Counsel.

Responses; Qualifications: Responses to this RFI should include at least the following information: (1) a description of the firm's or attorney's qualifications for performing the legal services requested, including the firm's prior experience in intellectual property-related matters, and appropriate information regarding efforts made by the firm to encourage and develop the participation of minorities and women in the provision both of the firm's legal services generally and intellectual property matters in particular; (2) the names, experience, and scientific or technical expertise of the attorneys and patent agents who may be assigned to work on such matters; (3) the submission of fee information (either in the form of hourly rates for each attorney and patent agent who may be assigned to perform services in relation to UNTHSC's intellectual property matters, flat fees, or other fee arrangements directly related to the achievement of specific goals and cost controls) and billable expenses; (4) disclosures of conflicts of interest (identifying each and every matter in which the firm has, within the past calendar year, represented any entity or individual with an interest adverse to the UNT System, UNTHSC, or to the State of Texas, or any of its boards, agencies, commissions, universities, or elected or appointed officials); and (5) confirmation of willingness to comply with policies, directives and guidelines of the UNT System, UNTHSC and the OAG for the State of Texas.

The law firm(s) or attorney(s) will be selected based on demonstrated knowledge and experience, quality of staff assigned to perform services under the contract, compatibility with the goals and objectives of UNTHSC, and reasonableness of proposed fees. The successful firm(s) or attorney(s) will be required to sign the Texas OAG's Outside Counsel Agreement, and execution of a contract with UNTHSC is subject to approval by the Texas OAG. UNTHSC reserves the right to accept or reject any or all responses submitted. UNTHSC is not responsible for and will not reimburse any costs incurred in developing and submitting a response.

Format and Person to Contact: Two copies of the response are requested. The response should be typed, preferably double spaced, on 8 1/2 x 11 inch paper with all pages sequentially numbered, and either stapled or bound together. They should be sent by mail, facsimile, or electronic mail, or delivered in person, marked "Response to Request for Information," and addressed to Jon McGough, Associate General Counsel, Office of General Counsel, UNT System, c/o 3500 Camp Bowie Blvd., Fort Worth, Texas 76107-2699; or email [jm-gough@hsc.unt.edu](mailto:jm-gough@hsc.unt.edu); or fax to (817) 735-0433.

Deadline for Submission of Response: All responses must be received by the Office of General Counsel at the address set forth above no later than 5:00 p.m., June 6, 2008. Questions regarding this request may be directed to Mr. McGough at (817) 735-5028.

TRD-200801889

William S. LeMaistre, JD, MPH

Senior Associate General Counsel

University of North Texas Health Science Center

Filed: April 8, 2008





**Notice of Request for Information (RFI) - Immigration Matters**

The University of North Texas System (UNT System) requests information from law firms interested in representing its component institution the University of North Texas Health Science Center at Fort Worth (UNTHSC) in certain immigration matters. This RFI is issued for the purpose of establishing (for the time frame beginning September 1, 2008 to August 31, 2009) a referral list from which UNTHSC, by and through its Office of Vice Chancellor and General Counsel, will select appropriate counsel for representation on specific immigration matters as the need arises.

**Description.** The UNT System comprises one health institution and two academic institutions located in three cities in Texas. The UNTHSC comprises four schools: a medical school, a graduate school of biomedical sciences, a school of public health, and a school of health professions. UNTHSC institutions attract and employ faculty and staff from around the world in furtherance of their mission. There are circumstances when the hiring of foreign faculty and staff is impacted by U.S. immigration laws. Further, students from around the world attend UNTHSC. There are circumstances when the attendance of foreign students at UNTHSC is impacted by immigration laws. Subject to approval by the Texas Attorney General, UNTHSC will engage outside legal counsel to provide legal counsel and advice to the UNTHSC on immigration law matters pertaining to the hiring and employment of aliens and immigration law matters pertaining to foreign students. This legal counsel and advice may include, but not be limited to, the following: matters regarding petitioning for nonimmigrant visas; petitioning for employer sponsored permanent residency; representation before the Department of Labor including labor condition applications, labor certifications, PERM; complying with SEVIS requirements; and providing counsel on the impact of homeland security issues on immigration law. This legal counsel will include interaction with and representation before applicable U.S. governmental agencies including the Department of Homeland Security and the Department of Labor. This legal counsel will include interaction with the UNT System Office of General Counsel and UNTHSC Human Resource Office. The law firm should be admitted to practice before Texas United States District Courts.

The UNT System invites responses to this RFI from qualified firms for the provision of such legal services under the direction and supervision of UNT System Office of Vice Chancellor and General Counsel.

**Responses.** Responses to this RFI should include at least the following information: (1) a description of the firm's or attorney's qualifications

for performing the legal services, including the firm's prior experience in immigration law-related matters including experience handling such immigration issues specific to hiring foreign faculty, physicians and staff at a university, the names and experience of the attorneys who will be assigned to work on such matters, the availability of the lead attorney and others assigned to the project, and appropriate information regarding efforts made by the firm to encourage and develop the participation of minorities and women in the provision of legal services; (2) the submission of fee information (either in the form of hourly rates for each attorney who may be assigned to perform services in relation to UNTHSC's immigration law matters, comprehensive flat fees, or other fee arrangements directly related to the achievement of specific goals and cost controls) and billable expenses; (3) a comprehensive description of the procedures to be used by the firm to supervise the provision of legal services in a timely and cost-effective manner; (4) disclosures of conflicts of interest (identifying each and every matter in which the firm has, within the past calendar year, represented any entity or individual with an interest adverse to the UNTHSC or to the State of Texas, or any of its boards, agencies, commissions, universities, or elected or appointed officials); and (5) confirmation of willingness to comply with policies, directives and guidelines of the UNTHSC and the Attorney General of the State of Texas.

**Format and Person to Contact.** Responses should be sent by mail, facsimile, electronic mail, or delivered in person, marked "Response to Request for Information - Immigration Matters" and addressed to William S. LeMaistre, Office of General Counsel, The University of North Texas System, 3500 Camp Bowie Blvd., Fort Worth, Texas 76107-2699; (wlemaist@hsc.unt.edu; fax: (817) 735-0433; telephone (817) 735-2527 for questions). If responding by mail, two copies of the response are requested. The response should be typed, preferably double-spaced, on 8 1/2 x 11 inch paper with all pages sequentially numbered, and either stapled or bound together.

**Deadline for Submission of Response.** All responses must be received by the Office of Vice Chancellor General Counsel of the UNT System at the address set forth above not later than 5:00 p.m., June 6, 2008.

TRD-200801890  
William S. LeMaistre, JD, MPH  
Senior Associate General Counsel  
University of North Texas Health Science Center  
Filed: April 8, 2008



### How to Use the Texas Register

**Information Available:** The 14 sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

**Governor** - Appointments, executive orders, and proclamations.

**Attorney General** - summaries of requests for opinions, opinions, and open records decisions.

**Secretary of State** - opinions based on the election laws.

**Texas Ethics Commission** - summaries of requests for opinions and opinions.

**Emergency Rules**- sections adopted by state agencies on an emergency basis.

**Proposed Rules** - sections proposed for adoption.

**Withdrawn Rules** - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

**Adopted Rules** - sections adopted following public comment period.

**Texas Department of Insurance Exempt Filings** - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

**Texas Department of Banking** - opinions and exempt rules filed by the Texas Department of Banking.

**Tables and Graphics** - graphic material from the proposed, emergency and adopted sections.

**Transferred Rules**- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

**In Addition** - miscellaneous information required to be published by statute or provided as a public service.

**Review of Agency Rules** - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

**How to Cite:** Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 30 (2005) is cited as follows: 30 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 "30 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 30 TexReg 3."

**How to Research:** The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code*, section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online through the Internet. The address is: <http://www.sos.state.tx.us>. The *Register* is available in an .html

version as well as a .pdf (portable document format) version through the Internet. For website subscription information, call the Texas Register at (800) 226-7199.

### Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete *TAC* is available through the Secretary of State's website at <http://www.sos.state.tx.us/tac>. The following companies also provide complete copies of the *TAC*: Lexis-Nexis (1-800-356-6548), and West Publishing Company (1-800-328-9352).

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

**How to Cite:** Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; TAC stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

**How to update:** To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Table of TAC Titles Affected*. The table is published cumulatively in the blue-cover quarterly indexes to the *Texas Register* (January 21, April 15, July 8, and October 7, 2005). If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with one or more *Texas Register* page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

*Part I. Texas Department of Human Services*

40 TAC §3.704.....950, 1820

The *Table of TAC Titles Affected* is cumulative for each volume of the *Texas Register* (calendar year).