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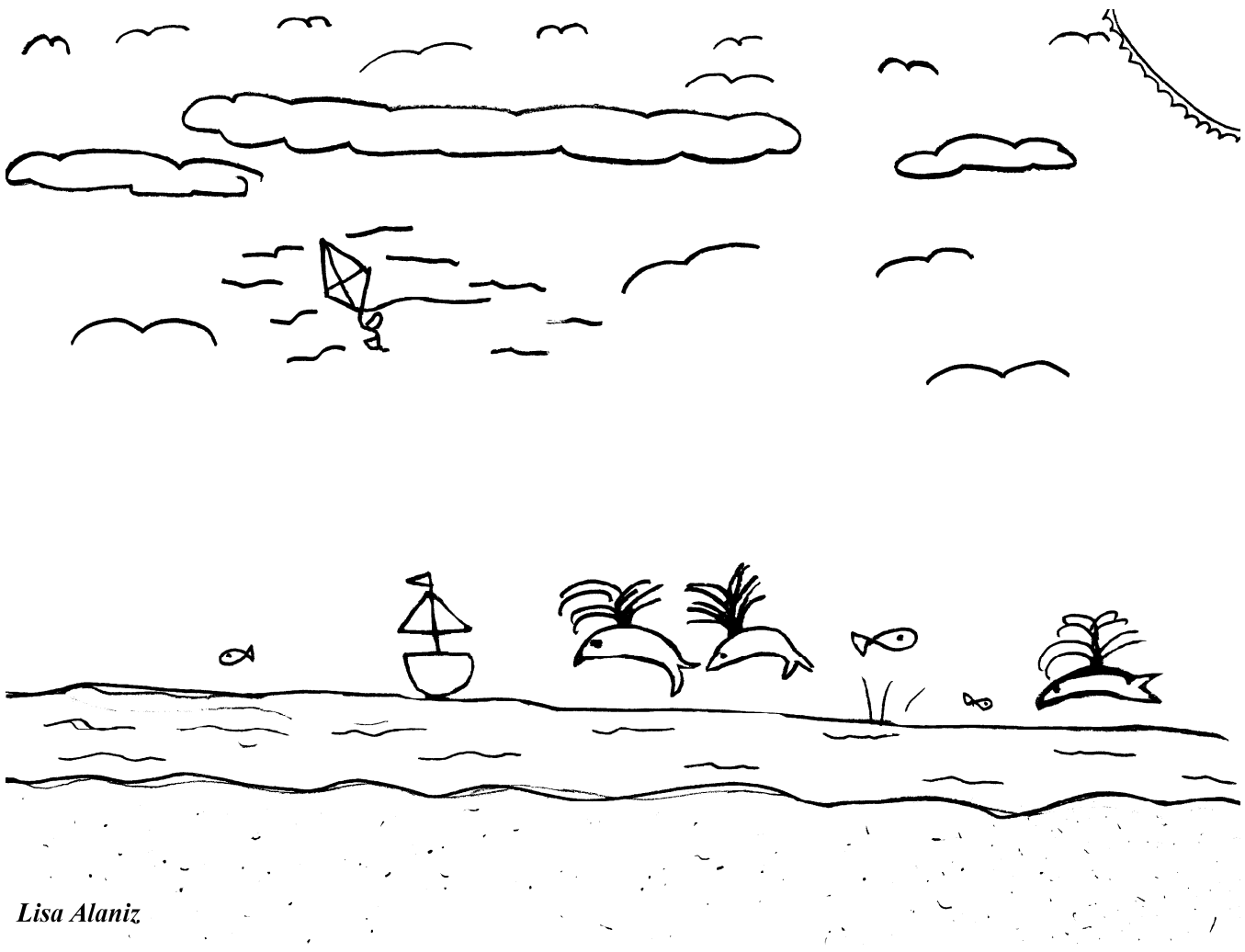
# TEXAS REGISTER

Volume 33 Number 32

August 8, 2008

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*Lisa Alaniz*

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

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# TEXAS REGISTER

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# THE GOVERNOR

As required by Government Code, §2002.011(4), the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

## Appointments

### Appointments for July 23, 2008

Appointed as Texas Secretary of State during the term of office of this Governor, Esperanza (Hope) Andrade of Boerne. Ms. Andrade will be replacing Mr. S. Philip Wilson of Austin who resigned.

### Appointments for July 24, 2008

Appointed to the Rio Grande Regional Water Authority Board of Directors, Paul Glen Heller of Mission (replacing Kathleen Reavis of Mission whose term expired). At the first meeting after the director is appointed, the director will draw a lot to determine his term.

Appointed to the Nueces River Authority Board of Directors for a term to expire February 1, 2013, Manuel Cano of Corpus Christi (replacing Eduardo Garcia of Corpus Christi whose term expired).

Rick Perry, Governor

TRD-200803788



## Proclamation 41-3152

TO ALL TO WHOM THESE PRESENTS SHALL COME:

I, RICK PERRY, Governor of Texas, do hereby certify that Tropical Storm Dolly poses a threat of imminent disaster along the Texas Coast beginning July 22, 2008. This threat exists in the following counties: Aransas, Bexar, Brooks, Calhoun, Cameron, Hidalgo, Jim Wells, Kenedy, Kleberg, Nueces, Refugio, San Patricio, Victoria and Willacy.

THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby declare a state of disaster in the counties listed above based on the existence of such threat, and direct that all necessary measures both public and private as authorized under Section 418.017 of the code be implemented to meet that threat.

As provided in section 418.016, all rules and regulations that may inhibit or prevent prompt response to this threat are suspended for the duration of the incident.

In accordance with the statutory requirements, copies of this proclamation shall be filed with the applicable authorities.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my Office in the City of Austin, Texas, this the 22nd day of July, 2008.

Rick Perry, Governor

Attested by: Coby Shorter, III, Secretary of State

TRD-200803789



## Proclamation 41-3153

TO ALL TO WHOM THESE PRESENTS SHALL COME:

I, RICK PERRY, Governor of Texas, do hereby amend my July 22, 2008, proclamation to include Starr County, certifying that Hurricane Dolly poses a threat of imminent disaster along the Texas Coast beginning July 22, 2008.

THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby declare a state of disaster in Starr County based on the existence of such threat, and direct that all necessary measures both public and private as authorized under Section 418.017 of the code be implemented to meet that threat.

As provided in Section 418.016, all rules and regulations that may inhibit or prevent prompt response to this threat are suspended for the duration of the incident.

In accordance with the statutory requirements, copies of this proclamation shall be filed with the applicable authorities.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my Office in the City of Austin, Texas, this the 23rd day of July, 2008.

Rick Perry, Governor

Attested by: Coby Shorter, III, Deputy Secretary of State

TRD-200803790



# 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-0727-GA**

### Requestor:

The Honorable Susan Combs  
Comptroller of Public Accounts  
Post Office Box 13528  
Austin, Texas 78711-3528

Re: Whether the Comptroller's report required by Texas Government Code section 313.032 must be limited to the items listed therein; and whether the Comptroller must redact certain information that has been marked as "confidential" (RQ-0727-GA)

### Briefs requested by August 25, 2008

**RQ-0728-GA**

### Requestor:

The Honorable Elizabeth Murray-Kolb  
Guadalupe County Attorney  
101 East Court Street, Suite 104  
Seguin, Texas 78155

Re: Proper method of indexing documents filed pursuant to section 12.0011(b) of the Property Code (RQ-0728-GA)

### Briefs requested by August 25, 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-200803955  
Stacey Napier  
Deputy Attorney General  
Office of the Attorney General  
Filed: July 30, 2008



## Opinions

**Opinion No. GA-0648**

The Honorable Geoffrey I. Barr  
Comal County Criminal District Attorney  
150 North Seguin Avenue, Suite 307

New Braunfels, Texas 78130

Re: Whether a municipality may adopt particular subdivision ordinances applicable to its extraterritorial jurisdiction and whether a county may do so in its unincorporated areas (RQ-0664-GA)

### S U M M A R Y

Chapter 212 of the Local Government Code authorizes municipalities to regulate subdivisions and plats within their boundaries and their extraterritorial jurisdiction. Chapter 232 authorizes counties to regulate subdivisions and plats within the unincorporated area of the county. Unless otherwise authorized by state law, counties and cities may not adopt subdivision or plat regulations applicable to a city's extraterritorial jurisdiction that regulate: (1) the use of any building or property for business, industrial, residential, or other purposes; (2) the bulk, height, or number of buildings constructed on a particular tract of land; (3) the size of a building that can be constructed on a particular tract of land, including without limitation any restriction on the ratio of building floor space to the land square footage; or (4) the number of residential units that can be built per acre of land.

Certain city regulations and county regulations addressed in this opinion appear to be facially inconsistent with the Local Government Code restrictions on lot size and residential unit density, but some of these regulations are claimed to actually protect water supply. However, because interpreting regulations requires the investigation and resolution of fact questions, their validity under Local Government Code chapters 212 and 232 cannot be determined as a matter of law in an attorney general opinion.

### Opinion No. GA-0649

The Honorable Will Hartnett  
Chair, Committee on Judiciary  
Texas House of Representatives  
Post Office Box 2910  
Austin, Texas 78768-2910

Re: Whether a rule of the Department of Family and Protective Services conflicts with section 42.041(a), Human Resources Code, which requires a license to operate a child-care facility (RQ-0670-GA)

### S U M M A R Y

Chapter 42 of the Human Resources Code requires persons who operate a child care facility to be licensed by the Texas Department of Family and Protective Services. Chapter 42 also exempts certain programs and facilities from the licensing requirement. The Department has express



authority under chapter 42 to make rules concerning the regulation and licensing of child care facilities. To the extent a Department rule exempting a short-duration child-care program creates an exemption not included in chapter 42, the rule conflicts with the statute, and is therefore invalid.

*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-200803956  
Stacey Napier  
Deputy Attorney General  
Office of the Attorney General  
Filed: July 30, 2008



# 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 10. COMMUNITY DEVELOPMENT

### PART 6. OFFICE OF RURAL COMMUNITY AFFAIRS

#### CHAPTER 257. EXECUTIVE COMMITTEE FOR OFFICE OF RURAL COMMUNITY AFFAIRS

The Office of Rural Community Affairs (Office) proposes the repeal of §257.10; and amendments to §§257.21 - 257.24, 257.30, 257.101, 257.103, 257.109, 257.201, 257.203, 257.301, 257.303, 257.313, 257.325, 257.503, 257.801, 257.809, 257.901, 257.902, 257.906, 257.951 and 257.952, concerning the Executive Committee for the Office.

The amendments are being proposed to change the name of the Office's "Executive Committee" to "Board" and to increase its size from 9 to 11. These changes were mandated by the 80th Legislature. Changes are also made to the Rural Physician Relief Advisory Committee.

Charles S. (Charlie) Stone, Executive Director, has determined that for each year of the first five years that the rules are in effect there will be no fiscal implication for the state and no fiscal implication for local government as a result of enforcing or administering the rules as proposed.

Mr. Stone has also determined that the rules will have no local employment impact.

Mr. Stone has also determined that for each year of the first five years the rules are in effect, the anticipated public benefit will be clarity in what is required by the law.

Mr. Stone has also determined there will be no direct adverse effect on small businesses or micro-businesses because the rules do not apply to single businesses.

Mr. Stone has further determined that there are no economic costs to persons required to comply with the rules.

Comments on the proposal may be submitted to Theresa Cruz, Director of State Office of Rural Health, Office of Rural Community Affairs, P.O. Box 12877, Austin, Texas 78711, telephone: (512) 936-6701. Comments will be accepted for 30 days following the date of publication of this proposal in the *Texas Register*.

#### SUBCHAPTER A. POLICIES AND PROCEDURES

##### 10 TAC §257.10

*(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the Office of Rural Community Affairs or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The repeal is proposed under §487.052 of the Government Code, which provides the Board with authority to adopt rules concerning the implementation of the Office's responsibilities.

No other code, article, or statute is affected by the proposed repeal.

§257.10. *Appeals Process to Award of Contract.*

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 July 28, 2008.

TRD-200803892

Charles S. (Charlie) Stone

Executive Director

Office of Rural Community Affairs

Earliest possible date of adoption: September 7, 2008

For further information, please call: (512) 936-6726



#### CHAPTER 257. BOARD FOR OFFICE OF RURAL COMMUNITY AFFAIRS SUBCHAPTER B. TEXAS OUTSTANDING RURAL SCHOLAR RECOGNITION PROGRAM 10 TAC §§257.21 - 257.24, 257.30

The amendments are proposed under §487.052 of the Government Code, which provides the Board with authority to adopt rules concerning the implementation of the Office's responsibilities.

No other code, article, or statute is affected by the proposed amendments.

§257.21. *Purpose, Administration and Delegation of Powers and Duties.*

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

(c) The Board ~~[executive committee]~~ delegates to the executive director of the Office the powers and duties to administer the program.

§257.22. *Definitions.*

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

(1) - (5) (No change.)

(6) Board [Executive committee]--The Board [Executive Committee] of the Office of Rural Community Affairs.

(7) - (9) (No change.)

(10) Fund--The Outstanding Rural Scholar Loan Fund administered by the Board [Executive Committee].

(11) - (16) (No change.)

§257.23. *Selection Committee.*

(a) Appointments to the selection committee by the Board [executive committee] shall be made with consideration to geographical areas of the state.

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

(e) Vacancies on the selection committee shall be filled by the Board [Executive Committee] in the same manner as indicated in subsections (a), (b) and (c) of this section.

(f) The selection committee advises the Board [Executive Committee] on the progress of the Outstanding Rural Scholar Recognition Program and shall:

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

§257.24. *Requirements for Recognition.*

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

(c) Criteria for Recognition.

(1) (No change.)

(2) The selection committee shall select and rank the students and inform the Board [executive committee] of its selections. The Board [Executive Committee] shall notify each sponsor of the results and provide the sponsor with a certificate of award signed by the Executive Director and the Board [Executive Committee] chairman for each student recognized as an outstanding rural scholar.

§257.30. *Dissemination of Program Information, Tracking and Reports.*

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

(e) After a student begins the obligated period of service, the Office shall track the student and report to the Board [Executive Committee] on the student's employment or practice status 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.

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Charles S. (Charlie) Stone

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For further information, please call: (512) 936-6726



## SUBCHAPTER D. TEXAS RURAL PHYSICIAN ASSISTANT LOAN REIMBURSEMENT PROGRAM

### 10 TAC §§257.101, 257.103, 257.109

The amendments are proposed under §487.052 of the Government Code, which provides the Board with authority to adopt rules concerning the implementation of the Office's responsibilities.

No other code, article, or statute is affected by the proposed amendments.

§257.101. *Purpose, Administration and Delegation of Powers and Duties.*

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

(c) The Board [Executive Committee] delegates to the Executive Director the necessary powers, duties and functions to administer the program. The Executive Director shall enter into an interagency contract with the Texas Medical Board to specify the mechanisms for the annual transfer of program funds from the Texas Medical Board.

§257.103. *Definitions.*

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

(1) (No change.)

(2) Board [Executive Committee]--The eleven [nine] member governing body of the Office appointed by the governor, with recommendations for three members from the lieutenant governor and recommendations for three members from the speaker.

(3) - (8) (No change.)

§257.109. *Application Process, Recipient Selection and Reimbursement of Educational Loans.*

(a) (No change.)

(b) Selection of recipients is contingent upon the availability of funds. Applicants practicing in areas with the highest degree of shortage and/or lowest Index of Medical Services (IMU) score are selected over other applicants. Selected recipients are recommended by the Office's Executive Director and approved by the Office's Board [Executive Committee]. Applicants are notified whether or not they are accepted for loan reimbursement after the annual application period is closed and recipients are selected.

(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.

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## SUBCHAPTER E. TEXAS HEALTH SERVICE CORPS PROGRAM

**10 TAC §257.201, §257.203**

The amendments are proposed under §487.052 of the Government Code, which provides the Board with authority to adopt rules concerning the implementation of the Office's responsibilities.

No other code, article, or statute is affected by the proposed amendments.

§257.201. *Purpose, Administration, and Delegation of Powers and Duties.*

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

(c) The Board [~~Executive Committee~~] of the Office delegates to the Executive Director the necessary powers, duties, and functions to administer the Program.

§257.203. *Definitions.*

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

(1) Board [~~Executive Committee~~]-The eleven [~~nine~~] member governing body of the Office appointed by the governor, with recommendations for three members from the lieutenant governor and recommendations for three members from the speaker.

(2) - (11) (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.

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**SUBCHAPTER F. MEDICALLY UNDERSERVED COMMUNITY-STATE MATCHING INCENTIVE PROGRAM**

**10 TAC §§257.301, 257.303, 257.313, 257.325**

The amendments are proposed under §487.052 of the Government Code, which provides the Board with authority to adopt rules concerning the implementation of the Office's responsibilities.

No other code, article, or statute is affected by the proposed amendments.

§257.301. *Introduction.*

(a) Purpose. This subchapter implements [~~These sections, listed in this Subchapter F of this chapter (relating to Executive Committee for the Office of Rural Community Affairs) implement~~] the provisions in the Texas Government Code, [~~Subchapter F,~~] §§487.201 - 487.204, by establishing program rules for the allocation of grant funds to qualified communities through the Medically Underserved Community-State Matching Incentive Program. State grants match funds committed by medically underserved communities to cover start-up costs for primary care physicians' practices.

(b) Funding. This subchapter describes [~~These sections, listed in Subchapter F of this chapter describe~~] the criteria and procedures to be used by the Office in determining the communities eligible for funding and the funding allocation method.

(c) Administration. The Office shall allocate funds to eligible communities based on the procedures specified in this subchapter [~~these sections, listed in Subchapter F of this chapter~~].

§257.303. *Definitions.*

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

(1) (No change.)

(2) Board [~~Executive Committee~~]-The [~~Executive Committee~~] Governing Board of the Office.

(3) (No change.)

(4) Medically underserved community--A community meeting any of the following criteria listed in subparagraphs (A) - (D) of this paragraph:

(A) - (C) (No change.)

(D) a community that meets criteria adopted by the Board [~~Executive Committee~~] by rule, considering relevant demographic, geographic, and environmental factors.

(5) - (8) (No change.)

§257.313. *Evaluation of Application.*

(a) The Board [~~Executive Committee~~] of the Office delegates to the executive director the necessary powers, duties and functions to administer this program.

(b) - (h) (No change.)

§257.325. *Breach of Contract.*

(a) Binding contract. A contract executed under this subchapter [~~these sections, listed in Subchapter F of this chapter (relating to Executive Committee for the Office)~~] between the Office and the supporting community is a binding contract.

(b) - (d) (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.

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**SUBCHAPTER H. RURAL TECHNOLOGY CENTER GRANT PROGRAM**

**10 TAC §257.503**

The amendment is proposed under §487.052 of the Government Code, which provides the Board with authority to adopt rules concerning the implementation of the Office's responsibilities.

No other code, article, or statute is affected by the proposed amendment.

§257.503. *Administration of the Program.*

(a) (No change.)

(b) The Board [~~Executive Committee~~] delegates to the Executive Director the necessary powers, duties, and functions to administer the Program.

(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.

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## SUBCHAPTER K. RURAL COMMUNITIES HEALTH CARE INVESTMENT PROGRAM

### 10 TAC §257.801, §257.809

The amendments are proposed under §487.052 of the Government Code, which provides the Board with authority to adopt rules concerning the implementation of the Office's responsibilities.

No other code, article, or statute is affected by the proposed amendments.

§257.801. *Definition of Terms.*

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

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

(3) Board--The eleven member governing body of the Office appointed by the governor, with recommendations for three members from the lieutenant governor and recommendations for three members from the speaker. [~~Executive Committee--the nine member governing body of the Office, appointed by the governor, lieutenant governor, and speaker.~~]

(4) - (8) (No change.)

§257.809. *Advisory Committee.*

(a) (No change.)

(b) The purpose of the panel is to advise the Board [~~executive committee~~].

(c) (No change.)

(d) The panel will report to the Board [~~Executive Committee~~] in writing 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.

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## SUBCHAPTER L. RURAL PHYSICIAN RELIEF PROGRAM

### 10 TAC §§257.901, 257.902, 257.906

The amendments are proposed under §487.052 of the Government Code, which provides the Board with authority to adopt rules concerning the implementation of the Office's responsibilities.

No other code, article, or statute is affected by the proposed amendments.

§257.901. *Purpose, Administration and Delegation of Powers and Duties.*

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

(c) The Board [~~Executive Committee~~] delegates to the executive director the necessary powers, duties and functions to administer the program.

§257.902. *Definitions.*

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

(1) (No change.)

(2) Board [~~Executive Committee~~]~~--The eleven~~ [~~nine~~] member governing body of the Office [~~of Rural Community Affairs~~] appointed by the governor, with recommendations for three members from the lieutenant governor and recommendations for three members from the speaker.

(3) - (7) (No change.)

§257.906. *Advisory Committee.*

(a) The Advisory Committee is appointed by the Board [~~Executive Committee~~] to assist in the office's duties. The Advisory Committee shall consist of:

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

(7) a representative from the Texas [~~State Board of~~] Medical Board. [~~Examiners; and~~]

(b) [~~(8)~~] A [~~a~~] hospital administrator in a rural county serves as a non-voting member of the community.

(c) [~~(b)~~] The purpose of the Advisory Committee is to assist the office in administering the program.

(d) [~~(e)~~] The Advisory Committee will report to the Board [~~Executive Committee~~] in writing 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.

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## SUBCHAPTER M. CRITICAL ACCESS HOSPITAL BOARD OF TRUSTEE CONTINUING EDUCATION PROGRAM

### 10 TAC §257.951, §257.952

The amendments are proposed under §487.052 of the Government Code, which provides the Board with authority to adopt rules concerning the implementation of the Office's responsibilities.

No other code, article, or statute is affected by the proposed amendments.

§257.951. *Purpose, Administration, and Delegation of Powers and Duties.*

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

(c) The Board [~~Executive Committee~~] delegates to the Executive Director the necessary powers, duties, and functions to administer the program.

§257.952. *Definitions.*

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

(1) (No change.)

(2) Board--The eleven member governing body of the Office appointed by the governor, with recommendations for three members from the lieutenant governor and recommendations for three members from the speaker. [~~Executive Committee--The nine member governing body of the Office of Rural Community Affairs appointed by the governor, lieutenant governor, and speaker.~~]

(3) - (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.

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## TITLE 19. EDUCATION

### PART 2. TEXAS EDUCATION AGENCY

#### CHAPTER 89. ADAPTATIONS FOR SPECIAL POPULATIONS

## SUBCHAPTER EE. COMMISSIONER'S RULES CONCERNING THE COMMUNITIES IN SCHOOLS PROGRAM

### 19 TAC §§89.1501 - 89.1503, 89.1505, 89.1507, 89.1509, 89.1511

The Texas Education Agency (TEA) proposes amendments to §89.1501 and §89.1502 and new §§89.1503, 89.1505, 89.1507, 89.1509, and 89.1511, concerning the Communities In Schools (CIS) program. Sections 89.1501 and 89.1502 establish definitions and the funding formula for local CIS programs. The proposed amendments and new sections would implement the new requirements of the Texas Education Code (TEC), §33.154, as amended by House Bill (HB) 1609, 80th Texas Legislature, 2007, which requires the commissioner of education by rule to develop and implement policies concerning the program.

The CIS program is a statewide youth dropout prevention program that uses a case management model to serve students who are at risk of dropping out of school or engaging in delinquent conduct, including students who are in family conflict or emotional crisis. Through 19 TAC Chapter 89, Subchapter EE, adopted to be effective July 4, 2005, the commissioner exercised rulemaking authority to establish definitions and an equitable funding formula for local CIS programs, in accordance with the TEC, §33.156.

HB 1609, 80th Texas Legislature, 2007, amended the TEC, §33.154, requiring the commissioner to adopt rules to implement policies concerning the responsibility of the TEA in encouraging local businesses to participate in local CIS programs, the responsibility of the TEA in obtaining information from participating school districts, and the use of federal or state funds available to the TEA for programs of this nature.

The commissioner is also required to establish state performance goals, objectives, and measures for the program that include improvement in student behavior and academic achievement as well as promotion, graduation, retention, and dropout rates. TEC, §33.154, gives the commissioner authority to withhold funding from programs that consistently fail to achieve the performance goals, objectives, and measures.

In addition to rule action required by HB 1609, staff in the TEA division responsible for state funding have identified changes needed to the current process for the allocation of financial resources. The recommended changes are included in the proposed revisions.

The proposed revisions to 19 TAC Chapter 89, Subchapter EE, would amend the two existing rules and add new rules as follows.

Section 89.1501, Definitions, would be amended to add definitions for case-managed student, eligible student, and local CIS program. Definitions for fully-developed program and funding formula would be deleted. Other existing definitions would be modified for clarification.

Section 89.1502, Funding, would be amended to specify that the current funding formula would continue to apply to the CIS program prior to school year 2009-2010. This amendment would clarify that the current funding process will be maintained for the upcoming 2008-2009 school year. The section title would also be updated accordingly.

Section 89.1503, Funding Beginning with School Year 2009-2010, would be added to establish funding allocations to

local CIS programs that include the distribution of financial resources in line with weighted average daily attendance (WADA).

Proposed new sections would also be added to address provisions for grant application eligibility (§89.1505), determination of the number of case-managed students each local CIS program will serve (§89.1507), and provisions for encouraging local business participation and obtaining information from participating school districts (§89.1509). A new section would also be added to establish performance standard expectations and revocation of grant award (§89.1511).

Proposed new 19 TAC §89.1509 would require school districts with CIS programs to provide information and data for students whose parents have authorized education records to be shared with CIS programs and the TEA. In addition, proposed new 19 TAC §89.1511 would add specific requirements for a program that fails to meet performance standards in accordance with the grant application. Such a program would be required to submit letter of explanation and an improvement plan.

Barbara Knaggs, associate commissioner for state initiatives, has determined that for the first five-year period the amendments and new sections are in effect there will be no additional fiscal implications for state government as a result of enforcing or administering the amendments and new sections. While the overall statewide allocation will not change, there will be a minor fiscal impact for local government. It is estimated that some school districts will see an increase or decrease of less than 10% of funds currently allocated. Funding is established by a rider in the General Appropriations Act. The formulas for allocating funds for the CIS program are being revised to more closely align with statutory language.

Ms. Knaggs 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 rule actions will be specific performance goals that will support student improvement in academics, attendance, behavior, and graduation to prepare students for post-secondary life in an effort to reduce the dropout rate. In addition, the proposed rule actions would address accountability in program performance and support actions that may be necessary to withhold funding from non-performing programs, which ensures the effective use of state funds. There is no anticipated economic cost to persons who are required to comply with the proposed amendments and new sections.

There is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

The public comment period on the proposal begins August 8, 2008, and ends September 8, 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. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of the proposal has been published in the *Texas Register* on August 8, 2008.

The amendments and new sections are proposed under the Texas Education Code, §33.154, which authorizes the commissioner to adopt rules to implement policies concerning the

Communities In Schools program, and §33.156, which authorizes the agency to develop and implement an equitable formula for the funding of local Communities In Schools programs.

The proposed amendments and new sections implement the Texas Education Code, §§33.151, 33.152, and 33.154-33.159.

*§89.1501. Definitions.*

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

(1) Case-managed student--A student who is identified as at-risk according to Communities In Schools (CIS) eligibility requirements as identified in the grant application and who is assessed to be in need of CIS services to address academic, attendance, behavior, retention, graduation, or social service needs according to the requirements in the grant application.

(2) ~~[(1)]~~ Communities In Schools [(CIS)] program--The statewide exemplary youth dropout prevention program authorized under the Texas Education Code (TEC), Chapter 33, Subchapter E (Communities In Schools Program) ~~[- that provides effective assistance to Texas public school students who are at risk of dropping out of school or engaging in delinquent conduct, including students who are in family conflict or emotional crisis].~~

~~[(2)]~~ Developing program--A local CIS program that has received funding for up to four fiscal years, including the fiscal year in which funding was provided to develop a business plan.]

(3) Developing program--An entity funded through the replication process for the purposes of establishing and implementing a local CIS program within a four-year period following the requirements in the grant application.

(4) Eligible student--A student who exhibits delinquent conduct as defined by the Texas Family Code, §51.03, or a student at risk of dropping out of school as defined under the TEC, §33.151(4)(A)-(C).

(5) ~~[(3)]~~ Expansion--The process of a ~~[fully-developed]~~ local CIS program establishing CIS services on a new school campus or in a new school district or expanding services to serve additional students on existing campuses, resulting in an increase of students served.

(6) ~~[(4)]~~ Fiscal year--A one-year period beginning on September 1 of a calendar year and continuing through August 31 of the next calendar year.

~~[(5)]~~ Fully-developed program--A local CIS program that has been in existence for more than four fiscal years or has opted to be treated as a fully-developed program for funding purposes.]

~~[(6)]~~ Funding formula--A formula used to determine the funding allocation to each program based on funds appropriated by the General Appropriations Act.]

(7) Local CIS program--A Communities In Schools 501(c)(3) non-profit organization established in accordance with the program model and state guidelines authorized by state law to operate for the purposes stated in paragraph (2) of this section and meeting all the requirements in the grant application for establishing a local CIS program.

(8) ~~[(7)]~~ Replication--The process of establishing a new local CIS program in an area of the state designated by the Texas Education Agency to be an area of critical need for a local CIS program.

(9) ~~[(8)]~~ Special initiative--The implementation of a specialized activity to address dropout prevention within the context of the CIS model.

§89.1502. *Funding Prior to School Year 2009-2010.*

(a) Equitable funding formula. As authorized by the Texas Education Code (TEC), §33.156, the Texas Education Agency (TEA) shall establish the funding of local Communities In Schools (CIS) programs in accordance with this section. The provisions of this section apply to funding of local CIS programs prior to school year 2009-2010. Local CIS program funding beginning with school year 2009-2010 shall be in accordance with provisions established in §89.1503 of this title (relating to Funding Beginning with School Year 2009-2010).

(b) Developing programs. Developing programs shall receive a specified funding amount each year for no more than four years, including the first-year start up funding, after which time they shall become fully-developed programs and their funding shall be determined by the funding formula established under subsection (c) of this section. Prior to the expiration of four years, a developing program may request to be considered as a fully-developed program in which the funding would then be determined under subsection (c)(1)-(3) of this section if approved by the TEA.

(c) Fully-developed programs. Fully-developed programs shall receive a specified funding amount each year to be allocated as set forth in paragraphs (1)-(3) of this subsection. The TEA may choose, for the purpose of minimizing disruption in services due to changes in funding allocation, to limit the annual amount of changes in funding allocation from one biennium to the next. This may include limiting the increase or decrease from the prior year funding to an amount no less than 5.0% and no more than 25% of the change produced by this subsection and/or establishing minimum and maximum funding amounts. The TEA shall allocate an amount of funds available for distribution based on the following criteria:

(1) an equal base amount of funds, as determined by the TEA;

(2) no less than 50% nor more than 80% of the specified funding amount based on a ratio of the relative proportion of students contracted by the program relative to the total number of students contracted by all fully-developed CIS programs; and

(3) no less than 5.0% nor more than 15% of the specified funding amount on the basis of the weighted financial resources of the individual communities and school districts, if less than the state average.

(A) Weighted financial resources will be determined using the following data elements for the first year of the preceding biennium:

(i) taxable property values determined in accordance with Government Code, Chapter 403, Subchapter M, for school districts listed in each program's contract;

(ii) students in membership, as reported by the school districts and verified by the TEA, in school districts listed in each program's contract; and

(iii) the number of economically disadvantaged students, as reported by the school districts and verified by the TEA, in school districts listed in each program's contract.

(B) Weighted financial resources of individual communities and school districts will be determined by:

(i) calculating the ratio of the number of economically disadvantaged students in each district divided by the total number of economically disadvantaged students in the program;

(ii) dividing the ratio of taxable property value of the district by the number of students in membership at the district;

(iii) multiplying the ratios calculated in clauses (i) and (ii) of this subparagraph for each district; and

(iv) summing the results of clause (iii) of this subparagraph for each program.

(d) CIS program replication and expansion. For program growth, the TEA may use any one or a combination of the following methods [guidelines].

(1) Replication. The TEA may determine and retain a base funding amount for replication of the CIS program in areas of the state that are not served by a participating local CIS program. Replication funds shall be made available through a competitive request for application [proposal] process. First-year replication funding may be a one-time planning grant for the development of a business plan. Any funds not used for replication may be used for expansion.

(2) Expansion. The TEA may determine and retain a funding amount for expansion of the CIS program using any one or a combination of the funding methods specified in subparagraphs (A)-(D) of this paragraph. Funds allocated for expansion will become part of the funding allocation.

(A) ~~[(2)]~~ Proportion of at-risk students served. An amount determined by the TEA may be distributed to each individual CIS program based on the relative proportion of the number of at-risk students, as defined by the TEC, §29.081, attending school districts served or new districts contracted to be served by the respective program area compared to the number of at-risk students in all districts served by CIS.

(B) ~~[(3)]~~ Proportion of total students contracted. An amount determined by the TEA may be distributed to each individual CIS program based on a ratio of the relative proportion of students contracted by the respective program relative to the total number of students contracted by all fully-developed CIS programs.

(C) ~~[(4)]~~ Program allocation. An amount determined by the TEA may be distributed to each individual CIS program based on the ratio of the respective individual program's total allocation relative to the total amount allocated to all fully-developed CIS programs.

(D) ~~[(5)]~~ Competitive process. Funds may be distributed through a competitive request for application [proposal] process.

(e) Other funding. Should ~~[additional and/or]~~ other funding sources become available for CIS, these funds may be made available for ~~[local CIS programs for]~~ replication, expansion, and/or special initiatives and allocated through such processes as the TEA deems appropriate to include the funding methods [guidelines and determinations delineated] in subsection (d) of this section.

(f) Special initiatives. The TEA may partner or contract with other agencies or entities for the purpose of CIS to implement specialized activities or programs that address dropout prevention. Selection of local CIS programs for participation in the initiative may be determined by the TEA and partner, or contractor, depending on the variables of the initiative. Local CIS programs will have the discretion of whether to participate in the special initiatives.



(g) Funding plan. Each local CIS program shall develop a funding plan which ensures that the level of service is maintained if state funding is reduced.

§89.1503. Funding Beginning with School Year 2009-2010.

(a) Equitable funding formula. As authorized by the Texas Education Code (TEC), §33.156, the Texas Education Agency (TEA) shall establish the funding of local Communities In Schools (CIS) programs in accordance with this section. The provisions of this section apply to funding of local CIS programs beginning with school year 2009-2010.

(b) Developing programs.

(1) A developing program shall receive a funding amount each year for no more than four years, including the first-year start up funding.

(2) A developing program that has met all the requirements for establishing a local CIS program before the fourth year may request to be considered as a local CIS program for funding determined under subsection (c)(1)-(3) of this section if approved by the TEA.

(c) Allocation. Local CIS programs shall receive a funding amount each year to be allocated based on the following criteria:

(1) an equal base amount of funds, as determined by the TEA;

(2) no less than 50% nor more than 80% of the specified funding amount based on the relative proportion of the number of case-managed students to be served by each local CIS program to the total number of case-managed students to be served by all local CIS programs; and

(3) no less than 5.0% nor more than 15% of the specified funding amount based on the weighted financial resources of the individual communities and school districts, if less than the average financial resources of all school districts participating in the program.

(A) Weighted financial resources will be determined using the following data elements for the first year of the preceding biennium:

(i) taxable property values determined in accordance with Government Code, Chapter 403, Subchapter M, for school districts listed in each program's current grant application;

(ii) weighted average daily attendance (WADA), as reported by the school districts and verified by the TEA, in school districts listed in each program's current grant application; and

(iii) the number of eligible students at the campus level, as reported by the school districts and verified by the TEA, in school districts listed in each program's current grant application.

(B) Financial resource allocation will be determined by:

(i) calculating the weighted average property value per WADA for each local CIS program;

(ii) calculating the ratio of the number of eligible students for each local CIS program divided by the total number of eligible students in all local CIS programs;

(iii) calculating the average taxable property value per WADA for each local CIS programs; and

(iv) allocating funds based on the eligible student ratios to participating local CIS programs with an average taxable property value per WADA lower than the average for all participating local CIS programs.

(4) The TEA may choose, for the purpose of minimizing disruption in services as a result of changes in funding allocation, to limit the annual amount of changes in funding allocation from one biennium to the next. This may include limiting the increase or decrease from the prior-year funding to an amount no less than 5.0% and no more than 25% of the change produced by the provisions of this subsection and/or by establishing minimum and maximum funding amounts.

(5) If there is no increase in the funds appropriated by the General Appropriations Act for the state CIS program, the TEA may choose to maintain CIS program funding allocations at the current level.

(d) CIS program replication and expansion. Should the legislature authorize an increase in the funds appropriated for the state CIS program, the TEA may designate an amount of the increase to be reserved for replication and/or expansion.

(1) Replication. The TEA may determine and retain a funding amount for replication of the CIS program in areas of the state that are not served by a participating CIS program. Replication funds may be made available through a competitive request for application process or through any other process the TEA deems necessary. First-year replication funding may be a one-time planning grant for the development of a business plan. Any funds not used for replication may be used for expansion.

(2) Expansion. The TEA may determine and retain a funding amount for expansion of the CIS program using any one or a combination of the funding methods specified in subparagraphs (A)-(D) of this paragraph. Funds allocated for expansion will become part of the funding allocation.

(A) Proportion of eligible students served. An amount determined by the TEA may be distributed to each local CIS program based on the relative proportion of the number of eligible students attending school districts served or new districts to be served by the respective program to the number of eligible students in all districts served by CIS.

(B) Proportion of total case-managed students. An amount determined by the TEA may be distributed to each local CIS program based on the relative proportion of the number of case-managed students as identified in the current year's grant application for each local CIS program to the total number of case-managed students for all CIS programs.

(C) Program allocation. An amount determined by the TEA may be distributed to each local CIS program based on the ratio of the total amount of grant funding allocated to the local CIS program to the total amount of grant funding allocated to all local CIS programs.

(D) Competitive process. Funds may be distributed through a competitive request for application process.

(E) Decline of expansion funds. If a local CIS program declines to accept grant funds for the expansion of a program, the total amount of grant funding available for expansion will be redistributed in accordance with this paragraph among local CIS programs participating in expansion activities.

(e) Use of federal or state funds. Pursuant to the TEC, §33.154(a)(7)(C), the TEA will make available to local CIS programs and developing programs information regarding state and federal grant opportunities.

(f) Other funding. Should other funding sources become available for CIS, these funds may be made available for replication, expansion, and/or special initiatives and allocated through such processes as

the TEA deems appropriate to include the funding methods in subsection (d) of this section.

(g) Special initiatives. If the TEA partners or contracts with other agencies or entities to implement special initiatives, activities, or programs that support dropout prevention efforts, local CIS programs will have the discretion of whether to participate in the special initiatives. Selection of local CIS programs for participation may be determined by the TEA and partner, or contractor, depending on the variables of the initiative.

(h) Funding plan. Each local CIS program shall develop a funding plan that ensures that the level of service is maintained if state funding is reduced.

§89.1505. Eligibility and Grant Application.

(a) Applicants eligible to receive grant funds are:

(1) as specified in the Texas Education Code, §33.152, local Communities In Schools (CIS) programs established under the Texas Labor Code, Chapter 305, as it existed on August 31, 1999, and its predecessor statute, the Texas Unemployment Compensation Act (Article 5221b-9d, Vernon's Texas Civil Statutes); and

(2) developing programs as defined in §89.1501(3) of this title (relating to Definitions).

(b) A local CIS program or a developing program must submit a grant application each year in accordance with procedures established by the commissioner of education.

(c) To remain eligible for grant funding, a local CIS program or a developing program must meet all deadlines and requirements set forth in §89.1511 of this title (relating to Performance Standards and Loss of State Grant Funding) and in the grant application.

§89.1507. Case-Managed Students.

(a) Each local Communities In Schools (CIS) program is required to serve each year a specific number of case-managed students, as defined in §89.1501(1) of this title (relating to Definitions). The specific number of case-managed students to be served will be identified in each annual grant application.

(b) Each local CIS program may be required to serve an increased number of case-managed students if the Texas Education Agency (TEA) receives an increase in the funds appropriated in the General Appropriations Act for the CIS program and/or if the performance measure related to the number of case-managed students served is increased.

(c) To determine an increase in the number of case-managed students to be served by each local CIS program, the TEA will use the number of case-managed students as determined in the current year's grant application and apply one of the following calculations:

(1) the relative proportion of the number of eligible students attending school districts served or to be served by the respective local CIS program to the number of eligible students in all districts served or to be served by all CIS programs;

(2) the relative proportion of the specified number of case-managed students for the respective local CIS program as identified in the current year's grant application to the total number of case-managed students for all CIS programs; or

(3) the ratio of the total amount of grant funding allocated to the respective local CIS program to the total amount of grant funding for all CIS programs.

§89.1509. Other Provisions.

(a) Pursuant to the Texas Education Code (TEC), §33.154(a)(7)(A), the Texas Education Agency (TEA) will develop an outreach plan in collaboration with the Communities In Schools (CIS) State Advisory Committee that includes outreach to local businesses.

(b) Pursuant to the TEC, §33.154(a)(7)(B), each school district that participates in a CIS program shall provide to the local CIS or developing program necessary student information and data for students whose parents have authorized in writing that educational records be shared with the CIS program and the TEA. Such information and data may include records on students' academic achievement, promotion, attendance, and assessment. A local CIS or developing program may provide this information and data to the TEA in accordance with the grant application.

§89.1511. Performance Standards and Loss of State Grant Funding.

(a) Performance standards for a local Communities In Schools (CIS) program regarding the number of case-managed students served.

(1) A local CIS program that fails to serve the number of case-managed students indicated in its grant application by the end of the school year of any given year will receive grant funding based only on the number of case-managed students the program actually served in that given year.

(2) Following the end of a given school year (Year 1), a local CIS program that fails to serve the number of case-managed students identified in its grant application must submit to the Texas Education Agency (TEA) a letter of explanation detailing the reasons the local CIS program did not serve the number of case-managed students indicated in its grant application. Additionally, a Program Improvement Plan (PIP) detailing how the CIS program will reach the Year 1 target by the end of the second school year (Year 2) is required. The PIP must include the following:

(A) local program contact information;

(B) the number of case-managed students listed in the grant application;

(C) the actual number of case-managed students served;

(D) a list of the proposed strategies and initiatives that will be implemented to meet the case-managed student target;

(E) a list of the timelines for each proposed strategy and initiative; and

(F) a list of fiscal, logistical, and human resources to be used to meet the case-managed student target.

(3) A local CIS program that fails to meet the Year 1 target for case-managed students in Year 2 will:

(A) receive payment only for the number of case-managed students the program actually served;

(B) have its grant application modified to reflect a decreased number of case-managed students and decreased funding for Year 3; and

(C) be placed on probation for Year 3.

(4) A local CIS program placed on probation:

(A) must update its PIP to show how it will modify its program to meet the Year 3 case-managed student target; and

(B) will not qualify for any increases in grant awards. The commissioner may waive this requirement if the local CIS program fails to meet its case-managed student target as a result of circumstances, such as a natural disaster, beyond the program's control.

(5) A local CIS program that fails to meet its Year 3 case-managed student target by the end of Year 3 may have its grant award non-renewed or revoked.

(6) A local CIS program that successfully reaches its Year 3 case-managed student target at the end of Year 3 will be removed from probation.

(7) A local CIS program may have its grant award non-renewed or revoked if it fails to meet its case-managed student target as identified in the grant application for four years out of a five-year period.

(b) Performance standards for a local CIS program regarding state targets in academic achievement, attendance, behavior, dropout rates, graduation, and promotion/retention.

(1) In accordance with the Texas Education Code (TEC), §33.154(a)(2), performance standards are established for local CIS programs in the objective areas of academic achievement, attendance, behavior, dropout rates, graduation, and promotion/retention.

(2) Each local CIS program must meet the performance standards stated in its grant application each year.

(3) The TEA shall notify local CIS programs that did not meet performance standards in any objective area, within a 5.0% variance, following the end of each school year.

(4) A local CIS program that fails to meet performance standard(s) in any objective area within a 5.0% variance must submit to the TEA a letter of explanation detailing the reasons the program was unable to meet state established performance standard(s). Additionally, a PIP detailing how the CIS program will reach the performance standard by the end of the next grant year period is required. The PIP shall include the following:

(A) local program contact information;

(B) a list of the objective area(s) and the performance standard(s) as listed in the grant application;

(C) a list of the actual standard(s) met for each objective area(s);

(D) a list of the proposed strategies and initiatives that will be implemented to meet the performance standard(s) that were not met;

(E) a list of the timelines for each proposed strategy and initiative; and

(F) a list of fiscal, logistical, and human resources to be used to reach the performance standard(s).

(5) The TEA will review PIPs within 30 days of receipt.

(6) A local CIS program that fails to meet performance standards for Year 2 or two consecutive years must submit an updated PIP for approval by the TEA and will be placed on probation for Year 3.

(7) A local CIS program placed on probation:

(A) must update its PIP to show how it will modify its program to meet the Year 3 performance standards; and

(B) will not qualify for any increases in grant awards. The commissioner may waive this requirement if the local CIS program fails to meet its performance standards as a result of circumstances, such as a natural disaster, beyond the program's control.

(8) A local CIS program that fails to meet its Year 3 performance standards by the end of Year 3 may have its grant award non-renewed or revoked.

(9) A local CIS program may have its grant award non-renewed or revoked if it fails to meet its performance standards as identified in the grant application for four years out of a five-year period.

(c) Performance standards for a developing program. A developing program that does not meet the requirements for establishing a local CIS program as specified in the request for application may have its grant funding non-renewed or revoked in accordance with subsection (d) of this section.

(d) Revocation of grant award.

(1) The commissioner may deny renewal or revoke the grant award of a local CIS program based on any of the following:

(A) failure to serve the number of case-managed students identified in its grant application for three consecutive years;

(B) failure to meet performance standards within a 5.0% variance as identified in the local CIS program's grant application for three consecutive years; or

(C) consistently failing to serve the target number of case-managed students and meet the performance standards within a 5.0% variance as identified in its grant application for four years out of a five-year period.

(2) The commissioner may deny renewal or revoke the grant award of a developing program based on any of the following:

(A) non-compliance with application assurances;

(B) lack of program success as evidenced by progress reports and program data;

(C) failure to meet performance standards specified in the application; or

(D) failure to provide accurate, timely, and complete information as required by the TEA to evaluate the effectiveness of the developing program.

(3) A decision by the commissioner to deny renewal or revoke authorization of a grant award is final and may not be appealed.

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 July 25, 2008.

TRD-200803794

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Earliest possible date of adoption: September 7, 2008

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



## CHAPTER 129. STUDENT ATTENDANCE SUBCHAPTER AA. COMMISSIONER'S RULES

### 19 TAC §129.1023, §129.1027

The Texas Education Agency (TEA) proposes an amendment to §129.1023 and §129.1027, concerning student attendance.

Section 129.1023 addresses provisions related to student attendance accounting standards. Section 129.1027 establishes requirements for the Optional Flexible School Day Program (OFSDP). The proposed amendment to §129.1023 would correct a statutory reference. The proposed amendment to §129.1027 would remove the requirement that applications for OFSDP be submitted 90 days before the start date of the program, delete an expired provision, and make minor technical corrections throughout the rule.

Through 19 TAC §129.1023, adopted to be effective May 10, 2001, the commissioner exercised rulemaking authority relating to student attendance accounting standards. In accordance with the Texas Education Code (TEC), §42.004, the rule requires school districts to adhere to the student attendance accounting standards established under 19 TAC §129.21 and the TEC, §42.004. The rule also establishes how the standards are disseminated and what aspects of attendance accounting they cover. In addition, the rule allows Foundation School Program allotments to be revised as a result of TEA investigations of student attendance accounting data.

As a result of the rule review conducted in June 2008, an amendment to §129.1023, Student Attendance Accounting Standards, is proposed to correct a statutory reference in subsection (b).

Through 19 TAC §129.1027, adopted to be effective July 4, 2007, the commissioner exercised rulemaking authority relating to the OFSDP. In accordance with the TEC, §29.0822, the rule establishes definitions, describes the program's application process, and explains program requirements related to student eligibility, student attendance, funding, program operation, district performance reviews, and program evaluation. The rule also describes the terms for revocation or denial of renewal of program authorization.

As a result of the rule review conducted in June 2008, an amendment to §129.1027, Optional Flexible School Day Program, is proposed to reflect updates to the program. The updates would include the removal of the requirement in subsection (c) that applications for the OFSDP be submitted 90 days before the start date of the program and the deletion of an expired provision in subsection (c) specific to the 2006-2007 school year. In addition, subsection (a) would be renumbered to reflect the deletion of two definitions, and minor technical corrections would be made throughout the section to correct references and word usage.

Adam Jones, deputy commissioner for finance and administration, has determined that for the first five-year period the amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amendments.

Mr. Jones 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 will be a corrected statutory reference in rule, the deletion of expired provisions from rule, and the removal of the overly burdensome requirement that applications for the OFSDP be submitted 90 days before the start date of the program. There is no anticipated economic cost to persons who are required to comply with the proposed amendments.

There is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

The public comment period on the proposal begins August 8, 2008, and ends September 8, 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. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of the proposal has been published in the *Texas Register* on August 8, 2008.

The amendments are proposed under the Texas Education Code, §29.0822, which authorizes the commissioner to adopt rules to administer the Optional Flexible School Day Program, and §42.004, which authorizes the commissioner, in accordance with rules of the State Board of Education, to take such action and require such reports consistent with TEC, Chapter 42, as may be necessary to implement and administer the Foundation School Program.

The proposed amendments implement the Texas Education Code, §29.0822 and §42.004.

*§129.1023. Student Attendance Accounting Standards.*

(a) The student attendance accounting standards established by the commissioner of education under §129.21 of this title (relating to Requirements for Student Attendance Accounting for State Funding Purposes) and Texas Education Code (TEC), §42.004, shall be used by school districts and charter schools to maintain records and make reports on student attendance and student participation in special programs. These student attendance accounting standards shall be annually published in official Texas Education Agency (TEA) publications. These publications shall be widely disseminated and cover the following procedures:

- (1) description of the Foundation School Program (FSP) eligibility requirements of all students;
- (2) prescription of the minimum standards for all attendance accounting systems, whether manual or automated;
- (3) listing of the documentation requirements for attendance audit purposes;
- (4) specifications of the minimum standards for systems that are entirely functional without the use of paper; and
- (5) details of the responsibilities of all district personnel involved in student attendance accounting.

(b) FSP allotments may be revised as a result of investigative activities by the TEA division responsible for school financial audits, as authorized under TEC, §§ 42.255, 44.008, and 44.010 [~~and 45.255~~].

*§129.1027. Optional Flexible School Day Program.*

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

- ~~{(1) Agency--Texas Education Agency.}~~
- (1) ~~{(2)}~~ Campus--For the purposes of this section, a campus is an organization that provides instructional services to students in Grades 9-12, maintains a separate budget, and has an administrator whose primary duty is the full-time administration of the campus.
  - ~~{(3) Commissioner--Commissioner of education.}~~
  - (2) ~~{(4)}~~ Instructional contact hours--For purposes of this section, instructional contact hours are the hours spent learning the cur-

riculum under the direct supervision of an educator meeting the qualifications of the State Board for Educator Certification or the employing charter school.

(3) ~~[(5)]~~ Optional Flexible School Day Program (OFSDP)-Authorized under the Texas Education Code (TEC), §29.0822, a program approved by the commissioner of education to provide flexible hours and days of attendance for eligible students in Grades 9-12, as defined in subsection (b) of this section.

(4) ~~[(6)]~~ School district--For the purposes of this section, the definition of a school district includes an open-enrollment charter school.

(5) ~~[(7)]~~ School district board of trustees--For the purposes of this section, the definition of a school district board of trustees includes a charter holder board.

(6) ~~[(8)]~~ School year--For funding purposes, a school year cannot exceed 1,080 instructional hours in a 12-month consecutive period as adopted by the school district board of trustees.

(b) Student eligibility. A student is eligible to participate in an OFSDP if:

(1) the student is enrolled in Grade 9, 10, 11, or 12 and at least one of the following conditions is satisfied:

(A) the student is at risk of dropping out of school, as defined by the TEC, §29.081;

(B) the student is attending a campus implementing an innovative redesign, as defined by the TEC, §39.132; or

(C) the student is attending an approved early college high school program, as defined by the TEC, §29.908; and

(2) either:

(A) the student and the student's parent, or person standing in parental relation to the student, agree in writing to the student's participation if the student is less than 18 years of age and not emancipated by marriage or court order; or

(B) the student agrees in writing to participate if the student is 18 years of age or older or has otherwise attained legal status as an adult by reason of marriage or court order.

(c) Application to operate an OFSDP. Any school district may apply for authorization to operate an OFSDP.

~~[(1) Application process.]~~

(1) ~~[(A)]~~ The Texas Education Agency (TEA) [Agency] shall make available to each eligible school district an application form for initial approval or renewal that must be completed and submitted annually to the TEA [Agency] for approval.

(2) ~~[(B)]~~ The board of trustees of a school district must approve the application. The board of trustees of a school district must include the OFSDP as an item on a regular agenda for a board meeting providing options for public input concerning the proposed application before applying to operate an OFSDP.

(3) ~~[(C)]~~ A school district must submit an application in accordance with instructions provided by the TEA [Agency].

(4) ~~[(D)]~~ As part of the application process, a school district shall include the following information: implementation plan description, staff plans, schedules, and student attendance accounting security procedures and documentation.

(5) ~~[(E)]~~ The school district must have submitted the required annual audit report for the immediate prior fiscal year to the

TEA [Agency] division responsible for financial audits. The annual audit must be determined by the TEA [Agency] to be in compliance with applicable audit standards.

(6) ~~[(F)]~~ The commissioner may consider academic and financial performance at a campus or a district when reviewing application qualifications.

(7) ~~[(G)]~~ The TEA [Agency] may defer or reject an application based on pending or final audit of data submitted, irregularities in assessment administration, accreditation status, accountability ratings, or sanctions under the TEC, Chapter 39.

(8) ~~[(H)]~~ The TEA [Agency] may grant or reject an entire application or grant or reject any campus submitted on an application.

(9) ~~[(I)]~~ The TEA [Agency] will notify each applicant of its approval or nonapproval ~~[non approval]~~ to operate an OFSDP.

~~[(2) Participation in 2006-2007 school year. For the 2006-2007 school year, a school district must have received notice of approval from the Agency prior to participating in the program. This paragraph expires August 31, 2007.]~~

(10) ~~[(3) Participation in 2007-2008 and subsequent school years. For the 2007-2008 school year and subsequent school years, a school district must submit an initial or renewal application 90 days prior to the start date of the program.]~~ The school district must receive notice of approval to continue or begin participation in the program.

(d) Attendance. A school district must report student OFSDP attendance in a manner provided by the TEA [Agency] in the Student Attendance Accounting Handbook adopted under §129.1025 of this title (relating to Adoption By Reference: Student Attendance Accounting Handbook). Funding for attendance in an OFSDP is proportionate to attendance in a full-time program meeting the requirements of the TEC, §25.081 and §25.082.

(e) Funding under the TEC, Chapters 41, 42, and 46. Attendance in an OFSDP that is not authorized or does not meet the requirements of the TEC, §29.0822, or this section is not eligible for state funding.

(f) Extracurricular participation. A student enrolled in an OFSDP may participate in a competition or activity sanctioned by the University Interscholastic League (UIL) only if the student meets all UIL eligibility criteria.

(g) Conditions of program operation. A school district and campus operating an OFSDP must comply with all assurances in the program application. Approved OFSDPs will be required to submit annually one progress report on a form to be provided by the TEA [Agency] and signed by the district superintendent or executive officer. The data in the progress reports must be disaggregated by ethnicity, age, gender, and socioeconomic status. Approved OFSDPs will submit data as stated in the assurances section of the program application.

(1) A school district with a campus operating an OFSDP must reapply annually to continue to operate an OFSDP to verify that student eligibility requirements specified in subsection (b) of this section are met.

(2) A student participating in an OFSDP must take all assessment instruments as defined by the TEC, §39.023, during the regularly scheduled administration periods.

(3) A school district operating an OFSDP must conduct audits every other year of the OFSDP student attendance processes, procedures, and data quality to maintain eligibility for the program. Audits may be conducted by an internal auditor, external auditor, or an autho-

rized school district administrator responsible for student attendance accounting.

(4) The commissioner may consider academic performance and student attendance accounting documentation and procedures to continue district or campus eligibility for the OFSDP.

(h) School district annual performance review.

(1) Annually, each school district shall review its progress in relation to the performance indicators required by this subsection. Progress should be assessed based on information that is disaggregated with respect to race, ethnicity, gender, and socioeconomic status.

(A) A school district must include high school graduation as one of the performance indicators for students participating in the OFSDP.

(B) A school district operating an OFSDP for a campus will select and report student performance indicators appropriate to the population being served. The selected performance indicators must measure student achievement on an annual basis.

(2) At an open meeting of the board of trustees, a school district shall establish and review annual performance goals for the OFSDP related to performance indicators appropriate to the program, as established in paragraph (1) of this subsection and approved by the TEA [Agency].

(3) A school district shall ensure that decisions on the continuation of the OFSDP are based on state student assessment results and other student performance data.

(i) Evaluation of programs.

(1) The TEA [Agency] shall evaluate the OFSDP based on performance indicators established in subsection (h) of this section.

(2) In addition to the evaluation on the indicators identified in subsection (h) of this section, a school district shall be evaluated based on student assessment administration and student attendance accounting processes and procedures.

(j) Revocation of or denial to renew authorization to operate an OFSDP.

(1) The commissioner may revoke authorization or deny renewal of an OFSDP based on the following factors:

(A) noncompliance with application assurances and/or the provisions of this section;

(B) failure to keep timely and accurate audit and attendance accounting records;

(C) failure to maintain student eligibility requirements specified in subsection (b) of this section if one of these designations was used as an eligibility criteria for OFSDP;

(D) lack of program success as evidenced by progress reports or program data; or

(E) failure to provide accurate, timely, and complete information as required by the TEA [Agency] to evaluate the effectiveness of the OFSDP.

(2) A revocation or nonrenewal [~~non-renewal~~] of an approved OFSDP takes effect for the semester immediately following the date on which the revocation or nonrenewal [~~non-renewal~~] is issued unless another date is determined by the commissioner.

(3) An OFSDP is entitled to a ten-day notice of the proposed revocation or nonrenewal [~~non-renewal~~] and an informal review by the commissioner's designee.

(4) A decision by the commissioner to revoke the authorization or deny renewal of an OFSDP is final and may not be appealed.

(5) The OFSDP is a state program that may be monitored by an on-site visit under the TEC, §39.075. Student attendance accounting records are subject to audit under §129.21 of this title (relating to Requirements for Student Attendance Accounting for State Funding Purposes). The commissioner may impose sanctions on a school district under the TEC, §39.131, for failure to comply with the OFSDP requirements of this section.

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 July 21, 2008.

TRD-200803730

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

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



## TITLE 22. EXAMINING BOARDS

### PART 5. STATE BOARD OF DENTAL EXAMINERS

#### CHAPTER 115. EXTENSION OF DUTIES OF AUXILIARY PERSONNEL--DENTAL HYGIENE

##### 22 TAC §115.6

The Texas State Board of Dental Examiners (Board) proposes new §115.6. The new section establishes a reference to the recordkeeping standard of care relating to dental hygiene practice.

Ms. Sherri Sanders Meek, Executive Director, Texas State Board of Dental Examiners has determined that for each year of the first five-year period this section is in effect, there will be no fiscal implications for local or state government as a result of enforcing or administering this section.

Ms. Meek has also determined that for each year of the first five year period the section is in effect, the public benefit anticipated as a result of enforcing or administering this section will be to ensure that a patient record of dental hygiene treatments will be appropriately made, maintained and kept.

There is no anticipated impact on large, small or micro-businesses.

There is no anticipated economic cost to persons as a result of enforcing or administering this section.

Comments on the proposal may be submitted to Sherri Sanders Meek, Executive Director, Texas State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, (512) 463-6400. To be considered, all written comments must be received by the Texas State Board of Dental Examiners no later than 30 days from the date that this new section is published in the *Texas Register*.

The new section is proposed under Texas Government Code §§2001.021 et seq., and the Texas Occupations Code §254.001,

which provides the Board with the authority to adopt and enforce rules necessary for it to perform its duties.

The proposed new section affects Title 3, Subtitle D of the Occupations Code and Title 22, Texas Administrative Code, Chapters 101 - 125.

§115.6. Records.

A Texas dental hygiene licensee practicing dental hygiene in Texas shall make, maintain, and keep adequate records of the treatments delegated by a Texas licensed dentist and performed for and upon each dental patient for reference, identification, and protection of the patient and the dentist.

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 July 21, 2008.

TRD-200803726

Sherri Sanders Meek

Executive Director

State Board of Dental Examiners

Earliest possible date of adoption: September 7, 2008

For further information, please call: (512) 475-0972



## CHAPTER 116. DENTAL LABORATORIES

### 22 TAC §116.3

The Texas State Board of Dental Examiners (Board) proposes an amendment to §116.3(b), concerning the registration and renewal requirements of Texas dental laboratories. The amendment is proposed to require a jurisprudence assessment be completed to ensure that dental laboratory owners understand Texas statutes and regulations regarding dental laboratories.

Sherri Sanders Meek, Executive Director of the Texas State Board of Dental Examiners, has determined that for each year of the first five-year period the section is in effect, there will be no fiscal implications for local or state government as a result of enforcing or administering the section.

Ms. Meek has also determined that for each year of the first five year period the section is in effect, the administration and enforcement of the proposed section is expected to benefit the public by ensuring that dental laboratories are operated with knowledge of relevant Texas laws and regulations.

There is no impact on large, small or micro-businesses.

There is no anticipated economic cost to persons as a result of enforcing or administering the section.

Comments on the proposal may be submitted to Sherri Sanders Meek, Executive Director, Texas State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, or by fax at (512) 463-7452. To be considered, all written comments must be received by the Texas State Board of Dental Examiners no later than 30 days from the date that this amended section is published in the *Texas Register*.

The amendment is proposed under Texas Government Code §§2001.021 et seq., and Texas Occupations Code §254.001, which provides the Board with the authority to adopt and enforce rules necessary for it to perform its duties.

The proposed amendment affects Title 3, Subtitle D of the Occupations Code and Title 22, Texas Administrative Code, Chapters 101 - 125.

§116.3. Registration and Renewal.

(a) (No change.)

(b) The Dental Laboratory Certification Council (DLCC) shall review each application for registration or renewal of registration to determine if the applicant meets the requirements of Occupations Code, Chapter 266. The DLCC shall provide the Board with a list of applicants who are eligible for registration with the Board. Applications will be forwarded with a recommendation to the Board for registration if the requirements of Occupations Code, Chapter 266 and this chapter are met, and the following materials are submitted:

(1) A complete application or renewal, with all required information;

(2) proof of compliance with §116.6 of this chapter; [~~and,~~]

(3) the appropriate fee; ~~and, [-]~~

(4) effective January 1, 2009, for initial registrations only and once every three years for registration renewals, proof of completion of the Texas Jurisprudence Assessment for dental laboratories.

(c) - (d) (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 July 21, 2008.

TRD-200803727

Sherri Sanders Meek

Executive Director

State Board of Dental Examiners

Earliest possible date of adoption: September 7, 2008

For further information, please call: (512) 475-0972



### 22 TAC §116.6

The Texas State Board of Dental Examiners (Board) proposes an amendment to §116.6(c), concerning continuing education requirements of Texas dental laboratories. The amendment is proposed to update the continuing education requirements that certain dental laboratory employees must take in order to be in compliance with recognized standards.

Sherri Sanders Meek, Executive Director of the Texas State Board of Dental Examiners, has determined that for each year of the first five-year period the section is in effect, there will be no fiscal implications for local or state government as a result of enforcing or administering the section.

Ms. Meek has also determined that for each year of the first five year period the section is in effect, the administration and enforcement of the proposed section is expected to benefit the public by ensuring that certain dental laboratory employees maintain appropriate continuing education requirements.

There is no impact on large, small or micro-businesses.

There is no anticipated economic cost to persons as a result of enforcing or administering the section.

Comments on the proposal may be submitted to Sherri Sanders Meek, Executive Director, Texas State Board of Dental Examin-

ers, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, or by fax at (512) 463-7452. To be considered, all written comments must be received by the Texas State Board of Dental Examiners no later than 30 days from the date that this amended section is published in the *Texas Register*.

The amendment is proposed under Texas Government Code §§2001.021 et seq., and Texas Occupations Code §254.001, which provides the Board with the authority to adopt and enforce rules necessary for it to perform its duties.

The proposed amendment affects Title 3, Subtitle D of the Occupations Code and Title 22, Texas Administrative Code, Chapters 101 - 125.

*§116.6. Continuing Education.*

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

(c) Acceptable continuing education shall be comprised of business management, infection control, and technical competency courses presented in seminars or clinics as accepted by a recognized organization of dentistry or dental technology, subject to the following requirements:

(1) The designated employee must complete at least one course in regulatory compliance [~~infection control~~] annually. Examples include courses in Infection Control, Occupational Safety and Health Administration (OSHA), Federal Drug Administration (FDA), Texas Jurisprudence, Cardiopulmonary Resuscitation (CPR) or Ethics.

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

(d) (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 July 21, 2008.

TRD-200803728

Sherri Sanders Meek

Executive Director

State Board of Dental Examiners

Earliest possible date of adoption: September 7, 2008

For further information, please call: (512) 475-0972



**22 TAC §116.10**

The Texas State Board of Dental Examiners (Board) proposes an amendment to §116.10, concerning prosthetic identification. The amendment is proposed to require dental laboratories to clearly label or certify in writing to the prescribing dentist the place of manufacture of a dental prosthetic.

Sherri Sanders Meek, Executive Director of the Texas State Board of Dental Examiners, has determined that for each year of the first five-year period the section is in effect, there will be no fiscal implications for local or state government as a result of enforcing or administering the section.

Ms. Meek has also determined that for each year of the first five year period the section is in effect, the administration and enforcement of the proposed section is expected to benefit the public by ensuring that dentists are informed as to the place of manufacture of dental prosthetics.

There is no impact on large, small or micro-businesses.

There is no anticipated economic cost to persons as a result of enforcing or administering the section.

Comments on the proposal may be submitted to Sherri Sanders Meek, Executive Director, Texas State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, or by fax at (512) 463-7452. To be considered, all written comments must be received by the Texas State Board of Dental Examiners no later than 30 days from the date that this amended section is published in the *Texas Register*.

The amendment is proposed under Texas Government Code §§2001.021 et seq., and Texas Occupations Code §254.001, which provides the Board with the authority to adopt and enforce rules necessary for it to perform its duties.

The proposed amendment affects Title 3, Subtitle D of the Occupations Code and Title 22, Texas Administrative Code, Chapters 101 - 125.

*§116.10. Prosthetic Identification.*

(a) - (e) (No change.)

(f) A dental laboratory that is required to register with the State Board of Dental Examiners shall clearly label or certify in writing to the prescribing dentist that the prosthesis or appliance being delivered to the prescribing dentist was either:

(1) manufactured entirely by the SBDE registered dental laboratory;

(2) manufactured in part or whole by a domestic laboratory inside of the United States; or,

(3) manufactured in part or whole by a foreign laboratory outside of the United States.

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 July 21, 2008.

TRD-200803729

Sherri Sanders Meek

Executive Director

State Board of Dental Examiners

Earliest possible date of adoption: September 7, 2008

For further information, please call: (512) 475-0972



**PART 11. TEXAS BOARD OF NURSING**

**CHAPTER 211. GENERAL PROVISIONS**

**22 TAC §211.7**

The Texas Board of Nursing (Board) proposes an amendment to §211.7, concerning Executive Director. The proposed amendment outlines the Board's current policies that delegate authority to the Executive Director.

The Board by policy has authorized the Executive Director to offer proposed disciplinary orders upon evaluation of the investigation findings. The Executive Director may make these offers by mail at the conclusion of an investigation; or in person following an informal conference. Similarly, the Executive Director is authorized by Board policy to accept the voluntary surrender of a license and Board ratification is not required. The Executive Director is authorized to accept and enter the several types



of agreed orders on behalf of the Board and ratification by the Board is not necessary.

The amendment includes delegated authority to enter board orders for remedial education and fine for violations including practice on a delinquent license; aiding, abetting or permitting a nurse to practice on a delinquent license; failure to comply with CE requirements; failure to comply with mandatory reporting requirements; failure to assure licensure/credentials of personnel for whom the nurse is administratively responsible; failure to provide employers, potential employers or the Board with complete and accurate answers to specific questions regarding employment or background (e.g., presenting incomplete employment history); failure to report unauthorized practice; failure to comply with Board requirements for change of name/address; failure to develop, maintain and implement a peer review plan according to statutory peer review requirements; failure to file, or cause to be filed, complete, accurate and timely reports required by Board Order; and failure to make complete and timely compliance with the terms of any stipulation contained in a Board Order. Additionally, the Executive Director may enter Orders requiring a licensee to comply with a peer assistance program and may also grant certain motion for rehearings on default orders. The Executive Director is to report summaries of dispositions to the Board at its regular meetings.

Katherine Thomas, Executive Director, has determined that for the first five-year period the proposed amendment is in effect there will be no additional fiscal implications for state or local government as a result of enforcing the amendment as proposed.

Ms. Thomas has also determined that for each year of the first five years the proposed amendment is in effect, the public benefit will be disciplinary cases will be resolved in a more timely basis without the delays often associated with docketing routine matters before board meetings. There will not be any foreseeable effect on small or micro businesses. There are no anticipated costs to affected individuals as a result of the implementation of the proposed amendment.

Written comments on the proposal may be submitted to Dusty Johnston, General Counsel, Texas Board of Nursing, 333 Guadalupe, Suite 3-460, Austin, Texas 78701, or by e-mail to dusty.johnston@bon.state.tx.us, or by fax to Dusty Johnston at (512) 305-8101.

The amendment is proposed pursuant to the authority of Texas Occupations Code §301.151 which authorizes the Texas Board of Nursing to adopt, enforce, and repeal rules consistent with its legislative authority under the Nursing Practice Act.

The amendment seeks to outline those duties the board wishes performed by the executive director as authorized by Texas Occupations Code §301.101(b). No other statutes, articles or codes are affected by this proposal.

*§211.7. Executive Director.*

(a) The board shall determine qualifications for and retain an executive director who shall be the chief executive officer of the agency.

(b) The executive director shall have the authority and responsibility for the operations and administration of the agency and such additional powers and duties as prescribed by the board. As chief executive of the board the executive director shall manage all aspects of the agency, including personnel, financial and other resources, in support of the NPA, rules and policies, the board's mission and strategic plan. The executive director shall attend all meetings of the board and

may offer recommendations to the board, but shall not vote on matters brought before the board.

(c) The executive director shall have the authority to dismiss a complaint if an investigation demonstrates that a violation did not occur, or the subject of the complaint is outside the board's jurisdiction. At each public meeting of the board, the executive director shall report to the board each complaint dismissed since the board's last public meeting.

(d) The Executive Director, or the Executive Director's designee, is authorized to offer proposed disciplinary orders upon evaluation of the investigation findings. Such an offer may be made:

- (1) by mail at the conclusion of an investigation; or
- (2) in person following an informal conference.

(e) The Executive Director is authorized to accept the voluntary surrender of a license. Board ratification is not required. The Executive Director will report summaries of dispositions to the Board at its regular meetings.

(f) The Executive Director is authorized to accept the following orders on behalf of the Board and ratification by the Board is not necessary. The Executive Director will report summaries of dispositions to the Board at its regular meetings.

(1) Orders consisting of a fine and/or education stipulations. The following violations may be appropriate for disposition by fine with or without educational stipulations:

(A) practice on a delinquent license for more than six months but less than two years;

(B) practice on a delinquent license for two to four years;

(C) practice on a delinquent license over four years;

(D) aiding, abetting or permitting a nurse to practice on a delinquent license;

(E) failure to comply with CE requirements;

(F) failure to comply with mandatory reporting requirements;

(G) failure to assure licensure/credentials of personnel for whom the nurse is administratively responsible;

(H) failure to provide employers, potential employers or the Board with complete and accurate answers to specific questions regarding employment or background (e.g., presenting incomplete employment history);

(I) failure to report unauthorized practice;

(J) failure to comply with Board requirements for change of name/address;

(K) failure to develop, maintain and implement a peer review plan according to statutory peer review requirements;

(L) failure to file, or cause to be filed, complete, accurate and timely reports required by Board Order; and

(M) failure to make complete and timely compliance with the terms of any stipulation contained in a Board Order.

(2) Orders requiring a licensee to comply with a peer assistance program.

(g) The Executive Director may grant any motion for rehearing if he/she is of the opinion that the motion has merit based on the

criteria of §213.16(j) of this title (relating to Respondent's Answer in a Disciplinary Matter). Otherwise, any motion considered untimely or without merit under the criteria of §213.16(j) of this title, would be scheduled without prejudice before the next practicable full Board or Eligibility and Disciplinary meeting for review and determination.

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 July 28, 2008.

TRD-200803909

James W. Johnston

General Counsel

Texas Board of Nursing

Earliest possible date of adoption: September 7, 2008

For further information, please call: (512) 305-6811



## CHAPTER 214. VOCATIONAL NURSING EDUCATION

### 22 TAC §§214.1 - 214.13

The Texas Board of Nursing (Board) proposes amendments to §§214.1 - 214.13, concerning Vocational Nursing Education.

Elsewhere in this issue of the *Texas Register*, the Board is contemporaneously proposing amendments to §§215.1 - 215.13, concerning Professional Nursing Education.

At the July 2006 Board meeting, the Board issued a charge to the Advisory Committee on Education (ACE) to review rule language regarding clarity and consistency between Chapters 214 and Rule 215. ACE addressed this charge during the June 13, 2008 meeting in Austin and continued the process during the June 24, 2008 telephonic conference. The proposed amendments to Chapters 214 are as follows:

Section 214.1, General Requirements - addition of language provides clarity for the intent of the rule and matches wording in the statute;

Section 214.2, Definitions - addition, deletion, reorganization, rephrasing, and revision of language provide clarity for the intent of the rule, demonstrate consistency between the rules, and describe the processes that actually occur;

Section 214.3, Program Development, Expansion and Closure - addition, clarification, deletion and revision of language provide clarity for the intent of the rules, demonstrate consistency between the rules, and describe the processes that actually occur and are outlined in Board guidelines;

Section 214.4, Approval - addition, clarification, deletion, reorganization and revision of language provide clarity for the intent of the rules, demonstrate consistency between the rules, and describe the processes that actually occur;

Section 214.5, Philosophy/Mission and Objectives/Outcomes - addition and revision of language provide clarity for the intent of the rule, demonstrate consistency between the rules, and match wording in the statute;

Section 214.6, Administration and Organization - addition, reorganization, and revision of language provide clarity for the intent of the rule, consistency between the rules, and describe the processes that actually occur;

Section 214.7, Faculty - addition, deletion, revision, rephrasing, and reorganization of language provide clarity for the intent of the rule, demonstrate consistency between the rules, and describe the processes that actually occur;

Section 214.8, Students - addition, deletion, reorganization, rephrasing, and revision of language provide clarity for the intent of the rule, demonstrate consistency between the rules, and describe the processes that actually occur;

Section 214.9, Program of Study - addition, deletion, reorganization, rephrasing, and revision of language provide clarity for the intent of the rule, demonstrate consistency between the rules, and describe the processes that actually occur;

Section 214.10, Clinical Learning Experiences - addition, deletion, reorganization, rephrasing, and revision of language provide clarity for the intent of the rule, demonstrate consistency between the rules, and describe the processes that actually occur;

Section 214.11, Facilities, Resources and Services - addition, deletion, reorganization, rephrasing, and revision of language provide clarity for the intent of the rule, demonstrate consistency between the rules, and describe the processes that actually occur;

Section 214.12, Records and Reports - addition, deletion, reorganization, rephrasing, and revision of language provide clarity for the intent of the rule, demonstrate consistency between the rules, and describe the processes that actually occur; and

Section 214.13, Total Program Evaluation - addition, deletion, reorganization, rephrasing, and revision of language provide clarity for the intent of the rule, demonstrate consistency between the rules, and describe the processes that actually occur.

Additional non-substantive changes were made throughout Chapters 214 for the purposes of correcting spelling/grammatical errors and providing correct numbering of items.

Katherine Thomas, Executive Director, has determined that for the first five-year period the proposed amendments are in effect there will be no additional fiscal implications for state or local government as a result of enforcing the amendment as proposed.

Ms. Thomas has also determined that for each year of the first five years the proposed amendments are in effect, the public benefit will be to provide clarity for the intent of the rules, demonstrate consistency between the rules, and describe the processes that actually occur and are outlined in Board guidelines with regard to program evaluations and approval. Additionally, the rule amendments seek to comply with the Sunset Commissions recommendations outlined in Acts 2007 (H.B. 2426), 80th Leg., eff. Sept. 1, 2007 and statutory amendments to §301.157, Texas Occupations Code. There will not be any foreseeable effect on small or micro businesses. There are no anticipated costs to affected individuals as a result of the implementation of the proposed amendments.

Written comments on the proposal may be submitted to Dusty Johnston, General Counsel, Texas Board of Nursing, 333 Guadalupe, Suite 3-460, Austin, Texas 78701, or by e-mail to [dusty.johnston@bon.state.tx.us](mailto:dusty.johnston@bon.state.tx.us), or by fax to Dusty Johnston at (512) 305-8101.

The amendments are proposed pursuant to the authority of Texas Occupations Code §301.157 and §301.151 which authorizes the Texas Board of Nursing to adopt, enforce, and repeal

rules consistent with its legislative authority under the Nursing Practice Act.

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

§214.1. General Requirements.

(a) The director/coordinator [~~Director or Coordinator~~] and faculty are accountable for complying with the Board's rules and regulations and the Nursing Practice Act.

(b) Rules for vocational nursing educational [education] programs shall provide reasonable and uniform standards based upon sound educational principles that allow the opportunity for flexibility, creativity and innovation [~~and creativity~~].

§214.2. Definitions.

Words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise:

(1) Accredited nursing educational program--a vocational nursing educational program having voluntary accreditation by a Board-approved national nursing accrediting body.

[(1) Affidavit of Graduation--an official Board form containing an approved nursing educational program's curriculum components and hours, a statement attesting to an applicant's qualifications for vocational nurse licensure in Texas, the official school seal and the signature of the nursing program director/coordinator.]

(2) Affidavit of Graduation--an official Board form containing an approved nursing educational program's curriculum components and hours, a statement attesting to an applicant's qualifications for vocational nurse licensure in Texas and the signature of the nursing program director/coordinator [~~Affiliating Agency or Clinical Facility--a health care facility or agency which provides learning experiences for students~~].

(3) Affiliating agency or clinical facility--a health care facility or agency which provides learning experiences for students.

(4) Alternative practice settings--settings which provide opportunities for clinical learning experiences although their primary function is not the delivery of health care.

(5) [(3)] Approved vocational nursing educational program--a vocational nursing educational program approved by the Texas Board of Nursing.

[(4) Assistant Program Coordinator--a registered nurse faculty member in the vocational nursing educational program who is designated to assist with program management when the director or coordinator assumes responsibilities other than the program.]

(6) Articulation--a planned process between two or more educational systems to assist students to make a smooth transition from one level of education to another without duplication in learning.

(7) [(5)] Board--the Texas Board of Nursing composed of members appointed by the Governor for the State of Texas.

(8) Career school or college--see (35) Proprietary school--educational entity defined in Title 3, Texas Education Code, §132.0015 as "career school or college."

(9) [(6)] Class hours [Hours]--those hours allocated to didactic instruction and testing in each subject.

[(7) Clinical Conferences--scheduled presentations and discussions of aspects of client care experiences.]

(10) [(8)] Clinical learning experiences [Learning Experiences]--faculty-planned and guided learning activities designed to assist students to meet stated program and course outcomes and to safely

apply knowledge and skills when providing nursing care to clients across the life span as appropriate to the role expectations of the graduates. These experiences occur in actual patient care clinical learning situations, nursing skills and computer laboratories, in simulated clinical settings, in a variety of affiliating agencies or clinical practice settings including, but not limited to: acute care facilities, extended care facilities, clients' residences, and community agencies; and in associated clinical conferences.

(11) [(9)] Clinical practice hours [Practice Hours]--hours spent in actual client care assignments, simulated laboratory experiences, observations, clinical conferences and clinical instruction.

(12) [(10)] Clinical preceptor [Preceptor]--a licensed nurse who meets the minimum requirements in §214.10(i)(6) [§214.10 (4)(5)] of this chapter (relating to [Management of] Clinical Learning Experiences [~~and Resources~~]), not employed [~~paid~~] as a faculty member by the controlling agency/governing institution, and who directly supervises clinical learning experiences for no more than two students. A clinical preceptor facilitates student learning in a manner prescribed by a signed written agreement between the educational institution, preceptor, and affiliating agency (as applicable)

(13) [(11)] Compliance Audit--a document required by the Board to be submitted at a specified time by the nursing educational program director/[or] coordinator that serves as verification of the program's adherence to this chapter.

(14) [(12)] Conceptual framework [Framework]--theories or concepts giving structure to the curriculum and enabling faculty to make consistent decisions about [~~all aspects of~~] curriculum development, implementation, and evaluation.

[(13) Concurrent Theory and Skills Laboratory Experiences--planned experiences which coincide or operate at the same time to provide a common effect.]

(15) [(14)] Controlling agency [Agency]--institution that has direct authority and administrative responsibility for the operation of a board approved nursing educational program

(16) [(15)] Correlated theory and clinical practice [Theory and Clinical Practice]--didactic and clinical experiences which have a reciprocal relationship or mutually complement each other.

(17) [(16)] Course--organized subject content and related activities, which may include didactic, laboratory and/or clinical experiences, planned to achieve specific objectives within a given time period.

(18) [(17)] Curriculum--course offerings which, in aggregate, make up the total learning activities in a program of study.

(19) [(18)] Differentiated Entry Level Competencies (DELCE)--the expected educational outcomes to be demonstrated by nursing students at the time of graduation as published in *Differentiated Entry Level Competencies of Graduates of Texas Nursing Programs, Vocational (VN), Diploma/Associate Degree (Dip/ADN), Baccalaureate (BSN), September 2002 (DELCE)*.

(20) [(19)] Director/coordinator--a registered nurse who is accountable for administering a pre-licensure nursing educational program, who meets the requirements as stated in §214.6(f) of this chapter (relating to Administration and Organization), and is approved by the Board [~~or Coordinator~~--denotes the nurse directly in charge chosen by the controlling agency, approved by the Board, and who is administratively responsible for the nursing educational program].

(21) ~~[(20)]~~ Examination year [~~Year~~]~~--the period beginning January 1 and ending December 31 used for the purposes of determining programs' NCLEX-PN® [NCLEX-PN™] examination pass rates.~~

(22) Extension program /campus--instruction provided by an approved vocational nursing educational program through a variety of instructional methods to any location(s) other than the program's main campus and where students are required to attend activities such as testing, group conferences, and/or campus laboratory. An extension program may offer the entire identical curriculum or may offer a single course or multiple courses.

(23) ~~[(21)]~~ Faculty member--an individual employed to teach in the vocational nursing educational program who meets the requirements as stated in §214.7 of this chapter (relating to Faculty [~~Qualifications and Faculty Organization~~]).

(24) ~~[(22)]~~ Faculty waiver--a waiver granted by a director or coordinator of a vocational nursing educational program and submitted to the Board on a notarized notification form, or by the Board, as specified in §214.7(d)(1) ~~[(e)(2)(C)]~~ of this chapter, to an individual who is currently licensed as an LVN or RN, or has a privilege to practice ~~as appropriate,~~ in Texas and who is approved to be employed as a faculty member which is valid for up to one year.

(25) Governing institution--the entity with administrative and operational authority over a Board-approved vocational nursing educational program.

(26) Health care professional--an individual other than a licensed nurse who holds at least a bachelor's degree in the health care field, including, but not limited to: respiratory therapists, physical therapists, occupational therapists, dietitians, pharmacists, physicians, social workers and psychologists.

~~[(23)] Lead Instructor--a licensed nurse approved by the Board who has the delegated administrative authority for the program.]~~

(27) MEEP--a Multiple Entry-Exit Program which allows students to challenge the NCLEX-PN® examination when they have completed sufficient course work in a professional nursing educational program that will meet all requirements as outlined in Chapter 213 of this title (relating to Practice and Procedure).

(28) ~~[(24)]~~ Mobility--the ability to advance without educational barriers.

(29) ~~[(25)]~~ Non-nursing faculty [Non-Nursing Faculty]--instructors who teach non-nursing content [theory courses] such as pharmacology, pathophysiology, anatomy and physiology, growth and development, and nutrition, [pharmacology, nutrition, and anatomy and physiology] and who have educational preparation appropriate to the assigned teaching responsibilities.

(30) ~~[(26)]~~ Objectives/Outcomes--clear statements of expected behaviors that are attainable and measurable.

(A) Program Objectives/Outcomes--broad statements used to direct overall student learning to meet [toward the] achievement of expectations upon graduation [expected program outcomes].

(B) Clinical Objectives/Outcomes--statements describing expected student behaviors throughout the curriculum and which represent progression of students' cognitive, affective and psychomotor achievement in clinical practice across the curriculum.

(C) Course Objectives/Outcomes--statements describing expected behavioral changes in the learner upon successful completion of specific curriculum content and which serve as the mechanism for evaluation of student progression.

(31) ~~[(27)]~~ Observational experience--an assignment to a facility or unit where students observe activities within the facility and/or the role of nursing within the facility, but where students do not participate in patient/client care.

(32) ~~[(28)]~~ Pass rate--the percentage of first-time candidates within one examination year who pass the National Council Licensure Examination for Vocational Nurses (NCLEX-PN®) [~~NCLEX-PN™~~].

(33) ~~[(29)]~~ Philosophy/Mission--statement of concepts expressing fundamental values and beliefs regarding human nature as they apply to nursing education and practice and upon which the curriculum is based.

(34) ~~[(30)]~~ Program of Study--the courses and learning experiences that constitute the requirements for completion of a vocational nursing educational program.

(35) ~~[(31)]~~ Proprietary school [~~Schools~~]~~--educational entity [entities] defined in Title 3, Texas Education Code, §132.0015 as "career school or college." [by Texas Workforce Commission as "career schools and colleges."~~

(36) ~~[(32)]~~ Recommendation--a specific suggestion based upon program assessment indirectly related to the rules to which the program must respond but in a method of their choosing.

(37) ~~[(33)]~~ Requirement--mandatory criterion based on program assessment directly related to the rule that must be addressed in the manner prescribed.

(38) ~~[(34)]~~ Shall--denotes mandatory requirements.

(39) ~~[(35)]~~ Staff--employees [Employees] of the Texas Board of Nursing.

(40) ~~[(36)]~~ Supervision--immediate availability of a faculty member or clinical preceptor to coordinate, direct, and observe first hand the practice of students.

(41) ~~[(37)]~~ Survey visit [~~Visit~~]~~--an on-site visit to a vocational nursing educational program by a Board representative. The purpose of the visit is to evaluate the program of learning by gathering data to determine whether the program is meeting the Board's requirements as specified in §§214.2 - 214.13 of this chapter.~~

(42) ~~[(38)]~~ Systematic approach [~~Approach~~]~~--the organized process in nursing that [which] provides individualized, goal-directed nursing care that [which] includes the vocational nurse's role in participating in data collection, assessment activities, planning and implementing client care, and evaluating the client's responses to nursing interventions and identification of client needs.~~

(43) ~~[(39)]~~ Texas Higher Education Coordinating Board (THECB)--a state agency created by the Legislature to provide coordination for the Texas higher education system, institutions, and governing boards, through the efficient and effective utilization and concentration of all available resources and the elimination of costly duplication in program offerings, faculties, and physical plants (Texas Education Code, Title 3, Subtitle B, Chapter 61).

(44) ~~[(40)]~~ Texas Workforce Commission (TWC)--the state agency charged with overseeing and providing workforce development services to employers and job seekers of Texas (Texas Labor Code, Title 4, Subtitle B, Chapter 301).

(45) ~~[(41)]~~ Vocational Nursing Educational Program--an educational [a] unit [or entity] within the structure of a school, including a college, university, or proprietary school (career school or college); and a program conducted by a hospital that [an educational set-

~~ting which] provides a program of study preparing graduates who are competent to practice safely and who are eligible to take the NCLEX-PN® [NCLEX-PN™] examination. [Types of programs:]~~

~~[(A) Extension program—a site other than the program’s main location where the program of study is provided, duplicating the current curriculum and teaching resources:]~~

~~[(B) MEEP—Multiple Entry Exit Program that offers mobility options for students:]~~

~~[(C) New program—a newly created program of study in which the curriculum, teaching resources, or program hours required to complete the program differs from that of the main location:]~~

### §214.3. Program Development, Expansion and Closure.

#### (a) New programs.

(1) New nursing educational programs must be approved by the Texas Board of Nursing in order to operate in the State of Texas. The Texas Board of Nursing has established guidelines for the initial approval of schools of nursing or educational programs.

(2) [(1)] Proposal to establish a new vocational nursing educational program.

(A) An educational unit in nursing within the structure of a school, including a college, university, or proprietary school (career school or college), or a hospital is eligible to submit a proposal to establish a vocational nursing educational program. Specialized institutions such as nursing homes, tuberculosis hospitals, and others do not qualify as controlling agencies, but may participate with a program as an affiliating health care facility.

(B) The new vocational nursing educational program must be approved/licensed or deemed exempt by the appropriate Texas agency, Texas Workforce Commission (TWC), Texas Higher Education Coordinating Board (THECB), [i.e., THECB, TWC,] before approval can be granted by the Texas Board of Nursing for the program to be implemented. The proposal to establish a new vocational nursing educational program may be submitted to the Board at the same time that an application is submitted to THECB or TWC, but the proposal cannot be approved by the Board until such time as the proposed program is approved by THECB or TWC.

(C) The process to establish a new vocational nursing educational program shall be initiated with the Board office one year prior to the anticipated start of the program.

(D) The individual actually writing the proposal for a new nursing educational program does not have to be a registered nurse or hold a Texas license or a privilege to practice nursing in Texas. [The proposal shall be completed under the direction/consultation of a registered nurse who meets the Board-approved qualifications for a program director according to §214.6 of this chapter.]

(i) The name and credentials of the author of the proposal must be included in the document.

(ii) At some point, and at least prior to the presentation of the proposal to the Board, an individual must be identified as the prospective director and this individual must meet the rule requirements in §214.6 of this chapter (relating to Administration and Organization) to be a program director.

(iii) The prospective program director must review/revise the proposal and agree with the components of the proposal as being representative of the proposed program that the individual will be responsible for administratively.

(E) Prior to presentation of the proposal to the Board for approval, a minimum of a prospective director and at least one prospective nursing faculty member must be identified and these individuals must review/revise and approve the curriculum that is included with the proposal. [Sufficient nursing faculty, with appropriate expertise, shall be in place for development of the curriculum component of the program.]

(F) The proposal shall include information outlined in Board guidelines.

(G) After the proposal is submitted and reviewed, a preliminary survey visit shall be conducted by Board staff prior to presentation to the Board.

(H) The proposal shall be considered by the Board following a public hearing at a regularly scheduled meeting of the Board. The Board may approve the proposal and grant initial approval to the new program, may defer action on the proposal, or may deny further consideration of the proposal.

(I) The program shall not admit students until the Board approves the proposal and grants initial approval.

(J) Prior to presentation of the proposal to the Board, evidence of approval from the appropriate regulatory/funding agencies shall be provided.

(K) When [After] the proposal is submitted [approved], an initial approval fee shall be assessed per §223.1 of this chapter (related to Fees).

(L) A proposal without action for one calendar year shall be inactivated.

(M) If the Board denies further consideration of a proposal, the educational unit in nursing within the structure of a school, including a college, university, or proprietary school (career school or college), or a hospital must wait a minimum of twelve calendar months from the date of the denial before submitting a new proposal to establish a vocational nursing educational program.

(3) [(2)] Survey visits shall be conducted, as necessary, by staff until full approval status is granted.

#### (b) Extension Program/Campus.

(1) Only vocational nursing educational programs which have full approval status are eligible to initiate or modify an extension program/campus.

(2) Instruction provided for the extension program/campus may include a variety of instructional methods, shall be congruent with the program’s curriculum plan, and shall enable students to meet the goals, objectives, and competencies of the educational program and requirements of the Board as stated in §§214.2 - 214.13 of this chapter (relating to Vocational Nursing Education).

(3) [(2)] An approved vocational nursing educational program desiring to establish [begin] an extension program/campus that [which] duplicates the main program’s/campus’ current curriculum and teaching resources shall:

(A) Notify the Board office at least four (4) months prior to implementation of the extension program;

(B) Submit required information according to Board guidelines; and

(C) Provide documentation to the Board of notification or approval from the controlling agency/governing institution,

THECB, TWC and /or other regulatory/funding agencies, as applicable, at least four (4) months prior to implementation, as appropriate.

(4) [(3)] When the curriculum of the extension program/campus [program's curriculum] deviates from the original program in any way, the proposed extension is viewed as a new program and Board guidelines for a new program apply.

(5) [(4)] Extension programs of vocational nursing educational programs which have been closed may be reactivated by submitting notification of reactivation to the Board at least four (4) months prior to reactivation, using the Board guidelines for initiating an extension program.

(6) [(5)] A program intending to close an extension program shall:

(A) Notify the Board office at least four (4) months prior to closure of the extension program.

(B) Submit required information according to Board-approved guidelines including:

(i) reason for closing the program;

(ii) date of intended closure;

(iii) academic provisions for students; and

(iv) provisions made for access to and storage of vital school records.

(7) Consolidation. When a controlling agency/governing institution oversees an extension program/campus or multiple extension programs/campuses with curricula identical to the curriculum of the main program/campus, the controlling agency/governing institution and the program director may request consolidation of the extension program(s)/campus(es) with the main program utilizing one NCLEX-PN® examination testing code.

(A) The request to consolidate the extension program(s)/campus(es) with the main program shall be submitted in the form of a formal letter to the Board office at least four (4) months prior to the effective date of consolidation addressing the required information as outlined in Board guidelines.

(B) The notification of the consolidation will be presented, as information only, to the Board at a regularly scheduled Board meeting as no Board action is required.

(C) The program will receive an official letter of acknowledgment following the Board meeting.

(D) After the effective date of consolidation, the NCLEX-PN® examination testing code(s) for the extension program(s) will be deactivated/closed.

(E) The NCLEX-PN® examination testing code assigned to the main program will remain active.

(c) Transfer of Controlling Agency/Governing Institution. The authorities of the controlling agency/governing institution shall notify the Board office in writing of an intent to transfer the administrative authority of the program. This notification shall follow Board guidelines.

(d) Closing [Closure of] a Program. A program shall notify the Board office in writing of their intent to close the program.

(1) When the decision to close a program which provides the entire program of study has been made, the director must notify the Board and submit a written plan for closure which includes the following:

(A) reason for closing the program;

(B) date of intended closure;

(C) academic provisions for students to complete the nursing educational program and teach-out arrangements have been approved by the appropriate Texas agency, (i.e., TWC, THECB, Texas Board of Nursing);

(D) provisions made for access to and safe storage of vital school records, including transcripts of all graduates; and

(E) methods to be used to maintain requirements and standards until the program closes.

(2) The program shall continue within standards until all students, enrolled in the nursing educational program at the time of the decision to close, have graduated. In the event this is not possible, a plan shall be developed whereby students may transfer to other approved programs.

[(1) The controlling agency shall be responsible for graduating enrolled students or ensuring the satisfactory transfer of those students into another program.]

[(2) The controlling agency shall provide for permanent storage of student records.]

(3) A program is deemed closed when the program has not enrolled students for a period of two years since the last graduating class or student enrollment has not occurred for a two-year period. Board-ordered enrollment suspensions may be an exception.

(e) Approval of a Nursing Educational Program Outside Texas' Jurisdiction to Conduct Clinical Learning Experiences in Texas.

(1) The nursing educational program outside Texas' jurisdiction seeking approval to conduct clinical learning experiences in Texas should initiate the process with the Texas Board of Nursing two to three months prior to the anticipated start of the clinical learning experiences in Texas.

(2) A written request and the required supporting documentation shall be submitted to the Board office following Board guidelines.

(3) Evidence that the program has been approved/licensed or deemed exempt from approval/licensure by the appropriate Texas agency, (i.e., THECB, TWC), to conduct business in the State of Texas, must be obtained before approval can be granted by the Texas Board of Nursing for the program to conduct clinical learning experiences in Texas.

#### §214.4. Approval.

(a) The progressive designation of approval status is not implied by the order of the following listing. Approval status is based upon each program's performance and demonstrated compliance to the Board's requirements and response to the Board's recommendations. Change from one status to another is based on NCLEX-PN® [NCLEX-PN™] examination pass rates, compliance audits, survey visits, and other factors listed under subsection (b) of this section [§214.4(b) of this chapter]. Types of approval include:

(1) Initial Approval.

(A) Initial approval is written authorization by the Board for a new program to admit students, is granted if the program meets the requirements and addresses the recommendations issued by the Board, and begins with the date of the first student enrollment.

(B) Student enrollment is determined by the Board and the specifics are included in the Board's initial approval letter [The program shall not enroll more than one class per year while on initial approval].

(C) Change from initial approval status to full approval status cannot occur until the program has met requirements and responded to all recommendations issued by the Board and the licensing examination result of the first graduating class is evaluated by the Board.

(2) Full Approval.

(A) Full Approval is granted by the Board to a vocational nursing educational program that is in compliance with all requirements and has responded to all recommendations.

(B) Only programs with full [Full] approval status may initiate extension programs, grant faculty waivers, and petition for faculty waivers.

(3) Full approval [Approval] with warning [Warning] is issued by the Board to a vocational nursing educational program that is not meeting legal and educational requirements.

(A) A program issued a warning will receive written notification from the Board of the warning.

(B) The program is given a list of the deficiencies and a specified time in which to correct the deficiencies.

(4) Conditional Approval. Conditional approval is issued by the Board for a specified time to provide the program opportunity to correct deficiencies.

(A) The program shall not admit students while on conditional status.

(B) The Board may establish specific criteria to be met in order for the program's conditional approval status to be changed.

(C) Depending upon the degree to which the Board's legal and educational requirements are met, the Board may change the approval status to full approval or full approval with warning, or may withdraw approval.

(5) Withdrawal of Approval. The Board may withdraw approval from a program which fails to meet legal and educational requirements within the specified time. The program shall be removed from the list of Board approved vocational nursing educational programs.

(b) Factors Jeopardizing Program Approval Status--Approval may be changed or withdrawn for any of the following reasons:

(1) deficiencies in compliance with the rule;

(2) utilization of students to meet staffing needs in health care facilities;

(3) noncompliance with school's stated philosophy/mision, program design, objectives/outcomes, and/or policies;

(4) continual failure to submit records and reports to the Board office within designated time frames;

(5) failure to provide sufficient variety and number of clinical learning opportunities for students to achieve stated objectives/outcomes;

(6) failure to comply with Board requirements or to respond to Board recommendations within the specified time;

(7) student enrollments without sufficient faculty, facilities and/or patient census;

(8) failure to maintain a 80% passing rate on the licensing examination by first-time candidates;

(9) failure of program director to document annually the currency of faculty licenses; or

(10) other activities or situations that demonstrate to the Board that a program is not meeting legal requirements and standards.

(c) Ongoing Approval Procedures. Approval status is determined biennially by the Board on the basis of the program's compliance audit, NCLEX-PN® [NCLEX-PN™] examination pass rate, and other pertinent data.

(1) Compliance Audit. Each approved vocational nursing educational program shall submit a biennial audit regarding its compliance with the Board's legal and educational requirements.

(2) NCLEX-PN® [NCLEX-PN™] Pass Rates.

(A) Eighty percent (80%) of first-time candidates who complete the program of study are required to achieve a passing score on the NCLEX-PN® [NCLEX-PN™] examination.

(B) When the passing score of first-time candidates who complete the vocational nursing educational program is less than 80% on the NCLEX-PN® [NCLEX-PN™] examination during the examination year, the nursing program shall submit a self-study report that evaluates factors which contributed to the graduates' performance on the NCLEX-PN® [NCLEX-PN™] examination and a description of the corrective measures to be implemented. The report shall follow Board guidelines.

(C) A warning shall be issued to the program when the pass rate of first-time candidates, as described in subsection (c)(2)(A) of this section, is less than 80% for two consecutive examination years.

(D) A program shall be placed on conditional approval status if, within one examination year from the date the warning is issued, the performance of first-time candidates fails to be at least 80% on the NCLEX-PN® [NCLEX-PN™] examination, or the faculty fail to implement appropriate corrective measures.

(E) Approval may be withdrawn if the performance of first-time candidates fails to be at least 80% during the examination year following the date that the program was placed on conditional approval.

(F) A program issued a warning or placed on conditional approval status may request a review of the program's approval status by the Board at a regularly scheduled meeting if the program's pass rate for first-time candidates during one examination year is at least 80%.

(3) Survey Visit. Each vocational nursing educational program shall be visited at least every six years after full approval has been granted, unless accredited by a Board-recognized national nursing accrediting agency.

(A) The Board may authorize staff to conduct a survey visit at any time based upon established criteria.

(B) After a program is fully approved by the Board, a report from a Board-recognized national nursing accrediting agency regarding a program's accreditation status may be accepted in lieu of a Board survey visit.

(C) A written report of the survey visit, compliance audit, and NCLEX-PN® [NCLEX-PN™] examination pass rate shall be reviewed by the Board biennially at a regularly scheduled meeting.

(4) The Texas Board of Nursing will select one or more national nursing accrediting agencies, recognized by the United States Department of Education and determined by the Board to have standards equivalent to the Board's ongoing approval standards. Identified areas that are not equivalent to the Board's ongoing approval standards will be monitored by the Board on an ongoing basis. [equivalent to the Board's ongoing approval standards.]

(5) [(A)] The Texas Board of Nursing will periodically review the standards of the national nursing accrediting agencies following revisions of accreditation standards or revisions in Board requirements for validation of continuing equivalency.

(6) [(B)] The Texas Board of Nursing will deny or withdraw approval from a school of nursing or educational program that fails to:

(A) [(i)] meet the prescribed course of study or other standard under which it sought approval by the Board.

(B) [(ii)] meet or maintain voluntary accreditation, by a school of nursing or educational program approved by the Board as stated in paragraph (7) of this subsection [§214.4(e)(4)(C) of this chapter], with the national nursing accrediting agency selected by the Board under which it was approved or sought approval by the Board.

(C) [(iii)] maintain the approval of the state board of nursing of another state that the Board has determined has standards that are substantially equivalent to the Board's standards under which it was approved.

(7) [(C)] A school of nursing or educational program is considered approved by the Board and exempt from Board rules that require ongoing approval if the program:

(A) [(i)] is accredited and maintains voluntary accreditation through an approved national nursing accrediting agency that has been determined by the Board to have standards equivalent to the Board's ongoing approval standards; and

(B) [(ii)] maintains an acceptable pass rate, as determined by the Board, on the applicable licensing exam.

(8) [(D)] A school of nursing or educational program that fails to meet or maintain an acceptable pass rate, as determined by the Board, on applicable licensing examinations is subject to review by the Board.

(9) [(E)] A school of nursing or educational program, approved by the Board as stated in paragraph (7) of this subsection [§214.4(e)(4)(C)] of this chapter, that does not maintain voluntary accreditation through an approved national nursing accrediting agency that has been determined by the Board to have standards equivalent to the Board's ongoing approval standards is subject to review by the Board.

(10) [(F)] The Board may assist the school or program in its effort to achieve compliance with the Board's standards.

(11) [(G)] A school or program from which approval has been withdrawn may reapply for approval.

(12) [(H)] A school of nursing or educational program accredited by an agency recognized by the Board shall:

(A) [(i)] provide the board with copies of any reports submitted to or received from the national nursing accrediting agency selected by the Board within three (3) months of receipt of official reports;

(B) [(ii)] notify the Board of any change in accreditation status within two (2) weeks following receipt of official notification letter; and

(C) [(iii)] provide other information required by the Board as necessary to evaluate and establish nursing education and workforce policy in this state.

(d) Notice of a program's approval status shall be sent to the director, chief administrative officer of the controlling agency/governing institution, and others as determined by the Board.

#### §214.5. *Philosophy/Mission and Objectives/Outcomes.*

(a) The philosophy/mission and objectives/outcomes of the vocational nursing educational [education] program shall be consistent with the philosophy/mission of the controlling agency. They shall reflect the diversity of the community served and shall be consistent with professional, educational, and ethical standards of nursing.

(b) Program objectives/outcomes derived from the philosophy/mission shall reflect the *Differentiated Entry Level Competencies of Graduates of Texas Nursing Programs, Vocational (VN), Diploma/Associate Degree (Dip/ADN), Baccalaureate (BSN), September 2002 (DELIC)*.

(c) Clinical objectives/outcomes shall be stated in behavioral terms and shall serve as a mechanism for evaluating student progression.

(d) The conceptual framework shall provide the organization of major concepts from the philosophy/mission of the program that provides the underlying structure or theme of the curriculum and facilitates the achievement of program objectives/outcomes.

(e) The faculty shall periodically review the philosophy/mission and objectives/outcomes and shall make appropriate revisions to maintain currency.

#### §214.6. *Administration and Organization.*

(a) The controlling agency/governing institution shall be licensed/approved or deemed exempt [or accredited] by the Texas Workforce Commission (TWC) or the Texas Higher Education Coordinating Board (THECB) [a Board-recognized agency].

(b) There shall be an organizational chart indicating lines of authority between the vocational nursing educational program and the controlling agency/governing institution.

(c) The nursing educational program shall have comparable status with other educational units within the controlling agency/governing institution in such areas as budgetary authority, rank, promotion, tenure, leave, benefits and professional development [within the institution (controlling agency)].

(d) Salaries shall be adequate to recruit, employ, and retain sufficient qualified nursing faculty members with the expertise necessary for students to meet program goals.

(e) The controlling agency/governing institution shall provide financial support and resources needed to operate a nursing educational program which meets the legal and educational requirements of the Board and fosters achievement of program goals. The financial resources shall support adequate educational facilities, equipment and qualified administrative and instructional personnel.



(f) Each vocational nursing educational program shall be administered by a qualified individual who is accountable for the planning, implementation and evaluation of the vocational nursing educational program. The director/coordinator shall:

(1) hold a current license or privilege to practice as a registered nurse in the state of Texas;

(2) have been actively employed in nursing for the past five years, preferably in supervision or teaching;

(3) if the director has not been actively employed in nursing for the past five years, the director's advanced preparation in nursing, nursing education, and nursing administration and prior relevant nursing employment may be taken into consideration by the Board staff in evaluating qualifications for the position;

(4) have a degree or equivalent experience that will demonstrate competency and advanced preparation in nursing, education, and administration;

(5) have had five years of varied nursing experience since graduation from a professional nursing educational program;

(6) the director may have responsibilities other than the program provided that another qualified nursing faculty member is designated to assist with the program management; and

(7) a director with responsibilities other than the program shall not have major teaching responsibilities.

(g) When the director/coordinator of the program changes, the director/coordinator shall submit to the Board office written notification of the change indicating the final date of employment.

(1) A new Dean/Director/Coordinator Qualification Form shall be submitted to the office by the controlling agency/governing institution for approval prior to the appointment of a new director/coordinator or an interim director/coordinator in an existing program or a new nursing educational program according to Board guidelines.

(2) A vitae and all applicable official transcripts shall be submitted with the new Dean/Director/Coordinator Qualification Form, according to Board guidelines.

(3) If an interim director/coordinator is appointed to fill the position, this appointment shall not exceed one year.

(4) In a fully approved vocational nursing educational program, if the individual to be appointed as director/coordinator or interim director/coordinator does not meet the requirements for director/coordinator as specified in subsection (f) of this section, the administration is permitted to petition for a waiver of the Board's requirements, according to Board guidelines, prior to the appointment of said individual.

(h) A newly appointed director/coordinator or interim director/coordinator of a vocational nursing educational program shall attend the next scheduled education workshop provided by the Board related to the education rules and the role and responsibilities of newly appointed directors/coordinators.

(i) The director/coordinator shall have the authority to direct the nursing educational program in all its phases, including approval of teaching staff, selection of appropriate clinical sites, admission, progression, probation, dismissal of students, and enforcement of student policies. Additional responsibilities include, but are not limited to:

(1) providing evidence of faculty expertise and knowledge to teach curriculum content;

(2) verifying student's completion of program requirements;

(3) completing and submitting the Texas Board of Nursing Affidavit of Graduation; and

(4) completing and submitting the Texas Board of Nursing Educational Program Information Survey (NEPIS) and Compliance Audit (CANEP) by the required dates.

[(d) The controlling agency shall:]

[(1) be responsible for satisfactory operation of the vocational nursing educational program;]

[(2) meet rules and regulations as stated in this chapter;]

[(3) provide the number of faculty necessary to meet minimum standards set by the Board and to insure a sound educational program;]

[(4) provide for suitable classroom and clinical facilities;]

[(5) provide secretarial assistance;]

[(6) provide sufficient funds for operation and maintenance of the program to meet requirements set by the Board; and]

[(7) select and appoint a qualified registered nurse director or coordinator for the program who meets the requirements of the Board. The director shall:]

[(A) hold a current license or privilege to practice as a registered nurse in the state of Texas;]

[(B) have been actively employed in nursing for the past five years, preferably in supervision or teaching. If the director has not been actively employed in nursing for the past five years, the director's advanced preparation in nursing, nursing education, and nursing administration and prior relevant nursing employment may be taken into consideration by the Board staff in evaluating qualifications for the position;]

[(C) have a degree or equivalent experience that will demonstrate competency and advanced preparation in nursing, education, and administration; and]

[(D) have had five years of varied nursing experience since graduation from a professional nursing educational program;]

[(e) When the director or coordinator of the program changes, the director or coordinator shall submit to the Board office written notification of the change indicating the final date of employment. The controlling agency shall ensure that:]

[(1) a new director or coordinator qualification form is submitted to the Board office for approval prior to being hired at an existing program or a new program;]

[(2) the director may have responsibilities other than the program provided that an assistant program coordinator/lead instructor is designated to assist with the program management;]

[(3) a director with responsibilities other than the program shall not have major teaching responsibilities; and]

[(4) written job descriptions exist which clearly delineate responsibilities of the director, coordinator and lead instructor, as appropriate;]

[(f) In a fully approved vocational nursing educational program, if the individual to be appointed as director or coordinator does not meet the requirements for director or coordinator as specified in subsection (d)(7) of this section, the administration is permitted to pe-

tion for a waiver of the Board's requirements, according to Board guidelines, prior to the appointment of said individual.]

[(g) A newly appointed director or coordinator of a vocational nursing educational program shall attend the next scheduled orientation provided by the Board staff.]

[(h) The director or coordinator shall have the authority to direct the program in all its phases, including approval of teaching staff, selection of appropriate clinical sites, admission, progression, probation, and dismissal of students. Additional responsibilities include but are not limited to:]

[(1) providing evidence of faculty expertise and knowledge to teach curriculum content;]

[(2) acting as agent of the Board and issuing temporary permits to eligible graduates, upon completion of the program;]

[(3) verifying student's completion of program requirements on the Affidavit of Graduation; and]

[(4) completing and submitting the Texas Board of Nursing Compliance Audit and Nursing Educational Program Information Survey by the required dates.]

§214.7. *Faculty [Qualifications and Faculty Organization].*

(a) There shall be written personnel policies for nursing faculty that are in keeping with accepted educational standards and are consistent with the policies of the controlling agency/governing institution. [Faculty policies shall include, but not be limited to: qualifications, responsibilities, performance evaluation criteria, and terms of employment.]

(1) Nursing policies that differ from those of the controlling agency/governing institution shall be consistent with nursing unit mission and goals (philosophy and outcomes).

(2) Written policies concerning workload for the director or coordinator shall allow for sufficient time for administrative responsibilities consistent with §214.6 of this chapter (relating to Administration and Organization).

(3) Faculty policies shall include, but not be limited to: qualifications, responsibilities, performance evaluation criteria, and terms of employment.

(4) Written policies for nursing faculty workload shall allow sufficient time for faculty to accomplish those activities related to the teaching-learning process.

(5) Position descriptions for the director/coordinator and nursing faculty outlining their responsibilities directly related to the nursing program shall be included in the nursing faculty handbook.

(6) Written policies for nursing faculty shall include: plans for faculty orientation to the institution and the nursing program, faculty development, and evaluation of faculty.

(A) Orientation of new nursing faculty members shall be initiated at the onset of employment.

(B) A plan for nursing faculty development shall be offered to encourage and assist faculty members to meet the nursing program's needs as well as individual faculty members' professional development needs.

(C) A variety of means shall be used to evaluate faculty performance such as self, student, peer and administrative evaluation.

[(1) Policies concerning workload for faculty and the director or coordinator shall be in writing.]

[(2) There shall be written plans for faculty orientation, development and evaluation.]

[(3) There shall be orientation of new faculty members at the onset of employment.]

[(4) A variety of means shall be used to evaluate faculty performance such as self, student, peer and administrative evaluation.]

(b) A vocational nursing educational program shall employ sufficient faculty members with educational preparation and expertise necessary to enable the students to meet the program goals. The number of faculty members shall be determined by such factors as: [Minimum Teaching Personnel—There shall be a minimum of one full-time nursing instructor for the program. A director/coordinator without major teaching or clinical responsibilities shall not be considered a full-time instructor. Use of part-time instructors is permissible.]

(1) The number and level of students enrolled;

(2) The curriculum plan;

(3) Activities and responsibilities required of faculty;

(4) The number and geographic locations of affiliating agencies and clinical practice settings; and

(5) The level of care and acuity of clients.

(c) Faculty Qualifications and Responsibilities.

(1) Documentation of faculty qualifications shall be included in the official files of the program.

(2) Each nurse faculty member shall:

(A) Hold [hold] a current license or privilege to practice nursing in the State of Texas;

(B) Have [have] been actively employed in nursing for the past three years or have advanced preparation in nursing, nursing education, and/or nursing administration. [If the instructor has not been actively employed in nursing for the past three years, the instructor's advanced preparation in nursing, nursing education, and nursing administration, and prior relevant nursing employment may be taken into consideration in evaluating qualifications for the position; and]

(C) Have [have] had three years varied nursing experiences since graduation.

(d) Faculty Waivers.

(1) [(2)] In fully approved programs, if an individual to be appointed as faculty member does not meet the requirements for faculty as specified in subsection (c) of this section, the director or coordinator is permitted to waive the Board's requirements, if the program and prospective faculty member meet the following criteria and after notification to the Board of the intent to waive the Board's faculty requirements for a temporary time period not to exceed one year:

(2) [(A)] Minimum [minimum] program criteria:

(A) [(+)] program's NCLEX-PN Examination pass rate for the preceding exam year was 80% or above.

(B) [(+)] total number of faculty waivers at program shall not exceed 10% of the total number of nursing faculty.

[(iii) waiver is valid for up to one year and shall not be extended without Board approval.]

(3) [(B)] Minimum [minimum] criteria for prospective faculty member:

(A) ~~[(i)]~~ holds a current license or privilege to practice as a vocational or registered nurse in the State of Texas;

(B) ~~[(ii)]~~ has been actively employed in nursing for at least two years in the last three years;

(C) ~~[(iii)]~~ if not actively employed in nursing for the past three (3) years, the prospective faculty's advanced preparation in nursing, nursing education, and nursing administration shall be considered; and

(D) ~~[(iv)]~~ prior relevant nursing employment.

(4) ~~[(C)]~~ When ~~[when]~~ the program does not meet the minimum program criteria or the prospective faculty member does not meet the minimum criteria for a faculty member, a petition for a waiver shall be submitted to the Board and be reviewed by the members of the Education Liaison Committee (ELC) for recommendation regarding approval and referred to the full Board for ratification.

(5) ~~[(D)]~~ A ~~[a]~~ waiver is valid for up to one year.

(6) ~~[(E)]~~ The ~~[the]~~ director or coordinator shall submit a sworn (notarized) notification of waiver to the Board.

(7) ~~[(F)]~~ If ~~[if]~~ an extension of the waiver is needed, the director or coordinator shall petition the Board for an extension of the original waiver.

~~[(3)]~~ Faculty shall be responsible for:

~~[(A)]~~ supervision of students in clinical learning experiences;

~~[(B)]~~ all initial nursing procedures in the clinical area and ascertain that the student is competent before allowing the student to perform an actual nursing procedure independently;

~~[(C)]~~ developing, implementing, and evaluating curriculum; and

~~[(D)]~~ participating in the development of standards for admission, progression, probation, dismissal of students, and participation in academic guidance and counseling.

~~[(4)]~~ Non-nursing faculty are exempt from meeting the faculty qualifications as long as the teaching assignments are not nursing didactic or clinical courses.]

~~[(5)]~~ Clinical preceptors shall be responsible for providing clinical instruction and/or supervision when a program faculty member is unavailable in clinical sites. The clinical preceptor shall meet the requirements of Rule 214.10(k)(1).]

~~[(6)]~~ Substitute faculty may be employed to meet emergent program needs. Substitute faculty beyond ten consecutive working days and/or on an interim basis shall meet qualifications as specified in Rule 214.7(e)(1).]

~~[(7)]~~ Part-time faculty may participate in all aspects of the program. Clear lines of communication of program policies, objectives and evaluative criteria shall be included in policies for part-time faculty.]

(e) ~~[(8)]~~ Military faculty--Federal laws and regulations regarding licensure of military nursing personnel shall apply to Texas based military faculty members functioning within vocational nursing educational programs.

(f) Non-nursing faculty are exempt from meeting the faculty qualifications as long as the teaching assignments are not nursing content or clinical nursing courses.

(g) All nursing faculty, as well as non-nursing faculty, who teach non-clinical nursing courses that are part of the nursing curriculum, e.g., biological, physical, social, behavioral and nursing sciences, including, body structure and function, microbiology, pharmacology, nutrition, signs of emotional health, and human growth and development, shall have sufficient educational preparation verified by the program director/coordinator as appropriate to these areas of teaching responsibility.

(h) Non-nursing faculty assigned to teach didactic nursing content shall be required to co-teach with nursing faculty in order to meet nursing course objectives.

(i) Teaching assignments shall be commensurate with the faculty member's education and experience in nursing.

(j) Faculty shall be responsible for:

(1) supervision of students in clinical learning experiences;

(2) all initial nursing procedures in the clinical area and ascertain that the student is competent before allowing the student to perform an actual nursing procedure independently;

(3) developing, implementing, and evaluating curriculum;  
and

(4) participating in the development, implementation, and enforcement of standards/policies for admission, progression, probation, and dismissal of students, and participation in academic guidance and counseling.

(k) Teaching activities shall be coordinated among full-time faculty, part-time faculty, and clinical preceptors.

(l) There shall be a minimum of one full-time nursing instructor for the program.

(m) A director/coordinator without major teaching or clinical responsibilities shall not be considered a full-time instructor for purposes of meeting the Board's requirements related to having a sufficient number of nursing faculty for a nursing educational program.

(n) Substitute faculty may be employed to meet emergent program needs. Substitute faculty beyond ten consecutive working days and/or on an interim basis shall meet qualifications as specified in subsection (c) of this section.

(o) Faculty Organization:

(1) The faculty shall be organized with written policies and procedures and/or bylaws to guide the faculty and program's activities, including processes for enforcement of written student policies.

(2) The faculty shall meet regularly and function in such a manner that all members participate in planning, implementing and evaluating the nursing program. Such participation includes, but is not limited to the initiation and/or change in program policies, personnel policies, curriculum, utilization of affiliating agencies, and program evaluation.

(A) Committees necessary to carry out the functions of the program shall be established with duties and membership of each committee clearly defined in writing.

(B) Minutes of faculty organization and meetings shall document the reasons for actions and the decisions of the faculty and shall be available for reference.

(C) Part-time faculty may participate in all aspects of the program. Clear lines of communication of program policies, objectives and evaluative criteria shall be included in policies for part-time faculty.

~~[(d) The faculty shall meet regularly and function in such a manner that all members participate in planning, implementing and evaluating the nursing program. Such participation includes, but is not limited to the initiation and/or change in program policies, personnel policies, curriculum, utilization of affiliating agencies, and program evaluation. Minutes of faculty organization and meetings shall document the reasons for actions and the decisions of the faculty and shall be available for reference.]~~

§214.8. Students.

(a) The number of students admitted to the program shall be determined by the number of qualified faculty, adequate educational facilities and resources, and the availability of appropriate clinical learning experiences for students. Programs shall not accept admissions after the third day of class [The program shall have well defined student policies based upon statutory and Board requirements].

(b) Individuals enrolled in approved vocational nursing education programs preparing students for licensure shall be provided verbal and written information regarding conditions that may disqualify graduates from licensure and of their rights to petition the Board for a Declaratory Order of Eligibility. Required eligibility information includes:

(1) Texas Occupations Code §§301.252, 301.257, and 301.452-.469; and

(2) Sections [§§] 213.27 - 213.30 of the Texas Administration Code (relating to Good Professional Character, Licensure of Persons with Criminal Convictions, Criteria and Procedure Regarding Intemperate Use and Lack of Fitness in Eligibility and Disciplinary Matters, and Declaratory Order of Eligibility for Licensure).

(c) The vocational nursing educational program shall maintain written receipt of eligibility notification for up to six months after the enrolled individual completes the nursing educational program or permanently withdraws from the nursing educational program [Admission requirements shall be stated in the student policies. Programs shall set reasonable educational requirements for admission. Applicants shall present evidence of being able to meet objectives/outcomes of the program. All students shall be pretested. Tests shall measure reading comprehension and mathematical ability].

(d) The program shall have well-defined written nursing student policies based upon statutory and Board requirements, including nursing student admission, dismissal, progression, and graduation policies that shall be developed, implemented and enforced.

(1) Student policies shall be in accordance with the requirements of applicable federal and state agencies.

(2) Nursing student policies which differ from those of the governing institution shall be in writing and shall be made available to faculty and students.

(3) Applicants shall present evidence of being able to meet objectives/outcomes of the program.

(4) All students shall be pretested. Tests shall measure reading comprehension and mathematical ability.

(e) Reasons for dismissal shall be clearly stated in written nursing student policies and shall include any demonstration of the following, including, but not limited to:

(1) evidence of actual or potential harm to patients, clients, or the public;

(2) criminal behavior whether violent or non-violent, directed against persons, property or public order and decency;

(3) intemperate use, abuse of drugs or alcohol, or diagnosis of or treatment for chemical dependency, mental illness, or diminished mental capacity; and

(4) the lack of good professional character as evidenced by a single incident or an integrated pattern of personal, academic and/or occupational behaviors which, in the judgment of the Board, indicates that an individual is unable to consistently conform his or her conduct to the requirements of the Nursing Practice Act, the Board's rules and regulations, and generally accepted standards of nursing practice including, but not limited to, behaviors indicating honesty, accountability, trustworthiness, reliability, and integrity.

(f) Policies shall facilitate mobility/articulation, be consistent with acceptable educational standards, and be available to students and faculty.

~~[(d) Reasons for dismissal shall be stated in student policies.]~~

(g) [(e)] Student [Copies of the student] policies shall be furnished manually or electronically to all students at the beginning of the students' enrollment in the nursing educational program [school year].

(1) The program [school] shall maintain a signed receipt of student policies in all students' records.

(2) It is the [school's] responsibility of the program and the nursing faculty to define and enforce nursing student policies.

(h) Acceptance of transfer students and evaluation of allowable credit for advanced placement remains at the discretion of the director or coordinator of the program and the controlling agency/governing institution. Upon completing the receiving program's requirements, the individual is considered to be a graduate of the program.

(i) Students shall have mechanisms for input into the development of academic policies and procedures, curriculum planning, and evaluation of teaching effectiveness.

(j) Students shall have the opportunity to evaluate faculty, courses, and learning resources and these evaluations shall be documented.

~~[(f) The number of students admitted to the program shall be determined by the number of qualified faculty, adequate educational facilities and resources, and the availability of appropriate clinical learning experiences for students. Programs shall not accept admissions after the third day of class.]~~

[(g) Students shall be allocated at least 18 days leave for vacation and/or holidays. All scheduled holidays are to be observed on the holidays designated by the controlling agency. Vacation time shall be scheduled at the same time for all students.]

[(h) Students shall meet the requirements of Rule 214.9(e) related to Program of Study to be eligible for graduation from an approved vocational nursing education program.]

[(i) Acceptance of transfer students and evaluation of allowable credit for advanced placement remains at the discretion of the coordinator or director of the program and the controlling agency. Upon completing the program's requirements, the individual is considered to be a graduate of the school.]

[(j) Records of student conferences shall be kept and made available to the student involved and all faculty members. Students shall be provided written documentation of all conferences.]

[(k) Students shall have the opportunity to evaluate faculty, courses, and learning resources and these evaluations shall be documented.]

§214.9. Program of Study.

(a) The program of study shall include both didactic and clinical learning experiences and shall be:

(1) a minimum of 1,398 clock hours: 558 hours for classroom instruction and 840 hours for clinical practice; [~~Class hours shall include actual hours of classroom instruction in nursing and non-nursing Board-required courses/content. Clinical practice shall include actual hours of practice in clinical areas, clinical conferences, and/or simulated lab experiences.~~]

(2) planned, implemented, and evaluated by the faculty;

(3) based on the philosophy/mission and objectives/outcomes;

(4) organized by subject and content to meet the needs of the program;

(5) scheduled with the placement of courses or course content throughout the entire length of the program;

(2) scheduled with the placement of courses or course content throughout the entire length of the program;]

(3) organized by subject and content to meet the needs of the program;]

(4) based on the philosophy/mission and objectives/outcomes;]

(6) [~~(5)~~] based on sound educational principles;

(7) [~~(6)~~] designed to prepare graduates to practice according to the [~~The Nursing Practice Act,~~] Standards of Nursing Practice as set forth in the Board's Rules and Regulations [~~Unprofessional Conduct Rules,~~ and other laws and regulations which pertain to various practice settings];

(8) [~~(7)~~] designed and implemented to prepare students to demonstrate the *Differentiated Entry Level Competencies of Graduates of Texas Nursing Programs, Vocational (VN), Diploma/Associate Degree (Dip/ADN), Baccalaureate (BSN), September 2002 (DELIC)*; and

(9) [~~(8)~~] designed to teach students to use a systematic approach to clinical decision making and safe patient care.

(b) The faculty shall be responsible for the development, implementation and evaluation of the curriculum based upon the following guidelines:

(1) There shall be a reasonable balance between non-nursing courses and nursing courses which are offered in a supportive sequence with rationale which are clearly appropriate for the study of vocational nursing.

(1) Framework. The philosophy/mission shall be the basis for curriculum development and shall reflect the purpose of the organization, faculty beliefs, and education concepts. Clinical learning objectives/outcomes derived from the philosophy/mission shall be representative of the *Differentiated Entry Level Competencies of Graduates of Texas Nursing Programs, Vocational (VN), Diploma/Associate Degree (Dip/ADN), Baccalaureate (BSN), September 2002* for preparation of a vocational nurse graduate. Clinical and course objectives/outcomes shall be stated in behavioral terms and shall serve as the mechanism for student progression. The conceptual framework shall define the internal and external influences impacting vocational nursing education and shall identify the educational method and focus.]

(2) Design and Implementation. The curriculum shall be designed and implemented to prepare students to demonstrate the *Differentiated Entry Level Competencies of Graduates of Texas Nursing*

*Programs, Vocational (VN), Diploma/Associate Degree (Dip/ADN), Baccalaureate (BSN), September 2002.* The curriculum design shall allow for flexibility to incorporate current nursing education theories and the implications of current developments in health care and health care delivery to assist graduates in meeting professional, legal, and societal expectations. Educational mobility shall also be a consideration in curriculum design.]

(2) [(3)] [Specific provisions] Instruction shall be provided in nursing roles; biological, physical, social, behavioral, and nursing sciences, including body structure and function, microbiology, pharmacology, [and] nutrition, signs of emotional health, [~~and~~] human growth and development; vocational [~~Vocational~~] adjustments; and nursing skills [shall also be included]. Courses may be integrated or separate. [The selection and organization of the learning experiences in the curriculum shall provide continuity, sequence, and integration of learning. Didactic and skills laboratory experiences shall be concurrent. Correlated didactic and clinical practice shall be provided in the following areas, but not necessarily in separate courses:]

[(A) Nursing Care of Children. Experiences shall include care of children and meeting their needs in a variety of age groups in both the acute and non-acute care setting. Day care and clinic settings may be utilized as supplementary experience. Common health deviations; physical, psychological, and neurological handicaps; and nutritional needs shall be emphasized. Students shall have opportunities to develop understanding of normal growth and development and the influences of the family, home, church, school, and community. Student practice in caring for and understanding the needs of newborn infants shall also be included.]

[(B) Maternity Nursing. Opportunities shall be provided for students to gain an understanding of the psychological and physiological aspects of pregnancy, labor, and puerperium. Assisting mothers in the care of their infants shall be emphasized. A variety of settings, including clinics, organized maternity units, and maternity cases in non-segregated units, may be utilized for provision of maternity nursing experience.]

[(C) Nursing Care of the Aged. Opportunities shall be included for the care of individuals experiencing specific changes related to the aging process. Students shall develop an understanding of the physical and mental changes associated with aging and the implications of aging in planning nursing care.]

[(D) Nursing Care of Adults. Opportunities shall be provided to the student through the use of various resources to care for adults who have health deviations. Resources used shall include learning experiences to illustrate the individual as a member of the family, the responsibilities and functions of the community in the provision of nursing care, and the types of agencies where nursing is practiced. Preventive, therapeutic, and rehabilitative aspects shall be provided. Experiences shall also include the physical, psychological, and spiritual components of health and disease. Experience shall include, but not be limited to, the acute care settings.]

[(E) Nursing Care of Individuals With Mental Health Problems. Learning opportunities shall include an understanding of personality development, human needs, common mental mechanisms, and factors influencing mental health and mental illness. Common mental disorders and related therapy shall be included. Clinical experience in a unit or facility specifically designed for psychiatric care is optional.]

(c) Instruction [Classroom instruction] shall include, but not be limited to, organized student/faculty interactive learning activities, formal lecture, audiovisual presentations, [and] simulated laboratory instruction, and actual patient care clinical learning experiences.

(1) Class hours shall include actual hours of classroom instruction in nursing and non-nursing Board-required courses/content;

(2) Laboratory activities/instruction may be counted as either classroom or laboratory hours for the purpose of calculating the hours in the curriculum;

(3) Clinical hours shall be sufficient to meet program of study requirements;

(4) Clinical practice shall include actual hours of practice in clinical areas, clinical conferences, and simulated lab experiences, if counted as clinical hours for the purpose of calculating the hours in the curriculum;

(5) The total weekly schedule throughout the length of the program shall not exceed 40 hours per week, including both class and clinical practice hours;

(6) Students shall be assigned two consecutive non-class/clinical days off each week;

(7) Students shall be allocated at least 18 days leave for vacation and/or holidays;

(8) All scheduled holidays are to be observed on the holidays designated by the controlling agency/governing institution; and

(9) Vacation time shall be scheduled at the same time for all students.

(d) Educational mobility shall be a consideration in curriculum design [The curriculum plan, including course outlines, shall be kept current and available to faculty and Board representatives].

(e) The program of study shall include, but not be limited to, the following areas: [A system of grading shall be in place which does not allow grades of less than a "C" on any subject area required for licensure eligibility listed in this chapter].

(1) Nursing Care of Children. Opportunities shall be provided for students to gain an understanding of the common health deviations, physical, psychological, and neurological handicaps, and nutritional needs of pediatric patients. Day care and clinic settings may be utilized as supplementary experiences. Normal growth and development and the influences of the family, home, church, school, and community shall be emphasized. Student practice in caring for and understanding the needs of newborn infants shall also be included. A variety of settings, including acute and non-acute, may be utilized for the provision of pediatric nursing experiences.

(2) Maternity Nursing. Opportunities shall be provided for students to gain an understanding of the psychological and physiological aspects of pregnancy, labor, and puerperium. Assisting mothers in the care of their infants shall be emphasized. A variety of settings, including clinics, organized maternity units, and maternity cases in non-segregated units, may be utilized for provision of maternity nursing experience.

(3) Nursing Care of the Aged. Opportunities shall be included for the care of individuals experiencing specific changes related to the aging process. Students shall develop an understanding of the physical and mental changes associated with aging and the implications of aging in planning nursing care.

(4) Nursing Care of Adults. Opportunities shall be provided to the student through the use of various resources to care for adults who have health deviations. Resources used shall include learning experiences to illustrate the individual as a member of the family, the responsibilities and functions of the community in the provision of nursing care, and the types of agencies where nursing is practiced. Pre-

ventive, therapeutic, and rehabilitative aspects shall be provided. Experiences shall also include the physical, psychological, and spiritual components of health and disease. Experience shall include, but not be limited to, the acute care settings.

(5) Nursing Care of Individuals With Mental Health Problems. Learning opportunities shall include an understanding of personality development, human needs, common mental mechanisms, and factors influencing mental health and mental illness. Common mental disorders and related therapy shall be included. Clinical experience in a unit or facility specifically designed for psychiatric care is optional.

(f) The selection and organization of the learning experiences in the curriculum shall provide continuity, sequence, and integration of learning. [Major revisions to the curriculum must be submitted to the Board office following Board guidelines for review and approval prior to implementation. Major revisions include:]

(1) The learning experiences shall provide for progressive development of values, knowledge, judgment, and skills.

(2) Didactic learning experiences shall be provided either prior to or concurrent (at the same time) with the related clinical learning experiences.

(3) Clinical learning experiences shall be sufficient in quantity and quality to provide opportunities for students to achieve the stated outcomes.

(4) Students shall have sufficient opportunities in simulated or clinical settings to develop manual technical skills, using contemporary technologies, essential for safe, effective nursing practice.

(5) Learning opportunities shall assist students to develop communication and interpersonal relationship skills.

[(1) changes in philosophy/mission;]

[(2) revisions in program hours; and]

[(3) addition/reduction of courses in the program of study.]

(g) Course content shall be appropriate to the role expectations of the graduate.

(1) Professional values, including ethics, safety, diversity, and confidentiality shall be addressed.

(2) The Nursing Practice Act, Standards of Nursing Practice, Unprofessional Conduct Rules, and other laws and regulations which pertain to various practice settings shall be addressed.

(3) The curriculum plan, including course outlines, shall be kept current and available to faculty and Board representatives.

(h) Faculty shall develop and implement evaluation methods and tools to measure progression of students' cognitive, affective and psychomotor achievements in course/clinical objectives, according to Board guidelines.

(1) A system of grading shall be in place which does not allow grades of less than a "C" on any subject areas required for licensure eligibility listed in this chapter.

(2) Programs may allow individuals to challenge the vocational nursing educational curriculum, and shall develop and define such policies to meet theory and practice requirements for challenging credit.

(i) Curriculum changes shall be developed by the faculty according to Board standards and shall include information outlined in the Board guidelines. The two types of curriculum changes are:

(1) Minor curriculum changes not requiring prior Board staff approval, and may include:

(A) Editorial updates of philosophy/mission and objectives/outcomes; or

(B) Redistribution of course content or course hours.

(2) Major curriculum changes requiring Board staff approval prior to implementation, including:

(A) Changes in program philosophy/mission and objectives/outcomes which result in a reorganization or re-conceptualization of the entire curriculum, including but not limited to, changing from a block to an integrated curriculum;

(B) Revisions in program hours; and

(C) Addition/reduction of course(s) in the program of study.

(j) Documentation of controlling agency/governing institution approval, and approval from the Texas Workforce Commission (TWC) or the Texas Higher Education Coordinating Board (THECB) if approved/licensed by the TWC or THECB, must be provided to the Board prior to implementation of changes, as appropriate.

(k) Nursing educational programs that have full approval status and are undergoing major curriculum changes shall submit an abbreviated proposal, as outlined in Board guidelines, to the Board office for approval at least four (4) months prior to implementation. The abbreviated proposal shall contain at least the following:

(1) new and old philosophy/mission, major concepts, program objectives/outcomes, course objectives/outcomes;

(2) new and old curriculum plans;

(3) clinical evaluation tools for each clinical course; and

(4) additional information, as requested, in order to provide clarity for Board staff.

(l) Nursing educational programs not having full approval status, but proposing a major curriculum change shall submit a full curriculum change proposal, as outlined in Board guidelines, to the Board office and meet the requirements as outlined in subsection (i) of this section.

(m) All nursing educational programs implementing a curriculum change shall submit an evaluation of the outcomes of the implemented curriculum change through the first graduating class under the new curriculum.

[(g) All programs implementing a curriculum change shall provide an evaluation of the outcomes of these changes and submit them with the Annual Report through the first graduating class.]

[(h) There shall be provision for continuous development, implementation, and evaluation of the curriculum.]

[(i) Programs may allow individuals to challenge the vocational nursing education curriculum, and shall develop and define such policies to meet theory and practice requirements for challenging credit.]

[(j) Adaptation to the calendar in the college catalog is permissible.]

§214.10. [Management of] Clinical Learning Experiences [and Resources].

(a) Faculty shall be responsible and accountable for managing clinical learning experiences and observational experiences of students. [Faculty shall be responsible for student clinical practice evalua-

tions. Clinical practice evaluations shall be correlated with level and/or course objectives including formative and summative evaluation. Students shall receive a minimum of three clinical evaluations during the program year.]

(b) Faculty shall develop criteria for the selection of affiliating agencies/clinical facilities or clinical practice settings which address safety and the need for students to achieve the program outcomes (goals) and course objectives through the practice of nursing care or observational experiences. Consideration of selection of a clinical site shall include: [Clinical practice shall include actual hours of practice in clinical areas, clinical conferences, and/or simulated lab experiences.]

(1) client census in sufficient numbers to meet the clinical objectives/outcomes of the program/courses; and

(2) evidence of collaborative arrangements for scheduling clinical rotations with those facilities that support multiple nursing programs.

(c) Faculty shall select and evaluate affiliating agencies/clinical facilities or clinical practice settings which provide students with opportunities to achieve the goals of the program.

(1) Written agreements between the program and the affiliating agencies shall be in place before clinical learning experiences begin and shall specify the responsibilities of the program to the agency and the responsibilities of the agency to the program.

(2) Agreements shall be reviewed periodically and include provisions for adequate notice of termination and a withdrawal of participation clause indicating a minimum period of time to be given for notice of such withdrawal.

(3) Affiliation agreements are optional for those clinical experiences which are observation only.

[(e) Clinical experiences shall include the administration of medications, health promotion and preventive aspects, nursing care of persons throughout the life span with acute and chronic illnesses, and rehabilitative care. Students shall participate in instructor supervised patient teaching. Students shall also be provided opportunities for participation in clinical conferences. The focus of clinical conferences shall be student experiences in the clinical setting. Simulated laboratory experiences may also be utilized as a teaching strategy in classroom and clinical settings to meet objectives.]

(d) The faculty member shall be responsible for the supervision of students in clinical learning experiences and scheduling [Scheduling] of student time and clinical rotations [shall be made by the program faculty].

(1) Selected clinical learning experiences will remain unchanged unless a client's condition demands reassignment.

(2) Reassignment must be approved with prior consent of faculty.

(3) The student's daily client assignment shall be made in accordance with clinical objectives/outcomes and learning needs of the students.

(4) The total number of daily assignments shall not exceed five (5) clients.

(e) Clinical learning experiences shall include the administration of medications, health promotion and preventive aspects, nursing care of persons throughout the life span with acute and chronic illnesses, and rehabilitative care.

(1) Students shall participate in instructor supervised patient teaching.

(2) Students shall also be provided opportunities for participation in clinical conferences.

(3) Simulated laboratory experiences may also be utilized as a teaching strategy in classroom and clinical settings to meet objectives and may be counted as either classroom or clinical hours for the purpose of calculating the hours in the curriculum.

(f) Faculty shall be responsible for student clinical practice evaluations. Clinical practice evaluations shall be correlated with level and/or course objectives and shall include a minimum of a formative and summative evaluation for each clinical in the curriculum.

(g) The following ratios only apply to clinical learning experiences involving direct patient care:

(1) When a faculty member is the only person officially responsible for a clinical group, the group shall total no more than ten (10) students.

(2) Patient safety shall be a priority and may mandate lower ratios, as appropriate.

(3) The faculty member shall supervise that group in only one facility at a time, unless some portion or all of the clinical group are assigned to observational experiences in additional settings.

(4) Direct faculty supervision is not required for an observational experience.

(h) Clinical preceptors may be used to enhance clinical learning experiences after a student has received clinical and didactic instruction in all basic areas of nursing or within a course after a student has received clinical and didactic instruction in the basic areas of nursing for that course or specific learning experience.

(1) In courses which use clinical preceptors for a portion of clinical learning experiences, faculty shall have no more than twelve (12) students in a clinical group.

(2) In a course which uses clinical preceptors as the sole method of student instruction and supervision in clinical settings, faculty shall coordinate the preceptorship for no more than twenty-four (24) students.

(3) The preceptor may supervise student clinical learning experiences without the physical presence of the faculty member in the affiliating agency or clinical practice setting.

(4) The preceptor shall be responsible for the clinical learning experiences of no more than two (2) students at a time per clinical group.

(i) When faculty use clinical preceptors to enhance clinical learning experiences and to assist faculty in the clinical supervision of students, the following applies:

(1) Faculty shall develop written criteria for the selection of clinical preceptors.

(2) When clinical preceptors are used, written agreements between the vocational nursing educational program, clinical preceptor, and the affiliating agency, when applicable, shall delineate the functions and responsibilities of the parties involved.

(3) Faculty shall be readily available to students and clinical preceptors during clinical learning experiences.

(4) The designated faculty member shall meet periodically with the clinical preceptors and student(s) for the purpose of monitoring and evaluating learning experiences.

(5) Written clinical objectives shall be shared with the clinical preceptors prior to or concurrent with the experience. Written clinical objectives shall be shared with the clinical preceptors prior to or concurrent with the experience.

(6) Clinical preceptors shall have the following qualifications:

(A) competence in designated areas of practice;

(B) philosophy of health care congruent with that of the nursing program; and

(C) current licensure or privilege to practice as a licensed nurse in the State of Texas; or

(D) if not a licensed nurse, a current license in Texas as a health care professional with a minimum of a bachelor's degree in that field.

(j) During clinical learning experiences, programs shall not permit utilization of students for health care facility staffing.

[(e) The student's daily client assignment shall be made in accordance with clinical objectives/outcomes and learning needs of the students. The total number of daily assignments shall not exceed five clients.]

[(f) Consideration of selection of a clinical site shall include:]

[(1) client census in sufficient numbers to meet the clinical objectives/outcomes of the program; and]

[(2) evidence of collaborative arrangements in those facilities, which support multiple nursing programs:]

[(g) There shall be a written affiliation agreement between the controlling agency and the affiliating agency before the affiliation begins. The agreement shall outline the responsibilities of each agency entering the agreement. The agreement shall contain a withdrawal of participation clause indicating a minimum period of time to be given for notice of such withdrawal.]

[(h) Affiliation agreements are optional for those clinical experiences which are observation only:]

[(i)] The affiliating agency shall:

(1) provide clinical facilities for student experiences;

(2) provide space for conducting clinical conferences for use by the school if classrooms are located elsewhere;

(3) provide assistance with clinical supervision of students, including preceptorships, by mutual agreement between the affiliating agency and controlling agency; and

(4) have no authority to dismiss faculty or students. Should the affiliating agency wish to recommend dismissal of faculty or students, such recommendation(s) shall be in writing.

[(j) The faculty member shall be responsible for the supervision of students in clinical learning experiences:]

[(k) The following ratios only apply to clinical learning experiences involving direct patient care:]

[(1) When a faculty member is the only person officially responsible for a clinical group, then the group shall total no more than ten (10) students. Patient safety shall be a priority and may mandate lower ratios, as appropriate. The faculty member shall supervise that group in only one facility at a time, unless some portion or all of the clinical group are assigned to observational experiences in additional settings:]



[(2) Direct faculty supervision is not required for an observational experience. Observational experiences may be used to supplement, but not replace patient care experiences, and must serve the purpose of student attainment of clinical objectives.]

[(4) Clinical preceptors may be used to enhance clinical learning experiences after a student has received clinical and didactic instruction in all basic areas of nursing or within a course after a student has received clinical and didactic instruction in the basic areas of nursing for that course or specific learning experience.]

[(1) In courses which use clinical preceptors for a portion of clinical learning experiences, faculty shall have no more than twelve (12) students in a clinical group.]

[(2) In a course which uses clinical preceptors as the sole method of student instruction and supervision in clinical settings, faculty shall coordinate the preceptorship for no more than twenty-four (24) students.]

[(3) The preceptor may supervise student clinical learning experiences without the physical presence of the faculty member in the affiliating agency or clinical practice setting.]

[(4) The preceptor shall be responsible for the clinical learning experiences of no more than two students (2) at a time per clinical group.]

[(m) When faculty use clinical preceptors to enhance clinical learning experiences and to assist faculty in the clinical supervision of students the following applies:]

[(1) Faculty shall develop written criteria for the selection of clinical preceptors.]

[(2) When clinical preceptors are used, written agreements between the vocational nursing education program, clinical preceptor, and the affiliating agency, when applicable, shall delineate the functions and responsibilities of the parties involved.]

[(3) Faculty shall be readily available to students and clinical preceptors during clinical learning experiences.]

[(4) The designated faculty member shall meet periodically with the clinical preceptors and student(s) for the purpose of monitoring and evaluating learning experiences.]

[(5) Written clinical objectives, evaluation criteria, and written description of expectations shall be shared with the clinical preceptors prior to or concurrent with the experience.]

[(6) The preceptor shall be accountable for evaluating the student using clinical objectives developed by vocational nursing faculty.]

[(7) Clinical preceptors shall have the following qualifications:]

[(A) competence in designated areas of practice;]

[(B) philosophy of health care congruent with that of the nursing program; and]

[(C) current licensure or privilege to practice nursing in the State of Texas.]

[(n) The total weekly schedule throughout the length of the program shall not exceed 40 hours per week including both class and clinical practice hours. Class and clinical practice hours shall be continuous. Students shall be assigned two consecutive non-class days off each week.]

[(e) Programs shall not permit utilization of students for health care facility staffing.]

#### §214.11. Facilities, Resources, and Services.

(a) The controlling agency/governing institution shall be responsible for providing: [Classrooms and nursing skills laboratory facilities shall be provided to accommodate the learning needs of the students:]

(1) educational facilities,

(2) resources, and

(3) services which support the effective development and implementation of the nursing educational program.

(b) An appropriately equipped skills laboratory shall be provided to accommodate maximum number of students allowed for the program.

(1) The laboratory shall be equipped with hot and cold running water.

(2) The laboratory shall have adequate [cabinets for] storage for [of] equipment.

(c) The director/coordinator and faculty shall have adequate secretarial and clerical assistance to meet the needs of the program.

(d) The physical facilities shall be adequate to meet the needs of the program in relation to the size of the faculty and the student body.

(1) The director/coordinator shall have a private office.

(2) Faculty offices shall be conveniently located and adequate in number and size to provide faculty with privacy for conferences with students and uninterrupted work.

(3) Space for clerical staff, records, files, and equipment shall be adequate.

(4) There shall be mechanisms which provide for the security of sensitive materials, such as examinations and health records.

(5) Classrooms, laboratories, and conference rooms shall be conducive to learning and adequate in number, size, and type for the number of students and the educational purposes for which the rooms are used.

(6) Teaching aids shall be provided to meet the objectives/outcomes of the program.

(7) Adequate restrooms and lounges shall be provided convenient to the classroom.

(e) The learning resources, library, and departmental holdings shall be current, use contemporary technology appropriate for the level of the curriculum, and be sufficient for the size of the student body and the needs of the faculty.

(1) Provisions shall be made for accessibility, availability, and timely delivery of information resources.

(2) Facilities and policies shall promote effective use, i.e. environment, accessibility, and hours of operation.

[(e) The director or coordinator and faculty shall have office space provided, other than the classroom. There shall be privacy for counseling of students.]

[(d) The learning resources, library, and departmental holdings shall be current, use contemporary technology appropriate for the level of the curriculum, and be sufficient for the size of the student body and the needs of the faculty.]

[(1) Provisions shall be made for accessibility, availability, and timely delivery of information resources.]

[(2) Facilities and policies shall promote effective use, i.e. environment, accessibility, and hours of operation.]

[(e) Teaching aids shall be provided to meet the objectives of the program.]

[(f) Adequate restrooms and lounges shall be provided convenient to the classroom.]

#### §214.12. *Records and Reports.*

(a) Accurate and current records shall be maintained for a minimum of two (2) years in a confidential manner and be accessible to appropriate parties, including Board representatives. These records shall include, but are not limited to: [Student Forms—Student records shall be maintained on all students and shall be accessible to all faculty members and to Board representatives. Record forms may be developed by an individual school. Hospital employment forms are not to be used for student records.]

(1) records of current students, including the student's application and required admission documentation, evidence of student's ability to meet objectives/outcomes of the program, final clinical practice evaluations, signed receipt of student policies furnished by manual and/or electronic means, evidence of student receipt of the Texas Board of Nursing license eligibility information as specifically outlined in §214.8(b) of this chapter (relating to Students), and the statement of withdrawal from the program, if applicable;

(2) faculty records;

(3) administrative records, which include minutes of faculty meetings for the past three years, and school catalogs;

(4) the current program of study and curriculum including mission and goals (philosophy and outcomes), and course outlines;

(5) agreements with affiliating agencies; and

(6) the master plan of evaluation with most recent data collection.

(b) Record forms may be developed by an individual school.

(c) Hospital employment forms are not to be used for student records.

(d) Records shall be safely stored to prevent loss, destruction, or unauthorized use.

(e) Copies of the program's Texas Board of Nursing Educational Program Information Survey (NEPIS), Compliance Audit of the Nursing Educational Program (CANEP), and important Board communication shall be maintained as appropriate.

[(b) Required Student Forms—The required student forms are the student application, evidence of student's ability to meet objectives/outcomes of the program, clinical practice evaluation, transcript, signed receipt of written student policies, evidence of student receipt of eligibility information, and statement of withdrawal.]

[(e) Record Storage—Records shall be safely stored to prevent loss, destruction, or unauthorized use. Records of all graduates must be completed prior to permanent storage. Records on students who withdraw from the program shall be completed up to the date of withdrawal]

[(d) Retention of Student Records—All records shall be maintained for two years. At minimum, a transcript shall be retained as a permanent record on all students.]

[(e) Copies of the program's Texas Board of Nursing Compliance Audit of the Nursing Educational Program (CANEP), Nursing Educational Program Information Survey (NEPIS), and important Board communication shall be maintained as appropriate.]

#### §214.13. *Total Program Evaluation.*

(a) There shall be a written plan for the systematic evaluation of the total program. The plan shall include evaluative criteria, methodology, frequency of evaluation, assignment of responsibility, and indicators (benchmarks) of program and instructional effectiveness. The following broad areas shall be periodically evaluated:

- (1) organization and administration of the program;
- (2) philosophy/mission and objectives/outcomes;
- (3) program of study, curriculum, and instructional techniques;
- (4) educational facilities, resources, and services;
- (5) affiliating agencies and clinical learning activities;
- (6) students' achievement;
- (7) graduates' performance on the licensing examination;
- (8) graduates' nursing competence;
- (9) faculty members' performance; and
- (10) extension programs.

(b) All evaluation methods and instruments shall be periodically reviewed for appropriateness.

(c) Implementation of the plan for total program evaluation shall be documented in the minutes.

(d) Major changes in the nursing educational [~~education~~] program shall be evidence-based and supported by rationale.

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 July 28, 2008.

TRD-200803914

James W. Johnston

General Counsel

Texas Board of Nursing

Earliest possible date of adoption: September 7, 2008

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## CHAPTER 215. PROFESSIONAL NURSING EDUCATION

### 22 TAC §§215.1 - 215.13

The Texas Board of Nursing (Board) proposes amendments to §§215.1 - 215.13, concerning Professional Nursing Education.

Elsewhere in this issue of the *Texas Register*, the Board is contemporaneously proposing amendments to §§214.1 - 214.13, concerning Vocational Nursing Education.

At the July 2006 Board meeting, the Board issued a charge to the Advisory Committee on Education (ACE) to review rule language regarding clarity and consistency between Chapter 214 and Chapter 215. ACE addressed this charge during the June 13, 2008, meeting in Austin and continued the process during the

June 24, 2008, telephonic conference. The proposed amendments to Chapter 215 are as follows:

Section 215.1, General Requirements - addition of language provides clarity for the intent of the rule and matches wording in the statute;

Section 215.2, Definitions - addition, deletion, reorganization, rephrasing, and revision of language provide clarity for the intent of the rule, demonstrate consistency between the rules, and describe the processes that actually occur;

Section 215.3, Program Development, Expansion, and Closure - addition, clarification, deletion and revision of language provide clarity for the intent of the rules, demonstrate consistency between the rules, and describe the processes that actually occur and are outlined in Board guidelines;

Section 215.4, Approval - addition, clarification, deletion, reorganization and revision of language provide clarity for the intent of the rules, demonstrate consistency between the rules, and describe the processes that actually occur;

Section 215.5, Philosophy/Mission and Objectives/Outcomes - addition and revision of language provide clarity for the intent of the rule, demonstrate consistency between the rules, and match wording in the statute;

Section 215.6, Administration and Organization - addition, reorganization, and revision of language provide clarity for the intent of the rule, consistency between the rules, and describe the processes that actually occur;

Section 215.7, Faculty Qualifications and Faculty Organization - addition, deletion, revision, rephrasing, and reorganization of language provide clarity for the intent of the rule, demonstrate consistency between the rules, and describe the processes that actually occur;

Section 215.8, Students - addition, deletion, reorganization, rephrasing, and revision of language provide clarity for the intent of the rule, demonstrate consistency between the rules, and describe the processes that actually occur;

Section 215.9, Program of Study - addition, deletion, reorganization, rephrasing, and revision of language provide clarity for the intent of the rule, demonstrate consistency between the rules, and describe the processes that actually occur;

Section 215.10, Management of Clinical Learning Experiences and Resources - addition, deletion, reorganization, rephrasing, and revision of language provide clarity for the intent of the rule, demonstrate consistency between the rules, and describe the processes that actually occur;

Section 215.11, Facilities, Resources, and Services - addition, deletion, reorganization, rephrasing, and revision of language provide clarity for the intent of the rule, demonstrate consistency between the rules, and describe the processes that actually occur;

Section 215.12, Records and Reports - addition, deletion, reorganization, rephrasing, and revision of language provide clarity for the intent of the rule, demonstrate consistency between the rules, and describe the processes that actually occur; and

Section 215.13, Total Program Evaluation - addition, deletion, reorganization, rephrasing, and revision of language provide clarity for the intent of the rule, demonstrate consistency between the rules, and describe the processes that actually occur.

Additional non-substantive changes were made throughout Chapter 215 for the purposes of correcting spelling/grammatical errors and providing correct numbering of items.

Katherine Thomas, Executive Director, has determined that for the first five-year period the proposed amendments are in effect there will be no additional fiscal implications for state or local government as a result of enforcing the amendments as proposed.

Ms. Thomas has also determined that for each year of the first five years the proposed amendments are in effect, the public benefit will be to provide clarity for the intent of the rules, demonstrate consistency between the rules, and describe the processes that actually occur and are outlined in Board guidelines with regard to program evaluations and approval. Additionally, the rule amendments seek to comply with the Sunset Commissions recommendations outlined in Acts 2007 (HB 2426), 80th Legislature, effective September 1, 2007 and statutory amendments to §301.157, Texas Occupations Code. There will not be any foreseeable effect on small or micro businesses. There are no anticipated costs to affected individuals as a result of the implementation of the proposed amendments.

Written comments on the proposal may be submitted to Dusty Johnston, General Counsel, Texas Board of Nursing, 333 Guadalupe, Suite 3-460, Austin, Texas 78701, or by e-mail to dusty.johnston@bon.state.tx.us, or by fax to Dusty Johnston at (512) 305-8101.

The amendments are proposed pursuant to the authority of Texas Occupations Code §301.157, and §301.151 which authorizes the Texas Board of Nursing to adopt, enforce, and repeal rules consistent with its legislative authority under the Nursing Practice Act.

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

#### §215.1. *General Requirements.*

(a) The dean/director [~~dean or director~~] and faculty are accountable for complying with the Board's rules and regulations and the Nursing Practice Act.

(b) Rules for professional nursing educational [~~education~~] programs shall provide reasonable and uniform standards based upon sound educational principles that allow the opportunity for flexibility, creativity and innovation [~~and creativity~~].

#### §215.2. *Definitions.*

Words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise:

(1) Accredited nursing educational program--a professional nursing educational program having voluntary accreditation by a Board-approved national nursing accrediting body.

(2) Affidavit of Graduation--an official Board form containing an approved nursing educational program's curriculum components and hours, a statement attesting to an applicant's qualifications for registered nurse licensure in Texas and the signature of the nursing program dean/director.

(3) [~~(2)~~] Affiliating agency or clinical facility [~~Agency or Clinical Facility~~]-a health care facility or agency which provides learning experiences for students.

(4) [~~(3)~~] Alternative practice settings--settings which provide opportunities for clinical learning experiences although their primary function is not the delivery of health care.

(5) [(4)] Approved professional nursing educational program--a professional nursing educational program approved by the Texas Board of Nursing.

(6) [(5)] Articulation--a planned process between two or more educational systems to assist students to make a smooth transition from one level of education to another without duplication in learning.

(7) [(6)] Board--the Texas Board of Nursing composed of members appointed by the Governor for the State of Texas.

(8) Career school or college--see paragraph (33) of this section (relating to Proprietary school)--educational entity defined in Title 3, Texas Education Code, §132.0015 as "career school or college."

(9) [(7)] Clinical learning experiences--faculty planned [faculty planned] and guided learning activities designed to assist students to meet stated program and course outcomes and to safely apply knowledge and skills when providing nursing care to clients across the life span as appropriate to the role expectations of the graduates. These experiences occur in actual patient care clinical learning situations; nursing skills and computer laboratories; in simulated clinical settings; in a variety of affiliating agencies or clinical practice settings including, but not limited to: acute care facilities, extended care facilities, clients' residences, and community agencies; and in associated clinical conferences.

(10) [(8)] Clinical preceptor--a registered nurse or other licensed health professional who meets the minimum requirements in §215.10(j)(6) [(4)(5)] of this chapter (relating to [Management of] Clinical Learning Experiences [and Resources]), not employed [paid] as a faculty member by the controlling agency/governing institution, and who directly supervises a student's clinical learning experience. A clinical preceptor facilitates student learning in a manner prescribed by a signed written agreement between the educational institution, preceptor, and affiliating agency (as applicable).

(11) [(9)] Clinical teaching assistant--a registered nurse licensed in Texas, who is employed to assist in the clinical area and work under the supervision of a Master's or Doctorally prepared nursing faculty member and who meets the minimum requirements in §215.10(j)(8) [(g)(4)] of this chapter.

(12) [(10)] Compliance Audit--a document required by the Board to be submitted at a specified time by the nursing educational program dean or director or coordinator that serves as verification of the program's adherence to this chapter.

(13) [(11)] Conceptual framework [Framework]--theories or concepts giving structure to the curriculum and enabling faculty to make consistent decisions about [all aspects of] curriculum development, implementation, and evaluation.

(14) Controlling agency--institution that has direct authority and administrative responsibility for the operation of a board approved nursing educational program.

(15) Correlated theory and clinical practice--didactic and clinical experiences which have a reciprocal relationship or mutually complement each other.

(16) [(12)] Course--organized subject content and related activities, which may include didactic, laboratory and/or clinical experiences, planned to achieve specific objectives within a given time period.

(17) [(13)] Curriculum--course offerings, which in aggregate, make up the total learning activities in a program of study.

(18) [(14)] Dean/director [or Director]--a registered nurse who is accountable for administering a pre-licensure nursing educa-

tional program, who meets the requirements as stated in §215.6(f) of this chapter (relating to Administration and Organization), and is approved by the Board.

(19) [(15)] Differentiated Entry Level Competencies (DEL<sub>C</sub>)--the expected educational outcomes to be demonstrated by nursing students at the time of graduation as published in *Differentiated Entry Level Competencies [Competencies] of Graduates of Texas Nursing Programs, Vocational (VN), Diploma/Associate Degree (Dip/ADN), Baccalaureate (BSN), September 2002 (DEL<sub>C</sub>).*

(20) [(16)] Examination year--the period beginning October 1 and ending September 30 used for the purposes of determining programs' NCLEX-RN® [NCLEX-RN™] examination pass rates.

(21) [(17)] Extension program/campus [Program]--instruction provided by an approved professional pre-licensure nursing educational program through [providing] a variety of instructional methods to any location(s) other than the program's main campus and where students are required to attend activities such as testing, group conferences, and/or campus laboratory. An extension program may offer the entire identical curriculum or may offer a single course or multiple courses.

{(A) Complete program--provides the entire program of study at a site other than the program's main campus.}

{(B) Partial program--provides a course, or courses, from the program of study at a site other than the program's main campus.}

(22) [(18)] Faculty member--an individual employed to teach in the professional nursing educational program who meets the requirements as stated in §215.7 of this chapter (relating to Faculty [Qualifications and Faculty Organization]).

(23) [(19)] Faculty waiver--a waiver granted by a dean or director of a professional nursing educational program and submitted to the Board on a notarized notification form, or by the Board, as specified in §215.7(d)(4) [(e)(1)(E)(iii)] of this chapter, to an individual who has a baccalaureate degree in nursing and is currently licensed in Texas, or has a privilege to practice, to be employed as a faculty member which is valid for up to one year.

(24) [(20)] Governing institution--the entity with administrative and operational authority over a Board-approved professional nursing educational program.

(25) [(21)] Health care professional--an individual other than a RN who holds at least a bachelor's degree in the health care field, including, but not limited to: respiratory therapists, physical therapists, occupational therapists, dieticians, pharmacists, physicians, social workers and psychologists.

{(22) Mobility--the ability to advance without educational barriers.}

(26) MEEP--a Multiple Entry-Exit Program which allows students to challenge the NCLEX-RN® examination when they have completed sufficient course work in a professional nursing educational program that will meet all requirements as outlined in Chapter 213 of this title (relating to Practice and Procedure).

(27) [(23)] Non-nursing faculty [Nursing Faculty]--instructors who teach non-nursing content [theory courses] such as pharmacology, pathophysiology, research, management and statistics, and who have educational preparation appropriate to the assigned teaching responsibilities.

(28) [(24)] Objectives/Outcomes--clear statements of expected behaviors that are attainable and measurable.

(A) Program Objectives/Outcomes--broad statements used to direct ~~[the]~~ overall student learning to meet [toward the] achievement of expectations upon graduation [expected program outcomes].

(B) Clinical Objectives/Outcomes--statements describing expected student behaviors throughout the curriculum and which represent progression of students' cognitive, affective and psychomotor achievement in clinical practice across the curriculum.

(C) Course Objectives/Outcomes--statements describing expected behavioral changes in the learner upon successful completion of specific curriculum content and which serve as the mechanism for evaluation of student progression.

~~(29) [(25)]~~ Observational experience--an assignment to a facility or unit where students observe activities within the facility and/or the role of nursing within the facility, but where students do not participate in patient/client care.

~~(30) [(26)]~~ Pass rate--the percentage of first-time candidates within one examination year who pass the National Council Licensure Examination for Registered Nurses NCLEX-RN® [NCLEX-RN™].

~~(31) [(27)]~~ Philosophy/Mission--statement of concepts expressing fundamental values and beliefs regarding human nature as they apply to nursing education and practice and upon which the curriculum is based.

~~(32) [(28)]~~ Professional Nursing Educational Programs--an educational unit [entity] that offers ~~[the]~~ courses and learning experiences preparing [that prepares] graduates who are competent to practice safely and who are eligible to take the NCLEX-RN® [NCLEX-RN™] examination, [and] often referred to as a pre-licensure nursing program. Types of pre-licensure professional nursing programs:

(A) Associate degree nursing educational program--a program leading to an associate degree in nursing conducted by an educational unit in nursing within the structure of a college or university.

(B) Baccalaureate degree nursing educational program--a program leading to a bachelor's degree in nursing conducted by an educational unit in nursing which is a part of a senior college or university.

(C) Master's degree nursing educational program--a program leading to a master's degree, which is an individual's first professional degree in nursing, and conducted by an educational unit in nursing within the structure of a senior college or university.

(D) Diploma nursing educational program--a program leading to a diploma in nursing conducted by a single purpose school usually under the control of a hospital.

~~[(E) MEEP--a Multiple Entry-Exit Program which allows students to challenge the NCLEX-PN™ examination when they have completed sufficient course work in a professional nursing educational program that will meet all requirements for the examination.]~~

~~(33) Proprietary school--educational entity defined in Title 3, Texas Education Code, §132.0015 as "career school or college."~~

~~(34) [(29)]~~ Program of study--the courses and learning experiences that constitute the requirements for completion of a professional pre-licensure nursing educational program (associate degree nursing educational program, baccalaureate degree nursing educational program, master's degree nursing educational program, or diploma nursing educational program).

~~(35) [(30)]~~ Recommendation--a specific suggestion based upon program assessment indirectly related to the rules to which the program must respond but in a method of their choosing.

~~(36) [(31)]~~ Requirement--mandatory criterion based upon program assessment directly related to the rules that must be addressed in the manner prescribed.

~~(37) [(32)]~~ Shall--denotes mandatory requirements.

~~(38) [(33)]~~ Staff--employees of the Texas Board of Nursing.

~~(39) [(34)]~~ Supervision--immediate availability of a faculty member, clinical preceptor, or clinical teaching assistant to coordinate, direct, and observe first hand the practice of students.

~~(40) [(35)]~~ Survey visit ~~[Visit]~~--an on-site visit to a professional nursing educational program by a Board representative. The purpose of the visit is to evaluate the program of learning by gathering data to determine whether the program is meeting the Board's requirements as specified in §§215.2 - 215.13 of this chapter (relating to Professional Nursing Education).

~~(41) [(36)]~~ Systematic approach [Approach]--the organized process in nursing that [which] provides individualized, goal-directed nursing care by performing comprehensive nursing assessments regarding the health status of the client, making nursing diagnoses that serve as the basis for the strategy of care, developing a plan of care based on the assessment and nursing diagnosis, implementing nursing care, and evaluating the client's responses to nursing interventions.

~~(42) [(37)]~~ Texas Higher Education Coordinating Board (THECB)--a state agency created by the Legislature to provide coordination for the Texas higher education system, institutions, and governing boards, through the efficient and effective utilization and concentration of all available resources and the elimination of costly duplication in program offerings, faculties, and physical plants (Texas Education Code, Title 3, Subtitle B, Chapter 61).

~~(43) [(38)]~~ Texas Workforce Commission (TWC)--the state agency charged with overseeing and providing workforce development services to employers and job seekers of Texas (Texas Labor Code, Title 4, Subtitle B, Chapter 301).

### §215.3. Program Development, Expansion, and Closure.

#### (a) New Programs.

(1) New nursing educational programs must be approved by the Texas Board of Nursing in order to operate in the State of Texas. The Texas Board of Nursing has established guidelines for the initial approval of schools of nursing or educational programs.

~~(2) [(4)]~~ Proposal to establish a new professional pre-licensure nursing educational program.

(A) The proposal to establish a professional nursing educational program may be submitted by:

(i) a college or university accredited by an agency recognized by the Texas Higher Education Coordinating Board (THECB) [THECB] or holding a certificate of authority from the THECB under provisions leading to accrediting of the institution in due course; or

(ii) a single-purpose school, such as a hospital, proposing a new diploma program.

(B) The new professional nursing educational program must be approved/licensed or deemed exempt by the appropriate Texas agency, ~~[i.e., THECB, TWC,]~~ before approval can be granted by the

Texas Board of Nursing for the program to be implemented. The proposal to establish a new professional nursing educational program may be submitted to the Board at the same time that an application is submitted to THECB or TWC, but the proposal cannot be approved by the Board until such time as the proposed program is approved by THECB or TWC.

(C) The process to establish a new professional nursing educational program shall be initiated with the Board office one year prior to the anticipated start of the program.

(D) The individual actually writing the proposal for a new nursing educational program does not have to be a registered nurse or hold a Texas license or a privilege to practice nursing in Texas.

(i) The name and credentials of the author of the proposal must be included in the document.

(ii) At some point, and at least prior to the presentation of the proposal to the Board, an individual must be identified as the prospective dean/director and this individual must meet the rule requirements in §215.6 of this chapter (relating to Administration and Organization) to be a program director.

(iii) The prospective dean/program director must review/revise the proposal and agree with the components of the proposal as being representative of the proposed program that the individual will be responsible for administratively.

(E) Prior to presentation of the proposal to the Board for approval, a minimum of a prospective dean/director and at least one prospective nursing faculty member must be identified and these individuals must review/revise and approve the curriculum that is included with the proposal.

~~{(D) The proposal shall be completed under the direction/consultation of a registered nurse who meets the approved qualifications for a program director according to §215.6 of this chapter (relating to Administration and Organization).}~~

~~{(E) Sufficient nursing faculty with appropriate expertise shall be in place for development of the curriculum component of the program.}~~

(F) The proposal shall include information outlined in ~~[applicable]~~ Board guidelines.

(G) A proposal for a new diploma nursing educational program must include a written plan addressing the legislative mandate that all nursing diploma programs in Texas must have a process in place by 2015 to ensure that their graduates are entitled to receive a degree from a public or private institution of higher education accredited by an agency recognized by the THECB and ~~[-]~~ at a minimum, entitle a graduate of the diploma program to receive an associate degree in nursing.

(H) After the proposal is submitted and reviewed, a preliminary survey visit shall be conducted by Board staff prior to presentation to the Board.

(I) The proposal shall be considered by the Board following a public hearing at a regularly scheduled meeting of the Board. The Board may approve the proposal and grant initial approval to the new program, may defer action on the proposal, or may deny further consideration of the proposal.

(J) The program shall not admit students until the Board approves the proposal and grants initial approval.

(K) Prior to presentation of the proposal to the Board, evidence of approval from the appropriate regulatory/funding agencies shall be provided.

(L) ~~When~~ ~~After~~ the proposal is submitted ~~[approved]~~, an initial approval fee shall be assessed per §223.1 of this title (relating to Fees).

(M) A proposal without action for one calendar year shall be inactivated.

(N) If the Board denies further consideration of a proposal, the educational unit in nursing within the structure of a school, including a college, university, or proprietary school (career school or college), or a hospital must wait a minimum of twelve calendar months from the date of the denial before submitting a new proposal to establish a professional pre-licensure nursing educational program.

(3) ~~[(2)]~~ Survey visits shall be conducted, as necessary, by staff until full approval status is granted.

(b) Extension Program/Campus.

(1) Only nursing educational programs that have full approval are eligible to initiate or modify an extension program/campus [programs].

(2) Instruction provided for the extension program/campus may include a variety of instructional methods, shall be congruent with the program's curriculum plan, and shall enable students to meet the goals, objectives, and competencies of the educational program and requirements of the Board as stated in §§215.2 - 215.13 of this chapter (relating to Professional Nursing Education).

(3) An approved professional nursing educational [A] program intending to establish an extension program/campus that duplicates the main program's/campus' current curriculum and teaching resources shall:

(A) Notify the Board office at least four (4) months prior to implementation of extension programs by any approved program;

(B) Submit required information according to Board-approved guidelines; ~~and]~~

(C) Provide documentation to the Board of notification or approval from the controlling agency/governing institution, THECB, TWC and/or other regulatory/funding agencies, as applicable, at least four (4) months prior to implementation, as appropriate [to the Regional Council of the governing institution about plans for establishment of extension programs to the Board office at least four (4) months prior to implementation, as appropriate; and].

~~{(D) Provide evidence of approval from the THECB, TWC and/or other regulating/accrediting bodies, as applicable, to the Board four (4) months prior to implementation, as appropriate.}~~

(4) When the curriculum of the extension/campus deviates from the original program in any way, the proposed extension is viewed as a new program and Board guidelines for a new program apply.

(5) ~~[(4)]~~ Extension programs of professional pre-licensure nursing educational programs which have been closed may be reactivated by submitting notification of reactivation to the Board at least four (4) months prior to reactivation, using the Board guidelines for initiating an extension program.

(6) ~~[(5)]~~ A program intending to close an extension program shall:

(A) Notify the Board at least four (4) months prior to closure of the extension program; and

(B) Submit required information according to Board-approved guidelines including:

- (i) reason for closing the program;
- (ii) date of intended closure;
- (iii) academic provisions for students; and
- (iv) provisions made for access to and storage of vital school records.

(c) Transfer of Administrative Control by Controlling Agency/Governing Institution [~~Institutions~~]. The authorities of the controlling agency/governing institution shall notify the Board office in writing of an intent to transfer the administrative authority of the program. This notification shall follow Board guidelines.

(d) Closing a Program.

(1) When the decision to close a program which provides the entire program of study has been made, the director must notify the Board and submit a written plan for closure which includes the following:

- (A) reason for closing the program;
- (B) date of intended closure;

(C) academic provisions for students to complete the nursing educational program and teach-out arrangements have been approved by the appropriate Texas agency, (i.e., TWC, THECB, Texas Board of Nursing);

(D) provisions made for access to and safe storage of vital school records, including transcripts of all graduates; and

(E) methods to be used to maintain requirements and standards until the program closes.

(2) The program shall continue within standards until all students [elasses, which are] enrolled in the nursing educational program at the time of the decision to close, have graduated. In the event this is not possible, a plan shall be developed whereby students may transfer to other approved programs.

(3) A program is deemed closed when the program has not enrolled students for a period of two years since the last graduating class or student enrollment has not occurred for a two-year period. Board-ordered enrollment suspensions may be an exception.

(e) Approval of a Nursing Educational Program Outside Texas' Jurisdiction to Conduct Clinical Learning Experiences in Texas.

(1) The nursing educational program outside Texas' jurisdiction seeking approval to conduct clinical learning experiences in Texas should initiate the process with the Texas Board of Nursing two to three months prior to the anticipated start of the clinical learning experiences in Texas.

(2) A written request and the required supporting documentation shall be submitted to the Board office following Board guidelines.

(3) Evidence that the program has been approved/licensed or deemed exempt from approval/licensure by the appropriate Texas agency, i.e., THECB, to conduct business in the State of Texas, must be obtained before approval can be granted by the Texas Board of Nursing for the program to conduct clinical learning experiences in Texas.

§215.4. *Approval.*

(a) The progressive designation of approval status is not implied by the order of the following listing. Approval status is based upon each program's performance and demonstrated compliance to the Board's requirements and responses to the Board's recommendations. Change from one status to another is based on NCLEX-RN® [NCLEX-RN™] examination pass rates, compliance audits, survey visits, and other factors listed under subsection (b) of this section. Types of approval include:

(1) Initial Approval.

(A) Initial approval is written authorization by the Board for a new program to admit students and is granted if the program meets the requirements and addresses the recommendations issued by the Board.

(B) Student enrollment is determined by the Board and the specifics are included in the Board's initial approval letter. [Change from initial approval status to full approval status cannot occur until the program has met requirements and responded to all recommendations issued by the Board and the licensing examination result of the first graduating class is evaluated by the Board.]

(C) Change from initial approval status to full approval status cannot occur until the program has met requirements and responded to all recommendations issued by the Board and the licensing examination result of the first graduating class is evaluated by the Board.

(2) Full Approval.

(A) Full approval is granted by the Board to a professional pre-licensure nursing educational program that is in compliance with all Board requirements and has responded to all Board recommendations.

(B) Only programs with full approval status may initiate extension programs, grant faculty waivers and petition for faculty waivers.

(3) Full approval with warning is issued by the Board to a professional nursing educational program that is not meeting legal and educational requirements.

(A) A program issued a warning will receive written notification from the Board of the warning.

(B) The program is given a list of the deficiencies and a specified time in which to correct the deficiencies.

(4) Conditional Approval. Conditional approval is issued by the Board for a specified time to provide the program the opportunity to correct deficiencies.

(A) The program shall not admit students while on conditional status.

(B) The Board may establish specific criteria to be met in order for the program's conditional approval status to be removed.

(C) Depending upon the degree to which the Board's legal and educational requirements are met, the Board may change the approval status to full approval or full approval with warning, or may withdraw approval.

(5) Withdrawal of Approval. The Board may withdraw approval from a program which fails to meet legal and educational requirements within the specified time. The program shall be removed from the list of Board-approved professional nursing educational programs.

(6) A diploma program of study in Texas that leads to an initial license as a registered nurse under this chapter must have a process in place by 2015 to ensure that their graduates are entitled to receive a degree from a public or private institution of higher education accredited by an agency recognized by the THECB. At a minimum, a graduate of a diploma program will be entitled to receive an associate degree in nursing.

(b) Factors Jeopardizing Program Approval Status--Approval may be changed or withdrawn for any of the following reasons:

- (1) deficiencies in compliance with the rule;
- (2) utilization of students to meet staffing needs in health care facilities;
- (3) noncompliance with school's stated philosophy/mision, program design, objectives/outcomes, and/or policies;
- (4) continual failure to submit records and reports to the Board office within designated time frames;
- (5) failure to provide sufficient variety and number of clinical learning opportunities for students to achieve stated objectives/outcomes;
- (6) failure to comply with Board requirements or to respond to Board recommendations within the specified time;
- (7) student enrollments without sufficient faculty, facilities and/or patient census;
- (8) failure to maintain a 80% passing rate on the licensing examination by first-time candidates;
- (9) failure of the program dean or director to document annually the currency of faculty licenses; or
- (10) other activities or situations that demonstrate to the Board that a program is not meeting legal requirements and standards.

(c) Ongoing Approval Procedures. Approval status is determined biennially by the Board on the basis of the program's compliance audit, NCLEX-RN® [NCLEX-RN™] examination pass rate, and other pertinent data.

(1) Compliance Audit. Each approved professional nursing educational program shall submit a biennial audit regarding its compliance with the Board's legal and educational requirements.

(2) NCLEX-RN® [NCLEX-RN™] Pass Rates.

(A) Eighty percent (80%) of first-time candidates who complete the program of study are required to achieve a passing score on the NCLEX-RN® [NCLEX-RN™] examination.

(B) When the passing score of first-time candidates who complete the professional nursing educational program of study is less than 80% on the NCLEX-RN® [NCLEX-RN™] examination during the examination year, the nursing program shall submit a self-study report that evaluates factors which contributed to the graduates' performance on the NCLEX-RN® [NCLEX-RN™] examination and a description of the corrective measures to be implemented. The report shall follow Board guidelines.

(C) A warning shall be issued to the program when the pass rate of first-time candidates, as described in subparagraph (A) of this paragraph [subsection (e)(2)(A) of this section], is less than 80% for two consecutive examination years.

(D) A program shall be placed on conditional approval status if, within one examination year from the date of the warning, the performance of first-time candidates on the NCLEX-RN® [NCLEX-

RN™] examination fails to be at least 80%, or the faculty fails to implement appropriate corrective measures.

(E) Approval may be withdrawn if the performance of first-time candidates fails to be at least 80% during the examination year following the date that the program is placed on conditional approval.

(F) A program issued a [~~placed on~~] warning or placed on conditional approval status may request a review of the program's approval status by the Board at a regularly scheduled meeting if the program's pass rate for first-time candidates during one examination year is at least 80%.

(3) Survey Visit. Each professional nursing educational program shall be visited at least every six years after full approval has been granted, unless accredited by a Board-recognized national nursing accrediting agency.

(A) The Board may authorize staff to conduct a survey visit at any time based upon established criteria.

(B) After a program is fully approved by the Board, a report from a Board-recognized national nursing accrediting agency regarding a program's accreditation status may be accepted in lieu of a Board survey visit.

(C) A written report of the survey visit, compliance audit, and NCLEX-RN® [NCLEX-RN™] examination pass rate shall be reviewed by the Board biennially at a regularly scheduled meeting.

(4) The Texas Board of Nursing will select one or more national nursing accrediting agencies, recognized by the United States Department of Education and determined by the Board to have standards equivalent to the Board's ongoing approval standards. Identified areas that are not equivalent to the Board's ongoing approval standards will be monitored by the Board on an ongoing basis.

(5) [(A)] The Texas Board of Nursing will periodically review the standards of the national nursing accrediting agencies following revisions of accreditation standards or revisions in Board requirements for validation of continuing equivalency.

(6) [(B)] The Texas Board of Nursing will deny or withdraw approval from a school of nursing or educational program that fails to:

(A) [(i)] meet the prescribed course of study or other standard under which it sought approval by the Board;

(B) [(ii)] meet or maintain voluntary accreditation, by a school of nursing or educational program approved by the Board as stated in paragraph (7) of this subsection [subparagraph (C) of this paragraph], with the national nursing accrediting agency selected by the Board under which it was approved or sought approval by the Board; and

(C) [(iii)] maintain the approval of the state board of nursing of another state that the Board has determined has standards that are substantially equivalent to the Board's standards under which it was approved.

(7) [(C)] A school of nursing or educational program is considered approved by the Board and exempt from Board rules that require ongoing approval if the program:

(A) [(i)] is accredited and maintains voluntary accreditation through an approved national nursing accrediting agency that has been determined by the Board to have standards equivalent to the Board's ongoing approval standards; and



(B) [(H)] maintains an acceptable pass rate, as determined by the Board, on the applicable licensing exam.

(8) [(D)] A school of nursing or educational program that fails to meet or maintain an acceptable pass rate, as determined by the Board, on applicable licensing examinations is subject to review by the Board.

(9) [(E)] A school of nursing or educational program, approved by the Board as stated in paragraph (7) of this subsection [subparagraph (C) of this paragraph], that does not maintain voluntary accreditation through an approved national nursing accrediting agency that has been determined by the Board to have standards equivalent to the Board's ongoing approval standards is subject to review by the Board.

(10) [(F)] The Board may assist the school or program in its effort to achieve compliance with the Board's standards.

(11) [(G)] A school or program from which approval has been withdrawn may reapply for approval.

(12) [(H)] A school of nursing or educational program accredited by an agency recognized by the Board shall:

(A) [(i)] provide the board with copies of any reports submitted to or received from the national nursing accrediting agency selected by the Board within three (3) months of receipt of official reports;

(B) [(ii)] notify the Board of any change in accreditation status within two (2) weeks following receipt of official notification letter; and

(C) [(iii)] provide other information required by the Board as necessary to evaluate and establish nursing education and workforce policy in this state.

(d) Notice of a program's approval status shall be sent to the director, chief administrative officer of the controlling agency/governing institution, and others as determined by the Board.

#### §215.5. *Philosophy/Mission and Objectives/Outcomes.*

(a) The philosophy/mission and objectives/outcomes of the professional nursing educational [education] program shall be consistent with the philosophy/mission of the governing institution. They shall reflect the diversity of the community served and shall be consistent with professional, educational, and ethical standards of nursing.

(b) Program objectives/outcomes derived from the philosophy/mission shall reflect the *Differentiated Entry Level Competencies [Competencies] of Graduates of Texas Nursing Programs, Vocational (VN), Diploma/Associate Degree (Dip/ADN), Baccalaureate (BSN), September 2002 (DELIC)*.

(c) Clinical objective/outcomes shall be stated in behavioral terms and shall serve as a mechanism for evaluating student progression.

(d) The conceptual framework shall provide the organization of major concepts from the philosophy/mission of the program that provides the underlying structure or theme of the curriculum and facilitates the achievement of the program objectives/outcomes.

(e) The faculty shall periodically review the philosophy/mission and objectives/outcomes and shall make appropriate revisions to maintain currency.

#### §215.6. *Administration and Organization.*

(a) The controlling agency/governing institution of a professional nursing school/educational program, not including a diploma

program, must be accredited by an agency recognized by the Texas Higher Education Coordinating Board (THECB) [THECB] or hold a certificate of authority from the THECB under provisions leading to accreditation of the institution in due course.

(b) There shall be an organizational chart which demonstrates the relationship of the professional pre-licensure nursing educational program to the controlling agency/governing institution, and indicates lines of responsibility and authority.

(c) In colleges and universities, the nursing educational program shall have comparable status with other academic units within the controlling agency/governing institution in such areas as budgetary authority, rank, promotion, tenure, leave, benefits and professional development.

(d) Salaries shall be adequate to recruit, employ, and retain sufficient qualified nursing faculty members with graduate preparation and expertise necessary for students to meet program goals.

(e) The controlling agency/governing institution shall provide financial support and resources needed to operate a nursing educational program which meets the legal and educational requirements of the Board and fosters achievement of program goals. The financial resources shall support adequate educational facilities, equipment and qualified administrative and instructional personnel.

(f) Each professional nursing educational program shall be administered by a qualified individual who is accountable for the planning, implementation and evaluation of the professional nursing educational program. The dean or director shall:

(1) hold a current license or privilege to practice as a registered nurse in the state of Texas;

(2) hold a master's degree or a doctorate degree in nursing;

(3) hold a doctoral degree, if administering a baccalaureate or master's degree program;

(4) have a minimum of three years teaching experience in a professional nursing educational program;

(5) have demonstrated knowledge, skills and abilities in administration within a professional nursing educational program; and

(6) not carry a teaching load of more than three clock hours per week if required to teach.

(g) When the dean/director [~~dean or director~~] of the program changes, the dean/director [~~dean or director qualification form~~] shall submit to the Board office written notification of the change indicating the final date of employment.

(1) A new Dean/Director/Coordinator Qualification Form [~~dean or director~~] shall be submitted to the office by the controlling agency/governing institution for approval prior to the appointment of a new dean/director or interim dean/director [~~dean or director~~] in an existing program or a new nursing educational program, according to Board guidelines.

(2) A vitae and all official transcripts shall be submitted with the new Dean/Director/Coordinator Qualification Form according to Board guidelines [~~dean or director qualification form~~].

(3) If an interim dean/director [~~dean or director~~] is appointed to fill the position, this appointment shall not exceed one year.

(4) In a fully approved professional nursing educational program, if the individual to be appointed as dean/director or interim dean/director [~~dean or director~~] does not meet the requirements for dean/director [~~dean or director~~] as specified in subsection (f) of this

section, the administration is permitted to petition for a waiver of the Board's requirements, according to Board guidelines, prior to the appointment of said individual.

(h) A newly appointed dean/director or interim dean/director [dean, director, interim dean, or interim director] of a professional nursing educational program shall attend the next scheduled education workshop [orientation] provided by the Board related to the education rules and the role and responsibilities of newly appointed deans/directors.

(i) The dean/director shall have the authority to direct the nursing educational program in all its phases, including approval of teaching staff, selection of appropriate clinical sites, admission, progression, probation, dismissal of students, and enforcement of student policies. Additional responsibilities include, but are not limited to:

(1) providing evidence of faculty expertise and knowledge to teach curriculum content;

(2) verifying student's completion of program requirements;

(3) completing and submitting the Texas Board of Nursing Affidavit of Graduation; and

(4) completing and submitting the Texas Board of Nursing Educational Program Information Survey (NEPIS) and Compliance Audit (CANEP) by the required dates.

§215.7. Faculty [Qualifications and Faculty Organization].

(a) There shall be written personnel policies for nursing faculty that are in keeping with accepted educational standards and are consistent with those of the controlling agency/governing institution.

(1) Nursing policies that [Policies which] differ from those of the controlling agency/governing institution shall be consistent with nursing unit mission and goals (philosophy and outcomes).

(2) Written policies concerning workload for the dean or director shall allow for sufficient time for administrative responsibilities consistent with §215.6 of this chapter (relating to Administration and Organization).

(3) Faculty policies shall include, but not be limited to: qualifications, responsibilities, performance evaluation criteria, and terms of employment.

(4) Written policies for nursing faculty workload shall allow sufficient time for faculty to accomplish those activities related to the teaching-learning process.

(5) Position descriptions for the dean/director and nursing faculty outlining their responsibilities directly related to the nursing program shall be included in the nursing faculty handbook.

(6) Written policies for nursing faculty shall include: plans for faculty orientation to the institution and the nursing program, faculty development, and evaluation of faculty.

(A) Orientation of new nursing faculty members shall be initiated at the onset of employment.

(B) A plan for nursing faculty development shall be offered to encourage and assist faculty members to meet the nursing program's needs as well as individual faculty members' professional development needs.

(C) A variety of means shall be used to evaluate faculty performance such as self, student, peer and administrative evaluation.

~~{(1) Policies concerning workload for faculty and the dean or director shall be in writing.}~~

~~{(2) Sufficient time shall be provided faculty to accomplish those activities related to the teaching-learning process.}~~

~~{(3) Teaching activities shall be coordinated among full-time, part-time faculty, clinical preceptors and clinical teaching assistants.}~~

(b) A professional nursing educational [education] program shall employ sufficient faculty members with graduate preparation and expertise necessary to enable the students to meet the program goals. The number of faculty members shall be determined by such factors as:

(1) The number and level of students enrolled;

(2) The curriculum plan;

(3) Activities and responsibilities required of faculty;

(4) The number and geographic locations of affiliating agencies and clinical practice settings; and

(5) The level of care and acuity of clients.

(c) Faculty Qualifications and Responsibilities.

(1) Documentation of faculty qualifications shall be included in the official files of the programs.

(2) Each nurse faculty member shall:

(A) Hold a current license or privilege to practice as a registered nurse in the State of Texas;

(B) Show evidence of teaching abilities and maintaining current knowledge, clinical expertise, and safety in subject area of teaching responsibility;

(C) Hold a master's degree or doctorate degree, preferably in nursing.

(D) A nurse faculty member holding a master's degree or doctorate degree in a discipline other than nursing shall hold a bachelor's degree in nursing from an approved or accredited baccalaureate program in nursing; and

(i) if teaching in a diploma or associate degree nursing program, shall have at least six graduate semester hours [of graduate level content] in nursing appropriate to assigned teaching responsibilities, or

(ii) if teaching in a baccalaureate level program, shall have at least 12 graduate semester hours [of graduate level content] in nursing appropriate to assigned teaching responsibilities.

(d) Faculty Waivers.

(1) ~~{(E)}~~ In fully approved programs, if an individual to be appointed as faculty member does not meet the requirements for faculty as specified in ~~{this}~~ subsection (c) of this section, the dean or director is permitted to waive the Board's requirements, if the program and prospective faculty member meet the following criteria and after notification to the Board of the intent to waive the Board's faculty requirements for a temporary time period not to exceed one year:

(2) ~~{(i)}~~ Minimum [minimum] program criteria:

(A) ~~{(H)}~~ program's NCLEX-RN® Examination pass rate for the preceding exam year was 80% or above;

(B) ~~{(H)}~~ total number of faculty waivers at program shall not exceed 10% of the total number of nursing faculty; and

(3) ~~{(ii)}~~ Minimum [minimum] criteria for prospective faculty member:

(A) ~~[(4)]~~ holds a current license or privilege to practice as a registered nurse in the State of Texas;

(B) ~~[(H)]~~ has at least two years in the last four years of nursing practice experience in the anticipated subject area of teaching responsibility;

(C) ~~[(HH)]~~ has earned a bachelor's degree in nursing or completed, as part of a nursing education program culminating in a master's or doctorate degree in nursing, the course work equivalent to the course work required for a bachelor's degree in nursing; and either

(i) ~~[(a-)]~~ is currently enrolled in a master's nursing education program and has earned a minimum of 50% of the required credits toward the master's degree in nursing, excluding thesis or professional paper; or

(ii) ~~[(b-)]~~ holds a master's degree in another field and has a documented plan to complete, within a designated time frame, the required number of graduate semester hours in nursing [~~level nursing credits~~] appropriate to the anticipated subject area of teaching responsibility, ~~six [6] graduate semester hours in nursing [level nursing credits]~~ to teach in a diploma or associate degree nursing education program or 12 graduate semester hours in nursing [~~level nursing credits~~] to teach in a baccalaureate degree or entry-level master's degree in nursing education program.

(4) ~~[(iii)]~~ When ~~[when]~~ the program does not meet the minimum program criteria or the prospective faculty member does not meet the minimum criteria for a faculty member:

(A) ~~[(4)]~~ a petition for a waiver shall be submitted to the Board and be reviewed by the members of the Education Liaison Committee (ELC) for recommendation regarding approval and referred to the full Board for ratification; or

(B) ~~[(H)]~~ a petition for an emergency waiver may be submitted to the Board staff for approval when a vacancy occurs because a faculty member fails to report as planned, i.e., sudden illness or death of a faculty member, or there is an unexpected resignation, or qualified applicants/prospective faculty are not available.

(5) ~~[(iv)]~~ A ~~[a]~~ waiver is valid for up to one year.

(6) ~~[(v)]~~ The ~~[the]~~ director or coordinator shall submit a sworn (notarized) notification of waiver to the Board.

(7) ~~[(vi)]~~ If ~~[if]~~ an extension of the waiver is needed, the director or coordinator shall petition the Board for an extension of the original waiver.

~~[(F)] In baccalaureate programs, an increasing number of faculty members should hold doctoral degrees appropriate to their responsibilities.]~~

~~[(2) All nursing faculty, as well as non-nursing faculty, who teach theory nursing courses, e.g., pathophysiology, pharmacology, research, management and statistics, shall have graduate level educational preparation verified by the program dean or director as appropriate to these areas of responsibility.]~~

(e) ~~[(3)]~~ Non-nursing faculty are exempt from meeting the faculty qualifications as long as the teaching assignments are not nursing content or clinical nursing courses [~~assigned to teach didactic nursing courses shall be required to co-teach with nursing faculty in order to meet nursing course objectives.~~]

(f) All nursing faculty, as well as non-nursing faculty, who teach non-clinical nursing courses that are part of the nursing curriculum, e.g., biological, physical, social, behavioral and nursing sciences, including pathophysiology, pharmacology, research, nutrition, human

growth and development, management, and statistics, shall have sufficient graduate level educational preparation verified by the program dean or director as appropriate to these areas of responsibility.

(g) Non-nursing faculty assigned to teach didactic nursing content shall be required to co-teach with nursing faculty in order to meet nursing course objectives.

(h) Teaching assignments shall be commensurate with the faculty member's education and experience in nursing.

(i) Faculty shall be responsible for:

(1) supervision of students in clinical learning experiences;

(2) all initial nursing procedures in the clinical area and ascertain that the student is competent before allowing the student to perform an actual nursing procedure independently;

(3) developing, implementing, and evaluating curriculum;  
and

(4) participating in the development, implementation, and enforcement of standards/policies for admission, progression, probation, and dismissal of students, and participation in academic guidance and counseling.

(j) Teaching activities shall be coordinated among full-time faculty, part-time faculty, clinical preceptors and clinical teaching assistants.

(k) There shall be a minimum of one full-time nursing instructor for the program.

(l) A dean/director without major teaching or clinical responsibilities shall not be considered a full-time instructor for purposes of meeting the Board's requirements related to having a sufficient number of nursing faculty for a nursing educational program.

(m) Substitute faculty may be employed to meet emergent program needs. Substitute faculty shall meet qualifications as specified in subsection (c)(2) of this section.

(n) Faculty Organization:

(1) The faculty shall be organized with written policies and procedures and/or bylaws to guide the faculty and program's activities, including processes for enforcement of written student policies.

(2) The faculty shall meet regularly and function in such a manner that all members participate in planning, implementing and evaluating the nursing program. Such participation includes, but is not limited to the initiation and/or change in program policies, personnel policies, curriculum, utilization of affiliating agencies, and program evaluation.

(A) Committees necessary to carry out the functions of the program shall be established with duties and membership of each committee clearly defined in writing.

(B) Minutes of faculty organization and meetings shall document the reasons for actions and the decisions of the faculty and shall be available for reference.

(C) Part-time faculty may participate in all aspects of the program. Clear lines of communication of program policies, objectives and evaluative criteria shall be included in policies for part-time faculty.

~~[(d) Teaching assignments shall be commensurate with the faculty member's education and experience in nursing.]~~

~~[(e) The faculty shall be organized with written policies and procedures and/or bylaws to guide the faculty and program's activities.]~~

~~[(f) The faculty shall meet regularly and function in such a manner that all members participate in planning, implementing and evaluating the nursing program. Such participation includes, but is not limited to the initiation and/or change of academic policies, personnel policies, curriculum, utilization of affiliating agencies, and program evaluation.]~~

~~[(1) Committees necessary to carry out the functions of the program shall be established with duties and membership of each committee clearly defined in writing.]~~

~~[(2) Minutes of faculty organization and committee meetings shall document the reasons for actions and the decisions of the faculty and shall be available for reference.]~~

~~[(g) There shall be written plans for faculty orientation, development, and evaluation.]~~

~~[(1) Orientation of new faculty members shall be initiated at the onset of employment.]~~

~~[(2) A program of faculty development shall be offered to encourage and assist faculty members to meet the nursing program's needs as well as individual faculty member's professional development needs.]~~

~~[(3) A variety of means shall be used to evaluate faculty performance such as self, student, peer and administrative evaluation.]~~

#### §215.8. *Students.*

~~(a) The number of students admitted to the program shall be determined by the number of qualified faculty, adequate educational facilities and resources, and the availability of appropriate clinical learning experiences for students. [Students shall have mechanisms for input into the development of academic policies and procedures, curriculum planning, and evaluation of teaching effectiveness.]~~

~~(b) Individuals enrolled in approved professional nursing educational programs preparing students for initial licensure shall be provided verbal and written information regarding conditions that may disqualify graduates from licensure and of their rights to petition the Board for a Declaratory Order of Eligibility. Required eligibility information includes: [The number of students admitted to the program shall be determined by the number of qualified faculty, adequate educational facilities and resources, and the availability of appropriate clinical learning experiences for students.]~~

~~(1) Texas Occupations Code §§301.252, 301.257 and 301.452 - 301.469; and~~

~~(2) Sections 213.27 - 213.30 of this title (relating to Good Professional Character, Licensure of Persons with Criminal Offenses, Criteria and Procedure Regarding Intemperate Use and Lack of Fitness in Eligibility and Disciplinary Matters, Declaratory Order of Eligibility for Licensure).~~

~~(c) The professional nursing educational program shall maintain written receipt of eligibility notification for up to six months after the enrolled individual completes the nursing educational program or permanently withdraws from the nursing educational program.~~

~~(d) ~~[(e)]~~ The program shall have well-defined written nursing student policies based upon statutory and Board requirements, including nursing student admission, dismissal, progression, and graduation policies that shall be developed, implemented and enforced. [Written policies regarding nursing student admission and progression shall be developed and implemented]~~

~~(1) Student policies shall be in accordance with the requirements of applicable federal and state agencies [that the governing institution must meet to maintain accreditation].~~

~~(2) Nursing student [Student] policies which differ from those of the governing institution shall be in writing and shall be made available to faculty and students.~~

~~(e) Reasons for dismissal shall be clearly stated in written nursing student policies and shall include any demonstration of the following, including, but not limited to:~~

~~(1) evidence of actual or potential harm to patients, clients, or the public;~~

~~(2) criminal behavior whether violent or non-violent, directed against persons, property or public order and decency;~~

~~(3) intemperate use, abuse of drugs or alcohol, or diagnosis of or treatment for chemical dependency, mental illness, or diminished mental capacity; and~~

~~(4) the lack of good professional character as evidenced by a single incident or an integrated pattern of personal, academic and/or occupational behaviors which, in the judgment of the Board, indicates that an individual is unable to consistently conform his or her conduct to the requirements of the Nursing Practice Act, the Board's rules and regulations, and generally accepted standards of nursing practice including, but not limited to, behaviors indicating honesty, accountability, trustworthiness, reliability, and integrity.~~

~~(f) ~~[(d)]~~ Policies shall facilitate mobility/articulation, be consistent with acceptable educational standards, and be available to students and faculty.~~

~~(g) Student policies shall be furnished manually or electronically to all students at the beginning of the students' enrollment in the nursing educational program.~~

~~(1) The program shall maintain a signed receipt of student policies in all students' records.~~

~~(2) It is the responsibility of the program and the nursing faculty to define and enforce nursing student policies.~~

~~(h) Acceptance of transfer students and evaluation of allowable credit for advanced placement remains at the discretion of the director or coordinator of the program and the controlling agency/governing institution. Upon completing the receiving program's requirements, the individual is considered to be a graduate of the program.~~

~~(i) Students shall have mechanisms for input into the development of academic policies and procedures, curriculum planning, and evaluation of teaching effectiveness.~~

~~(j) Students shall have the opportunity to evaluate faculty, courses, and learning resources and these evaluations shall be documented.~~

~~[(e) Students shall have the opportunity to evaluate faculty, courses, and learning resources and these evaluations shall be documented.]~~

~~[(f) Individuals enrolled in approved professional nursing educational programs preparing students for initial licensure shall be provided verbal and written information regarding conditions that may disqualify graduates from licensure and of their rights to petition the Board for a Declaratory Order of Eligibility. Required eligibility information includes:]~~

~~[(1) Texas Occupations Code §§301.252, 301.257 and 301.452 - .469; and]~~

~~[(2) Sections 213.27 - 213.30 of the Texas Administrative Code (relating to Good Professional Character, Licensure of Persons with Criminal Convictions, Criteria and Procedure Regarding Intem-~~

perate Use and Lack of Fitness in Eligibility and Disciplinary Matters, Declaratory Order of Eligibility for Licensure).]

[(g) The professional nursing education program shall maintain written receipt of eligibility notification for up to six months after the individual enrolled completes the nursing education program or permanently withdraws from the nursing education program.]

§215.9. *Program of Study.*

(a) The program of study shall include both didactic and clinical learning experiences and shall be:

- (1) at least the equivalent of two academic years and shall not exceed four calendar years;
- (2) planned, implemented, and evaluated by the faculty;
- (3) based on the philosophy/mission and objectives/outcomes;
- (4) organized logically, sequenced appropriately;
- (5) based on sound educational principles;
- (6) designed to prepare graduates to practice according to the Standards of Nursing Practice as set forth in the Board's Rules and Regulations; [and]
- (7) designed and implemented to prepare students to demonstrate the *Differentiated Entry Level Competencies [Competencies] of Graduates of Texas Nursing Programs, Vocational (VN), Diploma/Associate Degree (Dip/ADN), Baccalaureate (BSN), September 2002 (DELIC); and*
- (8) designed to teach students to use a systematic approach to clinical decision making and safe patient care.

(b) The faculty shall be responsible for the development, implementation and evaluation of the curriculum based upon the following guidelines: [There shall be a reasonable balance between non-nursing courses and nursing courses which are offered in a supportive sequence with rationale and are clearly appropriate for collegiate study.]

(1) There shall be a reasonable balance between non-nursing courses and nursing courses which are offered in a supportive sequence with rationale and are clearly appropriate for collegiate study.

(2) Instruction shall be provided in nursing roles; biological, physical, social, behavioral, and nursing sciences, including body structure and function, microbiology, pharmacology, nutrition, signs of emotional health, human growth and development; and nursing skills.

(c) Instruction shall include, but not be limited to, organized student/faculty interactive learning activities, formal lecture, audiovisual presentations, simulated laboratory instruction, and actual patient care clinical learning experiences. [There shall be a rationale for the ratio of contact hours assigned to classroom and clinical learning experiences. The recommended ratio is three contact hours of clinical learning experiences for each contact hour of classroom instruction.]

(1) Class hours shall include actual hours of classroom instruction in nursing and non-nursing Board-required courses/content;

(2) Laboratory activities/instruction may be counted as either classroom or laboratory hours for the purpose of calculating the hours in the curriculum;

(3) Clinical practice shall include actual hours of practice in clinical areas, clinical conferences, and simulated lab experiences, if counted as clinical hours for the purpose of calculating the hours in the curriculum; and

(4) Clinical hours shall be sufficient to meet program of study requirements. There shall be a rationale for the ratio of contact hours assigned to classroom and clinical learning experiences. The recommended ratio is one contact hour of didactic to three contact hours of associated clinical learning experiences (1:3), but could be expanded to a 1:4, 1:5, or 1:6 ratio depending on the type of clinical learning experience.

(d) The program of study should facilitate articulation among programs.

(e) The program of study shall include, but not be limited to, the following areas:

(1) non-nursing courses, clearly appropriate for collegiate study, offered in a supportive sequence.

(2) nursing courses which include didactic and clinical learning experiences in the four content areas, medical-surgical, maternal/child health, pediatrics, and mental health nursing that teach students to use a systematic approach to clinical decision making and prepare students to safely practice professional nursing through the promotion, prevention, rehabilitation, maintenance, and restoration of the health of individuals of all ages.

(A) Course content shall be appropriate to the role expectations of the graduate.

(B) Professional values including ethics, safety, diversity, and confidentiality shall be addressed.

(C) The Nursing Practice Act, Standards of Nursing Practice, Unprofessional Conduct Rules, Delegation Rules, and other laws and regulations which pertain to various practice settings shall be addressed.

(3) Nursing courses shall prepare students to recognize and analyze health care needs, select and apply relevant knowledge and appropriate methods for meeting the health care needs of individuals and families, and evaluate the effectiveness of the nursing care.

(4) Baccalaureate and entry-level master's degree programs in nursing shall include learning activities in basic research and management/leadership, and didactic and clinical learning experiences in community health nursing.

(f) The selection and organization of the learning experiences in the curriculum shall provide continuity, sequence, and integration of learning.

(1) [(4)] The learning experiences shall provide for progressive development of values, knowledge, judgment, and skills.

(2) [(4)] Didactic learning experiences shall be provided either prior to or concurrent (at the same time) with the related clinical learning experiences.

(3) [(2)] Clinical learning experiences shall be sufficient in quantity and quality to provide opportunities for students to achieve the stated outcomes.

(4) [(3)] Students shall have sufficient opportunities in simulated or clinical settings to develop manual technical skills, using contemporary technologies, essential for safe, effective nursing practice.

(5) [(4)] Learning opportunities shall assist students to develop communication and interpersonal relationship skills.

(g) Course content shall be appropriate to the role expectations of the graduate.

(1) Professional values, including ethics, safety, diversity, and confidentiality shall be addressed.

(2) The Nursing Practice Act, Standards of Nursing Practice, Unprofessional Conduct Rules, and other laws and regulations which pertain to various practice settings shall be addressed.

(3) The curriculum plan, including course outlines, shall be kept current and available to faculty and Board representatives.

(h) ~~[(g)]~~ Faculty shall develop and implement evaluation methods and tools to measure progression of students' cognitive, affective and psychomotor achievements in course/clinical objectives, according to Board guidelines.

(i) ~~[(h)]~~ Curriculum changes shall be developed by the faculty according to Board standards and shall include information outlined in the Board guidelines. The two types of curriculum changes are:

(1) Minor curriculum changes not requiring prior Board staff approval, and may include:

(A) Editorial ~~[editorial]~~ updates of philosophy/mission and objectives/outcomes; or

(B) Redistribution ~~[redistribution]~~ of course content or course hours.

(2) Major curriculum changes requiring Board staff approval prior to implementation, including:

(A) Change ~~[changes]~~ in program philosophy/mission and objectives/outcomes which result in a reorganization or re-conceptualization of the entire curriculum, including but not limited to, changing from a block to an integrated curriculum.

(B) The ~~[the]~~ addition of transition course(s), tracks/alternative programs of study, including MEEP, that provide educational mobility.

(C) Mobility ~~[mobility]~~ programs desiring to establish a generic program are treated as a new program and the appropriate proposal should be developed.

(j) Documentation of controlling agency/governing institution approval, and approval from the Texas Workforce Commission (TWC) or the Texas Higher Education Coordinating Board (THECB) if approved/licensed by the TWC or THECB, must be provided to the Board prior to implementation of changes, as appropriate.

(k) Nursing educational programs that have full approval status and are undergoing major curriculum changes shall submit an abbreviated proposal, as outlined in Board guidelines, to the Board office for approval at least four (4) months prior to implementation. The abbreviated proposal shall contain at least the following:

(1) new and old philosophy/mission, major concepts, program objectives/outcomes, course objectives/outcomes;

(2) new and old curriculum plans;

(3) clinical evaluation tools for each clinical course; and

(4) additional information, as requested, in order to provide clarity for Board staff.

(l) Nursing educational programs not having full approval status, but proposing a major curriculum change, shall submit a full curriculum change proposal, as outlined in Board guidelines, to the Board office and meet the requirements as outlined in subsection (i) of this section.

(m) All nursing educational programs implementing a curriculum change shall submit an evaluation of the outcomes of the implemented curriculum change through the first graduating class under the new curriculum.

~~[(i) All programs implementing a curriculum change shall provide an evaluation of the outcomes of these changes and submit with the Annual Report through the first graduating class.]~~

~~[(j) Documentation of Governing Institution approval or Texas Higher Education Coordinating Board approval must be provided to the Board prior to implementation of changes, as appropriate.]~~

~~[(k) Nursing educational programs that have full approval and are undergoing major curriculum changes shall submit an abbreviated proposal to the office for approval at least four (4) months prior to implementation. The abbreviated proposal shall contain at least the following:]~~

~~[(1) new and old philosophy/mission, major concepts, program objectives/outcomes, course objectives/outcomes;]~~

~~[(2) new and old curriculum plans;]~~

~~[(3) clinical evaluation tools for each clinical course; and]~~

~~[(4) additional information as requested in order to provide clarity for Board staff.]~~

~~[(l) Nursing education programs not having full approval but proposing a major curriculum change shall submit a full curriculum change proposal and meet the requirements as outlined in §215.9(h).]~~

~~§215.10. [Management of] Clinical Learning Experiences [and Resources].~~

(a) Faculty ~~[In all cases faculty]~~ shall be responsible and accountable for managing clinical learning experiences and observational experiences of students.

(b) Faculty shall develop criteria for the selection of affiliating agencies/clinical facilities or clinical practice settings which address safety and the need for students to achieve the program outcomes (goals) and course objectives through the practice of nursing care or observational experiences. Consideration of selection of a clinical site shall include:

(1) client census in sufficient numbers to meet the clinical objectives/outcomes of the program/courses; and

(2) evidence of collaborative arrangements for scheduling clinical rotations with those facilities that support multiple nursing programs.

(c) Faculty shall select and evaluate affiliating agencies/clinical facilities or clinical practice settings which provide students with opportunities to achieve the goals of the program.

(1) Written agreements between the program and the affiliating agencies shall specify the responsibilities of the program to the agency and the responsibilities of the agency to the program.

(2) Agreements shall be reviewed periodically and include provisions for adequate notice of termination.

(3) Affiliation agreements are optional for those clinical experiences which are observation only.

(d) The faculty member shall be responsible for the supervision of students in clinical learning experiences.

(e) Clinical learning experiences shall include the administration of medications, health promotion and preventive aspects, nursing care of persons throughout the life span with acute and chronic illnesses, and rehabilitative care.

(1) Students shall participate in instructor supervised patient teaching.

(2) Students shall also be provided opportunities for participation in clinical conferences.

(3) Simulated laboratory experiences may also be utilized as a teaching strategy in classroom and clinical settings to meet objectives and may be counted as either classroom or clinical hours for the purpose of calculating the hours in the curriculum.

(f) Faculty shall be responsible for student clinical practice evaluations. Clinical practice evaluations shall be correlated with level and/or course objectives and shall include a minimum of a formative and summative evaluation for each clinical in the curriculum.

(g) [(e)] The following ratios only apply to clinical learning experiences involving direct patient care:

(1) When a faculty member is the only person officially responsible for a clinical group, the group shall total no more than ten (10) students.

(2) Patient safety shall be a priority and may mandate lower ratios, as appropriate.

(3) The faculty member shall supervise that group in only one facility at a time, unless some portion or all of the clinical group are assigned to observational experiences in additional settings.

(4) [(2)] Direct faculty supervision is not required for an observational experience.

(h) [(f)] Clinical preceptors may be used to enhance clinical learning experiences after a student has received clinical and didactic instruction in all basic areas of nursing or within a course after a student has received clinical and didactic instruction in the basic areas of nursing for that course or specific learning experience.

(1) In courses which use clinical preceptors for a portion of clinical learning experiences, faculty shall have no more than twelve (12) students in a clinical group.

(2) In a course which uses clinical preceptors as the sole method of student instruction and supervision in clinical settings, faculty shall coordinate the preceptorship for no more than twenty-four (24) students.

(3) The preceptor may supervise student clinical learning experiences without the physical presence of the faculty member in the affiliating agency or clinical practice setting.

(4) The preceptor shall be responsible for the clinical learning experiences of no more than two (2) students at a time per clinical group.

(i) [(g)] Clinical teaching assistants may assist qualified, experienced faculty with clinical learning experiences.

(1) In clinical learning experiences where a faculty member is supported by a clinical teaching assistant, the ratio of faculty to students shall not exceed two (2) to fifteen (15) (one faculty plus one clinical teaching assistant to fifteen students).

(2) Clinical teaching assistants shall supervise student clinical learning experiences only when the qualified and experienced faculty member is physically present in the affiliating agency or alternative practice setting.

(j) [(h)] When faculty use clinical preceptors or clinical teaching assistants to enhance clinical learning experiences and to assist faculty in the clinical supervision of students the following applies:

(1) Faculty shall develop written criteria for the selection of clinical preceptors and clinical teaching assistants.

(2) When clinical preceptors or clinical teaching assistants are used, written agreements between the professional nursing educational [education] program, clinical preceptor or clinical teaching assistant, and the affiliating agency, when applicable, shall delineate the functions and responsibilities of the parties involved.

(3) Faculty shall be readily available to students and clinical preceptors or clinical teaching assistants during clinical learning experiences.

(4) The designated faculty member shall meet periodically with the clinical preceptors or clinical teaching assistants and student(s) for the purpose of monitoring and evaluating learning experiences.

(5) Written clinical objectives shall be shared with the clinical preceptors or clinical teaching assistants prior to or concurrent with the experience.

(6) Clinical preceptors shall have the following qualifications:

(A) competence in designated areas of practice;

(B) philosophy of health care congruent with that of the nursing program; and

(C) current licensure or privilege to practice as a registered nurse in the State of Texas; or

(D) if not a registered nurse, a current license in Texas as a health care professional with a minimum of a bachelor's degree in that field.

(7) When acting as a clinical teaching assistant, the RN shall not be responsible for other staff duties, such as supervising other personnel and/or patient care.

(8) Clinical teaching assistants shall meet the following criteria:

(A) hold a current license or privilege to practice as a registered nurse in the State of Texas; and

(B) have the clinical expertise to function effectively and safely in the designated area of teaching.

#### *§215.11. Facilities, Resources, and Services.*

(a) The controlling agency/governing institution shall be responsible for providing:

(1) educational facilities,

(2) resources, and

(3) services which support the effective development and implementation of the nursing educational [education] program.

(b) An appropriately equipped skills laboratory shall be provided to accommodate maximum number of students allowed for the program.

(1) The laboratory shall be equipped with hot and cold running water.

(2) The laboratory shall adequate storage for equipment.

(c) The dean/director and faculty shall have adequate secretarial and clerical assistance to meet the needs of the program.

(d) The physical facilities shall be adequate to meet the needs of the program in relation to the size of the faculty and the student body.

(1) The dean/director shall have a private office.

(2) Faculty offices shall be conveniently located and adequate in number and size to provide faculty with privacy for conferences with students and uninterrupted work.

(3) Space for clerical staff, records, files, and equipment shall be adequate.

(4) There shall be mechanisms which provide for the security of sensitive materials, such as examinations and health records.

(5) Classrooms, laboratories, and conference rooms shall be conducive to learning and adequate in number, size, and type for the number of students and the educational purposes for which the rooms are used.

(6) Teaching aids shall be provided to meet the objectives/outcomes of the program.

(7) Adequate restrooms and lounges shall be provided convenient to the classroom.

(e) The learning resources, library, and departmental holdings shall be current, use contemporary technology appropriate for the level of the curriculum, and be sufficient for the size of the student body and the needs of the faculty.

(1) Provisions shall be made for accessibility, availability, and timely delivery of information resources.

(2) Facilities and policies shall promote effective use, i.e. environment, accessibility, and hours of operation.

~~[(b) The dean or director and faculty shall have adequate secretarial and clerical assistance to meet the needs of the program.]~~

~~[(e) The physical facilities shall be adequate to meet the needs of the program in relation to the size of the faculty and the student body.]~~

~~[(1) The dean or director shall have a private office.]~~

~~[(2) Faculty offices shall be conveniently located and adequate in number and size to provide faculty with privacy for conferences with students and uninterrupted work.]~~

~~[(3) Space for clerical staff, records, files, and equipment shall be adequate.]~~

~~[(4) There shall be mechanisms which provide for the security of sensitive materials, such as examinations and health records.]~~

~~[(5) Classrooms, laboratories, and conference rooms shall be conducive to learning and adequate in number, size, and type for the number of students and the educational purposes for which the rooms are used.]~~

~~[(d) The learning resources, library, and departmental holdings shall be current, use contemporary technology appropriate for the level of the curriculum, and be sufficient for the size of the student body and the needs of the faculty.]~~

~~[(1) Provisions shall be made for accessibility, availability, and timely delivery of information resources.]~~

~~[(2) Facilities and policies shall promote effective use, i.e. environment, accessibility, and hours of operation.]~~

#### *§215.12. Records and Reports.*

(a) Accurate and current records shall be maintained for a minimum of two years in a confidential manner and be accessible to appropriate parties, including Board representatives. These records shall include, but are not limited to:

(1) records of current students, including the student's application and required admission documentation, evidence of student's ability to meet objectives/outcomes of the program, final clinical practice evaluations, signed receipt of written student policies furnished by manual and/or electronic means, evidence of student receipt of the Texas Board of Nursing license eligibility information as specifically outlined in §215.8(b) of this chapter (relating to Students), and the statement of withdrawal from the program, if applicable;

~~[(2) transcripts/permanent record cards of graduates;]~~

~~[(3)] faculty records;~~

~~[(4)] administrative records, which include minutes of faculty meetings for the past three years, and school catalogs;~~

~~[(5)] the current program of study and curriculum including mission and goals (philosophy and outcomes), and course outlines;~~

~~[(6)] agreements with affiliating agencies; and~~

~~[(7)] the master plan of evaluation with most recent data collection.~~

~~[(b) Record forms may be developed by an individual school.]~~

~~[(c) Hospital employment forms are not to be used for student records.]~~

~~[(d) [(b)] Records shall be safely stored to prevent loss, destruction, or unauthorized use.~~

~~[(e) [(e)] Copies of the program's Texas Board of Nursing Compliance Audit of the Nursing Educational Program (CANEP), Nursing Educational Program Information Survey (NEPIS), and important Board communication shall be maintained as appropriate.~~

#### *§215.13. Total Program Evaluation.*

(a) There shall be a written plan for the systematic evaluation of the total program. The plan shall include evaluative criteria, methodology, frequency of evaluation, assignment of responsibility, and indicators (benchmarks) of program and instructional effectiveness. The following broad areas shall be periodically evaluated:

(1) organization and administration of the program;

(2) philosophy/mission and objectives/outcomes;

(3) program of study, curriculum, and instructional techniques;

(4) education facilities, resources, and services;

(5) affiliating agencies and clinical learning activities;

(6) students' achievement;

(7) graduates' performance on the licensing examination;

(8) graduates' nursing competence;

(9) faculty members' performance; and

(10) extension programs.

(b) All evaluation methods and instruments shall be periodically reviewed for appropriateness.

(c) Implementation of the plan for total program evaluation shall be documented in the minutes.

(d) Major changes in the nursing educational [education] program shall be evidence-based and supported by rationale.



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.

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James W. Johnston

General Counsel

Texas Board of Nursing

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For further information, please call: (512) 305-6811



## CHAPTER 217. LICENSURE, PEER ASSISTANCE AND PRACTICE

### 22 TAC §217.17

The Texas Board of Nursing (Board) proposes an amendment to §217.17, concerning Nursing Jurisprudence Exam (NJE). The proposed amendment is necessary to implement the recommendations made by the Sunset Advisory Commission.

House Bill 2426 (80th Regular Tex. Legis. Session, 2007, Truitt), in part enacted the requirement in NPA §301.252 that requires the Board of Nursing (BON) to adopt a rule regarding the development of the examination, applicable fees, administration of the examinations, re-examination procedures, grading procedures, and notice of results. This requirement will effect applications received on or after September 1, 2008, from candidates for initial licensure by examination and those seeking to endorse their nursing license to Texas. Since the initial adoption of §217.17 in November 2007, board staff have continued to work out the details of development and administration of the NJE. In doing so, staff have determined that the original rule language requires revision in order to accurately reflect the processes now being put into place for this new examination.

Katherine Thomas, Executive Director, has determined that for the first five-year period the proposed amendment is in effect there will be no additional fiscal implications for state or local government as a result of enforcing the amendment as proposed.

Ms. Thomas has also determined that for each year of the first five years the proposed amendment is in effect, the public benefit will be that those individuals seeking licensure as a nurse in Texas will have had to demonstrate minimum competency concerning knowledge of the law and standards that effect nursing practice in Texas before being licensed. There will not be any foreseeable effect on small or micro businesses. There are no anticipated costs to affected individuals as a result of the implementation of the proposed amendment.

Written comments on the proposal may be submitted to Dusty Johnston, General Counsel, Texas Board of Nursing, 333 Guadalupe, Suite 3-460, Austin, Texas 78701, or by e-mail to dusty.johnston@bon.state.tx.us, or by fax to Dusty Johnston at (512) 305-8101.

The amendment is proposed pursuant to the authority of Texas Occupations Code §301.151 which authorizes the Texas Board of Nursing to adopt, enforce, and repeal rules consistent with its legislative authority under the Nursing Practice Act.

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

§217.17. *Nursing Jurisprudence Exam (NJE).*

#### (a) Exam Development.

(1) The Board will develop a Nursing Jurisprudence Exam (NJE) as authorized by Nursing Practice Act (NPA) 301.252.

(2) The NJE will be required for each person who submits an application seeking initial licensure on or after September 1, 2008.

(3) The NJE will be a minimum of 50 questions and shall be psychometrically validated.

(4) The NJE shall be designed to test an applicant's knowledge relating to board statutes, rules, position statements, guidelines, disciplinary sanction policies, frequently asked questions, and other resource documents accessible on the board's web page relating to the regulation, licensure, and practice of nursing under the following categories:

(A) Nursing Licensure and Regulation in Texas;

(B) Nursing Ethics;

(C) Nursing Practice;

(D) Nursing Peer Review;

(E) Disciplinary Action.

#### (b) Grading Procedures.

(1) ~~[(a)]~~ In this chapter, [when] applicants [are] required to take [pass] the NJE exam, [applicants] must achieve a passing [pass the NJE with a] score as determined by the Board of Nursing in consultation with a psychometrician [of 75 or better]. Should an [the] applicant fail to achieve a passing score [minimum grade of 75] on the NJE, such applicant, [in order to be licensed], shall retake the NJE until such time as a passing score [grade of 75] is achieved.

(2) In accordance with NPA §301.252(a)(3), an applicant for initial nursing licensure in Texas shall not be granted a nursing license until the applicant achieves a passing score on the NJE.

~~[(b) An examinee shall not utilize a proxy or bring books, notes, or other help into the examination room; nor be allowed to communicate by word or sign with another examinee while the examination is in progress.]~~

~~[(c) Irregularities during an examination such as giving or obtaining unauthorized information or aid as evidenced by observation of subsequent statistical analysis of answer sheets, shall be sufficient cause to terminate an applicant's participation in an examination; invalidate the applicant's examination results; or take other appropriate action.]~~

(3) ~~[(d)]~~ A person who has passed the NJE shall not be required to retake the NJE for another or similar license, except as a specific requirement of the board.

(4) A passing grade on the NJE is valid for purposes of licensure for one year from the date the passing grade is achieved.

#### (c) Taking the NJE.

(1) An applicant may take the NJE at any time during the application process.

(2) Should an applicant fail to achieve a minimum passing score on the NJE, such applicant may retake the NJE until such time as a passing score is achieved.

#### (d) Notice of Results.

(1) Attaining a passing score on the NJE is a requirement of initial licensure in Texas effective September 1, 2008.

(2) Each applicant will be notified upon successful completion of all requirements for initial licensure.

[(e) If the applicant should fail one of the Nursing Jurisprudence examinations, the grade of the examination which the applicant initially passed may be used for the purpose of licensure by examination for a period of two years from the date of passing the initial examination.]

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.

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James W. Johnston

General Counsel

Texas Board of Nursing

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For further information, please call: (512) 305-6811



## CHAPTER 221. ADVANCED PRACTICE NURSES

The Texas Board of Nursing (Board) proposes amendments to §221.4 and §221.6 and the repeal of §221.5, concerning Advanced Practice Nurses. The proposed amendments and repeal are necessary for the purpose of aligning 22 TAC Chapter 221 with Chapter 305 of the Nursing Practice Act (the Advanced Practice Registered Nurse (APRN) Compact) and national standards.

At its October 2007 meeting, the Board charged the Advanced Practice Nursing Advisory Committee (APNAC) with reviewing Rule 221 and discussing issues related to recognition of advanced practice nurses in preparation for implementation of the APRN Compact. As part of its discussion, the Board directed the APNAC to examine two specific issues. First, the issue of whether Texas should begin referring to nurses in advanced practice as APRNs rather than as APNs (advanced practice nurses). APRN is the term utilized in the compact language, and the term clearly identifies the licensee as both an advanced practice nurse and a registered nurse. It was the consensus of the APNAC to recommend that the Board begin using APRN in order to be consistent with Chapter 305 of the Nursing Practice Act.

The other issue the Board directed the APNAC to discuss is whether it would be in the best interest of the public to refer to authorization to practice as licensure rather than continuing to refer to advanced practice approval as an authorization that is linked to registered nurse (RN) licensure. The process used to review and approve applicants as advanced practice nurses is a licensure process, even though it is not presently called a license. Calling the approval a license will not change the advanced practice nurse's scope of practice in any way. The APRN's scope of practice will remain as set forth in current laws and regulations.

The Board utilizes a licensure process because it believes advanced practice nursing has evolved as a result of the complexity of services provided and the level of knowledge, skills, and competence required by individuals who provide such care. The services provided by APRNs exceed the scope of practice of RNs. Therefore, the potential for harm to the public is signif-

icantly greater for APRNs than for RNs, and a higher level of accountability is necessary. The Board's approval process ensures public protection through activities that include but are not limited to a detailed review of the individual's advanced practice nursing educational preparation related to the specialty for which he/she is seeking approval, verification of current RN licensure, and verification of appropriate national certification in the role and specialty that is congruent with the advanced practice nursing education. At least 50% of boards that are members of the National Council of State Boards of Nursing (NCSBN) already refer to their approval process for nurse anesthetists, nurse-midwives and nurse practitioners as licensure. Nearly 40% also license clinical nurse specialists (NCSBN Member Board Profiles, data last updated January 22, 2008).

Typically, licensure is considered the preferred method of regulation when the regulated activities are complex, requiring specialized knowledge, skills, and decision-making. Licensure in any profession is required when the potential for greater risk of harm to the public exists and the professional must be held to the highest level of accountability. Another key element of licensure is a unique and identifiable scope of practice. APRNs are engaged in activities that may include functions such as making medical diagnoses and ordering appropriate pharmacologic and non-pharmacologic care in collaboration with a delegating physician. The knowledge, skills and abilities required to provide advanced practice nursing care significantly exceed those acquired through entry-level nursing education programs that prepare individuals as RNs. Likewise, their scope of practice goes well beyond that of the RN and cannot be performed without completing an advanced practice nursing educational program. Therefore, the Board has established the minimum qualifications necessary for safe and competent practice, and applications for licensure are reviewed to determine that all qualifications have been met.

Calling the approval a license is not intended to replace RN licensure; rather, it will assist the public by providing greater clarity in identifying those RNs who are eligible to practice as APRNs in this state. The public is familiar with the concept of licensure for LVNs and RNs, and this change would reinforce to the public that APRNs complete formal education beyond the RN level and must meet certain criteria to practice at the advanced practice level. The APNAC recommends that the Board consider using the term licensure to describe the advanced practice recognition process.

One of the biggest changes recommended by the APNAC is to eliminate provisional authorization to practice for new graduates. The public, employers, and legislators have relayed to staff that the concept of provisional authorization is confusing. Eliminating this level will help to eliminate the confusion associated with it. Additionally, all certifying examinations are available via computer testing methods, allowing applicants to test quickly after graduation. Based on data from the NCSBN, graduates who delay taking VN or RN licensure examinations after graduation are less likely to be successful. It is reasonable to consider that this same concept is applicable to APRNs and certification examinations. In order to allow adequate time for test results to be received, the APNAC also recommends changing the interim approval period to 120 days from the current 90.

Katherine Thomas, Executive Director, has determined that for the first five-year period the proposal is in effect there will be no additional fiscal implications for state or local government as a result of enforcing the rules as proposed.

Ms. Thomas has also determined that for each year of the first five years the proposal is in effect, the public benefit will be that those individuals seeking authorization to practice as an advanced practice registered nurse will have demonstrated minimum qualifications necessary for safe and competent practice, and applications for licensure are reviewed to determine that all qualifications have been met. There will not be any foreseeable effect on small or micro businesses. There are no anticipated costs to affected individuals as a result of the implementation of the proposed rules.

Written comments on the proposal may be submitted to Dusty Johnston, General Counsel, Texas Board of Nursing, 333 Guadalupe, Suite 3-460, Austin, Texas 78701, or by e-mail to dusty.johnston@bon.state.tx.us, or by fax to Dusty Johnston at (512) 305-8101.

## 22 TAC §221.4, §221.6

The amendments are proposed pursuant to the authority of Texas Occupations Code §301.151 which authorizes the Texas Board of Nursing to adopt, enforce, and repeal rules consistent with its legislative authority under the Nursing Practice Act.

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

### §221.4. Advanced Practice Registered Nurse Licensure Requirements [for Full Authorization to Practice].

(a) Advanced practice registered nurse licensure is issued for the purpose of authorizing a registered nurse to practice in a specific advanced practice role and population-focus area.

(b) ~~[(a)]~~ The applicant for licensure as an advanced practice registered ~~[professional]~~ nurse shall ~~[who seeks authorization to practice as an advanced practice nurse must]~~:

(1) Hold ~~[hold]~~ a current, valid, unencumbered license or privilege to practice as a registered nurse in the State of Texas ~~[or reside in any party state and hold a current, valid, unencumbered registered nurse license in that state];~~

(2) Submit ~~[submit]~~ to the board such evidence as required by the board to insure compliance with the advanced practice educational requirements set forth in ~~[§221.3 of]~~ this chapter. Such evidence shall include official documentation verifying graduation from a graduate level advanced practice registered nurse educational program accredited by a national nursing education accrediting body that is recognized by the U.S. Department of Education and the Board. This documentation shall verify the date of graduation, credential conferred and provide evidence of meeting the standards of advanced practice registered nursing education in this state as described in this chapter. All applicants, including those seeking licensure by endorsement, must demonstrate that the educational requirements set forth in this chapter have been met. A transcript is required prior to the issuance of a permanent license. ~~[(relating to Education)];~~

(3) Attest ~~[attest]~~, on forms provided by the board, to having completed a ~~[met the]~~ minimum of 400 hours of current practice within the last 24 calendar months in the advanced practice role and population-focus area for which the applicant is applying ~~[the preceding biennium]~~ unless the applicant has completed an advanced practice registered nursing educational program in this advanced practice role and population-focus area within the last 24 calendar months. ~~[preceding biennium];~~

(A) If less than four years but more than two years have lapsed since completion of the advanced practice nursing educational program and/or the applicant does not have 400 hours of current practice in the advanced practice role and population focus area during the

previous 24 calendar months, the advanced practice registered nurse shall be required to demonstrate proof of completion of 400 hours of current practice obtained under the direct supervision of an advanced practice registered nurse licensed by the board in the same role and population focus area or by a physician in the same specialty.

(B) If more than four years have lapsed since completion of the advanced practice nursing educational program and/or the applicant has not practiced in the advanced practice role during the previous four years, the applicant shall successfully complete a refresher course or extensive orientation in the appropriate advanced practice role and population focus area that includes a supervised clinical component by a qualified instructor/sponsor.

(i) The course(s)/orientation shall be of sufficient length to satisfy the learning needs of the applicant and to assure that he/she meets the minimum standard for safe, competent care and include a minimum of 400 hours of current practice as described in subparagraph (A) of this paragraph. The course(s)/orientation shall cover the entire scope of the authorized advanced practice role and population focus area. Content shall include, but not be limited to that which is specified in board guidelines.

(ii) The instructor/sponsor must provide written verification of satisfactory completion of the refresher course/extensive orientation on forms provided by the board and assurance that the individual has reviewed current practice-related information pertinent to his/her advanced practice role and population focus area.

(4) Attest ~~[attest]~~, on forms provided by the board, to having obtained 20 contact hours of continuing education within the last 24 calendar months appropriate for ~~[in]~~ the advanced practice ~~[specialty and]~~ role and population-focus area for which the applicant is applying ~~[recognized by the board every two years]~~. Continuing education in the advanced practice ~~[specialty and]~~ role and population-focus area must meet the requirements of Chapter 216 of this title (relating to Continuing Education). The 20 contact hours required for RN licensure may be met by the 20 hours required by this subsection; and

(5) Respond to questions regarding personal background, including, but not limited to, information relating to:

(A) Disciplinary action or investigation regarding any professional license or credential;

(B) Criminal offenses, including those pending appeal;

(C) Current investigation by a grand jury or governmental agency;

(D) Any chemical, physical or mental impairment and/or disability or treatment for such that impacts the advanced practice registered nurse's ability to practice nursing safely, and a description of accommodations and/or practice limitations needed, if any;

(E) Any current substance use, misuse, or abuse; and,

(F) A detailed explanation and supporting documentation regarding any background information disclosed.

(6) ~~[(5)]~~ Submit ~~[submit]~~ the required, non-refundable application ~~[credentialing] fee~~, which is not refundable.

(c) ~~[(b)]~~ Applicants who completed their advanced practice nursing educational programs on or after January 1, 1996 must submit evidence of current certification in an advanced practice role and population focus area recognized by the Board that is congruent with the advanced practice nursing educational preparation. The certification examination shall be recognized by the Board for the role and population-focus area. If a specific certification examination does not

exist for the role and population focus area, the board [The applicant for advanced practice nurse authorization who completed an advanced educational program on or after January 1, 1996 must submit to the board such evidence as required by the board to ensure the applicant holds current certification in an the advanced nursing role and specialty recognized by the board. Such certification must be granted by a national certifying body recognized by the board. The Board] reserves the right to designate a [an available] national certification examination in a closely related population focus area. [specialty which that must be taken in lieu of an examination specifically related to the specialty.] If [an appropriate certification examination is not available and] the Board [board] has not designated an alternate examination, the applicant may petition the board for waiver from the certification requirement, according to the exceptions specified in [§221.7(e) of] this chapter [(relating to Petitions for Waiver)].

(d) [(e)] Advanced practice registered nurse applicants who wish to practice in [be authorized by the board for] more than one role and/or population-focus area [designation] shall complete additional education in the desired area(s) of licensure [approval] in compliance with the educational requirements set forth in [§221.3 of] this chapter and meet all requirements for licensure in each additional role or population-focus area [obtain national certification in the advanced role and specialty from a national certifying body recognized by the board]. To apply for licensure [authorization] for more than one title [designation], the applicant shall submit a separate application and fee for each desired title [designation]. Additional licensure is required for those licensed advanced practice registered nurses seeking to include an additional:

- (1) Advanced practice role and population-focus area,
- (2) Population-focus area within the same advanced practice role, or
- (3) Advanced practice role within the same population focus area.

(e) [(d)] After review by the board and verification that all requirements have been met, [notification of acceptability of credentials and] a certificate verifying licensure [approval] shall be sent to the advanced practice registered nurse.

#### §221.6. Interim Approval.

(a) Interim approval is a time-limited permit to practice nursing in a specific advanced practice role and population-focus area.

(b) [(a)] Interim approval may be granted to eligible applicants. Interim approval permits the advanced practice registered nurse applicant to practice without prescriptive authority while [by the board pending completion of] the application is reviewed [process for a period not to exceed 90 days. Extensions of the interim approval period shall not be granted].

(1) The [registered nurse seeking interim approval as an] advanced practice registered nurse applicant who meets all requirements and applies for interim approval must complete documents [documentation] provided by the board attesting [verifying] that: [he/she meets all requirements of this chapter and has completed and mailed the appropriate documents to the educational program or organization for completion.]

(A) He/She meets all requirements for full licensure in an advanced practice registered nurse role and population-focus area in the state of Texas; and,

(B) Has completed and submitted the appropriate documents to the advanced practice nursing educational program or designated organization for completion.

(2) An applicant for licensure as an advanced practice registered nurse who is a new graduate of an advanced practice registered nursing education program may be eligible for interim approval.

(A) The graduate advanced practice registered nurse applicant must apply for interim approval within six months of the program completion date.

(B) The graduate advanced practice registered nurse applicant must provide verification that he/she is approved by a national certifying body to sit for the national certification examination recognized by the Board for the advanced practice role and population focus area that is congruent with his/her advanced practice nursing educational preparation.

(C) The graduate advanced practice registered nurse shall notify the board of the official national certification examination results.

(D) Interim approval to practice as a graduate advanced practice registered nurse shall expire immediately when the applicant receives notice from the national certifying body that he/she has failed the national certification examination.

(i) Failure to pass the certification examination on the first attempt immediately renders the applicant ineligible to practice in the advanced practice role or utilize that advanced practice registered nurse title or titles that imply the bearer is an advanced practice registered nurse.

(ii) The applicant must immediately notify the board of the examination results and return the original interim approval document to the board's office accompanied by a photocopy of the examination results. Upon notification of the examination failure, the board will issue written notification that the interim approval to practice is rescinded and the application for advanced practice registered nurse licensure is denied.

(iii) An applicant who fails to pass the certification examination may continue to practice as a registered nurse.

[(2) A letter shall be issued by the board granting interim approval.]

(3) Interim approval may be granted for a period of up to 120 days. An eligible applicant may be granted [is eligible for] interim approval one time only per [specialty and] role and population-focus area. Extensions or renewals of the interim approval period shall not be granted.

(4) The Board grants interim approval to eligible advanced practice registered nurse applicants.

(c) [(b)] An advanced practice registered nurse applicant who submits a request for waiver from the requirements for licensure [of the rules as] set forth in [§221.4 (relating to Full Authorization to Practice) and §221.5 (relating to Provisional Authorization) of] this chapter shall not be eligible for interim approval unless otherwise indicated in this chapter.

(d) [(e)] If an advanced practice registered nurse applicant is deemed ineligible for licensure [advanced practice authorization], the interim approval will be rescinded immediately, effective on the date the notice is sent by mail. The applicant must cease practicing [holding him/herself out] as an advanced practice registered nurse and may no longer use any [or using] titles that [to] imply to the public that he/she is an advanced practice registered nurse.

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.

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James W. Johnston

General Counsel

Texas Board of Nursing

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For further information, please call: (512) 305-6811



## 22 TAC §221.5

*(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 Board of Nursing or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The repeal is proposed pursuant to the authority of Texas Occupations Code §301.151 which authorizes the Texas Board of Nursing to adopt, enforce, and repeal rules consistent with its legislative authority under the Nursing Practice Act.

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

### §221.5. Provisional Authorization.

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.

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For further information, please call: (512) 305-6811



## CHAPTER 223. FEES

### 22 TAC §223.1

The Texas Board of Nursing (Board) proposes an amendment to §223.1, concerning Fees. The proposed amendment sets a "not to exceed" fee for the jurisprudence exam. Currently, the jurisprudence exam is being developed in house by the Board staff and iBridge Group. The Board staff anticipates that the board will be able to absorb all developmental and maintenance costs at this time but would like the option to charge of fee if it is deemed necessary at a later date. The Board staff will evaluate the costs of the jurisprudence examination on March 1, 2009 and again on August 31, 2009.

Katherine Thomas, Executive Director, has determined that for the first five-year period the proposed amendment is in effect there will be no additional fiscal implications for state or local government as a result of enforcing the amendment as proposed.

Ms. Thomas has also determined that for each year of the five years the proposed amendment is in effect, the public benefit will be that those individuals seeking licensure as a nurse in Texas will have had to demonstrate minimum competency in nursing jurisprudence and that any costs associated with the regulatory requirement is recovered. There will not be any foreseeable effect on small or micro businesses. There are no anticipated costs to affected individuals as a result of the implementation of the proposed amendment.

Written comments on the proposal may be submitted to Dusty Johnston, General Counsel, Texas Board of Nursing, 333 Guadalupe, Suite 3-460, Austin, Texas 78701, or by e-mail to dusty.johnston@bon.state.tx.us, or by fax to Dusty Johnston at (512) 305-8101.

The amendment is proposed pursuant to the authority of Texas Occupations Code §301.151 which authorizes the Texas Board of Nursing to adopt, enforce, and repeal rules consistent with its legislative authority under the Nursing Practice Act.

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

### §223.1. Fees.

(a) The Texas Board of Nursing has established reasonable and necessary fees for the administration of its functions.

(1) - (21) (No change.)

(22) fee for Federal Bureau of Investigations (FBI) and Department of Public Safety (DPS) criminal background check for licensees, initial licensure applicants and endorsement applicants as determined by fees imposed by the Criminal Justice Information Services (CJIS) Division and the Texas Department of Public Safety; ~~and~~

(23) Disciplinary monitoring fees as stated in a Board order; and [-]

(24) Nursing Jurisprudence Examination fee: not to exceed \$25.

(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 July 28, 2008.

TRD-200803913

James W. Johnston

General Counsel

Texas Board of Nursing

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For further information, please call: (512) 305-6811



## PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

### CHAPTER 501. RULES OF PROFESSIONAL CONDUCT

#### SUBCHAPTER C. RESPONSIBILITIES TO CLIENTS

### 22 TAC §501.76

The Texas State Board of Public Accountancy (Board) proposes an amendment to §501.76, concerning Records and Work Papers.

The amendment to §501.76(a) will remove the phrases "regardless of the status of the client or former client's account" and "either in hard copy or other useable form" and will add the sentence "The records and work papers may be provided to the client in either hard copy or other useable form."

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be clarity regarding the format of the records and work papers returned to a client or former client. The amendment also clarifies the concept that certain records and work papers must be returned to clients and former clients, whether or not the client or former client paid his bill.

The probable economic cost to persons required to comply with the amendment will vary according to the requests made by clients or former clients.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because it does not add additional costs in order to comply with the amendment.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on September 8, 2008. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe Street, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

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

§501.76. *Records and Work Papers.*

(a) Upon request, ~~[regardless of the status of the client or former client's account,]~~ a person shall provide to the client or former client any accounting or other records, ~~[either in hard copy or other useable form,]~~ belonging to, or obtained from or on behalf of, the client that the person removed from the client's premises or received on behalf of the client. The records and work papers may be provided to the client in either hard copy or other useable form. A person may make and retain copies of such records when they form the basis of work done by him. For a reasonable charge, a person shall furnish to his client or former client, upon request made within a reasonable time after original issuance of the document in question:

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

(b) - (g) (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 July 28, 2008.

TRD-200803836

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: September 7, 2008

For further information, please call: (512) 305-7848



## CHAPTER 502. PEER ASSISTANCE

### 22 TAC §502.2

The Texas State Board of Public Accountancy (Board) proposes new §502.2, concerning Texas State Board of Public Accountancy Policy Statement of the Peer Assistance Oversight Committee.

The new §502.2 will provide the public with a policy statement describing the duties of the Peer Assistance Oversight Committee.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed new rule will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the new rule will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the new rule will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the new rule will be none.

Mr. Treacy has determined that for the first five-year period the new rule is in effect the public benefits expected as a result of adoption of the proposed new rule will be a Board committee dedicated to overseeing peer assistance programs for CPAs.

The probable economic cost to persons required to comply with the new rule will be zero.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed new rule will not affect a local economy.

Mr. Treacy has determined that the proposed new rule will not have an adverse economic effect on small businesses because the amendment does not apply to small businesses.

Mr. Treacy had determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed new rule will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed new rule from any interested person. Comments must be received at the Board no later than noon on September 8, 2008. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe Street, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed new rule will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the new rule is to be adopted; finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The new rule is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed new rule.

§502.2. Texas State Board of Public Accountancy Policy Statement of the Peer Assistance Oversight Committee.

(a) The Texas State Board of Public Accountancy has established the Peer Assistance Oversight committee to oversee the activities of the Texas Society of Certified Public Accountants' peer assistance program as mandated under the Texas Health and Safety Code, Chapter 467.

(b) The Peer Assistance Oversight Committee operates under the premise that impairments caused by substance abuse and mental illness are treatable.

(c) The Peer Assistance Oversight Committee's responsibilities include, but are not limited to:

(1) protecting the public from CPAs whose ethical, behavioral, and technical violations due to chemical dependency and/or mental illness have harmed, or have the potential to harm, the public;

(2) encouraging CPAs, CPA candidates, and accounting students to seek assistance for impairment due to chemical dependency and/or mental illness;

(3) cooperating with the Texas Society of CPAs peer assistance program in promoting confidential assistance to CPAs, CPA

candidates, and accounting students who suffer from chemical dependency and/or mental illness; and

(4) disseminating information about the peer assistance program to CPAs, CPA candidates, and accounting students.

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.

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TRD-200803859

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: September 7, 2008

For further information, please call: (512) 305-7848



## CHAPTER 505. THE BOARD

### 22 TAC §505.7

The Texas State Board of Public Accountancy (Board) proposes an amendment to §505.7, concerning Vacancies in the Board.

The amendment to §505.7 will replace the word "offices" with the word "officers".

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be greater clarity regarding vacancies in the Board.

The probable economic cost to persons required to comply with the amendment will be zero.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not apply to small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on September 8, 2008. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333

Guadalupe Street, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

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

§505.7. *Vacancies in the Board.*

If for any reason a vacancy shall occur in the board, the presiding officer shall provide a notice to the governor and ask for the appointment of a new member to fill the unexpired term. If the vacancy shall occur in any of the officers [~~offices~~] of the board, the board shall elect from its own membership at the first regular or special meeting following the vacancy a new officer to serve for the balance of the unexpired term.

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.

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TRD-200803874

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: September 7, 2008

For further information, please call: (512) 305-7848



## 22 TAC §505.8

The Texas State Board of Public Accountancy (Board) proposes an amendment to §505.8, concerning Board Meetings.

The amendment to §505.8 will replace the phrase "presiding officer shall give written" with the phrase "executive director is responsible for providing" and replace the phrase "as required by law" with the phrase "pursuant to the Open Meetings Act" in subsection (a) and in subsection (b) delete the phrase "as required by statute" and replace the word "or" with the phrase "the board and".

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a clearer statement regarding those Board procedures necessary to comply with the Open Meetings Act.

The probable economic cost to persons required to comply with the amendment will be zero.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not apply to small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on September 8, 2008. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe Street, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

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

§505.8. *Board Meetings.*

(a) Board meetings shall be open to the public. The executive director is responsible for providing [~~presiding officer shall give written~~] notice of board meetings pursuant to the Open Meetings Act [~~as required by law~~].

(b) Board meetings [~~as required by statute~~] shall take place at the headquarters of the board or, if the convenience of the public, the board and [~~or~~] the parties to a hearing will be better served thereby, at such place as the board may designate.



(c) Special meetings may be held upon the call of the presiding officer, or upon call of a majority of the members of the board, after reasonable 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 July 28, 2008.

TRD-200803840

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: September 7, 2008

For further information, please call: (512) 305-7848



## 22 TAC §505.10

The Texas State Board of Public Accountancy (Board) proposes an amendment to §505.10, concerning Board Committees.

The amendment to §505.10(e) will remove paragraph (1)(C) and reletter subparagraphs (D), (E), (F), (G) and (H) to subparagraphs (C), (D), (E), (F) and (G); in paragraph (3)(A) add the phrase "and courses that may be used to meet the education requirements to take the examination"; in paragraph (6), replace "1" and "2" with "I" and "II"; and in paragraph (10) remove the phrase "who shall also serve as investigators" and add the phrase "constructive enforcement advisory".

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a greater clarity regarding the Executive Committee's responsibilities.

The probable economic cost to persons required to comply with the amendment will be zero.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not apply to small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on September 8,

2008. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe Street, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

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

### §505.10. Board Committees.

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

(e) Standing committee structure and charge to committees.

The standing committees shall consist of policy-making committees and working committees comprised of the following individuals and shall be charged with the following responsibilities.

(1) The executive committee shall be a policy-making committee comprised of the board's presiding officer, assistant presiding officer, secretary, treasurer, immediate past presiding officer of the board if still serving on the board, and at least one other officer elected by the board. The Executive Committee shall also be the board's audit committee. The executive committee may act on behalf of the full board in matters of urgency, or when a meeting of the full board is not feasible; the executive committee's actions are subject to full board ratification at its next regularly scheduled meeting. The functions of the executive committee shall be to advise, consult with, and make recommendations to the board concerning matters requested by the board's presiding officer, including:

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

~~[(C) cease and desist orders pursuant to board rule §518.2 of this title and violations of cease and desist orders pursuant to board rule §518.3 of this title;]~~

~~[(C) [(D)] proposed changes in the board rules of professional conduct (the rules);~~

~~[(D) [(E)] amendments to the Act;~~

~~[(E) [(F)] responses/positions relating to papers, reports, and other submissions from national associations or boards;~~

~~[(F) [(G)] legislative oversight, including, but not limited to, budget, performance measures, proposed changes in legislation affecting the board, and computer utilization; and [;]~~

~~[(G) [(H)] special issues.~~

(2) (No change.)

(3) The qualifications committee shall be a working committee comprised of at least two board members, one of whom shall serve as chair, assisted by at least two non-board members who shall serve in an advisory capacity. The committee shall make recommendations to the board regarding:

(A) the educational qualifications of an applicant for the Uniform Certified Public Accountant Examination in accordance with §§511.51 through 511.59 of this title (relating to Educational Requirements) and courses that may be used to meet the education requirements to take the examination;

(B) - (E) (No change.)

(4) - (5) (No change.)

(6) The technical standards review I [1] committee and the technical standards review II [2] committee shall be working committees each comprised of at least two board members, one of whom shall serve as chair, assisted by at least three non-board members who shall serve in an advisory capacity. The committees shall:

(A) - (C) (No change.)

(7) - (9) (No change.)

(10) The constructive enforcement committee shall be a working committee comprised of at least two board members, one of whom shall serve as chair, assisted by non-board CPA members [who shall also serve as investigators]. At least one Committee member shall be a public member of the board. The committee shall approve the constructive enforcement program, coordinate its activities with board committees and staff, and supervise the training of constructive enforcement advisory committee members. A staff attorney of the board shall supervise the day to day administration of the constructive enforcement program and activities of the committee's non-board members on behalf of the committee chairman. The committee shall:

(A) - (E) (No change.)

(f) - (h) (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.

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TRD-200803841

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7848



## 22 TAC §505.11

*(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 State Board of Public Accountancy or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The Texas State Board of Public Accountancy (Board) proposes the repeal of §505.11, concerning Texas State Board of Public Accountancy Policy Statement of the Peer Assistance Oversight Committee.

The proposed repeal of §505.11 will remove a rule that is no longer relevant to Chapter 505. This rule will be relocated to Chapter 502.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed repeal will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the repeal will be none.

B. the estimated reductions in costs to the state and to local governments as a result of enforcing or administering the repeal will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the repeal will be none.

Mr. Treacy has determined that for the first five-year period the repeal is in effect the public benefits expected as a result of adoption of the proposed repeal will be more streamlined rules.

The probable economic cost to persons required to comply with the repeal will be nothing.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed repeal will not affect a local economy.

Mr. Treacy has determined that the proposed repeal will not have an adverse economic effect on small businesses because the rule is being relocated to Chapter 502.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the repeal will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed repeal from any interested person. Comments must be received at the Board no later than noon on September 8, 2008. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe Street, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed repeal will have an adverse economic effect on small businesses; if the repeal is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted: finally, describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002.

The repeal is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

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

§505.11. Texas State Board of Public Accountancy Policy Statement of the Peer Assistance Oversight Committee.

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 July 28, 2008.

TRD-200803860

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7848



## 22 TAC §505.12

The Texas State Board of Public Accountancy (Board) proposes an amendment to §505.12, concerning Enforcement Committees.

The amendment to §505.12 in subsection (a) will add the word "the"; replace the phrase "committee, major case enforcement committee" with the phrase "I and II committees"; add the word "the"; remove the word "each" and remove the phrase "one of"; in subsection (b) replace the word "and" with the phrase "serving on"; replace the word "in" with the word "of" and replace the word "considered" with the word "investigated".

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be the consistent use of the new title for the former Major Case Committee, now called the Technical Standards Review II Committee.

The probable economic cost to persons required to comply with the amendment will be zero.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not apply to small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on September 8, 2008. Comments should be addressed to J. Randel (Jerry) Hill,

General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe Street, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

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

§505.12. *Enforcement Committees.*

(a) The behavioral enforcement committee, the technical standards review I and II committees [~~committee, major case enforcement committee~~] and the constructive enforcement committee shall [~~each~~] be [~~one of~~] the board's enforcement committees.

(b) A member of the board serving on [~~and~~] an enforcement committee shall recuse himself and take no part in the board's vote on the final disposition of [~~in~~] any case investigated [~~considered~~] by that enforcement committee.

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.

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TRD-200803842

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: September 7, 2008

For further information, please call: (512) 305-7848



## CHAPTER 507. EMPLOYEES OF THE BOARD

### 22 TAC §507.2

The Texas State Board of Public Accountancy (Board) proposes an amendment to §507.2, concerning Staff.

The amendment to §507.2(a) will add the phrase "employed in an executive, administrative or professional capacity as that phrase is used for purposes of establishing an exemption to the overtime provisions of the Fair Labor Standards Act and its subsequent amendments if the prospective employee is acting in the capacity of an officer, executive board or executive committee member, employee, or paid consultant of a Texas trade association in the field of public accountancy or the prospective

employee's spouse is acting in the capacity of an officer, executive board or executive committee member, manager or paid consultant of a Texas trade association or be".

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a clearer statement regarding those Board procedures necessary to comply with the Fair Labor Standards Act.

The probable economic cost to persons required to comply with the amendment will be zero.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not apply to small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on September 8, 2008. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe Street, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

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

#### §507.2. Staff.

(a) The executive director shall employ such staff as is authorized and necessary for the conduct of its affairs. Applications for employment by the board shall notify prospective employees that no employee of the board may be employed in an executive, administrative or professional capacity as that phrase is used for purposes of establishing an exemption to the overtime provisions of the Fair Labor Standards Act and its subsequent amendments if the prospective employee is acting in the capacity of an officer, executive board or executive committee member, employee, or paid consultant of a Texas trade association in the field of public accountancy or the prospective employee's spouse is acting in the capacity of an officer, executive board or executive committee member, manager or paid consultant of a Texas trade association or be related within the second degree of affinity or within the second degree of consanguinity to a person who is an officer, employee, or paid consultant of a trade association of the profession of public accountancy.

(b) Each employee shall be hired without regard to race, color, handicap, sex, religion, age, or national origin. The executive director shall report at least annually to the board on compliance with this 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.

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TRD-200803843

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7848



#### 22 TAC §507.4

The Texas State Board of Public Accountancy (Board) proposes an amendment to §507.4, concerning Confidentiality.

The amendment to §507.4(b) will replace the phrase "under the following circumstances:" with the phrase "to another governmental, regulatory or law enforcement agency engaged in an enforcement action." and delete subsection (b)(1) and (2).

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be clarification regarding who has access to confidential files maintained by the Board.

The probable economic cost to persons required to comply with the amendment will be zero.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not apply to small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on September 8, 2008. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe Street, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

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

§507.4. Confidentiality.

(a) Members of the board, the executive director, members of board staff, and independent contractors retained by the board shall not disclose any confidential information which comes to their attention, except as may be required by law.

(b) All complaints, investigation files, investigation reports, and other investigative information in the possession of, received or gathered by the board is confidential and any employee, agent, or member of the board may not disclose the information contained in these files except to another governmental, regulatory or law enforcement agency engaged in an enforcement action. [under the following circumstances:]

{(1) to another state, local or federal governmental or regulatory enforcement agency if sought in the furtherance of an investigation by the requesting agency in an enforcement action regarding the licensee; and}

{(2) to appropriate law enforcement agencies if sought in the furtherance of a criminal investigation by the requesting agency.}

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.

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J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7848

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CHAPTER 509. RULEMAKING PROCEDURES

22 TAC §509.2

The Texas State Board of Public Accountancy (Board) proposes an amendment to §509.2, concerning Suspension of Rules.

The amendment to §509.2 will replace the phrase "a public emergency or imperative public necessity" with the phrase "an imminent peril to the public health, safety or welfare or a requirement of a state or federal law" and correct the spelling of the word "therefore".

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be clarification regarding the circumstances under which the Board may suspend the operation of its rules.

The probable economic cost to persons required to comply with the amendment will be zero.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not apply to small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on September 8, 2008. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small busi-

nesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

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

#### §509.2. *Suspension of Rules.*

In any case in which an imminent peril to the public health, safety or welfare or a requirement of a state or federal law [a public emergency or imperative public necessity] so requires, the board may suspend the operation of these sections to the extent authorized by law, stating its reasons therefore [therefor] in writing.

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.

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J. Randel (Jerry) Hill

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Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7848



#### **22 TAC §509.6**

The Texas State Board of Public Accountancy (Board) proposes an amendment to §509.6, concerning Rulemaking Procedures.

The amendment to §509.6(d) will replace the word "encourage" with the word "utilize".

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a more definite statement regarding the Board's use of negotiated rulemaking.

The probable economic cost to persons required to comply with the amendment will be zero.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not apply to small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on September 8, 2008. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

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

#### §509.6. *Rulemaking Procedures.*

(a) Notice of a proposed new rule or amendment of any existing rule shall be made in accordance with the provisions of §2001.023 and §2001.024 of the Administrative Procedure Act.

(b) A request for a public hearing to receive comments on a proposed new rule or amendment to an existing rule must be received in the offices of the board no later than 5:00 p.m. of the thirtieth calendar day prior to the board meeting scheduled to consider the adoption of the proposed rule unless the board announces a different filing date.

(c) A person wishing to testify at a public hearing to receive comments on a proposed new rule or amendment to an existing rule must file a written copy of the proposed testimony in the offices of the board by no later than 5:00 p.m. of the fifth calendar day prior to the public hearing unless the board announces a different filing date.

(d) It is the board's policy to utilize [~~encourage~~] negotiated rule making when appropriate.

(e) The executive director shall designate a board employee as the board's Negotiated Rulemaking Director to implement the provisions of the Negotiated Rulemaking Act, chapter 2008 of the Texas Government Code, and perform the following functions:

(1) maintain necessary agency records of negotiated rule-making procedures while maintaining the confidentiality of participants;

(2) establish a method of choosing conveners and facilitators as defined by the Negotiated Rulemaking Act, chapter 2008 of the Texas Government Code;

(3) establish a method of convening negotiated rules committees;

(4) provide information about the negotiated rulemaking process to agency employees, potential users, and users of the negotiated rulemaking program;

(5) arrange training or education necessary to implement the negotiated rulemaking process; and

(6) establish a system to evaluate the negotiated rulemaking program, conveners, facilitators, and committees.

(f) The board or the Rules Committee may request the Negotiated Rulemaking Director to institute negotiated rulemaking proceedings on a specified subject. Upon receipt of such a request, the Negotiated Rulemaking Director shall institute the negotiated rulemaking process pursuant to chapter 2008 of the Texas Government Code.

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.

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J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7848



## CHAPTER 518. UNAUTHORIZED PRACTICE OF PUBLIC ACCOUNTANCY

### 22 TAC §518.2

The Texas State Board of Public Accountancy (Board) proposes an amendment to §518.2, concerning Cease and Desist Orders.

The amendment to §518.2 will replace the word "Committee" with the word "Director" twice in the beginning of the rule, remove the sentence "The Executive Committee may issue a cease and desist order by agreement or after a hearing in a contested matter.", replace the phrase "A cease and desist order issued by the Executive Committee" with the phrase "The Executive Director and the person under investigation may agree to a cease and desist order at any time;" add the phrase "however, such an agreed cease and desist order", replace the word "by" with the word "be" and remove the phrase at its next regularly scheduled meeting", add new "(1) The Executive Director may refer an investigation to the Constructive Enforcement Committee for its consideration before taking any action. In such cases, the Constructive Enforcement Committee may recommend that staff dismiss the matter without further action, instruct staff to investigate the matter further or recommends that staff offer the person under investigation a cease and desist order.", add new "(2) The Executive Director may enlist the aid of the members of the Constructive Enforcement Advisory Committee in gathering evi-

dence during investigations of the unauthorized practice of public accountancy.", in subsection (b) replace the phrase "; provided that the time limits provided in this rule control." with a ".", and remove subsection (c) and (d).

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a clearer, more streamlined procedure for investigating and prosecuting unauthorized practice cases.

The probable economic cost to persons required to comply with the amendment will be zero.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not apply to small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on September 8, 2008. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

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

§518.2. *Cease and Desist Orders.*

(a) Whenever the board, through its Executive Director [Committee], determines that a person is engaging in an act or practice that constitutes the practice of public accountancy without a license issued under the Act, the board, through its Executive Director [Committee], after notice and an opportunity for a hearing, may issue a cease and desist order prohibiting the person from engaging in that activity. The Executive Director and the person under investigation may agree to a cease and desist order at any time; however, such an agreed cease and desist order [The Executive Committee may issue a cease and desist order by agreement or after a hearing in a contested matter. A cease and desist order issued by the Executive Committee] must be [by] ratified by the board [at its next regularly scheduled meeting].

(1) The Executive Director may refer an investigation to the Constructive Enforcement Committee for its consideration before taking any action. In such cases, the Constructive Enforcement Committee may recommend that staff dismiss the matter without further action, instruct staff to investigate the matter further or recommends that staff offer the person under investigation a cease and desist order.

(2) The Executive Director may enlist the aid of the members of the Constructive Enforcement Advisory Committee in gathering evidence during investigations of the unauthorized practice of public accountancy.

(b) A hearing under this rule shall be conducted in the manner of a contested case pursuant to the Act, the APA, the board's rules and SOAH's rules; ~~provided that the time limits provided in this rule control.~~

~~[(c) Upon the filing of a request to docket the case, SOAH shall set the matter for hearing no later than 20 days from the date of the request. The ALJ shall deliver a PFD and recommendation as to whether a cease and desist order should be issued to the Executive Committee no later than five days after the completion of the hearing. The Executive Committee shall make its determination as to whether to issue a cease and desist order no later than five days after receipt of the PFD and recommendation.]~~

~~[(d) Pursuant to Chapter 551 of the Texas Government Code (relating to Open Meetings), the Executive Committee may hold a meeting by telephone conference call if immediate action is required and the convening at one location of the Executive Committee is inconvenient for any member of the Committee.]~~

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.

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J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7848



**22 TAC §518.3**

The Texas State Board of Public Accountancy (Board) proposes an amendment to §518.3, concerning Violation of a Cease and Desist Order.

The amendment to §518.3 will add the phrase "and Subchapter L of the Texas Public Accountancy Act, as amended.", add

new subsection "(b) The board staff acting through the Executive Director will offer the person found in violation of a cease and desist order an agreed consent order.", add new paragraph "(1) The agreed consent order will act as the preliminary report as required by §901.553 of the Act, including findings of fact to support the administrative penalty as well as the amount of the penalty to be imposed.", add new paragraph "(2) Board staff will advise the person found in violation of a cease and desist order that he has 20 days to either sign the agreed consent order or to request a hearing in writing, as required by §901.554 of the Act.", add new paragraph "(3) If the person found to be in violation of a cease and desist order signs the agreed consent order, then the agreed consent order will be presented to the board for its consideration. If the board ratifies the agreed consent order, then it will issue a board order." and delete subsection (b) and (c).

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a enforcement procedure that follows the procedure outlined in Subchapter L of the Public Accountancy Act.

The probable economic cost to persons required to comply with the amendment will be zero.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not apply to small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on September 8, 2008. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board



may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

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

*§518.3. Violation of a Cease and Desist Order.*

(a) Whenever the board, through its Executive Director, determines that a person subject to a cease and desist order issued by the board has violated that order, the board, through its Executive Director, after notice and an opportunity for a hearing, may assess an administrative penalty, after consulting with the board's presiding officer, against the person in violation in accordance with the guidelines contained in §518.4 of this title (relating to Administrative Penalty Guidelines for Violations of Cease and Desist Orders) and Subchapter L of the Texas Public Accountancy Act, as amended.

(b) The board staff acting through the Executive Director will offer the person found in violation of a cease and desist order an agreed consent order.

(1) The agreed consent order will act as the preliminary report as required by §901.553 of the Act, including findings of fact to support the administrative penalty as well as the amount of the penalty to be imposed.

(2) Board staff will advise the person found in violation of a cease and desist order that he has 20 days to either sign the agreed consent order or to request a hearing in writing, as required by §901.554 of the Act.

(3) If the person found to be in violation of a cease and desist order signs the agreed consent order, then the agreed consent order will be presented to the board for its consideration. If the board ratifies the agreed consent order, then it will issue a board order.

~~[(b) The board shall give notice of the assessment of an administrative penalty in accordance with §901.553 of the Act. The person may pay the penalty or request a hearing in accordance with §901.554 of the Act. A hearing under this rule shall be conducted in the manner of a contested case pursuant to the Act, the APA, the board's rules and SOAH's rules; provided that the time limits provided in this rule control.]~~

~~[(c) If a penalty is assessed the person may pay or appeal the board's order in accordance with §901.556 of the Act.]~~

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.

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J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7848



## 22 TAC §518.4

The Texas State Board of Public Accountancy (Board) proposes an amendment to §518.4, concerning Administrative Penalty Guidelines for Violations of Cease and Desist Orders.

The amendment to §518.4 will replace the phrase "claims to provide "accounting services" or other non-attest services reserved for licensed certified public accountants and licensed certified public accounting firms" with the phrase "asserts an expertise in accounting through use of the term "accounting service" or any variation of that term" in paragraph (3) and replace the phrase "claims to provide "accounting services" or other non-attest services reserved for licensed certified public accountants and licensed certified public accounting firms" with the phrase "asserts an expertise in accounting through use of the term "accounting service" or any variation of that term" in paragraph (4).

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a clearer correlation between activity that violates the Public Accountancy Act and the penalties that the Board can impose upon a person that engages in that activity.

The probable economic cost to persons required to comply with the amendment will vary according to the activity and the range of penalties that correspond with that activity.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment applies only to those persons or entities that violate the Public Accountancy Act.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on September 8, 2008. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic im-

part of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

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

*§518.4. Administrative Penalty Guidelines for Violations of Cease and Desist Orders.*

The amount of the administrative penalty assessed under this chapter will be in accordance with the following guidelines:

(1) an unlicensed individual who uses terms restricted for use by certified public accountants only in violation of §§901.451, 901.452 and 901.453 of the Act shall pay a penalty of no less than \$1,000.00 and no more than \$5,000.00;

(2) an unlicensed entity that uses terms restricted for use by licensed firms only in violation of §901.351(a) of the Act shall pay a penalty of no less than \$5,000.00 and no more than \$10,000.00;

(3) an unlicensed individual who asserts an expertise in accounting through use of the term "accounting service" or any variation of that term [~~claims to provide "accounting services" or other non-attest services reserved for licensed certified public accountants and licensed certified public accounting firms~~] shall pay a penalty of no less than \$1,000.00 and no more than \$5,000.00;

(4) an unlicensed entity that asserts an expertise in accounting through use of the term "accounting service" or any variation of that term [~~claims to provide "accounting services" or other non-attest services reserved for licensed certified public accountants and licensed certified public accounting firms~~] shall pay a penalty of no less than \$5,000.00 and no more than \$10,000.00;

(5) an unlicensed individual who claims to provide attest services shall pay a penalty of no less than \$5,000.00 and no more than \$25,000.00;

(6) an unlicensed entity that claims to provide attest services shall pay a penalty of no less than \$5,000.00 and no more than \$25,000.00;

(7) an unlicensed individual who claims to be a certified public accountant shall pay a penalty of no less than \$5,000.00 and no more than \$25,000.00; and

(8) an unlicensed entity that claims to be a certified public accounting firm shall pay a penalty of no less than \$5,000.00 and no more than \$25,000.00.

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.

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J. Randel (Jerry) Hill  
General Counsel  
Texas State Board of Public Accountancy  
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For further information, please call: (512) 305-7848



## CHAPTER 519. PRACTICE AND PROCEDURE SUBCHAPTER A. GENERAL PROVISIONS

### 22 TAC §519.2

The Texas State Board of Public Accountancy (Board) proposes an amendment to §519.2, concerning Definitions.

The amendment to §519.2 will remove the phrase "which are the Behavioral Enforcement Committee, the Technical Standards Review I Committee and the Technical Standards Review II Committee" in paragraph (5); in paragraph (7) add the word "the" and in paragraph (8) replace the word "costs" with the word "Costs".

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be more concise and clear definitions.

The probable economic cost to persons required to comply with the amendment will be zero.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not apply to small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on September 8, 2008. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be

impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

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

§519.2. *Definitions.*

In this chapter:

(1) "Address of record" means the last address provided to the board by a certificate or registration holder pursuant to board rule 501.93 of this title (relating to Responses);

(2) "ALJ" means administrative law judge;

(3) "APA" means the Texas Administrative Procedure Act, chapter 2001 of the Texas Government Code;

(4) "Board staff" means the employees or independent contractors of the board;

(5) "Committee" means an enforcement committee of the board [~~which are the Behavioral Enforcement Committee, the Technical Standards Review I Committee and the Technical Standards Review II Committee~~];

(6) "Complaint" means information available to or provided to the board indicating that a certificate or registration holder may have violated the Act, board rules, or order of the board;

(7) "Complainant" means the person or entity who initiates a complaint with the board against a certificate or registration holder;

(8) "Direct Administrative Costs [~~costs~~]" means those costs actually incurred by the board through payment to outside vendors and the resources expended by the board in the investigation and prosecution of a matter within the board's jurisdiction, including but not limited to, staff salary, payroll taxes and benefits and other non-salary related expenses, expert fees and expenses, witness fees and expenses, fees and expenses paid to the Office of the Attorney General, filing fees, SOAH utilization fees, court reporting fees, copying fees, delivery fees, case management fees, costs of exhibit creation, technical fees, travel costs and any other cost or fee that can reasonably be attributed to the matter;

(9) "PFD" means the proposal for decision prepared by an administrative law judge;

(10) "Respondent" means a certificate or registration holder against whom a complaint has been filed; and

(11) "SOAH" means the State Office of Administrative Hearings.

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.

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J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7848



## 22 TAC §519.4

The Texas State Board of Public Accountancy (Board) proposes an amendment to §519.4, concerning Conduct and Decorum.

The amendment to §519.4 will replace the word "Committees" with the word "committee" in subsections (a) and (b).

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a consistent use of terms within the rule.

The probable economic cost to persons required to comply with the amendment will be zero.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not apply to small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on September 8, 2008. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; finally describe how the health,

safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

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

§519.4. *Conduct and Decorum.*

(a) Every party, witness, attorney, or other representative appearing before the board, board committee [~~Committees~~] or board staff shall comport himself in all proceedings with proper dignity, courtesy, and respect for the board, the executive director, and all other participants. Disorderly conduct will not be tolerated. Attorneys and other representatives of parties shall observe and practice the standards of ethical behavior prescribed for attorneys at law by the State Bar of Texas.

(b) Any person engaging in disorderly conduct or communicating with board members in violation of the prohibitions on ex parte communication may be excluded from any board, committee [~~Committee~~] or staff proceeding and treated as if defaulting on obligations to the board.

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.

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J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7848



## 22 TAC §519.7

The Texas State Board of Public Accountancy (Board) proposes an amendment to §519.7, concerning Misdemeanors that Subject a Certificate or Registration Holder to Discipline by the Board.

The amendment to §519.7 will add the phrase "deferred prosecution, withheld adjudication" twice in subsections (a), (b), (c), (d) and once in subsection (f) and in subsection (c)(5) replace the word "marihuana" with the word "marijuana".

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result

of adoption of the proposed amendment will be clarification regarding an additional type of plea bargain agreement that may subject persons to discipline by the Board.

The probable economic cost to persons required to comply with the amendment will be zero.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not apply to small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on September 8, 2008. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

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

§519.7. *Misdemeanors that Subject a Certificate or Registration Holder to Discipline by the Board.*

(a) Final conviction or placement on deferred adjudication, deferred prosecution, withheld adjudication or community supervision in connection with misdemeanors that involve dishonesty or fraud may subject a certificate or registration holder to disciplinary action pursuant to §501.90 of this title (relating to Discreditable Acts). Because a certificate or registration holder is often placed in a position of trust with respect to client funds, and the public in general, and the business community in particular, rely on the veracity, integrity and honesty of certificate or registration holders in the preparation of reports and provision of other accounting services, the board considers conviction or placement on deferred adjudication, deferred prosecution, withheld adjudication or community supervision for any crime involving dishonesty or fraud to relate directly to the practice of public accountancy and may subject the certificate or registration holder to discipline by the board. The board has determined that misdemeanor offenses that involve dishonesty or fraud directly relate to the practice of accounting

pursuant to Sections 53.021, 53.022, 53.023 and 53.025 of the Occupations Code. The following non-exclusive list of misdemeanor offenses may involve dishonesty or fraud:

(1) - (47) (No change.)

(b) Final conviction or placement on deferred adjudication, deferred prosecution, withheld adjudication or community supervision in connection with misdemeanors that involve moral turpitude may subject a certificate or registration holder to disciplinary action pursuant to §501.90 of this title (relating to Discreditable Acts). Because a certificate or registration holder is often placed in a position of trust with respect to client funds, and the public in general, and the business community in particular, rely on the veracity, integrity and honesty of certificate or registration holders in the preparation of reports and provision of other accounting services, the board considers conviction or placement on deferred adjudication, deferred prosecution, withheld adjudication or community supervision for any crime involving moral turpitude to relate directly to the practice of public accountancy and may subject the certificate or registration holder to discipline by the board. The board has determined that misdemeanor offenses that involve moral turpitude directly relate to the practice of accounting pursuant to Sections 53.021, 53.022, 53.023 and 53.025 of the Occupations Code. The following non-exclusive list of misdemeanor offenses may involve moral turpitude:

(1) - (9) (No change.)

(c) Final conviction or placement on deferred adjudication, deferred prosecution, withheld adjudication or community supervision in connection with misdemeanors that involve alcohol abuse or controlled substances may subject a certificate or registration holder to disciplinary action pursuant to §501.90 of this title (relating to Discreditable Acts). Because a certificate or registration holder is often placed in a position of trust with respect to client funds, and the public in general, and the business community in particular, rely on the veracity, integrity and honesty of certificate or registration holders in the preparation of reports and provision of other accounting services, the board considers conviction or placement on deferred adjudication, deferred prosecution, withheld adjudication or community supervision for any crime involving alcohol abuse or controlled substances to relate directly to the practice of public accountancy and may subject a certificate or registration holder to discipline by the board. The board has determined that misdemeanor offenses that involve alcohol abuse or controlled substances directly relate to the practice of accounting pursuant to Sections 53.021, 53.022, 53.023 and 53.025 of the Occupations Code. The following non-exclusive list of misdemeanor offenses may involve alcohol abuse or controlled substances:

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

(5) Possession or delivery of marijuana [~~marihuana~~];

(6) - (8) (No change.)

(d) Final conviction or placement on deferred adjudication, deferred prosecution, withheld adjudication or community supervision in connection with misdemeanors that involve physical injury or threats of physical injury to a person may subject a certificate or registration holder to disciplinary action pursuant to §501.90 of this title (relating to Discreditable Acts). Because certificate or registration holders regularly deal directly with clients and other members of the public during the performance of their professional duties, often under highly stressful conditions, the public in general, and the business community in particular, rely on the stability and integrity of certificate or registration holders in the provision of accounting services. The board considers conviction or placement on deferred adjudication, deferred prosecution, withheld adjudication or community supervision for any crime

involving physical injury or threats of physical injury to a person to relate directly to the practice of public accountancy and may subject the certificate or registration holder to discipline by the board. The board has determined that misdemeanor offenses that involve physical injury or threats of physical injury to a person directly relate to the practice of accounting pursuant to Sections 53.021, 53.022, 53.023 and 53.025 of the Occupations Code. The following non-exclusive list of misdemeanor offenses may involve physical injury or threats of physical injury to a person:

(1) - (9) (No change.)

(e) Because a certificate or registration holder is often placed in a position of trust with respect to client funds, and the public in general, and the business community in particular, rely on the veracity, integrity and honesty of certificate or registration holders in the preparation of reports and provision of other accounting services, the board considers repeated violations of any criminal law to relate directly to the practice of public accountancy.

(f) A conviction or placement on deferred adjudication, deferred prosecution, withheld adjudication or community supervision for a violation of any state or federal law that is equivalent to an offense listed in subsections (a) through (e) of this section is considered to directly relate to the practice of accounting and may subject a certificate or registration holder to discipline by the board.

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.

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J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7848



## 22 TAC §519.9

The Texas State Board of Public Accountancy (Board) proposes an amendment to §519.9, concerning Administrative Penalty Guidelines.

The amendment to §519.9 will replace the word "subpoena" with the word "court order" in item number 33 of Figure: 22 TAC §519.9(a).

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be penalty guidelines that are consistent with other rules.

The probable economic cost to persons required to comply with the amendment will be zero.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not apply to small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on September 8, 2008. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe Street, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

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

§519.9. *Administrative Penalty Guidelines.*

(a) The following table contains guidelines for the assessment of administrative penalties in disciplinary matters. In determining whether a violation is minor, moderate or major, the board will apply the factors to be considered set forth in §901.552(b) of the Public Accountancy Act. In all cases where the board has determined a violation has occurred, administrative costs will be assessed, regardless of any other sanction imposed by the board.

Figure: 22 TAC §519.9(a)

(b) The amounts specified in subsection (a) of this section are guidelines only. The board retains the right to increase or decrease the amount of an administrative penalty based on the circumstances of each case it considers.

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.

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J. Randel (Jerry) Hill

General Counsel

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**22 TAC §519.10**

The Texas State Board of Public Accountancy (Board) proposes new §519.10, concerning Cooperation with Regulatory Bodies.

The new §519.10 will establish guidelines to assist the Board in exercising its authority to share confidential information with other governmental, regulatory, or law enforcement agencies in accordance with §901.160, Texas Occupations Code.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed new rule will be in effect:

- A. the additional estimated cost to the state expected as a result of enforcing or administering the new rule will be zero.
- B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the new rule will be zero.
- C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the new rule will be zero.

Mr. Treacy has determined that for the first five-year period the new rule is in effect the public benefits expected as a result of adoption of the proposed new rule will be greater clarity regarding the conditions under which confidential information can be shared with governmental, regulatory, or law enforcement agencies.

The probable economic cost to persons required to comply with the new rule will be zero.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed new rule will not affect a local economy.

Mr. Treacy has determined that the proposed new rule will not have an adverse economic effect on small businesses because the rule does not apply to small businesses.

Mr. Treacy had determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed new rule will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed new rule from any interested person. Comments must be received at the Board no later than noon on September 8, 2008. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe Street, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed new rule will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally

and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the new rule is to be adopted; finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The new rule is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed new rule.

*§519.10. Cooperation with Regulatory Bodies.*

The board, pursuant to §901.160(e) of the Public Accountancy Act, may disclose information that is confidential under §901.160(c) of the Public Accountancy Act to a governmental, regulatory or law enforcement agency if the requesting agency makes the request in writing and states that it is involved in an enforcement action.

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.

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J. Randel (Jerry) Hill  
General Counsel

Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7848



## SUBCHAPTER B. COMPLAINTS AND INVESTIGATIONS

### 22 TAC §519.24

The Texas State Board of Public Accountancy (Board) proposes an amendment to §519.24, concerning Committee Recommendations.

The amendment to §519.24 will replace the word "will" with the word "may" in subsection (b) and (c); in subsection (d) replace the "30" with the phrase "a specified number of" and add the phrase "in writing"; and replace "30 day period" with the phrase "specified number of days".

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be greater enforcement committee discretion regarding what it can recommend as

the final disposition of an investigation, as well as more discretion in offering settlements to respondents in investigations.

The probable economic cost to persons required to comply with the amendment will be zero.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not apply to small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on September 8, 2008. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

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

*§519.24. Committee Recommendations.*

(a) At the conclusion of its investigation the Committee will make a recommendation to the board regarding the disposition of the investigation.

(b) If the Committee determines the board no longer has jurisdiction, there is insufficient evidence of a violation of the Act or the Rules or the Respondent comes into compliance with the Act or Rules, the Committee may [with] recommend dismissal of the complaint. The Committee will inform the Respondent of its recommendation and may issue a letter of comment stating the Committee's concerns about Respondent's practice and make suggestions that may improve Respondent's practice. The Committee's recommendation of dismissal is not final until it is ratified by the board in an open meeting.

(c) If the Committee determines that there is a violation of the Act or Rules, the Committee may [with] recommend appropriate disciplinary action. The Committee may recommend any disciplinary sanction provided in Section 901.501 of the Act, singularly or any combination. The Respondent will be informed of the Committee's action.

(d) In the appropriate case, the Committee will offer to enter into an agreed consent order with the Respondent. The agreed consent order shall contain the Committee's factual findings and conclusions, and the recommended terms and conditions for final resolution of the matter. The Respondent will have a specified number of [30] days in writing to accept or reject the agreed consent order in accordance with §519.3 of this title (relating to Computation of Time). A rejection must be made in writing; however, failure to accept or reject the proposed agreed consent order within the specified number of days [30 day period] will be deemed a rejection. An agreed consent order is not final until it has been ratified by the board in an open meeting. If the agreed consent order is rejected the matter will be referred to SOAH for a contested case hearing.

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.

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J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7848



## 22 TAC §519.25

The Texas State Board of Public Accountancy (Board) proposes an amendment to §519.25, concerning Mediation and Alternative Dispute Resolution.

The amendment to §519.25 will add the word "to" in subsection (c).

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a clarification regarding when a respondent can request mediation in a disciplinary matter.

The probable economic cost to persons required to comply with the amendment will be zero.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not apply to small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because

the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on September 8, 2008. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

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

### §519.25. *Mediation and Alternative Dispute Resolution.*

(a) It is the board's policy to encourage the resolution and early settlement of all disputed matters, internal and external, through voluntary settlement procedures.

(b) The executive director shall designate a board employee as the board's Alternative Dispute Resolution Director to perform the following functions:

(1) maintain necessary agency records of alternative dispute resolution procedures while maintaining the confidentiality of participants;

(2) establish a method for the appointment of impartial third party mediators, moderators or arbitrators for alternative dispute resolution proceedings;

(3) provide information about available alternative dispute resolution processes to agency employees, potential users, and users of the alternative dispute resolution program;

(4) arrange training or education necessary to implement alternative dispute resolution processes; and

(5) establish a system to evaluate the alternative dispute resolution program and mediators.

(c) The board, a committee of the board, a respondent in a disciplinary matter pending before the board, the executive director of the board or a board employee engaged in a dispute with the executive director may request that a contested matter be submitted for alternative dispute resolution through mediation as described in §154.023 of the Texas Civil Practice and Remedies Code, moderated settlement conference as described in §154.025 of the Texas Civil Practice and Remedies Code, and non-binding arbitration as described in §154.027 of the Texas Civil Practice and Remedies Code by making a written request



for alternative dispute resolution that states the type of alternative dispute resolution requested and sets forth the issues to be submitted for alternative dispute resolution. A respondent in a disciplinary proceeding may not request mediation until a recommendation regarding that disciplinary matter has been made to a Committee of the board. The request must be delivered to the Alternative Dispute Resolution Director at the board's office.

(d) The party who requests alternative dispute resolution shall pay the cost of the impartial third party mediator, moderators or arbitrators and shall otherwise bear their own costs of alternative dispute resolution.

(e) Any resolution reached as a result of an alternative dispute resolution procedure is intended to be through the voluntary agreement of all of the parties. The resolution of a contested matter reached as a result of an alternative dispute resolution procedure must be in writing, signed by all of the parties, and is enforceable in the same manner as any other written contract; provided however, that any signed resolution that purports to bind the board must be ratified by the board and may be made public depending upon the terms of the agreed resolution.

(f) A communication relating to the subject matter made by a party in an alternative dispute resolution procedure is confidential, is not subject to disclosure, and may not be used as evidence in any further proceeding. Any notes or record made of an alternative dispute resolution procedure are confidential, and parties, including impartial third party mediators, moderators, or arbitrators may not be required to testify in any proceedings relating to or arising out of the matter in dispute or be subject to process requiring disclosure of confidential information or data relating to or arising out of the matter in dispute or under consideration. An oral communication or written material used in or made a part of an alternative dispute resolution procedure is admissible or discoverable only if it is admissible or discoverable independent of the procedure. If this section conflicts with other legal requirements for disclosure of communications or materials, the issue of confidentiality may be presented to a judge or administrative law judge in Travis County, Texas to determine, in camera, whether the facts, circumstances, and context of the communications or materials sought to be disclosed warrant a protective order or whether the communications or materials are subject to disclosure.

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.

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J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: September 7, 2008

For further information, please call: (512) 305-7848



## SUBCHAPTER C. PROCEEDINGS AT SOAH

### 22 TAC §519.40

The Texas State Board of Public Accountancy (Board) proposes an amendment to §519.40, concerning General Provisions.

The amendment to §519.40 will add the phrase "determine the sanctions and" in subsection (a).

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a definitive statement that the Board reserves the right to determine sanctions in disciplinary cases.

The probable economic cost to persons required to comply with the amendment will be zero.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not apply to small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on September 8, 2008. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

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

§519.40. *General Provisions.*

(a) The board appoints SOAH to be its finder of fact in contested cases pursuant to section 901.508 of the Act. The board does

not delegate to the ALJ and retains for itself the right to determine the sanctions and make the final decision in any contested case.

(b) SOAH hearings of contested cases shall be conducted in accordance with the APA by an ALJ assigned by SOAH. Jurisdiction over the case is acquired by SOAH when the board staff files a request to docket case.

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.

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J. Randel (Jerry) Hill

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Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7848



## CHAPTER 519. PRACTICE AND PROCEDURE

The Texas State Board of Public Accountancy (Board) proposes the repeal of §§519.41 concerning Pleadings in Contested Cases, 519.42 concerning Service in SOAH Proceedings, 519.44 concerning Default, 519.45 concerning Discovery, 519.46 concerning Official Notice and Business Records Affidavit, 519.47 concerning Waiver of Privilege/Confidentiality, 519.48 concerning Final Witness List, 519.49 concerning Exhibits, 519.50 concerning Reporter and Transcripts, 519.51 concerning Evidence, 519.52 concerning Motions, 519.53 concerning Dismissal by the Board and 519.70 concerning Proposals for Decision.

The proposed repeal of §§519.41, 519.42, 519.44, 519.45, 519.46, 519.47, 519.48, 519.49, 519.50, 519.51, 519.52, 519.53 and 519.70 will remove rules that are no longer relevant.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed repeal will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the repeal will be none.

B. the estimated reductions in costs to the state and to local governments as a result of enforcing or administering the repeal will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the repeal will be none.

Mr. Treacy has determined that for the first five-year period the repeal is in effect the public benefits expected as a result of adoption of the proposed repeal will be more streamlined rules that are consistent with procedural rules promulgated by the State Office of Administrative Hearings.

The probable economic cost to persons required to comply with the repeal will be none.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed repeal will not affect a local economy.

Mr. Treacy has determined that the proposed repeal will not have an adverse economic effect on small businesses because the repeal does not concern small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the repeal amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on September 8, 2008. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed repeal will have an adverse economic effect on small businesses; if the repeal is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted: finally, describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002.

## SUBCHAPTER C. PROCEEDINGS AT SOAH

### 22 TAC §§519.41, 519.42, 519.44 - 519.53

*(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 State Board of Public Accountancy or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The repeal is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

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

§519.41. *Pleadings in Contested Cases.*

§519.42. *Service in SOAH Proceedings.*

§519.44. *Default.*

§519.45. *Discovery.*

§519.46. *Official Notice and Business Records Affidavit.*

§519.47. *Waiver of Privilege/Confidentiality.*

§519.48. *Final Witness List.*

§519.49. *Exhibits.*

§519.50. *Reporter and Transcripts.*

§519.51. *Evidence.*

§519.52. *Motions.*

§519.53. *Dismissal by the Board.*

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.

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J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7848



## SUBCHAPTER D. PROCEDURES AFTER HEARING

### 22 TAC §519.70

*(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 State Board of Public Accountancy or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The repeal is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

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

§519.70. *Proposals for Decision.*

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.

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J. Randel (Jerry) Hill

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Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7848



## SUBCHAPTER C. PROCEEDINGS AT SOAH

### 22 TAC §519.43

The Texas State Board of Public Accountancy (Board) proposes an amendment to §519.43, concerning Emergency Suspension.

The amendment to §519.43 will replace the phrase "inconvenient for any member of the Committee" with the phrase "difficult or impossible" in subsection (c).

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a rule regarding emergency suspensions that is consistent with the Open Meetings Act.

The probable economic cost to persons required to comply with the amendment will be zero.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not apply to small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on September 8, 2008. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

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

§519.43. *Emergency Suspension.*

(a) Whenever the board, through its Executive Committee, determines that a certificate or registration holder is engaged in or about to engage in an act of fraud or a violation of the Act and the certificate or registration holder's continued practice constitutes an immediate threat to the public welfare, the board, through its Executive Committee, may issue an order temporarily suspending the certificate or registration holder's license without notice and without a hearing. An order temporarily suspending a license issued by the Executive Committee must be ratified by the board at its next regularly scheduled meeting.

(b) "Immediate threat to the public welfare" means a real and present danger to clients caused through the certificate or registration holder's lack of competence, impaired status, or failure to adequately service clients. A "real and present danger" exists if clients have a

likely exposure to or significant risk of loss of funds or records or financial injury and is based on actual actions or inactions of the certificate or registration holder. The Executive Committee may consider information that the certificate or registration holder previously committed similar actions or inactions in determining whether the certificate or registration holder poses an immediate threat to commit such actions or inactions in the future.

(c) Pursuant to Chapter 551 of the Texas Government Code (relating to Open Meetings), the Executive Committee may hold a meeting by telephone conference call if immediate action is required and the convening at one location of the Executive Committee is difficult or impossible [inconvenient for any member of the Committee]. Whenever possible, the Executive Committee will attempt to provide the certificate or registration holder with notice and an opportunity to be present at the emergency suspension proceeding.

(d) The determination of the Executive Committee may be based not only on evidence admissible under the Texas Rules of Evidence, but may be based on information of a type on which a reasonably prudent person commonly relies in the conduct of the person's affairs. Presentations by the parties may be based on evidence or information and shall not be excluded on objection of a party unless determined by the chair that the evidence or information is clearly irrelevant or unduly inflammatory in nature; however, objections by a party may be noted for the record. Witnesses may provide sworn statements in writing or verbally and may choose to provide statements that are not sworn. However, whether a statement is sworn may be a factor to be considered by the Executive Committee in evaluating the weight to be given to the statement. Questioning of witnesses by board staff, the Respondent or Executive Committee members is under the control of the Executive Committee chair.

(e) The Executive Committee shall immediately serve notice of the suspension on the certificate or registration holder in accordance with section 901.5045(b) of the Act. The suspended certificate or registration holder shall be provided the opportunity to request a hearing in accordance with §901.5045(c) of the Act. The hearing shall be conducted in the manner of a contested case pursuant to the Act, the APA, the board's rules and SOAH's rules; provided that time limits provided in §901.5045(c) of the Act shall control. At the close of the hearing, the ALJ shall recommend to the Executive Committee whether to uphold, vacate or modify the suspension order. If the ALJ's recommendation is to vacate the emergency suspension order, the Executive Committee shall determine whether to adopt that recommendation no later than the second day after it receives that recommendation.

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.

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J. Randel (Jerry) Hill  
General Counsel

Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7848



## SUBCHAPTER D. PROCEDURES AFTER HEARING

### 22 TAC §519.71

The Texas State Board of Public Accountancy (Board) proposes an amendment to §519.71, concerning Exceptions and Replies.

The amendment to §519.71 will add the statement to subsection (d) "The presiding officer may waive the twenty day notice requirement if such action would best serve the public interest."

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be greater flexibility when determining if and/or when oral arguments will be made before the Board.

The probable economic cost to persons required to comply with the amendment will be zero.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not apply to small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on September 8, 2008. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

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

§519.71. *Exceptions and Replies.*

(a) Exceptions to the PFD and any replies to exceptions must be filed within the time specified in SOAH's rules.

(b) The form of exceptions and replies is governed by SOAH's rules.

(c) Each exception or reply to a finding of fact or conclusion of law shall be concisely stated and shall summarize the evidence in support thereof. Arguments shall be logical and citations to authorities shall be complete.

(d) Any party may request oral argument before the board after service of the PFD and disposition of the exceptions, if any, and before the board's final determination of the matter. The written request for oral argument must be filed with the Board's Executive Director no later than 5:00 p.m. on the twentieth day prior to the board meeting at which the matter is to be considered. The presiding officer may waive the twenty day notice requirement if such action would best serve the public interest. Oral argument is allowed only at the discretion of the board. In the event oral argument is granted by the board, each party will be notified of the time and place of the argument and the amount of time allotted for the presentation. Only one spokesman per party and position will be allowed to speak. At the conclusion of the presentation, board members may ask questions of the person who made the presentation. Under no circumstances may any party making oral argument to the board refer to or urge reliance on materials that are not part of the administrative record.

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.

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J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7848



## CHAPTER 526. BOARD OPINIONS

### 22 TAC §526.1

The Texas State Board of Public Accountancy (Board) proposes an amendment to §526.1, concerning Issuance of Opinions.

The amendment to §526.1 will replace the phrase "fact situations" with the phrase "facts specific to the situation and".

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be clarity regarding the scope of opinions issued by the Board.

The probable economic cost to persons required to comply with the amendment will be zero.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not apply to small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on September 8, 2008. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe Street, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

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

§526.1. *Issuance of Opinions.*

The board may issue opinions upon the written request of any person. These opinions shall be based on actual facts specific to the situation and ~~[fact situations]~~ submitted in accordance with board instructions and shall be limited to areas within the board's jurisdiction.

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.

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J. Randel (Jerry) Hill  
General Counsel  
Texas State Board of Public Accountancy  
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For further information, please call: (512) 305-7848



## 22 TAC §526.2

The Texas State Board of Public Accountancy (Board) proposes an amendment to §526.2, concerning Procedure.

The amendment to §526.2(a) will add the phrase "determine if the opinion request is appropriate for board consideration and"; replace the word "recommend" with the phrase "if so submit a recommended"; and add the statement "The board may decline to consider requests for opinions on interpretations of the Public Accountancy Act or board rules from persons involved in litigation".

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

- A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.
- B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.
- C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be clarity regarding the circumstances under which the Board may issue opinions.

The probable economic cost to persons required to comply with the amendment will be zero.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not apply to small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on September 8, 2008. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe Street, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods

of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

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

### §526.2. Procedure.

(a) The appropriate board committee will review requests for opinions and determine if the opinion request is appropriate for board consideration and if so submit a recommended [recommen] action to the board. The board may decline to consider requests for opinions on interpretations of the Public Accountancy Act or board rules from persons involved in litigation. All recommendations will be submitted for consideration by the board at a regularly scheduled meeting.

(b) The board will consider the recommendation of the committee and will:

- (1) decline to ratify the recommendation of the committee;
- (2) approve or amend the recommendation of the committee and issue an opinion; or
- (3) take such other action as the board may deem appropriate.

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.

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J. Randel (Jerry) Hill  
General Counsel  
Texas State Board of Public Accountancy  
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For further information, please call: (512) 305-7848



## 22 TAC §526.3

The Texas State Board of Public Accountancy (Board) proposes an amendment to §526.3, concerning Advisory Opinions.

The amendment to §526.3 will add the word "and", add the word "specific", replace the phrase "unless ratified by the board at a regularly scheduled board meeting" with the phrase "on the board"; and add the sentence "Board staff may respond to routine questions without the need for issuing formal staff opinions".

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

- A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.
- B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be clarification regarding the scope of opinions issued by Board staff.

The probable economic cost to persons required to comply with the amendment will be zero.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not apply to small businesses.

Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on September 8, 2008. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe Street, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

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

#### §526.3. *Advisory Opinions.*

The board's staff or board members may issue an opinion to any person with a cover letter clearly identifying that the opinion is advisory in nature, and is restricted to the specific fact situation identified in the opinion, and is not binding on the board [unless ratified by the board at a regularly scheduled board meeting]. Board staff may respond to routine questions without the need for issuing formal staff opinions.

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 July 28, 2008.

TRD-200803858

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: September 7, 2008

For further information, please call: (512) 305-7848

## TITLE 28. INSURANCE

### PART 1. TEXAS DEPARTMENT OF INSURANCE

#### CHAPTER 1. GENERAL ADMINISTRATION SUBCHAPTER D. EFFECT OF CRIMINAL CONDUCT

##### 28 TAC §1.501, §1.503

The Texas Department of Insurance proposes amendments to §1.501 and §1.503, concerning the effect of criminal conduct on licenses. The proposed amendments to §1.501 and §1.503 are necessary to: (i) implement the Occupations Code Chapter 53 and House Bill (H.B.) 472, enacted by the 80th Legislature, Regular Session, effective September 1, 2007, which amends the Insurance Code Chapter 4151; (ii) clarify an existing non-substantive inconsistency within §1.501(b)(1); (iii) clarify the applicability of the Department's existing guidelines in §1.502 to certain persons from whom biographical information is required; (iv) implement rules that are consistent with the Department's recently proposed amendments to §5.6403 of this title (relating to Application for Initial Certificate of Approval); and (v) clarify the applicability of the Department's existing fingerprint requirements in §1.504(a) to certain persons from whom biographical information is required.

##### *Implementation of the Occupations Code Chapter 53 and HB 472*

The proposed amendments to §1.501 and §1.503, particularly §1.503(1), are necessary to implement the Occupations Code Chapter 53 and HB 472, enacted by the 80th Legislature, Regular Session, effective September 1, 2007, which amends the Insurance Code Chapter 4151. The Insurance Code §4151.051 prohibits a person from acting as or holding itself out as an administrator, as that term is defined under the Insurance Code Chapter 4151, unless the person holds a certificate of authority under the Insurance Code Chapter 4151. For a person submitting an application for a certificate of authority under the Insurance Code Chapter 4151, the Insurance Code §4151.053 requires the Commissioner to determine the fitness of the applicant to hold the authorization, including determining whether granting the authorization would violate a state or federal law. This statutory requirement requires the Department to consider the provisions of 18 U.S.C. §1033 and §1034, which prohibit an individual who has been convicted of a state or federal felony involving dishonesty or breach of trust from engaging in the business of insurance that affects interstate commerce or from participating in such business unless the individual is specifically authorized to do so by an insurance regulatory official. An individual may be in violation of federal law and may be subject to the penalties prescribed in 18 U.S.C. §1033 and §1034 if he or she: (1) has been convicted of a state or federal felony involving dishonesty or breach of trust; (2) engages in the business of insurance that affects interstate commerce or participates in

such business; and (3) does not hold the authorization required under 18 U.S.C. §1033 and §1034. Such activity is directly relevant to the statutorily required determination under the Insurance Code §4151.053. Further, HB 472 enacts the Insurance Code §4151.301, which authorizes the Department to deny an application for a certificate of authority under the Insurance Code Chapter 4151 if the Department determines that an applicant, individually, or through an officer, director, or shareholder, has been convicted of a felony. The Insurance Code §4001.103 also permits the Department to deny an application for an authorization if the applicant fails to provide a complete set of fingerprints on request by the Department. The Insurance Code §4001.103 is made applicable to administrators that are regulated under the Insurance Code Chapter 4151 through the Insurance Code §4001.002. The Insurance Code §4001.002 provides that the Insurance Code Title 13 applies to each person licensed under Title 13 Subtitle B, C, or D. Chapter 4151 administrators are licensed under Subtitle D. Further, the Occupations Code §53.021 authorizes the Department to disqualify a person from receiving a license on the grounds that the person has been convicted of a felony or misdemeanor that directly relates to the duties and responsibilities of the licensed occupation. Additionally, the Government Code §411.106 and §411.087 authorize the Department to access an applicant's criminal history information from both the Texas Department of Public Safety (DPS) and the Federal Bureau of Investigation (FBI). Collectively, these statutes require and authorize the Department to determine a person's fitness for holding an authorization under the Insurance Code Chapter 4151 or to have the ability to control, direct, or manage the affairs of an authorized entity under the Insurance Code Chapter 4151 when that person has committed a criminal offense or has engaged in fraudulent or dishonest activity. The fitness of an applicant to hold an authorization under Chapter 4151 is especially important because of the unique services offered and performed by administrators under Chapter 4151. Administrators often have control over and access to the financial accounts, claims files, books and records, and premium and contribution collections of an insurer. Additionally, administrators are authorized under the Insurance Code Chapter 4151 to hold premiums, contributions, return premiums, and return contributions in fiduciary bank accounts on behalf of insurers. Further, administrators often have access to or control over certain accounts funded by insurers for claims payment purposes. In addition to affecting the insurance business of an insurer, the actions of administrators also affect Texas consumers and the general public. Very often, consumers interact directly with administrators when discussing claims payment procedures and guidelines, premium or contribution payments, review of medical billing, and other customer service related matters. The nature of this interaction requires the public to place trust in and reliance upon these administrators due to the complex and varied nature of insurance and insurance-related products. As such, the Department considers the determination of the honesty, trustworthiness, and reliability of each of these administrators to be an essential regulatory function. For all of these reasons, the Department has determined that the use of criminal history information is the best means to assist the Department in performing its statutory duty of determining a person's fitness for holding an authorization under the Insurance Code Chapter 4151 or having the ability to control, direct, or manage the affairs of an authorized entity under the Insurance Code Chapter 4151.

The proposed amendments to §1.501 and §1.503 apply the Department's existing requirements and procedures regarding prior criminal conduct and fraudulent and dishonest activity to Chap-

ter 4151 administrators. Applying the Department's current fingerprinting and criminal history review process to these administrators promotes stability, uniformity, and consistency in Department regulation and reduces additional costs and unnecessary use of resources. Additionally, the proposed amendments to §1.501 and §1.503 will help maintain effective regulation of the insurance industry by ensuring that persons receiving authorizations under the Insurance Code Chapter 4151 or persons having the ability to control, direct, or manage the affairs of an authorized entity under the Insurance Code Chapter 4151 are honest, trustworthy, and reliable. Under the proposal, and in the manner prescribed by existing rules in Chapter 1, Subchapter D, the Department will consider, in determining the applicant's fitness for a certificate of authority under the Insurance Code Chapter 4151, the criminal history information of each applicant and the criminal history information of any individual who has the right to control, direct, or manage the affairs of the applicant. The Department has consulted with the DPS and, for the following reasons, has determined that fingerprint checks, and in particular, electronic fingerprint checks, provide the most effective method of identifying an individual and obtaining that individual's criminal history information. First, fingerprint checks prevent individuals with a criminal history in another state from attempting to evade detection by simply moving to Texas. Second, fingerprint collection by an independent third party vendor allows for independent verification of the identity of the individual being fingerprinted and increases confidence in the review process. Third, improvements in electronic fingerprint technology have increased the accuracy of fingerprint capture and have substantially reduced the time frame for processing the fingerprint to obtain the criminal history information. For these reasons, the existing rules in Subchapter D require affected individuals to be fingerprinted by an acceptable vendor. The individual's fingerprints will either be submitted directly to the DPS, if captured by the DPS electronic vendor, or to the Department, and then to the DPS, if captured on paper. Further, the Department understands from the DPS that all fingerprints will be processed through both the DPS and the FBI.

#### *Clarification of §1.501(b) Inconsistency*

The proposed amendment to §1.501(b)(1) is necessary to clarify a non-substantive inconsistency in the introductory paragraph of §1.501(b)(1). The existing introductory paragraph of §1.501(b)(1) applies the provisions of §1.502 to an applicant for, or a holder of, a license, registration, permit, authorization, or certification issued by the Department under certain Insurance Code provisions enumerated in existing §1.501(b)(1)(A) - (U). Section 1.502 contains the Department's current guidelines relating to the matters the Department will consider in determining whether to grant, deny, suspend, or revoke any license or authorization under its jurisdiction. Additionally, §1.502 prescribes the crimes which the Department considers to be of such a serious nature that they are of prime importance in determining an applicant's fitness for licensure or authorization. While existing §1.501(b)(1)(R) refers to the Insurance Code Chapter 4151 as an applicable Insurance Code provision under which the Department may issue an authorization, existing §1.501(b)(1), which specifies the various types of applicants and holders of a license, registration, permit, authorization, or certification under the Insurance Code, does not specifically refer to administrators. Administrators are authorized under the Insurance Code Chapter 4151. This omission creates an internal inconsistency between existing §1.501(b)(1) and existing §1.501(b)(1)(R). The proposed amendment to §1.501(b)(1) is necessary to include the term administrator in the introductory



paragraph of §1.501(b)(1) to make it consistent with existing §1.501(b)(1)(R).

#### *Clarification of the Applicability of §1.502*

Existing §1.501(b)(3) enumerates the individuals by organization title that are subject to the provisions of §1.502. Section 1.502 contains the Department's current guidelines relating to the matters the Department will consider in determining whether to grant, deny, suspend, or revoke any license or authorization under its jurisdiction. Additionally, §1.502 prescribes the crimes which the Department considers to be of such a serious nature that they are of prime importance in determining an applicant's fitness for licensure or authorization. Under existing §1.501(b)(3), the provisions of §1.502 apply to those who are or become partners or officers, directors, or controlling shareholders, including limited liability company members and managers, of entities that are applicants for, or holders of, a license, authorization, permit, certification, or registration under provisions specified in §1.501(b)(1) and (2) and from whom biographical information is required. The proposed amendment to §1.501(b)(3) clarifies the applicability of §1.502 to include, in addition to those specified under the existing rule, those who are or become principals and those who have similar responsibilities to principals, partners, officers, directors, or controlling shareholders, including limited liability company members and managers, of entities that are applicants for, or holders of, a license, authorization, permit, certification, or registration under provisions specified in §1.501(b)(1) and (2) and from whom biographical information is required. This proposed change is necessary because the existing rule causes uncertainty and confusion for individuals holding organization titles other than those specifically enumerated. For example, existing §1.501(b)(3) refers to officers, directors, controlling shareholders, and limited liability company members and managers but does not refer to a principal. If an individual is a principal and performs the same functions as an individual who holds one or more of the enumerated organization titles, it is unclear if the provisions of §1.502 apply to the individual who is a principal. Additionally, organizations will continue to evolve and will necessarily use different organization titles to describe different individuals involved in the operation of their organizations. An officer of a large organization may perform similar functions as the principal of a smaller organization or sole proprietorship. Therefore, to remove the uncertainty and confusion in existing §1.501(b)(3), the proposed amendment to §1.501(b)(3) adds the term principal to the list of enumerated organization titles and adds the phrase or have similar responsibilities to existing §1.501(b)(3). This will impose the requirements of §1.502 on any individual who is or becomes a principal and to any individual who has similar responsibilities to any individual holding any of the enumerated organization titles in §1.501(b)(3), including the organization title of principal. The proposed amendment is consistent with the intent of existing §1.501(b)(3), authorized under the Occupations Code Chapter 53, the Labor Code Chapter 407A, and the Insurance Code Chapters 801, 822, 823, 841, 843, 844, 846, 981, 1111, 1305, 2551, 2552, 2651, 2652, 4001, 4005, 4051, 4052, 4053, 4054, 4055, 4056, 4101, 4102, 4151, 4152, 4153, 4201, and 4202, which is to require the key individuals of an organization with management, discretionary, or decision making authority to comply with the requirements of §1.502 of the subchapter.

#### *Consistency with Amendments to §5.6403*

The proposed amendment to §1.501(b)(5) provides necessary consistency with the proposed amendments affecting

§5.6403(e) and (f) of this title, which were published in the July 25, 2008, issue of the *Texas Register* (33 TexReg 5835). The proposed amendment to §5.6403(e) requires a biographical affidavit to be submitted to the Department by each member of the initial board of trustees of a workers' compensation self-insurance group (group), subsequent members of the board of trustees of a group, and the executive officers of a person identified pursuant to proposed amended §5.6403(12)(A) or (B). Additionally, under proposed amended §5.6403(e), a particular individual does not have to file a biographical affidavit with the Department if a biographical affidavit from the individual has been filed with the Department within the prior three years and contains substantially accurate information. The proposed amendment to §5.6403(e) further elaborates that a biographical affidavit contains substantially accurate information if the responses given by the individual in the affidavit on file with the Department continue to indicate sufficient experience, ability, standing, and good record to make success of a group probable. The proposed amendment to §5.6403(f) requires each member of the initial board of trustees of a group, subsequent members of the board of trustees of a group, and the executive officers of a person identified pursuant to proposed amended §5.6403(c)(12)(A) or (B) to comply with the requirements of Chapter 1 Subchapter D of this title (relating to Effect of Criminal Conduct). Under these proposed amendments, each member of the initial board of trustees of a group, subsequent members of the board of trustees of a group, and the executive officers of certain delegated entities of a group are required to file biographical information with the Department and to comply with the fingerprint and criminal history requirements of Chapter 1, Subchapter D. The proposed amendment to §1.501(b)(5) is necessary to provide that proposed amended §1.501(b)(5) and proposed amended §5.6403(e) and (f) apply equally to each member of the initial board of trustees of a group, subsequent members of the board of trustees of a group, and the executive officers of certain delegated entities of a group.

#### *Clarification of the Applicability of §1.504(a)*

Existing §1.503(2)(A) and (B) enumerate the individuals by organization title that are subject to the provisions of §1.504(a) of the subchapter. Section 1.504(a) contains the Department's current requirements relating to the submission of an individual's complete set of fingerprints and related processing fees and additional identifying information required by the DPS and the FBI for processing the complete set of fingerprints. Under existing §1.501(2)(A), the provisions of §1.504(a) apply to those who are partners or officers, directors, or controlling shareholders, including limited liability company members and managers, of entities that are applicants for a license, certification, permit, registration, or authorization under provisions specified in §1.503(1) and from whom biographical information is required. Under existing §1.501(2)(B), the provisions of §1.504(a) apply to those who become partners or officers, directors, or controlling shareholders, including limited liability company members and managers, of entities that are holders of a license, authorization, permit, certification, or registration under provisions specified in §1.503(1) and from whom biographical information is required. The proposed amendment to §1.503(2)(A) clarifies the applicability of §1.502 to include, in addition to those specified under the existing rule, those who are principals and those who have similar responsibilities to principals, partners, officers, directors, or controlling shareholders, including limited liability company members and managers, of entities that are applicants for a license, certification, permit, registration, or authorization under provisions spec-

ified in §1.503(1) and from whom biographical information is required. The proposed amendment to §1.503(2)(B) clarifies the applicability of §1.502 to include, in addition to those specified under the existing rule, those who become principals and those who have similar responsibilities to principals, partners, officers, directors, or controlling shareholders, including limited liability company members and managers, of entities that are holders of a license, authorization, permit, certification, or registration under provisions specified in §1.503(1) and from whom biographical information is required. These proposed changes are necessary because the existing rules cause uncertainty and confusion for individuals holding organization titles other than those specifically enumerated. For example, existing §1.503(2)(A) and (B) refer to officers, directors, controlling shareholders, and limited liability company members and managers but do not refer to a principal. If an individual is a principal and performs the same functions as an individual who holds one or more of the enumerated organization titles, it is unclear if the provisions of §1.503(2)(A) and (B) apply to the individual who is a principal. Additionally, organizations will continue to evolve and will necessarily use different organization titles to describe different individuals involved in the operation of their organizations. An officer of a large organization may perform similar functions as the principal of a smaller organization or sole proprietorship. Therefore, to remove the uncertainty and confusion in existing §1.503(2)(A) and (B), the proposed amendment to §1.503(2)(A) adds the term principal to the list of enumerated organization titles and adds the phrase or have similar responsibilities to to existing §1.503(2)(A). Additionally, the proposed amendment to §1.503(2)(B) adds the term principal to the list of enumerated organization titles and adds the phrase or have similar responsibilities to to existing §1.503(2)(B). These proposed amendments impose the requirements of §1.504(a) on any individual who is or becomes a principal and on any individual who has similar responsibilities to any individual holding any of the enumerated organization titles in §1.503(2)(A) or (B), including the organization title of principal. The proposed amendments are consistent with the intent of existing §1.503(2)(A) and (B), authorized under the Government Code §§411.083, 411.087 and 411.106, the Labor Code Chapter 407A, and the Insurance Code Chapters 801, 822, 823, 841, 843, 844, 846, 981, 1111, 1305, 2551, 2552, 2651, 2652, 4001, 4005, 4051, 4052, 4053, 4054, 4056, 4101, 4102, 4152, 4153, 4201, and 4202, which is to require the key individuals of an organization with management, discretionary, or decision making authority to comply with the requirements of §1.504(a) of the subchapter.

#### *Consistency with Amendments to §5.6403*

The proposed amendment to §1.503(4) provides necessary consistency with the proposed amendments affecting §5.6403(e) and (f) of this title, which were published in the July 25, 2008, issue of the *Texas Register* (33 TexReg 5835). The proposed amendment to §5.6403(e) requires a biographical affidavit to be submitted to the Department by each member of the initial board of trustees of a group, subsequent members of the board of trustees of a group, and the executive officers of a person identified pursuant to proposed amended §5.6403(12)(A) or (B). Additionally, under proposed amended §5.6403(e), a particular individual does not have to file a biographical affidavit with the Department if a biographical affidavit from the individual has been filed with the Department within the prior three years and contains substantially accurate information. The proposed amendment to §5.6403(e) further elaborates that a biographical affidavit contains substantially accurate information if the responses

given by the individual in the affidavit on file with the Department continue to indicate sufficient experience, ability, standing, and good record to make success of a group probable. The proposed amendment to §5.6403(f) requires each member of the initial board of trustees of a group, subsequent members of the board of trustees of a group, and the executive officers of a person identified pursuant to proposed amended §5.6403(c)(12)(A) or (B) to comply with the requirements of Chapter 1 Subchapter D of this title (relating to Effect of Criminal Conduct). Under these proposed amendments, each member of the initial board of trustees of a group, subsequent members of the board of trustees of a group, and the executive officers of certain delegated entities of a group are required to file biographical information with the Department and to comply with the fingerprint and criminal history requirements of Chapter 1, Subchapter D. The proposed amendment to §1.503(4) is necessary to provide that proposed amended §1.503(4) and proposed amended §5.6403(e) and (f) apply equally to each member of the initial board of trustees of a group, subsequent members of the board of trustees of a group, and the executive officers of certain designated delegated entities of a group.

**Section-by-Section Overview.** The following is a section-by-section overview of the proposal.

**§1.501. Purpose and Application.** The proposed amendment to §1.502(b)(1) adds the term administrator to the existing introductory language of §1.502(b)(1). The proposed amendment to §1.502(b)(3) adds the term principal to the enumerated organization titles of individuals that are subject to the provisions of §1.502. Finally, the proposed amendment to §1.502(b)(5) clarifies that each person who is required to file biographical information under §5.6403 of this title (relating to Application for Initial Certificate of Approval) is also subject to the provisions of §1.502.

**§1.503. Application of Fingerprint Requirement.** The proposed amendment to §1.503(1) applies the fingerprinting requirements of existing §1.504(a) to administrators under the Insurance Code Chapter 4151. The proposed amendment to §1.503(2)(A) and (B) applies the fingerprinting requirements of existing §1.504(a) to individuals who are required to provide biographical information to the Department and who are or have similar responsibilities to principals, partners, officers, directors, or controlling shareholders, including limited liability company members and managers, of entities that are applicants for a license, certification, permit, registration, or authorization under provisions specified in §1.503(1) and to individuals who are required to provide biographical information to the Department and who become or will have similar responsibilities to principals, partners, officers, directors, or controlling shareholders, including limited liability company members and managers, of entities that are holders of a license, authorization, permit, certification or registration under provisions specified in §1.503(1). Finally, the proposed amendment to §1.503(4) applies the fingerprinting requirements of existing §1.504(a) to each person who is required to file biographical information under §5.6403 of this title (relating to Application for Initial Certificate of Approval).

**FISCAL NOTE.** Danny Saenz, Senior Associate Commissioner for the Financial Division, has determined that for each year of the first five years the proposed amendments will be in effect, there will be an approximate \$2,250 - \$3,750 annual increase in revenue to state government as a result of the enforcement and administration of this proposal due to the estimated additional fingerprint submissions to the DPS. The Department an-

anticipates 150 - 250 new fingerprint submissions annually based on the following factors. First, the proposed amendments do not impose additional requirements or costs on persons to maintain their current authorizations under the Insurance Code Chapter 4151. As a result, the Department generally does not anticipate that any person holding an authorization under the Insurance Code Chapter 4151 on the effective date of the proposed amendments will be required to submit fingerprints to the DPS, so long as the information submitted by the certificate holder with regard to its key management or decision making personnel at the time of application remains unchanged. Second, the proposed amendments apply to applicants for a certificate of authority under the Insurance Code Chapter 4151 and to any individual that has the right to control, direct, or manage the affairs of an applicant for a certificate of authority under the Insurance Code Chapter 4151. The Department anticipates that it will receive 50 new applications for a certificate of authority under the Insurance Code Chapter 4151 annually. The Department anticipates that between 3 and 5 individuals per applicant will be required to submit fingerprints to the DPS under the proposed amendments, totaling 150- 250 new fingerprint submissions annually. Lastly, the Government Code §411.088(a)(2) authorizes the DPS to charge a \$15 fee for each criminal history record information inquiry. It is the Department's understanding based on information provided by the DPS that this fee is for the costs of processing fingerprints and maintaining the records and systems used by the DPS in processing fingerprint submissions. Therefore, anticipated additional fingerprint submissions may result in increased costs to the DPS, which may substantially offset or eliminate any additional revenue. Further, it is anticipated that most individuals within Texas will utilize the convenience and reliability offered by the authorized electronic fingerprint services and, as such, the Department estimates that there will be no measurable fiscal impact to local governments from the capture of fingerprints on paper cards by local law enforcement agencies as a result of the enforcement or administration of this proposal. There will be no anticipated effect on local employment or the local economy as a result of the proposal.

**PUBLIC BENEFIT/COST NOTE.** Mr. Saenz also has determined that for each year of the first five years the proposed amendments are in effect, the anticipated public benefit will be an efficient, standardized, thorough, and comprehensive review of the suitability of applicants for a certificate of authority under the Insurance Code Chapter 4151 and individuals that have the right to control, direct, or manage the affairs of applicants seeking to obtain a certificate of authority under the Insurance Code Chapter 4151. This enhanced review will ensure that these persons are honest, trustworthy, reliable, and fit to hold an authorization under the Insurance Code Chapter 4151, which should better protect the interests of Texas consumers and the general public. Additionally, this enhanced review should improve the quality of the relationship between applicants and authorization holders under the Insurance Code Chapter 4151 and insurers, providers, physicians, staff members, and the public.

The total probable economic costs to persons required to comply with the proposal should be \$45 - \$55. This cost estimate is based upon the following factors. The Department has been informed that each individual who must provide fingerprints under §1.503(a)(2) of the subchapter (relating to Application of Fingerprint Requirement) must pay a fingerprinting processing fee of \$34.25. The \$34.25 fingerprinting processing fee includes a FBI charge of \$19.25 and a DPS charge of \$15. This finger-

printing processing fee applies to both electronic fingerprint submissions and paper card fingerprint submissions. Additionally, there is a \$9.95 fingerprint collection fee charged by companies that are authorized to take electronic fingerprints on behalf of the DPS. While the Department anticipates that most individuals in the State of Texas will utilize the convenience and reliability offered by authorized electronic fingerprint services, an individual may choose to submit a paper fingerprint card instead of an electronic fingerprint submission. In those cases, an individual will be subject to a processing fee of \$9.95 to \$19.95. The Human Resources Code §80.001(b) authorizes a criminal law enforcement agency to charge an amount not to exceed \$10 for capturing fingerprints on a paper fingerprint card. Based on this information, the Department anticipates that an individual choosing to submit his or her fingerprints on a paper fingerprint card may be subject to a fingerprint collection fee of \$0.00 to \$10.00 charged by a criminal law enforcement agency capturing the fingerprints in addition to a fee of \$9.95 charged by an authorized company processing the fingerprints on behalf of the DPS. Lastly, any additional information that must be supplied by an individual at the time of fingerprinting is minimal and the Department does not anticipate an associated cost with providing such required information. Further, the Department anticipates that an individual or applicant should only have to submit a complete set of fingerprints under the proposed amendments one time, so long as the applicant maintains continuous licensure with the Department. These fingerprinting costs are comparable to fingerprinting costs required under similar requirements in other states. For example, California requires a \$60 - \$65 fingerprinting fee, Florida requires a \$58 fingerprinting fee, and Pennsylvania requires a \$39 fingerprinting fee.

Any other costs to comply with the proposed amendments result from the enactment of the Occupations Code Chapter 53 and the Insurance Code Chapter 4151, and are not a result of the adoption, enforcement, or administration of the proposal.

**ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES.** As required by the Government Code §2006.002(c), the Department has determined that between 150 and 250 applicants and individuals will be subject to the proposal and may qualify as small or micro businesses under the Government Code §2006.001. As required by the Government Code §2006.002(c), the Department has determined that the proposal may have an adverse economic effect on these small or micro businesses. Adverse economic impact may result from costs associated with the proposed fingerprinting requirements. The Department's cost analysis and resulting estimated costs in the Public Benefit/Cost Note portion of this proposal is equally applicable to these small or micro businesses.

In accordance with the Government Code §2006.002(c-1), the Department has determined that even though proposed amended §1.501 and §1.503 may have an adverse economic effect on small or micro businesses that are required to comply with these proposed requirements, the Department is not required to prepare a regulatory flexibility analysis as required in §2006.002(c)(2) of the Government Code. Section 2006.002(c)(2) requires a state agency, before adopting a rule that may have an adverse economic effect on small businesses, to prepare a regulatory flexibility analysis that includes the agency's consideration of alternative methods of achieving the purpose of the proposed rule. Section 2006.002(c-1) of the Government Code requires that the regulatory flexibility analysis "consider, if consistent with the health, safety, and

environmental and economic welfare of the state, using regulatory methods that will accomplish the objectives of applicable rules while minimizing adverse impacts on small businesses." Therefore, an agency is not required to consider alternatives that, while possibly minimizing adverse impacts on small and micro businesses, would not be protective of the health, safety, and environmental and economic welfare of the state.

The general purpose of the Insurance Code §4151.051 and §4151.053 is to require and authorize the Department to determine a person's fitness for holding an authorization under the Insurance Code Chapter 4151 or to have the ability to control, direct, or manage the affairs of an authorized entity under the Insurance Code Chapter 4151. The collective purpose of the Insurance Code §§4001.002, 4001.103, 4151.301, the Occupations Code Chapter 53, and the Government Code §411.106 and §411.087 is to authorize and provide the Department with the necessary tools to utilize a person's criminal history information in determining that person's fitness for holding an authorization under the Insurance Code Chapter 4151 or to have the ability to control, direct, or manage the affairs of an authorized entity under the Insurance Code Chapter 4151. The purpose of proposed amended §1.501 and §1.503 is to protect the health, safety, and economic welfare of Texas consumers and the state of Texas generally by ensuring that applicants, holders, and individuals with the right to control, direct, or manage the affairs of applicants or holders of certificates under the Insurance Code Chapter 4151 are honest, trustworthy, reliable, and fit to hold those authorizations.

The proposal requires applicants for a certificate of authority under the Insurance Code Chapter 4151 and those who have the right to control, direct, or manage the affairs of an applicant for a certificate of authority under the Insurance Code Chapter 4151 to submit a complete set of fingerprints, payment for all processing fees charged by the DPS or the FBI, and any additional identifying information required by the DPS or the FBI. The Department has determined that the required fingerprint checks will provide the most effective method of identifying an individual and obtaining that individual's criminal history information. It is critical that administrators under the Insurance Code Chapter 4151 be honest, trustworthy, reliable, and fit to hold an authorization under the Insurance Code Chapter 4151 because of the unique relationship administrators have with insurers, Texas consumers, and the general public. Administrators are authorized under the Insurance Code Chapter 4151 to collect premium and contributions from and to adjust and settle claims for Texas residents. As a result, administrators often have access to and control of fiduciary bank accounts and other accounts designated for claims payment. Because administrators are often involved in the adjusting and settling of insurance claims, they also directly interact with Texas consumers, providers, physicians, staff members, and adjusters. While the authority of an administrator is largely determined by the particular insurer that the administrator performs services for, many administrators are given great discretion in carrying out their delegated duties under the Insurance Code, the Labor Code, and any rules adopted thereunder. As such, administrators are often delegated the responsibility for the timely payment of medical benefits and workers' compensation benefits. Many administrators also have control over an insurer's books and records and claims files. Depending upon each insurer's individual preference, an administrator may perform a wide variety of statutorily required duties on behalf of an insurer. While such wide delegation of discretion may be appropriate in many instances, it becomes even more important for

the Department to ensure that these authorization holders are suitable and worthy of such trust. To that end, the Department has determined that it is appropriate to require fingerprint submission and criminal history inquiries for all applicants for a certificate of authority under the Insurance Code Chapter 4151 and from any individuals with the right to control, direct, or manage the affairs of applicants for certificates of authority under the Insurance Code Chapter 4151. Collectively, the proposed fingerprint checks will detect individuals with criminal histories in other states, will allow for independent verification of the identity of the individual being fingerprinted, will increase confidence in the application process, and will reduce the time frame for obtaining criminal history information. Lastly, the processing of all fingerprints through both the DPS and the FBI is the best and most accurate method to ensure that applicants under the Insurance Code Chapter 4151 are suitable to hold such authorizations.

Therefore, the Department has determined, in accordance with §2006.002(c-1) of the Government Code, that because the purpose of proposed amended §1.501 and §1.503 and the authorizing statutes of the Occupations Code, the Government Code, and the Insurance Code is to protect the health, safety, and economic welfare of Texas consumers and the state of Texas, there are no additional regulatory alternatives to the proposed requirements that will sufficiently protect the health, safety, and economic interests of Texas consumers and the welfare of the state.

**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 September 8 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 comments must be simultaneously submitted to Danny Saenz, Senior Associate Commissioner for the Financial Program, Mail Code 305-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Any request for a public hearing should be submitted separately to the Office of the 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.

**STATUTORY AUTHORITY.** The amendments are proposed under the Occupations Code, the Government Code, and the Insurance Code. The Occupations Code Chapter 53 generally prescribes the procedures a licensing authority must employ when considering the consequences of a criminal record on granting or continuing a person's license, authorization, certificate, permit, or registration. The Occupations Code §53.021 authorizes a licensing authority to suspend or revoke a license, disqualify a person from receiving a license, or deny to a person the opportunity to take a licensing examination on the grounds that the person has been convicted of a felony or misdemeanor that directly relates to the duties and responsibilities of the licensed occupation. The Government Code §411.106 permits the Department to obtain criminal history record information from DPS that relates to a person who is an applicant for a license, permit, certificate of authority, certificate of registration, or other authorization issued by the Department. The Government Code §411.087 permits

the Department to obtain through the FBI criminal history record information maintained or indexed by the FBI that pertains to that person or to obtain from any other criminal justice agency in this state criminal history record information maintained by that criminal justice agency that relates to that person. The Insurance Code §4001.002(a) provides that, except as otherwise provided by the Insurance Code, the provisions of the Insurance Code Title 13 apply to the persons licensed under Title 13 Subtitle B, C, or D. The Insurance Code §4001.005 authorizes the Commissioner to adopt rules necessary to implement the Insurance Code Title 13. The Insurance Code §4001.103 authorizes the Department to deny an application for an authorization if the applicant fails to provide a complete set of fingerprints on request by the Department. The Insurance Code §4151.006 provides that the Commissioner may adopt rules that are fair, reasonable, and appropriate to augment and implement the Insurance Code Chapter 4151. The Insurance Code §4151.051 prohibits an individual, corporation, organization, trust, partnership, or other legal entity from acting as or holding itself out as an administrator unless the entity is covered by and is engaging in business under a certificate of authority issued under the Insurance Code Chapter 4151. The Insurance Code §4151.053 prescribes the circumstances under which the Commissioner shall approve a certificate of authority under the Insurance Code Chapter 4151, including whether granting the application would violate a federal or state law. The Insurance Code §4151.211 authorizes the Department to determine the trustworthiness and integrity of a person seeking to acquire an ownership interest in an applicant holder under the Insurance Code Chapter 4151. The Insurance Code §4151.301 provides that the Department may deny an application for a certificate of authority or discipline the holder of a certificate of authority under the Insurance Code Chapter 4151 if the applicant or holder, individually, or through an officer, director, or shareholder, has been convicted of a felony. The Insurance Code §36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Department under the Insurance Code and other laws of this state.

CROSS REFERENCE TO STATUTE. The following statutes are affected by this proposal: Occupations Code Chapter 53; Government Code §411.106 and §411.087; Insurance Code §§4001.002(a), 4001.005, 4001.103, 4151.006, 4151.051, 4151.053, 4151.211, and 4151.301.

§1.501. *Purpose and Application.*

(a) (No change.)

(b) Section 1.502 of this subchapter applies to the following persons:

(1) applicants for, or holders of, any license, registration, permit, authorization, or certification, including temporary or training licenses or certificates, as agents, adjusters, public insurance adjusters, counselors, risk managers, reinsurance intermediaries, title agents, title escrow officers, title attorneys, utilization review agents, independent review organizations, viatical and life settlement registrants, ~~and~~ workers' compensation health care networks, ~~and~~ management contractors, and administrators, under the following Insurance Code provisions:

(A) - (U) (No change.)

(2) (No change.)

(3) those who are, ~~or~~ become, or have similar responsibilities to principals, partners, ~~or~~ officers, directors, or controlling shareholders, including limited liability company members and managers,

of entities that are applicants for, or holders of, a license, authorization, permit, certification, or registration under provisions specified in paragraphs (1) and (2) of this subsection and from whom biographical information is required;

(4) (No change.)

(5) each person who is required to file ~~member of the initial board of trustees, subsequent members of the board, and the chief executive officer, president, secretary, treasurer, chief financial officer, and controller of the administrator and any service company filing~~ biographical information under §5.6403 of this title (relating to Application for Initial Certificate of Approval).

(c) - (d) (No change.)

§1.503. *Application of Fingerprint Requirement.*

The fingerprint requirement in §1.504(a) of this subchapter (relating to Fingerprint Requirement) applies to the following individuals:

(1) applicants for any license, registration, certification, authorization or permit, including temporary or training licenses or certificates, as agents, adjusters, public insurance adjusters, counselors, risk managers, reinsurance intermediaries, title agents, title escrow officers, viatical and life settlement registrants, ~~and~~ workers' compensation health care networks, ~~and~~ management contractors, and administrators, under the following Insurance Code provisions:

(A) - (O) (No change.)

(P) Chapter 4151;

(Q) ~~(P)~~ Chapter 4152; or

(R) ~~(Q)~~ Chapter 4153.

(2) with the exception of those individuals associated with licenses issued to corporations and limited liability companies under Insurance Code Chapter 2651 Subchapter A, individuals who are required to provide biographical information and who:

(A) are or have similar responsibilities to principals, partners, ~~or~~ officers, directors, or controlling shareholders, including limited liability company members and managers, of entities that are applicants for a license, certification, permit, registration, or authorization under provisions specified in paragraph (1) of this section; or

(B) become or will have similar responsibilities to principals, partners, ~~or~~ officers, directors, or controlling shareholders, including limited liability company members and managers, of entities that are holders of a license, authorization, permit, certification or registration under provisions specified in paragraph (1) of this section.

(3) (No change.)

(4) each person who is required to file ~~member of the initial board of trustees, subsequent members of the board, and the chief executive officer, president, secretary, treasurer, chief financial officer, and controller of the administrator and any service company filing~~ biographical information under §5.6403 of this title (relating to Application for Initial Certificate of Approval).

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 July 28, 2008.  
TRD-200803881



## 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 C. NURSING FACILITY LICENSURE APPLICATION PROCESS

###### 40 TAC §19.208, §19.216

The Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), amendments to §19.208, concerning renewal procedures; and §19.216, concerning license fees, in Chapter 19, Nursing Facility Requirements for Licensure and Medicaid Certification.

###### BACKGROUND AND PURPOSE

The purpose of the amendments is, in part, to implement Senate Bill 1318, 80th Legislature, Regular Session, 2007, which amended Texas Health and Safety Code, §242.034. Texas Health and Safety Code, §242.034, was amended to allow DADS to assess a late fee against a license holder for late submission of a renewal application. The amendments also update rule language to provide for the assessment of a late fee instead of an administrative penalty.

The proposal also updates agency names and rule cross-references.

###### SECTION-BY-SECTION SUMMARY

The proposed amendment to §19.208 clarifies what DADS considers to be a timely and sufficient application submission. The amendment replaces obsolete references to the Texas Department of Human Services (DHS) with references to DADS. In addition, the amendment provides for the assessment of a late fee instead of an administrative penalty for submission of a late and complete or late and incomplete renewal application. The amendment also updates a rule cross-reference.

The proposed amendment to §19.216 allows for the assessment of a late fee when an application for license renewal is submitted later than the 45th day before the expiration of the license. Section 19.216 sets the late fee at one-half of the total basic renewal fee. The total basic renewal fee is \$250 plus \$10 per unit of capacity or bed space. The late fee is assessed in addition to the total basic renewal fee. The amendment also updates a rule cross-reference.

###### FISCAL NOTE

Gordon Taylor, DADS Chief Financial Officer, has determined that, for the first five years the proposed amendments are in effect,

there are no significant foreseeable implications relating to costs or revenues of state and local government.

###### SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed amendments may have an adverse economic effect on small businesses or micro-businesses, because the rule allows DADS to assess a late fee against a facility that does not comply with the rules.

DADS estimates that the number of small businesses subject to the proposed amendments is less than 981. This estimate is based on DADS records which indicate that of the 1,179 licensed nursing facilities, approximately 981 of them are formed for the purpose of making a profit, one of the requirements for being a "small business." DADS does not have specific data regarding number of employees and gross receipts to determine how many of these facilities are operated by an entity that would meet the definition of a "small business." DADS estimates that there are no micro-businesses subject to the proposed amendments.

The projected economic impact for a small business is a late fee equal to one-half of the basic license renewal fee of \$250, plus \$10 for each unit of capacity or bed space, but that fee is incurred only if the small business fails to submit a timely license renewal application. For that reason, DADS projects that there will be minimal economic impact to small businesses subject to the proposed amendments.

Several alternatives were considered in determining how to accomplish the objectives of the proposed rules while minimizing the adverse economic effect on small businesses. Statute gives DADS the option of assessing a late fee if a nursing facility does not comply with rules related to the submission of a renewal application. Therefore, DADS considered not imposing a late fee against a facility that does not comply with the proposed rules. DADS did not consider this option consistent with its responsibility as a regulatory agency, and specifically, determined that this option would not adequately address its need to have timely renewal applications submitted. An additional alternative considered was for DADS to impose a late fee without taking into consideration the unit capacity or bed space of a facility. DADS decided against this option as it would place more of a burden on small businesses. A third alternative considered was to impose a higher percentage, such as 75%, instead of 50% of the basic renewal fee, but DADS decided that this may also place a burden on small business.

###### PUBLIC BENEFIT AND COSTS

Veronda Durden, DADS Assistant Commissioner for Regulatory 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 reflect current law.

Ms. Durden anticipates that there may be an economic cost to persons who are required to comply with the amendments, because they allow DADS to assess a late fee of \$250, plus \$10 for each unit of capacity. 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 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-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; and Texas Health and Safety Code, Chapter 242, which authorizes DADS to license and regulate nursing facilities.

The amendments implement Texas Government Code, §531.0055; Texas Human Resources Code, §161.021; and Texas Health and Safety Code, §242.034.

§19.208. *Renewal Procedures and Qualifications.*

(a) (No change.)

(b) Each license holder must, no later than the 45th day [at least 45 days] before the expiration of the current license, file an application for renewal with DADS. DADS considers that an individual has filed a timely and sufficient application for the renewal of a license if the license holder submits:

(1) a complete application to DADS, and DADS receives the complete application no later than the 45th day before the expiration date of the current license [at least 45 days before the current license expires];

(2) an incomplete application to DADS with a letter explaining the circumstances which prevented the inclusion of the missing information, and DADS receives the incomplete application and letter no later than the 45th day before the expiration date of the current license [at least 45 days before the current license expires]; or

(3) a complete application or an incomplete application with a letter explaining the circumstances which prevented the inclusion of the missing information to DADS, DADS receives the application during the 45-day period ending on the date the current license expires, and the license holder [~~individual~~] pays the late fee established in §19.216(a)(6) of this chapter (relating to License Fees) in addition to the basic renewal fee [a \$500 administrative penalty].

(c) If the application is postmarked by the filing deadline, the application will be considered to be timely if received in DADS'

[DADS Regulatory Services,] Licensing and Credentialing Section, Regulatory Services Division within 15 days after the postmark.

(d) - (e) (No change.)

§19.216. *License Fees.*

(a) Basic fees.

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

(4) Change of administrator. A facility must report a change of administrator within 30 days of the effective date of the change by submitting a change of administrator notice and a \$20 fee to DADS' Licensing and Credentialing Section, Regulatory Services Division [the Texas Department of Human Services Facility Enrollment Section]. If DADS' Licensing and Credentialing Section, Regulatory Services Division [Facility Enrollment] does not receive the notice within 30 days of the effective date of the change, DADS [DHS] may impose a \$500 administrative penalty. If the notice is postmarked within the 30-day period, 15 days will be added to the time period to receive the notice.

(5) (No change.)

(6) Late renewal fee. An applicant for license renewal that submits an application during the 45-day period ending on the date the current license expires must pay a late fee of an amount equal to one-half of the total basic renewal fee in §19.216(a)(2) of this section.

(b) Trust fund fee.

(1) In addition to the basic license fee described in subsection (a) of this section, DADS [DHS] has established a trust fund for the use of a court-appointed trustee as described in the Health and Safety Code, Chapter 242, Subchapter D.

(2) DADS [DHS] charges and collects an annual fee from each facility licensed under the Texas Health and Safety Code, Chapter 242 each calendar year if the amount of the nursing and convalescent trust fund is less than \$10,000,000. The fee is based on a monetary amount specified for each licensed unit of capacity or bed space, not to exceed \$20 annually, and is in an amount sufficient to provide not more than \$10,000,000 in the trust fund. In calculating the fee, the amount will be rounded to the next whole cent.

(3) (No change.)

(4) DADS [DHS] may charge and collect a fee more than once a year only if necessary to ensure that the amount in the nursing and convalescent trust fund is sufficient to allow required disbursements.

(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 July 28, 2008.

TRD-200803924

Marianne Reat

Interim General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: September 7, 2008

For further information, please call: (512) 438-3734



SUBCHAPTER C. NURSING FACILITY LICENSURE APPLICATION PROCESS

The Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), the repeal of §19.210, concerning temporary change of ownership, in Chapter 19; and proposes new §19.210, concerning change of ownership, in Chapter 19, Nursing Facility Requirements for Licensure and Medicaid Certification.

#### BACKGROUND AND PURPOSE

The purpose of the new section and repeal, in part, is to implement Senate Bill (SB) 344, 80th Legislature, Regular Session, 2007. SB 344, in part, amended Texas Health and Safety Code, §242.0336. Texas Health and Safety Code, §242.0336, was amended to clarify that a change of ownership (CHOW) license is a 90-day temporary license; provides that DADS must issue a temporary CHOW license no later than the 31st day after receipt of the completed application; allows DADS to waive the 30-day notification from the applicant or the 30-day notification from the existing license holder under certain circumstances; and allows DADS to conduct a desk review instead of an on-site inspection or survey under certain circumstances after the issuance of a CHOW license.

The proposed new section also modifies the definition of a CHOW for different types of business entities and clarifies the documentation and time frames required for a CHOW application and issuance of a license.

The proposal rewrites and reorganizes the section and updates agency names and rule cross-references.

#### SECTION-BY-SECTION SUMMARY

Proposed new §19.210(a) specifies what constitutes a CHOW for each type of business entity.

Proposed new §19.210(b) specifies the documentation that a prospective new owner must submit to DADS when there is a CHOW.

Proposed new §19.210(c) requires an applicant to submit all items in subsection (b) at least 30 days before the anticipated date of the sale or other transfer to the new owner.

Proposed new §19.210(d) specifies that the 30-day notification from the applicant or license holder may be waived if DADS determines that the applicant presented sufficient evidence showing that not waiving the 30-day notification would create a threat to resident welfare or health and safety. The subsection also states that if the applicant has filed a timely and sufficient application for a CHOW license and meets all requirements, DADS issues a CHOW license effective on the date requested by the applicant.

Proposed new §19.210(e) clarifies that a CHOW license is a 90-day temporary license, and provides that, for a CHOW license, DADS may allow a desk review in lieu of an on-site inspection or survey under certain circumstances.

Proposed new §19.210(f) describes the process for acquiring a CHOW license on an expedited basis.

Proposed new §19.210(g) sets forth the procedure for a license holder that changes its name.

#### FISCAL NOTE

Gordon Taylor, DADS Chief Financial Officer, has determined that, for the first five years the proposed new section and repeal are in effect, enforcing or administering the new section and re-

peal 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 and repeal will not have an adverse economic effect on small businesses 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 section and repeal are in effect, the public benefit expected as a result of enforcing the new section and repeal is that the rules will reflect current law. The reformatting of §19.210 will also make the rules easier for the public to understand.

Ms. Durden anticipates that there will not be an economic cost to persons who are required to comply with the new section and repeal. The 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 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-030, 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 030" in the subject line.

#### 40 TAC §19.210

*(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 Health and Safety Code, Chapter 242, which authorizes DADS to license and regulate nursing facilities.

The repeal implements Texas Government Code, §531.0055; Texas Human Resources Code, §161.021; and Texas Health and Safety Code §242.0336.

*§19.210. Temporary Change of Ownership.*

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 July 23, 2008.

TRD-200803780

Marianne Reat

Interim General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: September 7, 2008

For further information, please call: (512) 438-3734



**40 TAC §19.210**

**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 242, which authorizes DADS to license and regulate nursing facilities.

The new section implements Texas Government Code, §531.0055; Texas Human Resources Code, §161.021; and Texas Health and Safety Code Chapter 242.

*§19.210. Change of Ownership.*

(a) A license holder may not transfer the license as part of a change of ownership. If there is a change of ownership, the license holder's license becomes invalid on the date of the change. The new owner must obtain a change of ownership license in accordance with subsection (b) of this section. The license holder and new license applicant must notify the Department of Aging and Disability Services before a change of ownership occurs.

(1) Sole proprietor. A change of ownership occurs if:

(A) the sole proprietor who is licensed to operate the facility sells or otherwise transfers its business of operating the facility to an entity not licensed to operate the facility; or

(B) upon the death of the sole proprietor, the facility continues to operate.

(2) General Partnership (as defined in the Texas Business Organization Code, §1.002). A change of ownership occurs if:

(A) a partner of a general partnership that is licensed to operate the facility is added or substituted;

(B) the partnership that is licensed to operate the facility is sold or otherwise transferred to an entity that is not licensed to operate the facility;

(C) the entity that is licensed to operate the facility sells or otherwise transfers its business of operating the facility to an entity that is not licensed to operate the facility;

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

(E) the entity that is licensed to operate the facility is terminated and fails or is ineligible to be reinstated, and the facility continues to operate.

(3) Limited Partnership (as defined in the Texas Business Organization Code, §1.002). A change of ownership occurs if:

(A) a general partner of a limited partnership that is licensed to operate the facility is added or substituted;

(B) ownership of the limited partnership that is licensed to operate the facility changes by 50% or more and one or more controlling person is added;

(C) the partnership that is licensed to operate the facility is sold or otherwise transferred to an entity that is not licensed to operate the facility;

(D) the entity that is licensed to operate the facility sells or otherwise transfers its business of operating the facility to an entity that is not licensed to operate the facility;

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

(F) the entity that is licensed to operate the facility is terminated and fails or is ineligible to be reinstated, and the facility continues to operate.

(4) Nonprofit organization. A change of ownership occurs if:

(A) the nonprofit organization that is licensed to operate the facility is sold or otherwise transferred to an entity that is not licensed to operate the facility;

(B) the entity that is licensed to operate the facility sells or otherwise transfers its business of operating the facility to an entity that is not licensed to operate the facility;

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

(D) the entity that is licensed to operate the facility is terminated and fails or is ineligible to be reinstated, and the facility continues to operate.

(5) For-profit corporation or limited liability company. A change of ownership occurs if:

(A) ownership of the business entity that is licensed to operate the facility changes by 50% or more and one or more controlling person is added;

(B) the business entity that is licensed to operate the facility is sold or otherwise transferred to an entity that is not licensed to operate the facility;

(C) the entity that is licensed to operate the facility sells or otherwise transfers its business of operating the facility to an entity that is not licensed to operate the facility;

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

(E) the entity that is licensed to operate the facility is terminated and fails or is ineligible to be reinstated, and the facility continues to operate.

(6) City, county, state or federal government authority, hospital district, or hospital authority. A change of ownership occurs if:

(A) the governmental entity that is licensed to operate the facility sells or otherwise transfers its business of operating the facility to an entity that is not licensed to operate the facility; or

(B) the entity that is licensed to operate the facility is terminated and the facility continues to operate.

(7) Trust, living trust, estate or any other entity type not included in paragraphs (1) - (6) of this subsection. A change of ownership occurs if:

(A) the entity that is licensed to operate the facility is sold or otherwise transferred to an entity that is not licensed to operate the facility;

(B) the entity that is licensed to operate the facility sells or otherwise transfers its business of operating the facility to an entity that is not licensed to operate the facility;

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

(D) the entity that is licensed to operate the facility is terminated and the facility continues to operate.

(8) For license holders that have multiple-level ownership structures, a change of ownership also occurs if any action described in paragraphs (1) - (7) of this subsection occurs at any level of the license holder's entire ownership structure.

(9) For paragraphs (3)(B) and (5)(A) of this subsection, the substitution of the executor of a decedent's estate for a decedent is not the addition of a controlling person.

(10) A conversion as described in Subchapter C of Chapter 10 of the Texas Business Organization Code is not a change of ownership if no controlling person is added.

(b) The prospective new owner must submit to DADS:

(1) a complete application for a change of ownership license under §19.201 of this subchapter (relating to Criteria for Licensing) or an incomplete application with a letter explaining the circumstances that prevented the inclusion of the missing information;

(2) the application fee, in accordance with §19.216 of this subchapter (relating to License Fees); and

(3) signed, written notice from the facility's existing license holder of his intent to transfer operation of the facility to the applicant beginning on a date specified by the applicant.

(c) To avoid a facility operating while unlicensed, an applicant must submit all items in subsection (b) of this section at least 30 days before the anticipated date of the sale or other transfer to the new owner. An application is considered timely filed if the application is postmarked by the filing deadline and received in DADS' Licensing and Credentialing Section, Regulatory Services Division, within 15 days after the date of the postmark.

(d) The 30-day notification from the applicant or the 30-day notification from the existing license holder or both may be waived if DADS determines that the applicant presented evidence showing that

circumstances prevented the submission of the 30-day notice and if DADS determines that not waiving the 30-day notification would create a threat to resident welfare or health and safety. If the applicant has filed a timely and sufficient application for a change of ownership license and meets all requirements for a license, DADS issues a change of ownership license effective on the date requested by the applicant.

(e) A change of ownership license is a 90-day temporary license issued to an applicant who proposes to become the new operator of a nursing facility that exists on the date the application is filed. Upon receipt of a complete application, fee, and signed, written notice from the facility's existing license holder of the intent to transfer the operation of the facility to the applicant beginning on a date specified by the applicant, DADS issues a change of ownership license to the prospective new owner if DADS finds that the prospective new owner and any other persons listed in §19.201(f) of this subchapter meet the requirements in §19.201(e)(2) and §19.201(g) of this subchapter.

(1) All applications must be made on forms prescribed by and available from DADS. Each application must be completed in accordance with DADS' instructions, signed, and notarized, and must contain all forms required by DADS.

(2) DADS approves or denies an application for a change of ownership license not later than the 31st day after the date of receipt of the complete application, fee, and signed, written notice from the facility's existing license holder of his intent to transfer the operation of the facility to the applicant beginning on a date specified by the applicant. The effective date of the license is the later of the date requested in the application or the 31st day after the date DADS receives the application, fee, and signed, written notice from the existing license holder, unless waived in accordance with subsection (d) of this section. The effective date of the change of ownership license cannot precede the date the application is received in DADS' Licensing and Credentialing Section, Regulatory Services Division.

(3) If the applicant meets the requirements of §19.201 of this subchapter and passes an initial inspection, desk review, or a subsequent inspection before the change of ownership license expires, a regular two-year license is issued. The effective date of the regular two-year license is the same date as the effective date of the change of ownership and cannot precede the date the application is received by DADS' Licensing and Credentialing Section, Regulatory Services Division.

(4) When an applicant has not previously held a license in Texas, a probationary license is issued following the change of ownership license. The effective date of the probationary one-year license is the same date as the change of ownership license and cannot precede the date the application is received in DADS' Licensing and Credentialing Section, Regulatory Services Division.

(5) A change of ownership license expires on the 90th day after its effective date.

(6) DADS conducts an on-site inspection to verify compliance with the requirements after issuing a change of ownership license.

(7) DADS may allow a desk review in lieu of an on-site inspection or survey if:

(A) the facility specifically requests a desk review and submits evidence during the application process that no new controlling person is added;

(B) DADS determines the change does not involve a new controlling person; and

(C) the facility meets the standards for operation based on the most recent on-site inspection.

(f) A nursing facility license holder may be eligible to acquire, on an expedited basis, a license to operate another existing nursing facility. A license holder that appears on the expedited change of ownership list may be granted expedited approval in obtaining a change of ownership license to operate another existing nursing facility in Texas.

(1) DADS maintains and keeps current a list of nursing facility license holders that operate an institution in Texas and that have met the criteria to qualify for an expedited change of ownership according to the information available to DADS.

(2) In order to establish and maintain the expedited change of ownership list, DADS uses the criteria found in §19.2322(e) of this chapter (relating to Medicaid Bed Allocation Requirements). A nursing facility license holder meeting these criteria appears on the list and is eligible to be issued, on an expedited basis, a change of ownership license to operate another existing institution in Texas.

(3) A nursing facility license holder appearing on the list must submit an affidavit that demonstrates the license holder continues to meet the criteria established for being listed on the expedited change of ownership list, and continues to meet the requirements in §19.201(e)(2) and (g) of this subchapter.

(4) DADS processes a change of ownership license application on an expedited basis for a nursing facility license holder on the list if DADS finds that the license holder and any other persons listed in §19.201(f) of this subchapter meet the requirements in §19.201(e)(2) and (g) of this subchapter.

(5) If the nursing facility license holder requesting a change of ownership license on an expedited basis complies with subsections (b) - (e) of this section, DADS approves or denies the application for a change of ownership license not later than the 15th day after the date of receipt of the complete application, fee, and signed, written notice from the facility's existing license holder of the intent to transfer the operation of the facility to the applicant beginning on a date requested in the application. The effective date of the license is the later of the date requested in the application or the 31st day after the date DADS receives the application fee, and signed, written notice from the existing license holder, unless waived in accordance with subsection (d) of this section. The effective date of the change of ownership license cannot precede the date the application is received in DADS' Licensing and Credentialing Section, Regulatory Services Division.

(6) An applicant for a change of ownership license on an expedited basis must meet all applicable requirements that an applicant for renewal of a license must meet. Any requirement relating to inspections or to an accreditation review applies only to institutions operated by the license holder at the time the application is made for the change of ownership license.

(g) If a license holder changes its name, but does not undergo a change of ownership, the license holder must notify DADS and submit a copy of a certificate of amendment from the Secretary of State's office. On receipt of the certificate of amendment, the current license will be re-issued in the license holder's new name.

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.

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Marianne Reat  
Interim General Counsel  
Department of Aging and Disability Services  
Earliest possible date of adoption: September 7, 2008  
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## CHAPTER 97. LICENSING STANDARDS FOR HOME AND COMMUNITY SUPPORT SERVICES AGENCIES

The Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), amendments to §§97.245 - 97.247, 97.249, 97.250, 97.282, 97.283, 97.501, 97.507, 97.525, and 97.527, concerning staffing policies, personnel records, verification of employability of unlicensed persons, reportable conduct, investigations, client conduct and responsibility and client rights, advance directives, survey frequency, agency cooperation with a survey, survey procedures, and post-survey procedures; new §97.502 and §97.602, concerning state agency investigations of complaints and self-reported incidents and administrative penalties; and the repeal of §97.602, concerning administrative penalties, in Chapter 97, Licensing Standards for Home and Community Support Services Agencies (HCSSAs).

### BACKGROUND AND PURPOSE

The purpose of the amendments, new rules and rule repeal is to implement portions of Senate Bill (SB) 1318, 80th Legislature, Regular Session, 2007. SB 1318, in part, amended the Texas Health and Safety Code, §142.009, to add that complaints investigated by DADS regarding the provision of services include allegations of abuse, neglect, or exploitation of a child. The proposed amendments and new section on the topic of abuse, neglect, and exploitation were written to address the prevention, reporting and investigation of abuse, neglect and exploitation of a HCSSA client by a HCSSA employee, volunteer, or contractor.

The amendments and new section on this topic were also written to address provisions in other Texas laws that apply to state agencies and HCSSAs regarding reports and investigations of abuse, neglect and exploitation. These state laws include the Texas Human Resources Code, Chapter 48, concerning investigations and protective services for elderly and disabled persons; the Texas Family Code, Chapter 261, Subchapter E, concerning investigations of abuse, neglect or exploitation of a child in certain facilities; the Texas Health and Safety Code, Chapter 250, concerning the nurse aide registry and criminal history checks of employees and applicants for employment in certain facilities serving the elderly or persons with disabilities; and the Texas Health and Safety Code, Chapter 253, concerning the employee misconduct registry.

The amendments and new section on abuse, neglect and exploitation were also written in response to HHSC's rules in the Texas Administrative Code, Title 1, Chapter 351, concerning coordinated planning and delivery of health and human services, specifically, §351.503, concerning minimum standards for investigations.

SB 1318, in part, also amended the Texas Health and Safety Code, §142.017, to add criteria for which DADS may assess an administrative penalty without providing a reasonable period of time to correct the violation before assessing a penalty. One of

the criteria provides a HCSSA up to 30 days to submit an acceptable plan of correction after DADS notifies the HCSSA that the previously submitted plan of correction is not acceptable. The proposed amendments, new rules, and repeal on the topic of administrative penalties clarify and update language on an administrative penalty for a violation of law relating to advance directives, add criteria for which DADS may assess a penalty before providing an opportunity to correct the violation, add and amend violations that meet the added criteria, and reorganize into one rule section violations that meet criteria related to agency cooperation with a survey.

The purpose of one amendment in §97.527 is to implement a portion of SB 344, 80th Legislature, Regular Session, 2007, which amended the Texas Health and Safety Code, §142.009 to change a reference to the "preliminary findings" of the survey to "official findings." The proposed amendment removes the superfluous explanation of "preliminary findings."

#### SECTION-BY-SECTION SUMMARY

The amendment to §97.245 updates the cross-reference to the amended title of §97.247 and makes minor technical corrections.

The amendment to §97.246 removes the requirements for a HCSSA to maintain a criminal history report and an employee misconduct registry check and the nurse aide registry check in the personnel record for an unlicensed employee or volunteer with face-to-face contact with a client.

The amendment to §97.247 renames the rule and specifies the requirements for conducting a criminal history check and searches of the nurse aide and employee misconduct registries to verify the employability of unlicensed applicants for employment and employees and to verify the use of volunteers and contractors whose duties include face-to-face contact with clients. The amended rule also requires that unlicensed staff receive written information about the employee misconduct registry, including a statement that if listed, a person cannot be employed or used by a HCSSA. The amended rule also specifies the different effective dates of rules that require an agency to search the nurse aide and employee misconduct registries for unlicensed applicants for employment and employees and to conduct a criminal history check and searches of the nurse aide and employee misconduct registries for unlicensed volunteers and contractors. It also specifies that an agency must provide documentation of compliance with the rules in this section upon request by DADS.

The amendment to §97.249 renames the rule to clarify that an agency must report allegations of abuse, neglect and exploitation as defined in the statutory references specified in the rule and deletes "reportable conduct," because this term applies only to unlicensed staff for the purpose of referrals by a state agency to the employee misconduct registry.

The amendment to §97.250 renames the rule section that pertains to agency (HCSSA) investigations of complaints and reports alleging abuse, neglect and exploitation of a client to avoid confusion with new §97.502 regarding investigations by a state agency. The amendment reorganizes the rule language and clarifies that rules related to a HCSSA completing a complaint investigation also apply to completing investigations of allegations of abuse, neglect and exploitation.

The amendment to §97.282 requires a HCSSA to protect and promote a client's rights, which include the right to be free from abuse, neglect and exploitation by an agency employee, volun-

teer, or contractor. The amendment also specifies that provisions in the Texas Human Resources Code, Chapter 102, related to rights of the elderly, apply to a person who is 60 years of age or older.

The amendment to §97.283 changes the term "individual", which is used in the Texas Health and Safety Code, Chapter 166, Advance Directives, to "client", the term used in the HCSSA statute and chapter to refer to an individual receiving services from a HCSSA. The amendment removes the phrase "relating to requirements for the provision of a written statement relating to advance directives" and formats the rule similar to §166.004. The amendment also specifies that DADS will assess a \$500 administrative penalty as provided in §142.0145 of the statute without providing an opportunity to correct a violation of that section.

The amendment to §97.501 adds that surveys conducted by DADS include surveys to investigate a complaint alleging abuse, neglect or exploitation of a client and that DADS investigates self-reported incidents that include allegations of abuse, neglect or exploitation. The amendment also specifies that these investigations are conducted as described in new §97.502, concerning state agency investigations of complaints and self-reported incidents. The amendment also reorganizes rule language regarding complaints alleging violations of the state statute, Chapter 97, or federal requirements, and corrects a reference to a subchapter.

The amendment to §97.507 adds rules regarding cooperation with a survey, which were deleted from §97.525. The amendment also adds new rules DADS can cite as violations that meet criteria in new §97.602, relating to administrative penalties with no opportunity to correct, for making a false statement during an investigation by DADS, refusing to allow DADS to inspect records required to be maintained, and willfully interfering with a representative of DADS during a survey. The amendment also specifies that enforcement actions by DADS for violations of provisions in that section include an administrative penalty without an opportunity to correct.

The amendment to §97.525 deletes language related to cooperation with a survey, which was added in the amendment to §97.507. The amendment also removes a reference to "required agency personnel" for an entrance conference held at the beginning of a survey because the rules in §97.523 specify the personnel requirements for an entrance conference. The amendment also makes technical corrections to the titles of Texas state statutes and reformats the rule.

The amendment to §97.527 removes the superfluous explanation of "preliminary findings of the survey." The amendment also deletes unnecessary language describing enforcement actions and requests for hearings because these are specified in §97.601, relating to enforcement actions, and in new §97.602, relating to administrative penalties. The amendment also increases the time frame for a HCSSA to submit an acceptable plan of correction after written notice from DADS of an unacceptable plan of correction.

Proposed new §97.502 defines what is meant by a "facility regulated by DADS" and specifies the statutory responsibilities of the Texas Department of Family and Protective Services and DADS under the Texas Human Resources Code, Chapter 48, and the Texas Family Code, Chapter 261, to conduct investigations of reports alleging abuse, neglect or exploitation of a child and an adult served by a HCSSA when the alleged perpetrator is a HCSSA employee, volunteer, or contractor. The proposal also

states what investigations conducted by DADS may include, to meet requirements in Chapter 48 of the Texas Human Resources Code and in Chapter 261 of the Texas Family Code for a state agency to adopt such rules.

Proposed new §97.602 updates the rule related to administrative penalties. The new rule on administrative penalties describes: (1) when DADS provides a HCSSA with an opportunity to correct a violation; (2) when DADS may assess a penalty for a minor violation; (3) the types of violations for which an agency may not have an opportunity to correct; (4) what constitutes a Severity Level A violation; and (5) what constitutes a Severity Level B violation. The new rule also sets the amount of an administrative penalty at \$500 for violations that may not meet the definition of what constitutes a Severity Level B violation but are the types of violations listed in the rule for which an agency may not have an opportunity to correct. The new rule also updates and corrects rules cites and subject matter listed on the Level A and Level B penalty schedules.

The repeal of §97.602 deletes the existing rule, which is replaced by new §97.602.

#### FISCAL NOTE

Gordon Taylor, DADS Chief Financial Officer, has determined that, for the first five years the amendments, repeal and proposed new sections are in effect, there are fiscal implications for state government as a result of enforcing or administering the section. 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 section, and repeal are in effect is an estimated increase in revenue of \$75,750 in fiscal year (FY) 2009; \$79,500 in FY 2010; \$83,250 in FY 2011; \$87,000 in FY 2012; and \$90,750 in FY 2013.

#### SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed amendments, new section, and repeal may have an adverse economic effect on small and micro-businesses because they allow DADS to assess an administrative penalty against a HCSSA that violates a licensure rule, without giving the HCSSA an opportunity to correct the violation, if the violation meets one of the criteria listed in §97.602(e).

DADS estimates that the number of small and micro-businesses subject to the proposed amendments, new section, and repeal is less than 3,472. This estimate is based on DADS records, which indicate that of the 3,742 licensed HCSSAs, approximately 3,472 of them are formed for the purpose of making a profit, one of the requirements for being a small or micro-business. DADS does not have information regarding the number of employees or gross receipts to determine what percentage of these HCSSAs are operated by an entity that would meet the definition of a "small business" or "micro-business."

The potential economic impact for a small or micro-business is an administrative penalty of \$500 - \$1,000 for each violation, depending on the severity of the violation, but a penalty is incurred only if the small or micro-business violates a licensure rule and the violation meets one of the criteria listed in §97.602(e). Therefore, DADS projects that there will be minimal economic impact to small and micro-businesses subject to these amendments and new rule.

Several regulatory options were considered in determining how to accomplish the objectives of the proposed rules, while minimizing the adverse economic effect on small and micro-businesses. The Texas Health and Safety Code, Chapter 142, §142.017(j) allows DADS to assess an administrative penalty without giving a HCSSA an opportunity to correct the violation if the violation meets one of the criteria set forth in statute, as proposed in §97.602(e)(1) - (5). DADS is proposing that the penalty for a violation that meets any one of the criteria in §97.602(e)(1) - (3) is \$500 - \$1000, depending on the severity of the violation, as described in §97.602(h)(3)(C), and the penalty for a violation that meets the criteria in §97.602(e)(4) or (5) is \$500. Therefore, DADS considered imposing a penalty lower than \$500 for a violation that meets any one of the criteria in §97.602(e)(4) or (5). DADS determined, however, that imposition of a penalty lower than \$500 would not be effective in encouraging compliance with licensure rules. DADS also considered imposing a penalty range lower than \$500 - \$1000 for a violation that meets any one of the criteria in §97.602(e)(1) - (3). DADS determined, however, that decreasing the penalty range, for violations that result in death or harm, constitute a serious threat, or decreases a HCSSA's capacity to provide safe, effective care is not consistent with DADS' responsibility to enforce standards to promote client health and safety. Finally, DADS considered the use of graduated penalties based on the severity of the violation and the size of a HCSSA, but determined that implementation of such a system would have additional administrative costs associated with it that outweigh the benefits of such a system, especially since a small business can avoid the penalty all together by complying with the licensing rules.

#### PUBLIC BENEFIT AND COSTS

Veronda Durden, DADS Assistant Commissioner for Regulatory Services, has determined that, for each year of the first five years the amendments, new sections, and repeal are in effect, the public benefit expected as a result of enforcing the amendments, new sections, and repeal is that HCSSAs will have clearer and easier-to-follow rules concerning abuse, neglect, and exploitation and administrative penalties. The amendments are proposed to address the health and safety needs, including protection from abuse, neglect, and exploitation, of HCSSA clients who reside outside of a facility regulated by DADS or are admitted to or residing in a hospice inpatient unit or residential unit. The public will also benefit from updated and clarified rules that are more accurate and easier for the public and HCSSAs to use and understand.

Ms. Durden anticipates that there will be an economic cost to persons who are required to comply with the amendments, new sections, and repeal. The probable economic cost to persons required to comply with the amendments, new sections and repeal for each year of the first five years the amendments, new sections and repeal are in effect will be a potential final payment of an administrative penalty of \$500 to \$1000 for each violation at this penalty severity level. For such violations, an agency will not be given an opportunity to come into compliance to avoid assessment of the penalty. 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 Sylvia Trevino at (361) 878-3419 in DADS' Regulatory Services Division. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-002, 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*. 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 002" in the subject line.

## SUBCHAPTER C. MINIMUM STANDARDS FOR ALL HOME AND COMMUNITY SUPPORT SERVICES AGENCIES

### DIVISION 3. AGENCY ADMINISTRATION

#### 40 TAC §§97.245 - 97.247, 97.249, 97.250

#### 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 Health and Safety Code, Chapter 142, which provides the Aging and Disability Services Council with the authority to make recommendations regarding rules governing licensing and regulation of home and community support services agencies.

The amendments implement Texas Government Code, §531.0055; Texas Human Resources Code, §161.021; and Texas Health and Safety Code, Chapter 142.

#### §97.245. *Staffing Policies.*

(a) An agency must adopt and enforce written staffing policies that govern all personnel used by the agency, including employees, volunteers, and contractors.

(b) An agency's written staffing policies must:

(1) include requirements for orientation to the policies, procedures, and objectives of the agency;

(2) include requirements for participation by all personnel in job-specific training. Agency training program policies must:

(A) ensure personnel are properly oriented to tasks performed;

(B) ensure demonstration of competency for tasks when competency cannot be determined through education, license, certification, or experience;

(C) ensure a continuing systematic program for the training of all personnel; and

(D) ensure personnel are informed of changes in techniques, philosophies, goals, client's rights, and products relating to client's care;

(3) address participation by all personnel in appropriate employee development programs;

(4) include a written job description (statement of those functions and responsibilities which constitute job requirements) and job qualifications (specific education and training necessary to perform the job) for each position within the agency;

(5) include procedures for processing criminal history checks and searches of the nurse aide registry and the employee misconduct registry for unlicensed personnel in accordance with §97.247 of this subchapter [title] (relating to [Verification of] Employability and Use of Unlicensed Persons);

(6) ensure annual evaluation of employee and volunteer performance;

(7) address employee and volunteer disciplinary action and procedures;

(8) if volunteers are used by the agency, address the use of volunteers. The policy must be in compliance with §97.248 of this subchapter [title] (relating to Volunteers);

(9) address requirements for providing and supervising services to pediatric clients. Services provided to pediatric clients must be provided by staff who have been instructed and have demonstrated competency [competence] in the care of pediatric clients; and

(10) include a requirement that all personnel who are direct care staff and who have direct contact with clients (employed by or under contract with the agency) sign a statement that they have read, understand, and will comply with all applicable agency policies.

#### §97.246. *Personnel Records.*

(a) A personnel record must be maintained on each individual who is employed by or volunteers for the agency. All information must be kept current. A personnel record must include the following:

(1) job description and qualifications or a statement signed by the employee or volunteer that he has read the job description and qualifications for the position accepted;

(2) application for employment or volunteer agreement;

(3) verification of license, permits, references, job experience, and educational requirements as appropriate; and

(4) performance evaluations and disciplinary actions. [; and]

{(5) for an unlicensed person having face-to-face contact with clients who is employed by or volunteers for the agency:}

{(A) a criminal history report;}

{(B) an employee misconduct registry check; and}

{(C) a nurse aide registry check.}

(b) Original personnel files may be kept in any location as determined by the agency. Original personnel files must be accessible and readily retrievable for inspection by DADS at the site of the survey.

#### §97.247. [Verification of] Employability and Use of Unlicensed Persons.

(a) An agency must do the following for unlicensed applicants for employment and employees.

(1) Conduct [An agency must conduct] the criminal history check authorized under the Texas Health and Safety Code, Chapter 250 (relating to Nurse Aide Registry and Criminal History Checks of Employees and Applicants for Employment in Certain Facilities Serving the Elderly or Persons with Disabilities) on an unlicensed applicant for employment at the agency whose duties would or do involve face-to-face contact with a client. [An agency must also conduct the verification of employability required under Health and Safety Code §253.008-]

(2) Conduct the authorized criminal history check on an unlicensed employee when job duties change so that they would or do include face-to-face contact with a client.

(3) As required by Texas Health and Safety Code §250.006, ensure the agency does not employ an unlicensed person whose criminal history record information includes a conviction that bars employment.

(4) Before an agency hires or rehires an unlicensed employee whose duties would or do involve face-to-face contact with a client on or after February 2, 2002, the agency must search the nurse aide registry (NAR) and the employee misconduct registry (EMR) by calling DADS' toll-free number, 1-800-452-3934, or by using DADS' Employability Status Search website at <http://www.dads.state.tx.us/providers/employability/esearch.cfm>, to verify that the applicant is not listed with a finding concerning abuse, neglect, or exploitation or mistreatment of a client of an agency or a facility, or misappropriation of a client's property as required by Texas Health and Safety Code §253.008.

(5) Provide written information about the EMR to all unlicensed employees, including a statement that a person listed in the EMR is not employable.

(6) As required by Texas Health and Safety Code §250.003, when the agency becomes aware of a finding or conviction, immediately discharge any employee:

(A) who is designated in the NAR or the EMR with a finding concerning abuse, neglect, or exploitation or mistreatment of a client of an agency or a facility, or misappropriation of a client's property; or

(B) whose criminal history check reveals conviction of a crime that bars employment or that the agency determines is a contraindication to employment.

(b) An agency must ensure the following for unlicensed volunteers with face-to-face client contact starting on or after June 1, 2006.

(1) Conduct a criminal history check on unlicensed volunteers whose duties would or do involve face-to-face contact with a client.

(2) Ensure that the criminal history check specified in paragraph (1) of this subsection is conducted prior to the unlicensed volunteer's first face-to-face contact with a client of the agency.

(3) Ensure the agency does not use an unlicensed volunteer whose criminal history information includes a conviction that would bar employment in a facility under Texas Health and Safety Code §250.006.

(4) Before using an unlicensed volunteer whose duties would or do involve face-to-face contact with a client, search the NAR and the EMR by calling DADS' toll-free number, 1-800-452-3934, or by using DADS' Employability Status Search website at

<http://www.dads.state.tx.us/providers/employability/esearch.cfm>, to verify that the unlicensed volunteer is not listed with a finding concerning abuse, neglect, or exploitation or mistreatment of a client of an agency or a facility, or misappropriation of a client's property.

(5) Provide written information about the EMR to all unlicensed volunteers, including a statement that a person listed in the EMR cannot be used by the agency.

(6) When the agency becomes aware of a finding or conviction, immediately stop using an unlicensed volunteer:

(A) who is designated in the NAR or the EMR with a finding concerning abuse, neglect, or exploitation or mistreatment of a client of an agency or a facility, or misappropriation of a client's property; or

(B) whose criminal history check reveals conviction of a crime listed in Texas Health and Safety Code §250.006.

(c) An agency must ensure the following for unlicensed contractors with face-to-face client contact starting on or after the effective date of this rule.

(1) That a criminal history check is conducted on an unlicensed contractor whose duties would or do involve face-to-face contact with a client of the agency.

(2) That the criminal history check specified in paragraph (1) of this subsection is conducted prior to the unlicensed contractor's first face-to-face contact with a client of the agency.

(3) Ensure the agency does not use an unlicensed contractor whose criminal history information includes a conviction that would bar employment in a facility under Texas Health and Safety Code §250.006.

(4) Before using an unlicensed contractor whose duties would or do involve face-to-face contact with a client, that a search of the NAR and the EMR is conducted by calling DADS' toll-free number, 1-800-452-3934, or by using DADS' Employability Status Search website at <http://www.dads.state.tx.us/providers/employability/esearch.cfm>, to verify that the unlicensed contractor is not listed with a finding concerning abuse, neglect, or exploitation or mistreatment of a client of an agency or a facility, or misappropriation of a client's property.

(5) That written information about the EMR is provided to all unlicensed contractors, including a statement that a person listed in the EMR cannot be used by the agency.

(6) When the agency becomes aware of a finding or conviction, immediately stop using an unlicensed contractor:

(A) who is designated in the NAR or the EMR with a finding concerning abuse, neglect, or exploitation or mistreatment of a client of an agency or a facility, or misappropriation of a client's property; or

(B) whose criminal history check reveals conviction of a crime listed in Texas Health and Safety Code §250.006.

(d) Upon request by a DADS surveyor, the agency must provide documentation to demonstrate compliance with subsections (a)-(c) of this section.

{(b) To verify that an applicant is not listed with a finding concerning abuse, neglect, or mistreatment of a consumer of an agency or a facility licensed under the Health and Safety Code, Chapter 142, or misappropriation of a consumer's property, an agency must search the nurse aide registry and the employee misconduct registry by calling DADS' toll-free number, 1-800-452-3934-]

~~[(e) Criminal history checks and registry searches of employees or applicants for employment must be kept with the agency's personnel records.]~~

§97.249. Self-Reported Incidents of Abuse, Neglect, and Exploitation [Reportable Conduct].

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

(1) Abuse, neglect, and exploitation of a client 18 years of age and older~~], and neglect]~~ have the meanings assigned by the Texas Human Resources Code, §48.002.

(2) Abuse, neglect, and exploitation of a child have the meanings assigned by the Texas Family Code, §261.401.

~~[(2) Cause to believe means that an individual knows or suspects.]~~

(3) Employee means an individual directly employed by an agency, a contractor, or a volunteer.

(4) Cause to believe means that an agency knows, suspects, or receives an allegation regarding abuse, neglect, or exploitation.

~~[(4) Reportable conduct has the meanings assigned by Human Resources Code, §48.401.]~~

(b) An agency must adopt and enforce a written policy relating to the agency's procedures for reporting alleged acts of abuse, neglect, and exploitation of a client ~~[clients and reportable conduct]~~ by an employee of the agency.

(c) ~~If an [An] agency [that] has cause to believe that a client served by the agency has been abused, neglected, or exploited [; or neglected]~~ by an agency employee, the agency must report the information immediately to:

(1) the Department of Family and Protective Services at 1-800-252-5400 ~~[Department of Aging and Disability Services at 1-800-458-9858]; and~~

(2) DADS at 1-800-458-9858 ~~[Department of Family and Protective Services at 1-800-252-5400, or other appropriate state agency as required by Human Resources Code, §48.051].~~

§97.250. Agency Investigations.

(a) Written policy.

(1) An agency must adopt and enforce a written policy relating to the agency's procedures for investigating complaints and reports of abuse, neglect, and exploitation.

(2) The policy must meet the requirements of this section.

(b) Reports of abuse, neglect, and exploitation (ANE).

(1) Immediately upon witnessing the act or upon receipt of the allegation, an [An] agency must initiate an investigation of known and alleged acts of ANE by agency employees, including volunteers and contractors. [; immediately upon witnessing the act or upon receipt of the allegation.]

~~[(2) An agency must send a written report of the investigation to DADS state office no later than the tenth day after reporting the act to DADS and the Department of Family and Protective Services.]~~

(2) ~~[(3)]~~ An agency must complete DADS' [the written report using the] Provider Investigation Report form and include the following information:

(A) incident date;

(B) the alleged victim;

(C) the alleged perpetrator;

(D) any witnesses;

(E) the allegation;

(F) any injury or adverse affect;

(G) any assessments made;

(H) any treatment required;

(I) the investigation summary; and

(J) any action taken.

(3) An agency must send the completed DADS' Provider Investigation Report form to DADS' Complaint Intake Unit no later than the 10th day after reporting the act to the Department of Family and Protective Services and DADS.

(c) Agency complaint [Other] investigations.

(1) An agency must investigate complaints made by a client, a client's family or guardian, or a client's health care provider, in accordance with this subsection, regarding:

(A) treatment or care that was furnished by the agency;

(B) treatment or care that the agency failed to furnish;

or

(C) a lack of respect for the client's property by anyone furnishing services on behalf of the agency.

(2) An agency must:

(A) document ~~[the]~~ receipt of the complaint and initiate a complaint investigation within 10 days after the agency's receipt of the complaint; and

(B) document all components of the investigation. ~~]; and]~~

(d) ~~[(C)]~~ Completing agency investigations. An agency must complete the investigation and documentation within 30 days after the agency receives a [the] complaint or report of abuse, neglect, and exploitation, unless the agency has and documents reasonable cause for a delay.

(e) ~~[(d)]~~ Retaliation.

(1) An agency may not retaliate against a person for filing a complaint, presenting a grievance, or providing, in good faith, information relating to home health, hospice, or personal assistance services provided by the agency.

(2) An agency is not prohibited from terminating an employee for a reason other than retaliation.

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.

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Marianne Reat

Interim General Counsel

Department of Aging and Disability Services

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For further information, please call: (512) 438-3734

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## DIVISION 4. PROVISION AND COORDINATION OF TREATMENT SERVICES

### 40 TAC §97.282, §97.283

#### 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 Health and Safety Code, Chapter 142, which provides the Aging and Disability Services Council with the authority to make recommendations regarding rules governing licensing and regulation of home and community support services agencies.

The amendments implement Texas Government Code, §531.0055; Texas Human Resources Code, §161.021; and Texas Health and Safety Code, Chapter 142.

#### §97.282. *Client Conduct and Responsibility and Client Rights.*

(a) An agency must adopt and enforce a written policy governing client conduct and responsibility and client rights in accordance with this section. The written policy must include a grievance mechanism under which a client can participate without fear of reprisal.

(b) An agency must protect and promote the client's rights of all clients.

(c) An agency must comply with the provisions of the Texas Human Resources Code, Chapter 102, Rights [concerning the rights] of the Elderly [elderly], which applies to a client 60 years of age or older.

(d) At the time of admission, an agency must provide a client [each person] who receives licensed home health services, licensed and certified home health services, hospice services, or personal assistance services with a written statement that informs the client that a complaint against the agency may be directed to the Department of Aging and Disability Services, DADS' Consumer Rights and Services Division, P.O. Box 149030, Austin, Texas 78714-9030, toll free 1-800-458-9858. The statement also may inform the client that a complaint against the agency may be directed to the administrator of the agency. The statement about complaints directed to the administrator also must include the time frame in which the agency will review and resolve the complaint.

(e) In advance of furnishing care to a [the] client or during the initial evaluation visit before the initiation of treatment, an agency must provide the [each] client or their legal representative with a written notice of all policies governing client conduct and responsibility and client rights.

(f) A client has the following rights:

(1) A client has the right to be informed in advance about the care to be furnished, the plan of care, expected outcomes, barriers to treatment, and any changes in the care to be furnished. The agency must ensure that written informed consent specifying [that specifies] the type of care and services that may be provided by the agency has been obtained for every client, either from the client or their legal representative. The client or the legal representative must sign or mark the consent form.

(2) A client has the right to participate in [the] planning [of] the care or treatment and in planning a change [changes] in the care or treatment.

(A) An agency must advise or consult with the client or legal representative in advance of any change in the care or treatment [plan of care].

(B) A client has the right to refuse care and services.

(C) A client has the right to be informed, before care is initiated, of the extent to which payment may be expected from the client, a third-party payer [payers], and any other source of funding known to the agency.

(3) A client has the right to have assistance in understanding and exercising the client's [his] rights. The agency must maintain documentation showing that it has complied with the requirements of this paragraph and that the client demonstrates understanding of the client's [his] rights.

(4) A client has the right to exercise [his] rights as a client of the agency.

(5) A client has the right to have the client's [his] person and property treated with consideration, respect, and full recognition of the client's [his] individuality and personal needs.

(6) A client has the right to be free from abuse, neglect, and exploitation by an agency employee, volunteer, or contractor.

(7) ~~[(6)]~~ A client has the right to confidential treatment of the client's [his] personal and medical records.

(8) ~~[(7)]~~ A client has the right to voice grievances regarding treatment or care that is or fails to be furnished, or regarding the lack of respect for property by anyone who is furnishing services on behalf of the agency and must not be subjected to discrimination or reprisal for doing so.

(g) In the case of a client adjudged incompetent, the rights of the client are exercised by the person appointed by law to act on the client's behalf.

(h) In the case of a client who has not been adjudged incompetent, any legal representative may exercise the client's rights to the extent permitted by law.

#### §97.283. *Advance Directives.*

(a) An agency must maintain a written policy regarding implementation of advance directives. The policy must be in compliance with the Advance Directives Act, Health and Safety Code, Chapter 166.

~~[(1)]~~ The policy must include a clear and precise statement of any procedure the agency is unwilling or unable to provide or withhold in accordance with an advance directive.

~~[(b)]~~ ~~[(2)]~~ [Except as provided by paragraph (4) of this subsection.] The [the] agency must provide written notice to a client [an individual] of the written policy required by [this] subsection (a) of this section. The notice must be provided at the earlier of:

(1) ~~[(A)]~~ the time the client [individual] is admitted to receive services from the agency; or

(2) ~~[(B)]~~ the time the agency begins providing care to the client [individual].

(c) ~~[(3)]~~ If, at the time notice must [is to] be provided under subsection (b) ~~[paragraph (2)]~~ of this section [subsection], the client [individual] is incompetent or otherwise incapacitated and unable to receive the notice [required by this subsection], the agency must pro-

vide the required written notice, in the following order of preference, to:

- (1) ~~[(A)]~~ the client's ~~[individual's]~~ legal guardian;
- (2) ~~[(B)]~~ a person responsible for the health care decisions of the client ~~[individual]~~;
- (3) ~~[(C)]~~ the client's ~~[individual's]~~ spouse;
- (4) ~~[(D)]~~ the client's ~~[individual's]~~ adult child;
- (5) ~~[(E)]~~ the client's ~~[individual's]~~ parent; or
- (6) ~~[(F)]~~ the person admitting the client ~~[individual]~~.

~~(d) [(4)] If subsection (c) [paragraph (3)] of this section [subsection] applies, except as provided by subsection (e) [paragraph (5)] of this section [subsection], if an agency is unable, after a diligent search, to locate an individual listed by subsection (c) [paragraph (3)] of this section [subsection], the agency is not required to provide the notice.~~

~~(e) [(5)] If a client [an individual] who was incompetent or otherwise incapacitated and unable to receive the notice required by this section [subsection] at the time notice was to be provided under subsection (b) [paragraph (2)] of this section [subsection] later becomes able to receive the notice, the agency must provide the written notice at the time the client [individual] becomes able to receive the notice.~~

~~(f) [(b)] DADS assesses an administrative penalty of \$500 without an opportunity to correct against an agency that violates this section [relating to requirements for the provision of a written statement relating to advance directives. DADS provides notice of administrative penalty and opportunity for a hearing in accordance with §97.602 of this chapter (relating to Administrative Penalties)].~~

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.

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Marianne Reat

Interim General Counsel

Department of Aging and Disability Services

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For further information, please call: (512) 438-3734



## SUBCHAPTER E. LICENSURE SURVEYS DIVISION 1. GENERAL

### 40 TAC §§97.501, 97.502, 97.507

#### STATUTORY AUTHORITY

The amendments 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 Health and Safety Code, Chapter 142, which provides the Aging and Disability Services Council with the authority to make recommendations

regarding rules governing licensing and regulation of home and community support services agencies.

The amendments and new section implement Texas Government Code, §531.0055; Texas Human Resources Code, §161.021; and Texas Health and Safety Code, Chapter 142.

#### *§97.501. Survey Frequency.*

(a) At a minimum, DADS:

(1) conducts an initial survey after an agency has notified DADS of its readiness. See §97.521 of this subchapter [chapter] (relating to Requirements for an Initial Survey);

(2) conducts a survey of the agency within 18 months after conducting an initial survey and conducts subsequent surveys at least every 36 months thereafter; and

(3) conducts a survey to investigate a complaint alleging:

(A) abuse, neglect, or exploitation of a client as described in §97.502 of this subchapter (relating to State Agency Investigations of Complaints and Self-Reported Incidents);

(B) a violation of [regarding the provision of licensed home health services; licensed and certified home health services; hospice services; or personal assistance services that is alleged to have violated] this chapter or the statute in the provision of licensed home health services, licensed and certified home health services, hospice services, or personal assistance services; and

(C) [(4)] a violation of [conducts a survey to investigate a complaint regarding the provision of licensed and certified home health services or hospice services that is alleged to have violated] federal requirements in the provision of licensed and certified home health services or licensed and certified hospice services.

(4) investigates a self-reported incident that includes allegations of abuse, neglect, or exploitation of a client as described in §97.502 of this subchapter.

(b) DADS may conduct a survey for the renewal of a license or the issuance of a branch office or alternate delivery site license.

#### *§97.502. State Agency Investigations of Complaints and Self-Reported Incidents.*

(a) This section applies when an alleged victim of abuse, neglect, or exploitation is an agency client and the alleged perpetrator of the abuse, neglect, or exploitation is an agency employee, volunteer, or contractor.

(b) In this section, facility regulated by DADS means any of the following:

(1) an inpatient unit and residential unit licensed to provide hospice services to clients admitted to or residing in these units;

(2) a nursing facility;

(3) an assisted living facility;

(4) an adult day care facility;

(5) an adult foster care facility; and

(6) a licensed intermediate care facility serving persons with mental retardation and related conditions.

(c) The Department of Family and Protective Services investigates a complaint or self-reported incident alleging abuse, neglect, or exploitation when:

(1) the client involved is elderly or disabled; and

(2) the alleged act occurs outside of a facility regulated by DADS as described in subsection (b) of this section.

(d) DADS investigates a complaint or self-reported incident alleging abuse, neglect, or exploitation of a client if the alleged act occurs in a facility regulated by DADS as described in subsection (b) of this section. DADS' investigation may include:

- (1) a visit to the facility;
- (2) an interview with the client, if appropriate; and
- (3) interviews with persons believed to have knowledge of the circumstances.

(e) DADS investigates a complaint or a self-reported incident alleging abuse, neglect, or exploitation of a child if the alleged act occurs outside of a facility regulated by DADS as described in subsection (b) of this section. DADS' investigation may include:

(1) an interview with the child after making a reasonable effort to inform each parent of the nature of the allegation and of the need to interview the child; and

(2) interviews with persons believed to have knowledge of the circumstances.

(f) DADS may conduct an interview in private or may include any person DADS determines is necessary.

*§97.507. Agency Cooperation with a Survey.*

(a) By applying for or holding a license, an agency consents to entry and survey by a DADS representative to verify compliance with the statute or this chapter.

(b) An agency must provide the surveyor access to all agency records required by DADS to be maintained by or on behalf of the agency.

(c) If a surveyor requests an agency record that is stored at a location other than the survey site, the agency must provide the original record to the surveyor within eight working hours of the request.

(d) An agency must provide the surveyor with copies of agency records upon request.

(e) During a survey, agency staff must not:

(1) make a false statement that a person knows or should know is false of a material fact about a matter under investigation by DADS;

(2) willfully interfere with the work of a DADS representative; or

(3) willfully interfere with a DADS representative in preserving evidence of a violation.

(f) DADS may assess an administrative penalty without an opportunity to correct for a violation of provisions in this section, or may take other enforcement action to deny, revoke, or suspend a license, if an agency does not cooperate with a survey.

~~[(b) If an agency does not cooperate with a survey, DADS may take enforcement action to deny, revoke, or suspend a license.]~~

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.

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Marianne Reat  
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For further information, please call: (512) 438-3734



## DIVISION 2. THE SURVEY PROCESS

### 40 TAC §97.525, §97.527

#### 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 Health and Safety Code, Chapter 142, which provides the Aging and Disability Services Council with the authority to make recommendations regarding rules governing licensing and regulation of home and community support services agencies.

The amendments implement Texas Government Code, §531.0055; Texas Human Resources Code, §161.021; and Texas Health and Safety Code, Chapter 142.

#### §97.525. Survey Procedures.

~~(a) Before beginning a survey, a surveyor holds an entrance conference [with the required agency personnel] to explain the purpose of the survey and the survey process and provides [the personnel] an opportunity to ask questions.~~

~~(b) [(+) During a survey, a [A] surveyor:~~

~~(1) [(A)] conducts at least three home visits to determine an agency's compliance with licensing requirements;~~

~~(2) [(B)] reviews any agency records that the surveyor believes are necessary to determine an agency's compliance with licensing requirements; and~~

~~(3) [(C)] evaluates an agency's compliance with each standard.~~

~~[(2) If a surveyor requests an agency record that is stored at a location other than the survey site, an agency must provide the original record to the surveyor within eight working hours. Failure to comply may result in enforcement action as described in §97.507 of this chapter (relating to Agency Cooperation with a Survey).]~~

~~(c) [(b)] An agency accredited by CHAP or JCAHO must have the documentation of accreditation available at the time of a survey.~~

~~[(e) An agency must provide the surveyor access to all agency records maintained by or on behalf of an agency.]~~

~~(d) DADS keeps agency records confidential, except as allowed by Texas Health and Safety Code, §142.009(d).~~

~~(e) A surveyor may remove original agency records from an agency only with the consent of the agency as provided in Texas Health and Safety Code, §142.009(e).~~

~~[(f) An agency must provide copies of agency records upon request by the surveyor.]~~

§97.527. *Post-Survey Procedures.*

(a) After a survey is completed, the surveyor holds an exit conference with the administrator or alternate administrator to inform the agency of the preliminary findings.

(b) An agency may make an audio recording of the exit conference only if the agency:

- (1) records two tapes simultaneously;
- (2) allows the surveyor to review the tapes; and
- (3) gives the surveyor the tape of the surveyor's choice before leaving the agency.

(c) An agency may make a video recording of the exit conference only if the surveyor agrees to allow it and if the agency:

- (1) records two tapes simultaneously;
- (2) allows the surveyor to review the tapes; and
- (3) gives the surveyor the tape of the surveyor's choice before leaving the agency.

(d) An agency may submit additional written documentation and facts after the exit conference only if the agency describes the additional documentation and facts to the surveyor during the exit conference.

(1) The agency must submit the additional written documentation and facts to the designated survey office within two working days after the end of the exit conference.

(2) If an agency properly submits additional written documentation, the surveyor may add the documentation to the record of the survey.

(e) If DADS identifies additional violations or deficiencies after the exit conference, DADS holds an additional face-to-face exit conference with the agency regarding the additional violations or deficiencies.

(f) DADS provides official written notification of the survey findings to the agency within 10 working days after the exit conference. ~~[For the purpose of this section, the "official written notification of the survey findings" means the "preliminary findings of the survey" referenced in Health and Safety Code, §142.009(g).]~~

(g) The official written notification of the survey findings includes a statement of violations and instructions for submitting an acceptable plan of correction, and provides an opportunity for an informal review of deficiencies (IRoD).

(1) If the official written notification of the survey findings declares that an agency is in violation of the statute or this chapter, an agency must follow DADS' instructions included with the statement of violations for submitting an acceptable plan of correction.

(2) An acceptable plan of correction includes the corrective measures and time frame with which the agency must comply to ensure correction of a violation. If an agency fails to correct each violation by the date on the plan of correction, DADS may take enforcement action against the agency. An agency must correct a violation in accordance with the following time frames:

(A) A Severity Level B violation that results in serious harm to or death of a client or constitutes a serious threat to the health or safety of a client must be addressed upon receipt of the official written notice of the violations and corrected within two days.

(B) A Severity Level B violation that substantially limits the agency's capacity to provide care must be corrected within seven days after receipt of the official written notice of the violations.

(C) A Severity Level A violation that has or had minor or no health or safety significance must be corrected within 20 days after receipt of the official written notice of the violations.

(D) A violation that is not designated as Severity Level A or Severity Level B must be corrected within 60 days after the date the violation was cited.

(3) An agency must submit an acceptable plan of correction for each violation or deficiency no later than 10 days after its receipt of the official written notification of the survey findings. ~~[Failure to meet this requirement may result in an administrative penalty.]~~

(4) If DADS finds the plan of correction unacceptable, DADS gives the agency written notice and provides the agency one additional opportunity to submit an acceptable plan of correction.

~~[(A)]~~ An agency must submit a revised plan of correction no later than 30 ~~[15]~~ days after the agency's receipt of DADS' written notice of an unacceptable plan of correction.

~~[(B)]~~ ~~If an agency fails to submit an acceptable plan of correction, DADS may recommend enforcement action.~~

(h) An acceptable plan of correction does not preclude DADS from taking enforcement action against an agency.

~~[(i)]~~ ~~If an agency fails to correct each violation or deficiency by the date on the plan of correction, DADS may take enforcement action against the agency. The agency may request a formal hearing as described in §97.601 of this chapter (relating to Enforcement Actions).~~

(i) ~~[(j)]~~ An agency must submit a plan of correction in response to an official written notification of survey findings that declares a violation or deficiency even if the agency disagrees with the survey findings.

(j) ~~[(k)]~~ If an agency disagrees with the survey findings, the agency may request an IRoD and submit additional written information to refute a violation or deficiency to demonstrate compliance in an informal setting.

(1) An IRoD is available for:

(A) a violation or deficiency cited during a visit;

(B) a violation or deficiency that remains uncorrected from a previous visit and is re-cited with no change in findings, as long as the agency has not already had an IRoD for the violation or deficiency from the original visit; and

(C) a violation or deficiency that remains uncorrected from a previous visit and is re-cited with new findings.

(2) To request an IRoD, an agency must:

(A) mail or fax a complete and accurate IRoD request form to the address or fax number listed on the form, which must be postmarked or faxed within 10 days after the date of receipt of the official written notification of the survey findings;

(B) mail or fax a rebuttal letter and supporting documentation to the address or fax number listed on the IRoD request form and ensure receipt by the DADS Survey and Certification Enforcement Unit within seven days after the postmark or fax date of the IRoD request form; and

(C) mail or fax a copy of the IRoD request form, rebuttal letter, and supporting documentation to the designated survey office

within the same time frames each is submitted to the DADS Survey and Certification Enforcement Unit.

(3) An agency may not submit information after the deadlines established in paragraph (2)(A) and (B) of this subsection unless DADS requests additional information. The agency's response to DADS' request for information must be received within three working days after the request is made.

(4) An agency waives its right to an IRoD if the agency fails to submit the required information to the DADS Survey and Certification Enforcement Unit within the required time frames.

(5) An agency must present sufficient information to the DADS Survey and Certification Enforcement Unit to support the agency's desired IRoD outcome.

(6) The rebuttal letter and supporting documentation must include:

- (A) the disputed deficiencies or violations;
- (B) the reason the deficiencies or violations are disputed;
- (C) the desired outcome for each disputed deficiency or violation; and
- (D) attachments from client records, applicable policies and procedures, or other supporting documentation or information that directly demonstrates that the deficiency or violation should not have been cited.

(7) The written decision issued by DADS after the completion of its review is final.

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.

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Marianne Reat  
Interim General Counsel  
Department of Aging and Disability Services  
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For further information, please call: (512) 438-3734



## SUBCHAPTER F. ENFORCEMENT

### 40 TAC §97.602

*(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 Health and Safety Code, Chapter 142, which provides the Aging and Disability Services Council with the authority to make recommendations regarding rules governing licensing and regulation of home and community support services agencies.

The repeal implements Texas Government Code, §531.0055; Texas Human Resources Code, §161.021; and Texas Health and Safety Code, Chapter 142.

§97.602. *Administrative Penalties.*

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.

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Marianne Reat  
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### 40 TAC §97.602

#### 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 142, which provides the Aging and Disability Services Council with the authority to make recommendations regarding rules governing licensing and regulation of home and community support services agencies.

The new section implements Texas Government Code, §531.0055; Texas Human Resources Code, §161.021; and Texas Health and Safety Code, Chapter 142.

§97.602. *Administrative Penalties.*

(a) Assessing penalties. DADS may assess an administrative penalty against a person who violates:

- (1) the statute;
- (2) a provision in this chapter for which a penalty may be assessed; or
- (3) Texas Occupations Code, §102.001, Soliciting Patients, if related to the provision of home health, hospice, or personal assistance services.

(b) Criteria for assessing penalties. DADS assesses administrative penalties in accordance with the schedule of appropriate and graduated penalties established in this section.

(1) The schedule of appropriate and graduated penalties for each violation is based on the following criteria:

(A) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation and the hazard of the violation to the health or safety of clients;

(B) the history of previous violations by a person or a controlling person with respect to that person;

(C) whether the affected agency identified the violation as part of its internal quality assurance process and made a good faith, substantial effort to correct the violation in a timely manner;

(D) the amount necessary to deter future violations;

(E) efforts made to correct the violation; and

(F) any other matters that justice may require.

(2) In determining which violation warrants a penalty, DADS considers:

(A) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation and the hazard of the violation to the health or safety of clients; and

(B) whether the affected agency identified the violation as part of its internal quality assurance program and made a good faith, substantial effort to correct the violation in a timely manner.

(c) Opportunity to correct. Except as provided in subsections (e) and (f) of this section, DADS provides an agency with an opportunity to correct a violation in accordance with the time frames established in §97.527(g)(2) of this chapter (relating to Post-Survey Procedures) before assessing an administrative penalty if a plan of correction has been implemented.

(d) Minor violations.

(1) DADS may not assess an administrative penalty for a minor violation unless the violation is of a continuing nature or is not corrected in accordance with an accepted plan of correction.

(2) DADS may assess an administrative penalty for a subsequent occurrence of a minor violation when cited within three years from the date the agency first received written notice of the violation.

(3) DADS does not assess an administrative penalty for a subsequent occurrence of a minor violation when cited more than three years from the date the agency first received written notice of the violation.

(e) No opportunity to correct. DADS may assess an administrative penalty without providing an agency with an opportunity to correct a violation if DADS determines that the violation:

(1) results in serious harm to or death of a client;

(2) constitutes a serious threat to the health or safety of a client;

(3) substantially limits the agency's capacity to provide care;

(4) involves the provisions of Texas Human Resources Code, Chapter 102, Rights of the Elderly;

(5) is a violation in which a person:

(A) makes a false statement, that the person knows or should know is false of a material fact:

(i) on an application for issuance or renewal of a license or in an attachment to the application; or

(ii) with respect to a matter under investigation by DADS;

(B) refuses to allow a representative of DADS to inspect a book, record, or file required to be maintained by an agency;

(C) willfully interferes with the work of a representative of DADS or the enforcement of this chapter;

(D) willfully interferes with a representative of DADS preserving evidence of a violation of this chapter or a rule, standard, or order adopted or license issued under this chapter;

(E) fails to pay a penalty assessed by DADS under this chapter not later than the 10th day after the date the assessment of the penalty becomes final; or

(F) fails to submit:

(i) a plan of correction not later than the 10th day after the date the person receives a statement of licensing violations; or

(ii) an acceptable plan of correction not later than the 30th day after the date the person receives notification from DADS that the previously submitted plan of correction is not acceptable.

(f) Violations relating to Advance Directives. As provided in Texas Health and Safety Code, §142.0145, DADS assesses an administrative penalty of \$500 for a violation of §97.283 of this chapter (relating to Advance Directives) without providing an agency with an opportunity to correct the violation.

(g) Penalty calculation and assessment.

(1) Each day that a violation occurs before the date on which the person receives written notice of the violation is considered one violation.

(2) Each day that a violation occurs after the date on which an agency receives written notice of the violation constitutes a separate violation.

(h) Schedule of appropriate and graduated penalties.

(1) If two or more rules listed in paragraphs (2) and (3) of this subsection relate to the same or similar matter, one administrative penalty may be assessed at the higher severity level violation.

(2) Severity Level A violations.

(A) The penalty range for a Severity Level A violation is \$100 - \$250 per violation.

(B) A Severity Level A violation is a violation that has or has had minor or no client health or safety significance.

(C) DADS assesses a penalty for a Severity Level A violation only if the violation is of a continuing nature or was not corrected in accordance with an accepted plan of correction.

(D) DADS may assess a separate Severity Level A administrative penalty for each of the rules listed in the following table. Figure: 40 TAC §97.602(h)(2)(D)

(3) Severity Level B violations.

(A) The penalty range for a Severity Level B violation is \$500-\$1,000 per violation.

(B) A Severity Level B violation is a violation that:

(i) results in serious harm to or death of a client;

(ii) constitutes an actual serious threat to the health or safety of a client; or

(iii) substantially limits the agency's capacity to provide care.

(C) The penalty for a Severity Level B violation that:

(i) results in serious harm to or death of a client is \$1,000;

(ii) constitutes an actual serious threat to the health or safety of a client is \$500 - \$1,000; and

(iii) substantially limits the agency's capacity to provide care is \$500 - \$750.

(D) As provided in subsection (e) of this section, a Severity Level B violation is a violation for which DADS may assess an administrative penalty without providing an agency with an opportunity to correct the violation.

(E) DADS may assess a separate Severity Level B administrative penalty for each of the rules listed in the following table. Figure: 40 TAC §97.602(h)(3)(E)

(i) Violations for which DADS may assess an administrative penalty of \$500.

(1) DADS may assess an administrative penalty of \$500 for each of the violations listed in subsection (e)(4) and (5) of this section, without providing an agency with an opportunity to correct the violation.

(2) A separate penalty may be assessed for each of these violations.

(j) Proposal of administrative penalties.

(1) If DADS assesses an administrative penalty, DADS provides a written notice of violation letter to an agency. The notice includes:

(A) a brief summary of the violation;

(B) the amount of the proposed penalty; and

(C) a statement of the agency's right to a formal administrative hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(2) An agency may accept DADS' determination not later than 20 days after the date on which the agency receives the notice of

violation letter, including the proposed penalty, or may make a written request for a formal administrative hearing on the determination.

(A) If an agency notified of a violation accepts DADS' determination, the DADS commissioner or the DADS commissioner's designee issues an order approving the determination and ordering that the agency pay the proposed penalty.

(B) If an agency notified of a violation does not accept DADS' determination, the agency must submit to the Health and Human Services Commission a written request for a formal administrative hearing on the determination and must not pay the proposed penalty. Remittance of the penalty to DADS is deemed acceptance by the agency of DADS' determination, is final, and waives the agency's right to a formal administrative hearing.

(C) If an agency notified of a violation fails to respond to the notice of violation letter within the required time frame, the DADS commissioner or the DADS commissioner's designee issues an order approving the determination and ordering that the agency pay the proposed penalty.

(D) If an agency requests a formal administrative hearing, the hearing is held in accordance with the statute, §142.0172, §142.0173, and the formal hearing procedures in 1 TAC Chapter 357, Subchapter I (relating to Hearings Under the Administrative Procedure Act).

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 July 28, 2008.

TRD-200803922

Marianne Reat

Interim General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: September 7, 2008

For further information, please call: (512) 438-3734



# WITHDRAWN RULES

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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)

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## TITLE 1. ADMINISTRATION

### PART 12. COMMISSION ON STATE EMERGENCY COMMUNICATIONS

#### CHAPTER 252. ADMINISTRATION

##### 1 TAC §252.6

The Commission on State Emergency Communications withdraws the proposed amendments to §252.6 which appeared in the April 4, 2008, issue of the *Texas Register* (33 TexReg 2767).

Filed with the Office of the Secretary of State on July 28, 2008.

TRD-200803891

Patrick Tyler

General Counsel

Commission on State Emergency Communications

Effective date: July 28, 2008

For further information, please call: (512) 305-6930





# 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 352. QUALITY ASSURANCE FEE

##### 1 TAC §352.10

The Texas Health and Human Services Commission (HHSC) adopts the repeal of §352.10, concerning Quality Assurance Fee for the Home and Community-based Services and Community Living Assistance and Support Services, without changes to the proposal as published in the May 2, 2008, issue of the *Texas Register* (33 TexReg 3505).

##### Background and Justification

Senate Bill (S.B.) 1830, 79th Legislature, Regular Session, 2005, required the Executive Commissioner of HHSC to impose a quality assurance fee (QAF) on persons providing services under the home and community-based services (HCS) waiver and community living assistance and support services (CLASS) waiver. However, Section 1 of S.B. 1830 included a requirement that if HHSC determined that the imposition of the QAF would not entitle Texas to receive additional federal Medicaid matching funds, the QAF would be discontinued.

Section 352.10, regarding the Quality Assurance Fee for the Home and Community-based Services and Community Living Assistance and Support Services, was adopted effective February 27, 2006 (31 TexReg 1017). The QAF was not implemented, however, pending confirmation from the Centers for Medicare and Medicaid Services (CMS) that the imposition of this QAF would entitle Texas to additional Medicaid matching funds under 42 C.F.R. §§433.55 - 433.68.

On the basis of its discussions with CMS and the explanatory preamble to the CMS final rule on Health Care-Related Taxes, HHSC has determined that this QAF would not qualify for matching funds under §§433.55 - 433.68 of Title 42 of the Code of Federal Regulations. S.B. 1830 was predicated on the idea that HCS providers were a permissible class of health care items or services for a QAF under 42 C.F.R. §433.56(4). However, in the preamble referenced above, CMS stated that only one state (Rhode Island) meets the existing requirements of §433.56(4) and that it was not proposing any changes to §433.56(4). The preamble to the CMS final rule appeared in the *Federal Register* on February 22, 2008 (73 FedReg 9685). Although the implementation of the final rule has been postponed until April 2009 under a moratorium included in the federal Fiscal Year 2008 Supplemental Appropriations Act (H.R. 2642), the comments in the explanatory preamble to the final rule indicated that this QAF would not qualify for federal matching funds under the current federal rule or under the amended rule currently under moratorium. Based on

its discussion with CMS and the comments included in the preamble to the final CMS rule, HHSC is repealing §352.10.

##### Comments

The 30-day comment period ended June 1, 2008. During this period, HHSC did not receive any comments regarding the proposed repeal of §352.10.

The repeal is 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; 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.

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 July 28, 2008.

TRD-200803797

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Effective date: August 17, 2008

Proposal publication date: May 2, 2008

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



#### CHAPTER 355. REIMBURSEMENT RATES SUBCHAPTER A. COST DETERMINATION PROCESS

##### 1 TAC §355.114

The Health and Human Services Commission (HHSC) adopts an amendment to §355.114, concerning Consumer Directed Services Payment Option, without changes to the proposed text as published in the May 16, 2008, issue of the *Texas Register* (33 TexReg 3853) and will not be republished.

The amendment adds new subsection (c) to the rule.

##### Background and Justification

The amendment to §355.114 describes the reimbursement methodology for Support Consultation services. This rule does not apply to DADS' program rules.

The Department of Aging and Disability Services (DADS) implemented the Consumer Directed Services (CDS) option

in September 2001, in response to Senate Bill 1586, 76th Legislature, Regular Session, 1999. The CDS option allows consumers or their legal guardians to be employers of record for the service providers. Thus, as participants in CDS, consumers have greater control and responsibility for their care and are able to self-direct their services. Consumers who participate in CDS choose a CDS Agency (CDSA) to provide financial management services such as payroll processing, assistance with developing a budget, and guidance to the consumer acting as an employer.

The CDS option is available in the following programs:

Community Based Alternatives (CBA),  
Community Living Assistance and Support Services (CLASS),  
Deaf-Blind-Multiple Disability Waiver (DBMD),  
Primary Home Care (PHC),  
Consumer Managed Personal Assistance Services (CMPAS),  
Medically-Dependent Children's Program (MDCP),  
Home and Community Based Services (HCS), and  
Texas Home Living (TxHmL).

The Texas Department of Aging and Disability Services (DADS) is adding Support Consultation services to the CDS option. Support Consultation services help a consumer meet the required employer responsibilities associated with CDS participation. Support Consultation services provide a higher level of assistance and training to the consumer than the CDSA, including skills training, assistance with completing required documents, and coaching on various employer tasks. A Support Advisor provides the Support Consultation services.

Support Consultation services became available in the HCS and TxHmL waivers effective February 1, 2008. It is scheduled to be implemented in PHC and the other waiver programs over the next year, pending CMS approval.

#### Comments

The 30-day comment period ended June 15, 2008. During this period, HHSC received no comments regarding the proposed amendments to this rule.

The amendment is adopted under the Human Resources Code, §32.021, which provides HHSC with the authority to adopt rules necessary to administer the federal medical assistance (Medicaid) program in Texas; Texas Government Code, §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out the commission's duties; and the Texas Government Code §531.021(a), which authorizes the Executive Commissioner to adopt rules for the operation and provision of health and human services by the health and human services agencies and to adopt or approve rates of payment required by law to be adopted or approved by a health and human services agency.

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 July 28, 2008.  
TRD-200803798

Steve Aragón  
Chief Counsel  
Texas Health and Human Services Commission  
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Proposal publication date: May 16, 2008  
For further information, please call: (512) 424-6900



## SUBCHAPTER J. PURCHASED HEALTH SERVICES

### DIVISION 4. MEDICAID HOSPITAL SERVICES

#### 1 TAC §355.8052

The Texas Health and Human Services Commission (HHSC) adopts new §355.8052, concerning Inpatient Hospital Reimbursement, with changes to the proposed text as published in the May 30, 2008, issue of the *Texas Register* (33 TexReg 4269). The text of the rule will be republished. Section 355.8052 will supersede the Medicaid inpatient hospital reimbursement methodology within 1 TAC §355.8063 for hospitals other than children's hospitals, state-owned teaching hospitals, and freestanding psychiatric hospitals.

HHSC has undertaken a rewrite of 1 TAC §355.8063, Reimbursement Methodology for Inpatient Hospital Services. As part of the rewrite, HHSC is creating separate rules for different hospital provider types based on specific reimbursement methodologies. New §355.8052 describes the prospective payment system methodology used to reimburse hospitals other than children's hospitals, state-owned teaching hospitals, and freestanding psychiatric hospitals. HHSC also is updating language in the new rule (taken largely from §355.8063) to more clearly explain the complex processes used in hospital reimbursement.

In addition, House Bill 1 directed HHSC to rebase inpatient hospital rates, for which the Legislature appropriated \$150 million general revenue for fiscal year 2009 (2008-2009 General Appropriations Act, Article II, Special Provisions, Section 57(c), 80th Legislature, Regular Session, 2007). HHSC is adding language to the new rule to accomplish the rebasing.

The new rule will become effective for claims approved for payment for admissions on or after September 1, 2008. The methodology in §355.8063 will continue to apply to claims approved for payment through state fiscal year 2008.

The language in the new rule differs from the language in §355.8063 in several ways. The significant changes are that §355.8052:

Includes a six-month cut off date after a base year for adjudicated claims that constitute the base year data set used in the rebasing process.

Updates the factors HHSC will use to inflate rebasing claims data.

Lists additional rebasing data elements that are not subject to appeal.

Removes the requirement that HHSC must rebase or inflate standard dollar amounts on a set schedule.

Adds definitions to improve clarity.

Groups rule subject matter by the flow of the reimbursement process for ease of understanding.

Limits the final payment division standard dollar amounts to available funds.

In response to comments received from interested parties and for the purpose of clarity, HHSC has changed some of the proposed language in the text of the rule as adopted. The changes, however, do not introduce new subject matters or affect persons in addition to those subject to the proposal as published. In subsection (c)(4)(B), the definition of "Base Year Claims" was changed to clarify language regarding the grace period. In addition, subsection (d)(2) was changed in response to comments received at the May 8, 2008, Medical Care Advisory Committee meeting, described more fully below. This subsection describing adjustments to PDSAs was changed to allow HHSC to prevent any hospital's rate from dropping below the lesser of their current rate or their fully rebased PDSA.

#### Fiscal Note

HHSC updated the estimated fiscal impact of the new rule after the proposed rule was published in the *Texas Register*. Thomas M. Suehs, Deputy Executive Commissioner for Financial Services, has determined that during the first five-year period the adopted rule is in effect, the updated fiscal impact to state government will be \$119,199,989 each year for state fiscal years 2009 through 2013 in state general revenue as a result of rebasing certain hospitals' inpatient payment rates. The adopted rule will not result in any fiscal implications for local health and human services agencies. Local governments will not incur additional costs.

#### Comments

HHSC received written comments during the 30-day comment period from the Texas Association of Public and Nonprofit Hospitals (TAPNH), Scott and White, and the Texas Hospital Association (THA). A summary of the comments and responses follows.

Comment: A few comments were received at the Medical Care Advisory Committee (MCAC) meeting held on May 8, 2008. Committee members and hospital representatives requested an analysis showing the hospital-specific impact of rebasing hospital rates under the DRG prospective payment methodology. The uncertainty of the impact to each hospital was a concern; some hospitals were unsure as to whether to support the adoption of this rule because they could not predict whether their rate would go up or down in the rebasing project under this methodology. THA and Scott and White also submitted written comments noting that HHSC had not prepared a hospital-specific impact analysis of the proposed rule despite MCAC committee members' requests that HHSC do so.

Response: The request for a hospital-specific impact analysis arose in connection with this rule as well as proposed amendments to the disproportionate share hospital (DSH) rules and funding for the Texas Health Opportunity Pool. A report of the hospital-specific impact for inpatient hospital rebasing could not be determined at the time of the publication of this rule or the DSH rules. The calculation of each hospital's rebased rate is influenced by a number of factors and events that will occur after implementation of this rule, including appeals requested by hospitals regarding TEFRA targets and HHSC's determination of each hospital's interim rate. In response, however, HHSC has addressed the source of the concerns in this rule. HHSC adds new language in this adopted rule that will prevent any hospital's

rate from dropping below the lesser of their current rate or their fully rebased PDSA. This change, in subsection (d)(2), was made in order to preserve the Medicaid provider base, ensure access to Medicaid hospital services, and minimize the effects of any PDSA decreases.

Comment: TAPNH expressed general support of HHSC's efforts to restructure and clarify the Medicaid reimbursement methodologies for inpatient hospital services.

Response: HHSC appreciates the support of this proposed change and believes that the new rule structure and clarity will be beneficial to HHSC and the provider community. The rule language was not changed in response to the comment.

Comment: TAPNH, THA and Scott and White opposed the proposed change to use the Centers for Medicare and Medicaid Services (CMS) Prospective Payment System (PPS) Market Basket index exclusively for the inflationary rates for inpatient hospital reimbursement. The request was to continue the use of the greater of the PPS Market Basket index or the Texas specific Medical Care component of the Consumer Price Index. Also, each commenter requested that HHSC clarify that the PPS Market Basket would not reflect any decreases to that figure required by Congress.

Response: Although HHSC has employed the greater of the two indexes in the past for hospital reimbursement, the use of the greater of the two did not consistently apply one index factor, which may result in overlap of trending factors influencing the rates higher or lower for a given period of time. The decision to use the CMS PPS Market Basket index was related to the substantial influence CMS holds on the Medicaid program and this index was readily accepted by CMS as the trend factor for inpatient inflationary cost. HHSC will use the CMS PPS Market Basket index published by CMS for the inpatient cost of living increase calculations as published and will not adjust for Congress' required reductions unless these reductions are included during the calculation of the CMS PPS Market Basket index prior to publication. The rule language was not changed in response to the comment.

Comment: TAPNH requested additional clarity be provided in §355.8052(c)(4)(B) regarding the "base year" used to determine the reimbursement rates. TAPNH stated that it is unclear whether the phrase "or another period designated by HHSC and communicated in writing to all hospitals" applies to the base year or "the six-month grace period that immediately follows the base year?" TAPNH requested that HHSC be more specific on the timeframe referenced.

Response: HHSC's intent was to have the ability to adjust the number of months included in the grace period immediately following the 12-month base year. In response to this comment, HHSC clarified §355.8052(c)(4)(B) by adding the word "grace" in defining the other period designated by HHSC.

Comment: THA and Scott and White requested that HHSC amend the definition of "Base Year Claims" at §355.8052(c)(4)(B) to extend the six-month grace period for claims adjudication to a nine-month grace period. The longer grace period would allow more of the costly and complicated hospital claims for services provided during the 12-month base year to be adjudicated and paid, and thus could allow them be included in the base-year claims database.

Response: HHSC received this comment during the MCAC meeting and agreed to take the request under advisement for

future rule changes. This change was not made to the rule due to time constraints that prevent changing the scope of base year claims for the FY 2009 rebasing. The rule language was not changed in response to the comment.

Comment: THA and Scott and White requested that HHSC amend the definition of "TEFRA target cap" at subsection (c)(32) and the calculation of the TEFRA cost for rebasing at subsection (d)(10)(B), to establish a process for recalculating all hospitals' TEFRA target caps prior to this rebasing period and on a regular basis moving forward. The comments noted that the TEFRA target caps have not been updated in nearly two decades and should be addressed for this rebasing, while recognizing there may be practical limitations on what can be accomplished for this rebasing.

Response: HHSC agrees to take this request under advisement for future rule changes. Due to time constraints required to reset TEFRA target caps for all providers, it is not possible to accomplish for this rebasing. A provider is given the opportunity and responsibility to request a TEFRA target appeal when the provider believes their business needs have changed related to increased costs or new services that were not included in their TEFRA base year. Allowing the provider the opportunity and responsibility to request a TEFRA appeal to reset the TEFRA base year has resulted in a number of TEFRA target caps being updated since the original base year of 1982. HHSC allows any hospital the option to update their base year to 1992, which some providers have elected not to do because the inflation factor that is applied to the base year results in a higher TEFRA target cap than electing to move the TEFRA base year forward. The rule language was not changed in response to the comment.

Comment: THA and Scott and White requested that HHSC amend subsection (d)(2) to allow PDSDAs to be increased to use available funds.

Response: HHSC received the request to allow PDSDAs to be increased to use available funds during the MCAC meeting and included this change in the proposed rule. Subsequent changes were made to subsection (d)(2) as described above, and that section still allows for PDSDAs to be adjusted as the comments suggest.

Comment: THA and Scott and White requested that HHSC apply adjustments under subsection (d)(2) prospectively only and provide notice of a change in PDSDA not later than 60 days before the effective date of the change.

Response: HHSC discussed this issue with stakeholders and concluded the fiscal year 2009 rebasing would be best applied retroactively to September 1, 2008, to avoid concerns related to changes in DSH and UPL payments. The rule language was changed to reflect that any adjustment to PDSDAs will be made in accordance with §355.201 of this title.

#### Legal Authority

The new rule is adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021, and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursements.

§355.8052. *Inpatient Hospital Reimbursement.*

#### (a) Application and general reimbursement method.

(1) The prospective payment system described in this section applies to inpatient hospital payments for admissions beginning in Fiscal Year (FY) 2009.

(2) HHSC calculates reimbursement for a covered inpatient hospital service, determined in subsection (g) of this section, by multiplying the hospital's payment division standard dollar amount, determined in subsection (d) of this section, by the relative weight for the appropriate diagnosis-related group, determined in subsection (e) of this section.

(3) HHSC will send a hospital an initial notification letter describing the hospital-specific and payment division standard dollar amounts, determined in subsection (d) of this section. HHSC will send a hospital a final notification letter reporting the payment division standard dollar amount, adjusted as described in subsection (d)(2) of this section, to be used in calculating the hospital's reimbursements to be paid for admissions beginning in FY 2009.

(4) HHSC will rebase hospital-specific and payment division standard dollar amounts in subsequent years when funds are appropriated for that purpose.

(b) Exceptions. The prospective payment system described in this section does not apply to the following types of hospitals for covered inpatient hospital services:

(1) In-state and out-of-state children's hospitals. In-state and out-of-state children's hospitals are reimbursed using the methodology described in §355.8054 of this chapter (relating to Children's Hospital Reimbursement Methodology).

(2) State-owned teaching hospitals. A state-owned teaching hospital is reimbursed in accordance with the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) principles using the methodology described in §355.8056 of this chapter (relating to State-Owned Teaching Hospital Reimbursement Methodology).

(3) Freestanding psychiatric hospitals. A freestanding psychiatric hospital is reimbursed under the methodology described in §355.8063 of this chapter (relating to Reimbursement Methodology for Inpatient Hospital Services).

(c) Definitions. When used in this section, and §355.8054 and §355.8056 of this chapter, the following words and terms will have the following meanings, unless the context clearly indicates otherwise.

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

(2) Average base year cost per claim--One factor used in arriving at the hospital-specific standard dollar amount; the arithmetic mean of base year costs per claim for a hospital, obtained by dividing the sum of all base year costs per claim for that hospital by the number of base year claims in the set.

(3) Base year--A period of 12 consecutive months selected by HHSC.

(4) Base year claims--All Medicaid inpatient hospital claims for reimbursement filed by a hospital that:

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

(B) Are adjudicated and approved for payment during the base year and the six-month grace period that immediately follows the base year or another grace period designated by HHSC and communicated in writing to all hospitals;

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

(D) Are not Medicaid spend-down claims.

(5) Base year cost per claim--One factor used in arriving at the hospital-specific standard dollar amount; the cost for a claim that would have been made to a hospital if HHSC reimbursed the hospital under methods and procedures used in the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), described in subsection (d)(3)(A) of this section.

(6) Case mix index--The average relative weight of a hospital's base year claims, obtained by summing the hospital's relative weights for all base year claims divided by the total number of that hospital's base year claims.

(7) Cost-of-Living Index--An adjustment applied to hospital-specific standard dollar amounts based on the Market Basket Index to account for changes in cost of living.

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

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

(10) Data entry error--An error resulting from mis-keyed or mistyped data that is different from the intended entry. This type of error does not include the omission of claims approved for payment after the base year and grace period.

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

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

(13) Diagnosis-related group (DRG)--The classification of medical diagnoses as defined in the Medicare DRG system or as otherwise specified by HHSC.

(14) Final settlement--Reconciliation of cost in the Medicare/Medicaid hospital fiscal year end cost report performed by HHSC within six months after HHSC receives the cost report audited by a Medicare intermediary, or in the case of children's hospitals, audited by HHSC.

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

(16) Hospital--specific standard dollar amount (HSDA)--One factor used in arriving at the payment division standard dollar amount (PDSDA); the average base year cost per claim for a hospital, adjusted by the case mix index and cost-of-living index.

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

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

(19) Interim rate--The ratio of Medicaid allowed inpatient costs to Medicaid allowed inpatient charges filed on a hospital's Medicare/Medicaid cost report, or inpatient cost-to-charge ratio, expressed as a percentage. The interim rate established at tentative settlement includes incentive and penalty payments associated with TEFRA target caps to the extent that they continue to be permitted by federal law and regulation.

(20) Market Basket Index--The Centers for Medicare and Medicaid Services (CMS) projection of the annual percentage increase in hospital inpatient operating costs, as defined in 42 C.F.R. §413.40.

(21) Mathematical error--An error that results from the erroneous application of variables, quotients, or functions within a methodology formula resulting in a different result than intended methodology results. This type of error does not include the omission of claims approved for payment after the base year and grace period.

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

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

(24) New hospital--A hospital that was newly constructed and enrolled as a Medicaid provider after the end of the base year.

(25) Newly enrolled hospital--A hospital that was assigned a new Texas Provider Identification number (TPI) and was enrolled as a Medicaid provider after the end of the base year.

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

(27) Payment division--A group of hospitals whose calculated hospital-specific standard dollar amounts fall within a \$100 range, where the \$100 increments begin at zero.

(28) Payment division standard dollar amount (PDSDA)--The weighted average dollar amount per claim calculated for all hospitals in a payment division.

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

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

(31) TEFRA cost for rebasing--One factor used in arriving at the hospital-specific standard dollar amount; Medicaid allowable charges for base year claims adjusted to cost by the interim rate derived from tentative or final settlement of cost reports that cover time periods in the base year.

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

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

(34) Universal Mean--Average base year cost per claim for all hospitals.

(35) Weighted hospital-specific standard dollar amount (HSDA)--One factor used in arriving at the payment division standard dollar amount; the product obtained by multiplying a hospital's hos-

pital-specific standard dollar amount by the number of its base year claims.

(d) Payment Division Standard Dollar Amount (PDSDA).

(1) HHSC recalculates PDSAs for payments in FY 2009 using FY 2006 base year claims. HHSC will not include claims that are adjudicated and approved for payment after the base year and subsequent six-month grace period. The six-month grace period is intended to allow inclusion of as many base year claims as possible, given practical time constraints.

(2) Adjustment of PDSAs.

(A) HHSC may adjust PDSAs in accordance with §355.201 of this title if HHSC determines that a recalculated PDSDA may have a significant and measurable effect on provider participation or have a significant and measurable effect on a provider's ability to deliver services.

(B) For rates taking effect on September 1, 2008, HHSC will:

(i) Adjust PDSAs pro rata among hospitals to available funds;

(ii) Exempt a hospital from the adjustment in clause (i) of this subparagraph if such adjustment would result in a lower rate than the hospital received as of August 31, 2008, in order to preserve the Medicaid provider base, ensure access to Medicaid hospital services, and minimize the effects of PDSDA decreases;

(iii) Apply a rate in place of the PDSDA, for a hospital that is exempted under clause (ii) of this subparagraph, that is the lesser of:

(I) the rate the hospital received as of August 31, 2008; or

(II) the fully rebased PDSDA before applying the adjustment described in clause (i) of this subparagraph;

(iv) Apply the PDSDA described in clause (i) of this subparagraph for all hospitals that are not exempted under clause (ii) of this subparagraph, without any recalculation within the payment divisions; and

(v) Not apply to any hospital a rate lower than the minimum PDSDA described in paragraph (7) of this subsection.

(3) Hospital-specific standard dollar amount (HSDA). Using base year claims, HHSC calculates an HSDA for each hospital as follows:

(A) Determines for each claim, the base year cost per claim, which is the greater of:

(i) the amount of TEFRA cost for rebasing, which is calculated under paragraph (10) of this subsection; or

(ii) payments from other insurance;

(B) Sums the dollar amount for each hospital's base year costs per claim determined in subparagraph (A) of this paragraph;

(C) Calculates the average base year cost per claim by dividing the result in subparagraph (B) of this paragraph by the total number of base year claims for the hospital;

(D) Calculates the case mix index by summing the hospital's relative weights for all base year claims divided by the total number of that hospital's base year claims;

(E) Divides the average base year cost per claim determined in subparagraph (C) of this paragraph by the hospital's case mix index determined in subparagraph (D) of this paragraph; and

(F) Multiplies the result in subparagraph (E) of this paragraph by the cost-of-living index described in paragraph (4) of this subsection to adjust costs from the base year to the rate year, which results in the HSDA.

(4) Cost-of-Living Index. HHSC updates HSDAs by applying a cost-of-living index to the HSDA established for the base year. HHSC uses the CMS Prospective Payment System Hospital Market Basket Index based on a federal fiscal year adjusted to a state fiscal year.

(5) Payment Divisions. HHSC groups hospital HSDAs into payment divisions by one-hundred-dollar (\$100) increments beginning at zero. For example, all hospitals with HSDAs between \$1,600.00 and \$1,699.99 are grouped together.

(6) Payment Division Standard Dollar Amount (PDSDA).

(A) HHSC computes a PDSDA for all hospitals within a payment division as follows:

(i) multiplies each hospital's HSDA by the hospital's total number of base year claims, resulting in a weighted HSDA;

(ii) sums the weighted HSDAs determined in clause (i) of this subparagraph for all hospitals within a payment division; and

(iii) divides the result in clause (ii) of this subparagraph by the total number of base year claims for all hospitals within a payment division, which results in the PDSDA.

(B) The PDSDA calculation does not include data from the following types of hospitals:

(i) out-of-state hospitals;

(ii) military hospitals;

(iii) new or newly enrolled hospitals;

(iv) in-state and out-of-state children's hospitals;

(v) inpatient psychiatric hospitals; and

(vi) state-owned teaching hospitals.

(C) If a payment division has fewer than 20 total base year claims, HHSC considers that payment division to be statistically invalid. Hospitals within that payment division are assigned a PDSDA equal to the mathematically closest valid PDSDA.

(7) Minimum PDSDA. The minimum PDSDA of \$1,600.00 is applied to any hospital with an HSDA equal to or less than \$1,600.00.

(8) PDSDA calculation for specific types of hospitals.

(A) The following types of hospitals are assigned the Universal Mean plus the cost-of-living update as specified in paragraph (4) of this subsection, as their PDSDA:

(i) military hospitals;

(ii) out-of-state hospitals; and

(iii) newly enrolled hospitals.

(B) New Hospitals.

(i) For new hospitals, HHSC will assign a PDSDA that is three percentile points higher than the Universal Mean in an array of base year costs per claim, plus the cost-of-living update as specified

in paragraph (4) of this subsection. This rate applies for five years from enrollment as a new Medicaid hospital or until HHSC recalculates PDSAs, whichever is earlier. After five years from enrollment, if HHSC has not recalculated PDSAs, the hospital's PDSA will be the Universal Mean.

(ii) A replacement facility constructed for a hospital that is currently enrolled as a Medicaid provider is reimbursed by using either the PDSA of the existing provider or the PDSA for new hospitals, whichever is greater.

(9) Merged hospitals.

(A) When two or more Medicaid participating hospitals merge during or after the base year but before the date of HHSC's final PDSA notification letter, HHSC combines the amounts determined in paragraph (3)(A) of this subsection for all hospitals involved in the merger and calculates the HSDA and PDSA for the merged entity as described for all other hospitals in this subsection.

(B) When two or more Medicaid participating hospitals merge after the base year and after the date of HHSC's final PDSA notification letter, HHSC combines the original base year costs per claim determined in paragraph (3)(A) of this subsection from the most recent rebasing period for all hospitals involved in the merger. HHSC calculates a new HSDA for the merged entity and assigns a PDSA equal to the mathematically closest valid PDSA.

(C) Acquisitions and buyouts do not result in a recalculation of the PDSA of an acquired hospital unless acquisitions or buyouts result in the purchased or acquired hospital becoming part of another Medicaid participating provider. The acquired hospital will continue being reimbursed based on the PDSA applied before the acquisition or buyout.

(10) TEFRA Cost for Rebasing. HHSC adjusts base year claims to arrive at a result based on cost reimbursement principles described in the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), and calculates TEFRA cost for rebasing as follows:

(A) HHSC adjusts each hospital's base year claims using the interim rate computed as a result of tentative or final cost reports covering the base year. The adjustments are applied to claims in months within the base year that coincide with months within the hospital's cost reporting periods.

(B) The TEFRA cost for rebasing is calculated by multiplying the Medicaid allowed charges for each base year claim by the interim rate described in subparagraph (A) of this paragraph.

(C) HHSC uses the tentative or final cost report settlement that is complete and available on the date HHSC sends the initial PDSA notification letter to the hospital. The results of a tentative or final cost report settlement completed after the date HHSC sends the initial PDSA notification letter to the hospital are not considered for purposes of this subsection.

(D) If there is no tentative or final cost report settlement available, the TEFRA cost for rebasing is calculated using an assigned interim rate of 50 percent.

(11) Correction of payment division error and reprocessing of claims.

(A) HHSC will place a hospital in the correct payment division if HHSC determines that the hospital was incorrectly assigned to a payment division due to a mathematical error or data entry error by HHSC.

(B) HHSC will reprocess all claims adjudicated during that state fiscal year that were paid to the hospital using the incorrect

PDSA by applying the corrected PDSA to the claims. No corrections are made for claims adjudicated in previous state fiscal years.

(e) Diagnosis Related Groups (DRGs) Statistical Calculations. HHSC adopts the classification of diagnoses defined in the Medicare DRG prospective payment system unless a revision is required based on Texas claims data or other factors, as determined by HHSC. HHSC recalibrates the relative weights, mean length of stay, and day outlier threshold whenever the PDSAs are recalculated.

(1) Recalibration of relative weights. HHSC calculates a relative weight for each DRG as follows:

(A) Base year claims are grouped by DRG;

(B) For each DRG, HHSC:

(i) sums the base year costs per claim as determined in subsection (d)(3)(A) of this section;

(ii) divides the result in clause (i) of this subparagraph by the number of claims in the DRG; and

(iii) divides the result in clause (ii) of this subparagraph by the Universal Mean, resulting in the relative weight for the DRG.

(2) Recalibration of mean length of stay (MLOS). HHSC calculates a mean length of stay (MLOS) for each DRG as follows:

(A) Base year claims are grouped by DRG;

(B) For each DRG, HHSC:

(i) sums the number of days billed for all base year claims;

(ii) divides the result in clause (i) of this subparagraph by the number of claims in the DRG, resulting in the MLOS for the DRG.

(3) Recalibration of day outlier thresholds. HHSC calculates a day outlier threshold for each DRG as follows:

(A) Calculates for all claims the standard deviations from the MLOS in paragraph (2) of this subsection;

(B) Removes each claim with a length of stay (number of days billed by a hospital) greater than or equal to three standard deviations above or below the MLOS. The remaining claims are those with a length of stay less than three standard deviations above or below the MLOS;

(C) Sums the number of days billed by all hospitals for a DRG for the remaining claims in subparagraph (B) of this paragraph;

(D) Divides the result in subparagraph (C) of this paragraph by the number of remaining claims in subparagraph (B) of this paragraph;

(E) Calculates one standard deviation for the result in subparagraph (D) of this paragraph; and

(F) Multiplies the result in subparagraph (E) of this paragraph by two and adds that to the result in subparagraph (D) of this paragraph; resulting in the day outlier threshold for the DRG.

(4) If a DRG has fewer than ten base year claims, HHSC will assign the corresponding Medicare relative weight and Medicare mean length of stay and will calculate the day outlier threshold based on the Medicare mean length of stay and standard deviation.

(5) If one of the DRGs specific to an organ transplant has less than five base year claims, HHSC will assign the corresponding Medicare relative weight and Medicare mean length of stay and will

calculate the day outlier threshold based on the Medicare mean length of stay and standard deviation. In addition, HHSC adds a relative weight to account for the cost of procuring the organ to the Medicare relative weight for the DRG. HHSC uses the organ procurement costs published by the Acquisition of Organ Procurement Organization (AOPO). To calculate the relative weight for procurement, HHSC divides the average cost of organ procurement by the universal mean for all claims.

(f) Request for Review. Except as otherwise provided in this subsection, HHSC uses the following process for reviews and appeals.

(1) If a hospital believes that HHSC made a mathematical error or data entry error in calculating the hospital's PDSDA, the hospital may request a review of the disputed calculation.

(A) A review of the calculation of a hospital's PDSDA will not be granted if the disputed calculation is the result of the hospital's submission of incorrect data or the result of the use of an interim rate derived from a cost reporting period occurring before the base year.

(B) The hospital must submit to HHSC a written request for review and appropriate specific documentation supporting its contention that there has been a mathematical or data entry error. The written request for review must be printed on the hospital's letterhead. HHSC Rate Analysis must receive a written request for an informal review by hand delivery, United States (U.S.) mail, or special mail delivery no later than 45 calendar days from the date of the initial PDSDA notification letter. If the 45th calendar day is a weekend day, national holiday, or state holiday, then the first business day following the 45th calendar day is the final day the receipt of the written request will be accepted. HHSC will not grant extensions of the 45-day deadline.

(C) If the hospital disagrees with the outcome of the review, the hospital may formally appeal in accordance with §§357.481 - 357.490 of this title (relating to Hearings Under the Administrative Procedure Act).

(2) A hospital may not appeal the elements of the prospective payment methodology used by HHSC, including:

(A) the payment division methodologies, including the HSDA and PDSDA calculations;

(B) the DRGs assigned through claims adjudication;

(C) the DRGs assigned to base year claims as a result of HHSC updating to a new version of the Medicare DRGs;

(D) the relative weights assigned to the DRGs;

(E) the adequacy of payments;

(F) the exclusion of claims that were not adjudicated and paid within the base year or six-month grace period; and

(G) the interim rate, computed as a result of tentative or final cost reports covering the base year that are completed after the date HHSC sends the initial PDSDA notification letter to the hospital.

(g) Reimbursements

(1) Calculating the payment amount. HHSC reimburses a hospital a prospective payment for covered inpatient hospital services by multiplying the PDSDA for the hospital's payment division by the relative weight for the DRG assigned to the adjudicated claim. The resulting amount is the payment amount to the hospital.

(2) The prospective payment as described in paragraph (1) of this subsection is considered full payment for covered inpatient hospital services. A hospital's request for payment in an amount higher than the prospective payment will be denied. The PDSDA result in

subsection (d) of this section includes but is not limited to the following:

(A) capital costs;

(B) cost of indirect medical education;

(C) cost of malpractice insurance; and

(D) return on equity.

(3) Day and cost outlier adjustments. HHSC pays a day outlier or a cost outlier for medically necessary inpatient services provided to clients under age 21 in all Medicaid participating hospitals that are reimbursed under the prospective payment system. If a patient age 20 is admitted to and remains in a hospital past his or her twenty-first (21st) birthday, inpatient days and hospital charges after the patient reaches age 21 are included in calculating the amount of any day outlier or cost outlier payment adjustment.

(A) Day outlier payment adjustment. HHSC or its designee calculates a day outlier payment adjustment for each claim as follows:

(i) determines whether the number of medically necessary days allowed for a claim exceeds:

(I) the MLOS by more than two days; and

(II) the DRG day outlier threshold as calculated in subsection (e)(3)(F) of this section;

(ii) if clause (i) of this subparagraph is true, subtracts the DRG day outlier threshold from the number of medically necessary days allowed for the claim;

(iii) multiplies the DRG relative weight by the PDSDA;

(iv) divides the result in clause (iii) of this subparagraph by the DRG MLOS described in subsection (e)(2) of this section, to arrive at the DRG per diem amount;

(v) multiplies the number of days in clause (ii) of this subparagraph by the result in clause (iv) of this subparagraph;

(vi) multiplies the result in clause (v) of this subparagraph by 70 percent.

(B) Cost outlier payment adjustment. HHSC makes a cost outlier payment adjustment for an extraordinarily high-cost claim as follows:

(i) to establish a cost outlier, the cost outlier threshold must be determined by first selecting the lesser of the Universal Mean of base year claims multiplied by 11.14 or the hospital's PDSDA multiplied by 11.14;

(ii) the full DRG prospective payment amount is multiplied by 1.5;

(iii) the cost outlier threshold is the greater of clause (i) or (ii) of this subparagraph;

(iv) the cost outlier threshold is subtracted from the amount of reimbursement for the claim established under cost reimbursement principles described in the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA); and

(v) the result in clause (iv) of this subparagraph is multiplied by 70 percent to determine the amount of the cost outlier payment.



(C) If an admission qualifies for both a day outlier and a cost outlier payment adjustment, HHSC pays the higher outlier payment.

(4) A hospital may submit a claim to HHSC before a patient is discharged, but only the first claim for that patient will be reimbursed the prospective payment described in paragraph (1) of this subsection. Subsequent claims for that stay are paid zero dollars. When the patient is discharged and the hospital submits a final claim to ensure accurate calculation for potential outlier payments for clients younger than 21 years of age, HHSC recoups the first prospective payment and issues a final payment in accordance with paragraphs (1) and (3) of this subsection.

(5) Patient transfers and split billing. If a patient is transferred, HHSC establishes payment amounts as specified in subparagraphs (A) - (D) of this paragraph. HHSC manually reviews transfers for medical necessity and payment.

(A) If the patient is transferred from a hospital to a nursing facility, HHSC pays the transferring hospital the total payment amount of the patient's DRG.

(B) If the patient is transferred from one hospital (transferring hospital) to another hospital (discharging hospital), HHSC pays the discharging hospital the total payment amount of the patient's DRG. HHSC calculates a DRG per diem and a payment amount for the transferring hospital as follows:

(i) multiplies the DRG relative weight by the PDSDA;

(ii) divides the result in clause (i) of this subparagraph by the DRG MLOS described in subsection (e)(2) of this section, to arrive at the DRG per diem amount; and

(iii) to arrive at the transferring hospital's payment amount:

(I) multiplies the result in clause (ii) of this subparagraph by the lesser of the DRG MLOS, the transferring hospital's number of medically necessary days allowed for the claim, or 30 days; or

(II) for a patient under age 21, multiplies the result in clause (ii) of this subparagraph by the lesser of the DRG MLOS or the transferring hospital's number of medically necessary days allowed for the claim.

(C) HHSC makes payments to multiple hospitals transferring the same patient by applying the per diem formula in subparagraph (B) of this paragraph to all the transferring hospitals and the total DRG payment amount to the discharging hospital.

(D) HHSC performs a post-payment review to determine if the hospital that provided the most significant amount of care received the total DRG payment. If the review reveals that the hospital that provided the most significant amount of care did not receive the total DRG payment, an adjustment is initiated to reverse the payment amounts. The transferring hospital is paid the total DRG payment amount and the discharging hospital is paid the DRG per diem.

(h) Cost reports. Each hospital must submit an initial cost report at periodic intervals as prescribed by Medicare or as otherwise prescribed by HHSC.

(1) Each hospital must send a copy of all cost reports audited and amended by a Medicare intermediary to HHSC within 30 days after the hospital's receipt of the cost report. Failure to submit copies or respond to inquiries on the status of the Medicare cost report will result in provider vendor hold.

(2) HHSC uses data from these reports in rebasing years, in making adjustments as described in subsection (d) of this section, and in completing cost settlements for children's hospitals and state-owned teaching hospitals as outlined in §355.8054 and §355.8056 of this chapter.

(3) Except as otherwise specified in subsection (i) of this section, there are no cost settlements for inpatient services under the prospective payment system in this section.

(4) The cost settlement process is limited by the TEFRA target cap.

(i) Hospitals in counties with 50,000 or fewer persons and certain other hospitals.

(1) Hospitals are reimbursed under this subsection if, as of the most recent decennial census, the hospital is:

(A) located in a county with 50,000 or fewer persons;

(B) a Medicare-designated Rural Referral Center (RRC) or Sole Community Hospital (SCH) not located in a metropolitan statistical area (MSA), as defined by the U.S. Office of Management and Budget; or

(C) a Medicare-designated Critical Access Hospital (CAH).

(2) A hospital that qualifies under this subsection is reimbursed for a cost reporting period the greater of:

(A) All Medicaid payments based on the prospective payment system; or

(B) The cost-reimbursement methodology described in the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) without the imposition of the TEFRA target cap described in subsection (h)(4) of this section.

(3) The amounts in this subsection are calculated using the most recent data for Medicaid Fee-for-Service (FFS) and Primary Care Case Management (PCCM) inpatient services.

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.

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## TITLE 19. EDUCATION

### PART 7. STATE BOARD FOR EDUCATOR CERTIFICATION

#### CHAPTER 232. GENERAL CERTIFICATION PROVISIONS

##### SUBCHAPTER A. TYPES AND CLASSES OF CERTIFICATES ISSUED

## 19 TAC §232.4, §232.5

The State Board for Educator Certification (SBEC) adopts amendments to §232.4 and §232.5, relating to types and classes of certificates issued. The amendment to §232.4 is adopted without changes to the proposed text as published in the March 28, 2008, issue of the *Texas Register* (33 TexReg 2632) and will not be republished. The amendment to §232.5 is adopted with changes to the proposed text published in the March 28, 2008, issue.

The Texas Education Code (TEC), §21.003(a), states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B. The TEC, §21.031, authorizes the SBEC to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators, and states that in proposing rules under the TEC, Chapter 21, Subchapter B, the SBEC shall ensure that all candidates for certification or renewal of certification demonstrate the knowledge and skills necessary to improve the performance of the diverse student population of this state.

The Texas Education Agency (TEA) staff presented draft proposed changes to the SBEC at the July 2007 meeting and at the November 2007 meeting following a September 26, 2007, staff meeting with stakeholders. The SBEC took action at the January 2008 meeting to approve proposed revisions to 19 TAC Chapter 232 for filing as proposed with the *Texas Register*. Following the public comment period, the SBEC took action in March 2008 to adopt, subject to SBOE review, proposed revisions to 19 TAC Chapter 232, as published as proposed, with the exception of §232.4, Probationary Certificates, and §232.5, Temporary Teacher Certificates. In March, the SBEC also took action to approve substitute rule text for §232.4 and §232.5 for filing as proposed with the *Texas Register*.

At the May 2008 meeting, the SBEC approved for adoption, subject to SBOE review, the proposed amendments to 19 TAC §232.4 and §232.5, with an additional change to §232.5(f) to specify that 380 total clock-hours of training would be required for temporary teacher certificates.

The adopted amendments to 19 TAC §232.4 and §232.5 clarify the requirements for probationary certificates and temporary teacher certificates. The adopted amendments also address special education assignment at the public middle school or high school level (Grades 7-12) and training requirements for temporary teacher certificate holders.

Following is a description of the adopted amendments to 19 TAC §232.4 and §232.5.

Language has been revised in §232.4(a)(4) and (5) to provide for incorporation of requirements imposed by subsequent amendments to the No Child Left Behind Act (NCLB) into the rule. Also, a definition for Early Childhood has been added to §232.4(a).

Language has been revised in §232.4(c)(1) to clarify that a recognized regional accrediting organization will be as specified in 19 TAC Chapter 230, Subchapter Y. Language has also been added to include an accrediting organization recognized by the Texas Higher Education Coordinating Board (THECB). Also, the phrase, "or otherwise approved by a state department of education," has been deleted to ensure educators meet rigorous

standards outlined by the accrediting agencies recognized by the THECB.

Language has been revised in §232.4(c)(3) and (d)(1) to remove reference to an alternative certification program.

Language has been revised in §232.4(c)(7) to further define public elementary school level as Early Childhood-Grade 6 and public middle or high school level as Grades 7-12. Language has been added in subsection (c)(7)(B) specifying that an educator will need to pass the appropriate content area certification examination to teach in Grades 7-12. Language has also been revised to specify that the upper division coursework will need to be in the subject taught.

Section 232.4 has been changed by adding adopted new subsection (c)(8) to clarify the requirements for a probationary certificate in a special education assignment. The change in adopted new subsection (c)(8)(A) specifies the special education assignment requirements at the public elementary school level. The change in adopted new subsection (c)(8)(B) reflects action taken by the SBEC at its March 7, 2008, meeting that requires a teacher in a special education assignment at the public middle and high school level to pass the appropriate special education Early Childhood-Grade 12 examination and demonstrate content area mastery by either: (1) passing the appropriate content area certification examination, or (2) completing 24 college-level semester hours in the content area. This change in adopted new subsection (c)(8)(B) replaced an earlier version, which was withdrawn, after TEA staff discovered that the language was incorrect and would have been contrary to established practice.

Language has been revised in §232.4(d) to clarify that a probationary certificate will be for a 12-month period from the date of issuance. Language has also been amended in adopted new subsection (d)(2) to change from three school years to three 12-month periods the maximum term that an individual may be employed under a probationary certificate and to list the certificate(s) an individual will be required to hold during the time period.

A definition for TEA staff has been added in §232.4 as adopted new subsection (f).

Language in §232.5 has been revised in adopted new subsection (f) to reflect action taken by the SBEC at its March 7, 2008, meeting, after TEA staff determined that the training and support requirements should align with the requirements for educator preparation programs in 19 TAC Chapter 228. This change provides that coursework, mentoring, and training for a temporary teacher certificate holder will be the same as that required of an educator preparation program in Chapter 228. The SBEC at its May 9, 2008, meeting took action to adopt an additional change to specify that temporary teacher certificates shall require 380 total clock-hours of training.

A clerical correction has been made in §232.5(i) in order to conform an existing cross reference to reflect adopted changes in §232.5(f).

Language has been amended in §232.5(j) that clarifies that the district has the option of recommending an individual for the standard certificate upon completion of all requirements.

*Changes to Comply with Senate Bill (SB) 9, 80th Texas Legislature, 2007*

As a result of passage of SB 9, language has been added to §232.4 in adopted new subsection (c)(6) and §232.5 in adopted new subsection (a)(4) to require that an individual submit fingerprints in accordance with the TEC, §22.0831.

#### *Technical Changes*

Throughout §232.4 and §232.5, numerous grammatical and technical changes have been made, such as replacing the term "Executive Director" with the term "TEA staff" and replacing the term "Board" with the term "State Board for Educator Certification." Also, statutory citation references have been updated and standardized to reflect current law and *Texas Register* formatting requirements.

There is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

Following the March 2008 SBEC meeting, the proposed amendments to 19 TAC §232.4 and §232.5 were filed with the *Texas Register* initiating the official public comment period. The following comments were received regarding the proposed amendments.

Comment: The Texas Classroom Teachers Association (TCTA) commented that the proposed amendment to 19 TAC §232.5(f) would temporarily eliminate minimum training requirements for temporary teacher certificates (TTC) because it would provide that a school district that employs a person with a TTC must provide the same coursework, mentoring, and training as is required by 19 TAC Chapter 228, Requirements for Educator Preparation Programs. The TCTA further commented that Chapter 228 currently contains no minimum training requirements and that the proposed revisions to Chapter 228, which would specify minimum requirements, would not be effective until the 2009-2010 school year. The TCTA is opposed to any reduction in the minimum standards for TTC training and is concerned that school districts would be confused about whether the current guidelines would still be effective. The TCTA appreciated the intent expressed by TEA staff to continue the current guidelines for the TTC until the specific requirements of the draft revisions to Chapter 228 become effective, but preferred to see that intent expressed in rule. In addition, the TCTA supported continuing the requirement in the current guidelines of 380 total clock-hours of training for the TTC rather than the 300 total clock-hours required by the draft revisions to 19 TAC Chapter 228.

Board Response: The SBEC agreed with the comment regarding minimum training requirements and took action to adopt, subject to State Board of Education review, the rule with changes since published as proposed to specify that 380 total clock-hours of training would be required for the TTC.

Comment: An individual commented that she had a valid Louisiana teaching certificate and had received "Exceeds Expectations" on her Professional Development and Appraisal System (PDAS) appraisal during the time she taught in Texas on a one-year, non-renewable certificate. The individual also stated that she had been allowed to teach in Texas and had applied for certification in 2001, 2002, and 2003, yet the SBEC records she received in response to her open records request did not reflect any certification had been granted. The individual questioned how this had happened and whether her records might have been altered.

Board Response: The SBEC did not find this comment relevant to this agenda item and took no action in response to this comment.

The State Board of Education (SBOE) took no action on the review of the amendments to 19 TAC §232.4 and §232.5 at the July 18, 2008, SBOE meeting.

The amendments are adopted under the Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; §21.031, which authorizes the SBEC to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators, and states that in proposing rules under the TEC, Chapter 21, Subchapter B, the SBEC shall ensure that all candidates for certification or renewal of certification demonstrate the knowledge and skills necessary to improve the performance of the diverse student population of this state; §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; §21.041(b)(3), which requires the SBEC to propose rules that specify the period for which each class of educator certificate is valid; §21.041(b)(4), which requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate; §21.041(b)(5), which requires the SBEC to propose rules that provide for the issuance of an educator certificate to a person who holds a similar certificate issued by another state or foreign country, subject to the TEC, §21.052; §21.041(b)(9), which requires the SBEC to propose rules that provide for continuing education requirements; §22.0831(c), which states that the SBEC shall review the national criminal history record information of a person who has not previously submitted fingerprints to the department or been subject to a national criminal history record information review; §22.0831(f), which allows the SBEC to propose rules establishing deadlines for a person to submit fingerprints and photographs in compliance with §22.0831, National Criminal History Record Information Review of Certified Educators; and sanctions for a person's failure to comply with the requirements of §22.0831, including suspension or revocation of a certificate or refusal to issue a certificate; and §22.0831(g), which requires the SBEC to establish a schedule for obtaining and reviewing the information a certified educator must provide the SBEC under §22.0831. Not later than September 1, 2011, the SBEC must obtain all national criminal history record information on all certified educators.

The adopted amendments implement the TEC, §§21.003(a); 21.031; 21.041(b)(1) - (5) and (9); and 22.0831(c), (f), and (g).

#### *§232.5. Temporary Teacher Certificates.*

(a) A person may be temporarily certified to teach only in Grades 8-12 if the person:

(1) holds a baccalaureate or advanced degree from an accredited institution of higher education received with an academic major or interdisciplinary academic major, including reading, other than education, that is related to at least one area of the curriculum as prescribed under the Texas Education Code (TEC), Chapter 28, Subchapter A;

(2) performs satisfactorily on the appropriate examinations prescribed under the TEC, §21.048;

(3) passes a criminal history background check by submitted fingerprints for review; and

(4) submits fingerprints in accordance with §232.905(c) of this title (relating to Submission of Required Information) and the TEC, §22.0831.

(b) A certificate issued under this section is valid for a term not to exceed two academic years.

(c) A person may receive a certificate to teach only in a subject area of the curriculum prescribed under the TEC, Chapter 28, Subchapter A, in which the person holds a baccalaureate or advanced degree from an institution of higher education with an academic major related to that area of the curriculum. Guidelines for determining the academic major related to the current Grades 8-12 certificate structure will be developed by the Texas Education Agency (TEA) staff.

(d) A person who applies for a temporary teaching certificate under this section shall pay a fee equal to that required of applicants for a probationary certificate under §230.436 of this title (relating to Schedule of Fees for Certification Services).

(e) A person who holds a certificate under this section may be employed by a school district only if the person and the school district agree that the person will be employed under a probationary contract for each year of the person's employment with the district.

(f) A school district employing a person who holds a certificate issued under this section must provide the same coursework, mentoring, and training that is required by Chapter 228 of this title (relating to Requirements for Educator Preparation Programs), except that a certificate issued under this section shall require 380 total clock-hours of training.

(g) Districts delivering the required intensive support for an educator holding the temporary teacher certificate must follow guidelines established by the TEA staff with evidence indicating the ability to comply with the provisions of this chapter.

(h) A school district may require that a person who will be employed by the district and who holds a temporary teacher certificate issued under this section complete a teacher training program.

(i) At the end of the two years of employment, the person must apply to the SBEC for a standard certificate. The person must also be recommended by the current employing school district for certification. All employing school districts must provide evidence to the SBEC that each district complied with the requirements of subsection (f) of this section.

(j) A standard teaching certificate may be issued to a person under this section if:

(1) the person held a temporary teacher certificate issued under this section;

(2) the person has been continuously employed as a teacher of record in a public school district for two academic years; and

(3) the employing district(s) has (have) favorably reviewed the person's performance, including classroom performance and performance in any teacher training program(s). Each school district must predominately base the review of a person's performance on the increase in achievement of his or her students.

(k) At the end of the two years of employment, if a person is granted a standard certificate, the person may not apply for or receive another temporary certificate under 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 July 28, 2008.

TRD-200803890

Karen Loonam

Deputy Associate Commissioner, Educator Certification and Standards,  
Texas Education Agency

State Board for Educator Certification

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## TITLE 22. EXAMINING BOARDS

### PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

#### CHAPTER 501. RULES OF PROFESSIONAL CONDUCT

##### SUBCHAPTER E. RESPONSIBILITIES TO THE BOARD/PROFESSION

###### 22 TAC §501.90

The Texas State Board of Public Accountancy adopts an amendment to §501.90 concerning Discreditable Acts without changes to the proposed text as published in the June 6, 2008, issue of the *Texas Register* (33 TexReg 4451). The text of the rule will not be republished.

The amendment to §501.90 will replace the word "his" with the phrase "that person's"; replace the word "subpoena" with the phrase "(i) a court order; or (ii) a summons (I) under the provisions of the Internal Revenue Code of 1986 and its subsequent amendments, (II) the Securities Act of 1933 (15 U.S.C. §77a et seq.) and its subsequent amendments, or (III) the Securities Exchange Act of 1934 (15 U.S.C. §78a et seq.) and its subsequent amendments;"; delete the phrase "under the Public Accountancy Act; or"; add the phrase "(F) in the course of a peer review under Section 901.159 of the Public Accountancy Act; or" and add the phrase "(G) any information that is required to be disclosed by the professional standards for reporting on the examination of a financial statement."

The amendment will function by providing a rule that is consistent with the Act.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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.

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J. Randel (Jerry) Hill  
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Texas State Board of Public Accountancy  
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For further information, please call: (512) 305-7848



## 22 TAC §501.93

The Texas State Board of Public Accountancy adopts an amendment to §501.93 concerning Responses without changes to the proposed text as published in the June 6, 2008, issue of the *Texas Register* (33 TexReg 4452). The text of the rule will not be republished.

The amendment to §501.93 will add the word and phrase "either" in writing or "through the board's website," to subsection (d).

The amendment will function by clarifying board procedures which are in keeping with currently accepted standard office practices

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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.

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For further information, please call: (512) 305-7848



## CHAPTER 511. ELIGIBILITY SUBCHAPTER C. EDUCATIONAL REQUIREMENTS

### 22 TAC §511.58

The Texas State Board of Public Accountancy adopts an amendment to §511.58 concerning Definitions of Related Business Subjects without changes to the proposed text as published in the June 6, 2008, issue of the *Texas Register* (33 TexReg 4453). The text of the rule will not be republished.

The amendment to §511.58 will insert "approved by the board and" in subsection (c).

The amendment will function by clarifying the existing rule and the requirements for the required ethics course.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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.

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## SUBCHAPTER F. EXPERIENCE REQUIREMENTS

### 22 TAC §511.122

The Texas State Board of Public Accountancy adopts an amendment to §511.122 concerning Acceptable Work Experience without changes to the proposed text as published in the June 6, 2008, issue of the *Texas Register* (33 TexReg 4454). The text of the rule will not be republished.

The amendment to §511.122 will insert the following text "attest services as defined in §501.52(4) of this title or professional accounting services or professional accounting work as defined in §501.52(21) of this title, and"; insert the following text "or higher" after text "level" and insert text "add skills" after the text "knowledge" in subsection (b); in subsection (c)(5) replace the following text "as approved by the board will" with the following text "on a full time basis may"; add subsection (c)(8) with the following text "Self employment may not be used to satisfy the work experience requirement unless approved by the Board."

The amendment will function by clarifying what constitutes as acceptable work experience.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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.

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## CHAPTER 512. CERTIFICATION BY RECIPROCITY

### 22 TAC §512.1

The Texas State Board of Public Accountancy adopts an amendment to §512.1 concerning Certification as a Certified Public Accountant by Reciprocity with changes to the proposed text as published in the June 6, 2008, issue of the *Texas Register* (33 TexReg 4455). The change from the proposal is in subsection (b)(1)(D), where the second instance of the word "person" has been replaced with the word "individual".

The amendment to §512.1, Certification as a Certified Public Accountant by Reciprocity, replaces the word "person" with the word "individual" throughout the rule.

The amendment will function by clarifying the rule since only individuals are subject to reciprocal provisions.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

#### §512.1. Certification as a Certified Public Accountant by Reciprocity.

(a) The certificate of a "certified public accountant" shall be granted by reciprocity to any individual who is qualified under §901.259 or §901.260 of the Act. The individual's certificate or credentials in the original jurisdiction must be in good standing when the application is submitted and remain in good standing until the individual's application for certification by reciprocity has been approved and a certificate has been issued to the individual by this board.

(b) An individual from a domestic jurisdiction demonstrates that he meets the requirements for certification by reciprocity by:

(1) satisfying one of the following conditions:

(A) the individual holds a certificate or license to practice public accountancy from a domestic jurisdiction that has been determined by the board pursuant to §512.2 of this title (relating to National Association of State Boards of Accountancy Verified Substantially Equivalent Jurisdictions) as having substantially equivalent requirements for certification; or

(B) the individual holds a certificate or license to practice public accountancy from a domestic jurisdiction that has not been determined by NASBA and the board to have substantially equivalent certification requirements but has had his education, examination and experience verified as substantially equivalent to those required by the Uniform Accountancy Act by NASBA; or

(C) the individual meets all requirements for issuance of a certificate set forth in the Act other than the provision requiring proof of grades to be eligible to take the uniform CPA examination; or

(D) the individual met the requirements in effect for issuance of a certificate in this state on the date the individual was issued a certificate or license by another domestic jurisdiction; or

(E) after passing the uniform CPA examination, the individual has completed at least four years of experience practicing public accountancy within the ten year period immediately preceding the date of application in this state; and

(2) the individual meets the CPE requirements applicable to certificate holders contained in Chapter 523 of this title (relating to Continuing Professional Education).

(c) An individual from a foreign jurisdiction demonstrates that he meets the requirements for certification by reciprocity by:

(1) holding a credential that has not expired or been revoked, suspended, limited or probated, that entitles the holder to issue reports on financial statements issued by a licensing authority or professional accountancy body of another country that:

(A) regulates the practice of public accountancy and whose requirements to obtain the credential have been determined by the board to be substantially equivalent to the requirements of education, examination and experience contained in the Act; and

(B) grants credentials by reciprocity to individuals certified to practice public accountancy by this state;

(2) receiving that credential based on education and examination requirements that were comparable to or exceeded those required by the Act at the time the credential was granted;

(3) completing an experience requirement in the foreign jurisdiction that issued the credential that is comparable to or exceeds the experience requirement of the Act or has at least four years of professional accounting experience in this state;

(4) passing an international qualifying examination (IQEX) covering national standards that has been approved by the board; and

(5) passing an examination covering the laws, rules and code of professional conduct in effect in this state that has been approved by the board.

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 July 28, 2008.

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J. Randel (Jerry) Hill  
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Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7848



### 22 TAC §512.2

The Texas State Board of Public Accountancy adopts an amendment to §512.2 concerning National Association of State Boards of Accountancy Verified Substantially Equivalent Jurisdictions without changes to the proposed text as published in the June 6, 2008, issue of the *Texas Register* (33 TexReg 4457). The text of the rule will not be republished.

The amendment to §512.2 will substitute "a person" in subsection (c) with "an individual".

The amendment will function by clarifying the rule and provide more consistent terminology throughout the rules.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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.

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## 22 TAC §512.4

The Texas State Board of Public Accountancy adopts an amendment to §512.4 concerning Application for Certification by Reciprocity without changes to the proposed text as published in the June 6, 2008, issue of the *Texas Register* (33 TexReg 4457). The text of the rule will not be republished.

The amendment to §512.4 will replace the word "person" with "individual" and delete the phrase "and submitted to the executive director" in subsection (a).

The amendment will function by simplifying the reciprocity process.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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.

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## 22 TAC §512.6

The Texas State Board of Public Accountancy adopts an amendment to §512.6 concerning Reciprocal Fee without changes to the proposed text as published in the June 6, 2008, issue of the *Texas Register* (33 TexReg 4458). The text of the rule will not be republished.

The amendment to §512.6 will replace the phrase "'A person" with the phrase "An individual" in subsection (a) and replace the word "void" with the word "deemed denied" in subsection (b).

The amendment will function by clarifying the effect of failure to complete timely the reciprocal application process.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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.

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Texas State Board of Public Accountancy

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## CHAPTER 513. REGISTRATION SUBCHAPTER A. REGISTRATION OF CPAS OF OTHER STATES AND PERSONS HOLDING SIMILAR TITLES IN FOREIGN COUNTRIES

### 22 TAC §513.1

The Texas State Board of Public Accountancy adopts an amendment to §513.1 concerning Registration of Foreign Practitioners with Substantially Equivalent Qualifications without changes to the proposed text as published in the June 6, 2008, issue of the *Texas Register* (33 TexReg 4459). The text of the rule will not be republished.

The amendment to §513.1 will replace the word "person" with "individual".

The amendment will function by clarifying the requirements for foreign practitioners with substantially equivalent qualifications to register with the board.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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.

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Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7848



## SUBCHAPTER B. REGISTRATION OF CPA FIRMS

### 22 TAC §513.10

The Texas State Board of Public Accountancy adopts an amendment to §513.10 concerning Eligibility of Firm License without changes to the proposed text as published in the June 6, 2008, issue of the *Texas Register* (33 TexReg 4460). The text of the rule will not be republished.

The amendment to §513.10 will replace the word "persons" with the word "individuals" in subsection (a)(1) and (2).

The amendment will function by providing more consistent terminology throughout the rules.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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.

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J. Randel (Jerry) Hill

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Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7848



### 22 TAC §513.11

The Texas State Board of Public Accountancy adopts an amendment to §513.11 concerning Qualifications for Non-CPA Owners of Firm License Holders without changes to the proposed text as published in the June 6, 2008, issue of the *Texas Register* (33 TexReg 4461). The text of the rule will not be republished.

The amendment to §513.11 will replace the phrase "a natural person" with the phrase "an individual"; replace the phrase "involve" with the phrase "providing personal services in the nature of management of some portion of the firm's business interests

or performing services for clients of the firm"; add the phrase "determined by the board" to subsection (b)(4); delete all of (c); renumber old "(d)" as "(c)"; replace the word "Owner" with the phrase "A Non-CPA Owner" and replace the word "person" with the word "individual".

The amendment will function by clarifying the substantive nature of the involvement required of a non-licensed individual owner.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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.

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J. Randel (Jerry) Hill

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Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7848



### 22 TAC §513.12

The Texas State Board of Public Accountancy adopts an amendment to §513.12 concerning Application for Firm License without changes to the proposed text as published in the June 6, 2008, issue of the *Texas Register* (33 TexReg 4461). The text of the rule will not be republished.

The amendment to §513.12 will replace the word "upon" with "on"; delete the phrase "and submitted to the executive director" and delete the phrase "in this state" in subsection (a).

The amendment will function by simplifying the rule and provide more consistent terminology throughout the rules.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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.

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J. Randel (Jerry) Hill

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Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7848



◆ ◆ ◆  
**22 TAC §513.13**

The Texas State Board of Public Accountancy adopts an amendment to §513.13 concerning Certification of Corporate Franchise Tax Status without changes to the proposed text as published in the June 6, 2008, issue of the *Texas Register* (33 TexReg 4462). The text of the rule will not be republished.

The amendment to §513.13 will replace the phrase "Each corporation or professional limited liability company required to obtain a firm license shall certify in its application for a license, that the corporation's Texas franchise taxes are current." with the phrase "Each firm subject to the Texas franchise tax must certify in its application for a firm license that its Texas franchise taxes are current." in subsection (a).

The amendment will function by clarifying the annual reporting requirement of all firms.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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.

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J. Randel (Jerry) Hill  
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Texas State Board of Public Accountancy  
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For further information, please call: (512) 305-7848

◆ ◆ ◆  
**22 TAC §513.14**

The Texas State Board of Public Accountancy adopts the repeal of §513.14 concerning Affidavit of Firm without changes to the proposed text as published in the June 6, 2008, issue of the *Texas Register* (33 TexReg 4463).

The repeal will omit a rule that is no longer relevant.

The repeal will function by omitting a rule that is no longer relevant.

No comments were received regarding adoption of the repeal.

The repeal is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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.

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**22 TAC §513.15**

The Texas State Board of Public Accountancy adopts an amendment to §513.15 concerning Firm Offices without changes to the proposed text as published in the June 6, 2008, issue of the *Texas Register* (33 TexReg 4464). The text of the rule will not be republished.

The amendment to §513.15 will replace the phrase "Certified Public Accountancy Firm" with the phrase "certified public accountancy firm" in subsection (a).

The amendment will function by providing a clearer, grammatically correct rule.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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.

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J. Randel (Jerry) Hill  
General Counsel  
Texas State Board of Public Accountancy  
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For further information, please call: (512) 305-7848

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**CHAPTER 515. LICENSES**

**22 TAC §515.1**

The Texas State Board of Public Accountancy adopts an amendment to §515.1 concerning License with changes to the proposed text as published in the June 6, 2008, issue of the *Texas Register* (33 TexReg 4464). The change will be in (a) to replace the word "each" with the word "a".

The amendment to §515.1 will replace the word "each" with the word "a"; add the phrase "and the license shall not be issued or renewed unless the board has received all required fees, satisfactory documentation of compliance with continuing professional education requirements and a completed application have been received by the board" and delete the statement "(c) A license shall not be issued or renewed unless all required fees, continuing professional education and a completed application have been received by the board."

The amendment will function by providing a clear succinct rule that all routine renewal procedures must be completed to renew your license.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

§515.1. *License.*

(a) Individuals certified or registered by this board must obtain a license for a 12-month interval and the license shall not be issued or renewed unless the board has received all required fees, satisfactory documentation of compliance with continuing professional education requirements and a completed application.

(b) Subject to §515.3 of this title (relating to License Renewal for Individuals and Firm Offices) firms registered with the board must obtain a license for each office associated with the firm.

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.

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**22 TAC §515.3**

The Texas State Board of Public Accountancy adopts an amendment to §515.3 concerning License Renewals for Individuals and Firm Offices without changes to the proposed text as published in the June 6, 2008, issue of the *Texas Register* (33 TexReg 4465). The text of the rule will not be republished.

The amendment to §515.3 will add the phrase "(a) License renewals for individuals shall be as follows:"; renumber subsection (a) to (a)(1); delete "will"; will add the phrase "following the initial licensing period"; will add a new subsection (a)(2) "An individual's license will not be renewed if the individual has not earned the required continuing professional education credit hours, completed all application parts including all parts of the signed renewal and completed the affidavit reporting area on the renewal form"; will add new "(b) License renewal for firm offices shall be as follows:"; renumber subsection (c) to subsection (b)(1); delete "Staggered firm license expiration dates begin on January 1, 2007."; renumber subsection (d) to subsection (b)(2); renumber subsection (c) to subsection (b)(3); insert "This does not apply to firms providing work pursuant to the practice privilege provisions of this title."; renumber subsection (f) to subsection (b)(4); replace the phrase "notified the board of the peer review date assigned by a board approved sponsoring organization." with the phrase "met the peer review requirements as defined in Chapter 527 of this title (relating to Peer Review)."; delete "notified the board of the peer review date assigned by a board approved sponsoring organization."

The amendment will function by providing a clearer understanding of the requirements necessary for the board to issue licenses.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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.

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**22 TAC §515.4**

The Texas State Board of Public Accountancy adopts an amendment to §515.4 concerning License Cancellation without changes to the proposed text as published in the June 6, 2008, issue of the *Texas Register* (33 TexReg 4466). The text of the rule will not be republished.

The amendment to §515.4 will replace the phrase "office's licenses" with the phrase "office(s) license(s)"; delete the sentence "A firm will not be considered in good standing until all of its office licenses have been issued".

The amendment will function by providing a clearer understanding of the requirements necessary to renew a license.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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.

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**22 TAC §515.5**

The Texas State Board of Public Accountancy adopts an amendment to §515.5 concerning Reinstatement of a License without changes to the proposed text as published in the June 6, 2008, issue of the *Texas Register* (33 TexReg 4467). The text of the rule will not be republished.

The amendment to §515.5 will replace the phrase "a person" with "an individual" in subsections (a), (b) (c) and (d); replace the word "application" with the phrase "submitting a complete application" in subsection (c); replace paragraphs "(1) paying the board a fee that is equal to two times the normally required renewal fee for the license; (2) providing the Board, within 90 days of the date of the Board's receipt of the application for reinstatement, a complete application including evidence of the required licensure; and (3) demonstrating that the out of state license is no more than 90 days beyond the normal expiration date of the license." with paragraphs "(1) providing the Board, within 90 days of the date of the Board's receipt of a complete application including evidence of the required licensure; (2) demonstrating that the out of state license is no more that 90 days beyond the normal expiration date of the license; (3) paying the board a fee that is equal to two times the normally required renewal fee for the license; and (4) meeting the other requirements for licensing."

The amendment will function by providing a clearer understanding of the requirements to get an expired license reinstated.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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.

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## 22 TAC §515.8

The Texas State Board of Public Accountancy adopts an amendment to §515.8 concerning Retirement Status or Permanent Disability without changes to the proposed text as published in the June 6, 2008, issue of the *Texas Register* (33 TexReg 4468). The text of the rule will not be republished.

The amendment to §515.8 will delete the phrase "who holds a current license"; add the word "at least"; replace the phrase "the licensee is no longer employed" with the phrase "that he has no association with accounting work for compensation"; replace the phrase "A certificate or registration holder" with the phrase "An individual" in subsections (a), (b) and (d); replace the phrase "since he was granted disability status" with the phrase "as required by §523.112(5)", replace the word "licensee" with the word "individual" and replace the phrase "since he was granted dis-

ability status" with the phrase "pursuant to §523.112(3)(D) of this title" in subsection (b)(3).

The amendment will function by using terminology consistent with the rest of the rule, provide a clearer understanding of the requirements for retirement and/or permanent disability status.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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.

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## 22 TAC §515.9

The Texas State Board of Public Accountancy adopts an amendment to §515.9 concerning Collection of License Fees Following Disciplinary Action without changes to the proposed text as published in the June 6, 2008, issue of the *Texas Register* (33 TexReg 4469). The text of the rule will not be republished.

The amendment to §515.9 will replace the words "individual" and "certificate, license, or registration holder" with the word "person"; replace the ", " with the word "or" and delete the phrase "or temporary permit".

The amendment will function by making a clearer rule by using terminology consistent with the rest of the rules.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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.

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## 22 TAC §515.10

The Texas State Board of Public Accountancy adopts an amendment to §515.10 concerning Licenses for Individuals with Defaulted Student Loans without changes to the proposed text as published in the June 6, 2008, issue of the *Texas Register* (33 TexReg 4470). The text of the rule will not be republished.

The amendment to §515.10 will replace the words "licensee" and "licensee's" with the word "individual" and "individual's".

The amendment will function by providing a clearer rule using terminology consistent with the rest of the rules.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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.

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Texas State Board of Public Accountancy

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## 22 TAC §515.11

The Texas State Board of Public Accountancy adopts an amendment to §515.11 concerning Exemption from Payment of the Professional Fee for Other than State of Texas Government Employees without changes to the proposed text as published in the June 6, 2008, issue of the *Texas Register* (33 TexReg 4471). The text of the rule will not be republished.

The amendment to §515.11 will delete the phrase "including as an employee, independent contractor, sole practitioner, partner, limited liability partner, shareholder of a professional corporation, or shareholder of a limited liability company" in subsection (a)(2); replace "licensee" with "individual" and replace "shall" with "will".

The amendment will function by providing a clearer rule due to the elimination of redundant language.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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.

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## 22 TAC §515.12

The Texas State Board of Public Accountancy adopts an amendment to §515.12 concerning Exemption from Payment of the Professional Fee for State of Texas Employees without changes to the proposed text as published in the June 6, 2008, issue of the *Texas Register* (33 TexReg 4472). The text of the rule will not be republished.

The amendment to §515.12 will delete the phrase "including as an employee, independent contractor, sole practitioner, partner, limited liability partner, shareholder of a professional corporation, or shareholder of a limited liability company" in subsection (a)(2) and replace the word "licensee" with the word "individual".

The amendment will function by providing a clearer less repetitive rule.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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.

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## CHAPTER 517. PRACTICE BY CERTAIN OUT OF STATE FIRMS AND INDIVIDUALS

### 22 TAC §517.1

The Texas State Board of Public Accountancy adopts an amendment to §517.1 concerning Practice by Certain Out of State Firms without changes to the proposed text as published in the June 6, 2008, issue of the *Texas Register* (33 TexReg 4473). The text of the rule will not be republished.

The amendment to §517.1 will replace the word "with" with the phrase "that has" in subsection (a)(2) and in subsection (c)(2).

The amendment will function by providing a clearer rule.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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.

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J. Randel (Jerry) Hill

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Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7848



## CHAPTER 521. FEE SCHEDULE

### 22 TAC §521.1

The Texas State Board of Public Accountancy adopts an amendment to §521.1, concerning Individual License Fees, without changes to the proposed text as published in the June 6, 2008, issue of the *Texas Register* (33 TexReg 4475). The text of the rule will not be republished.

The amendment to §521.1(a) will replace the fee of "\$45.00" with the fee of "\$30.00" and replace the word "shall" with the word "will".

The amendment will function by an adjustment in the fees to be collected to better mirror revenue (including the increased number of applicants) and expenses.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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.

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Texas State Board of Public Accountancy

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### 22 TAC §521.4

The Texas State Board of Public Accountancy adopts an amendment to §521.4, concerning Registration Fee for Foreign Accountants, without changes to the proposed text as published in the June 6, 2008, issue of the *Texas Register* (33 TexReg 4476). The text of the rule will not be republished.

The amendment to §521.4(a) will replace the word "shall" with the word "will".

The amendment will function by providing a clearer rule.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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.

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J. Randel (Jerry) Hill

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### 22 TAC §521.6

The Texas State Board of Public Accountancy adopts an amendment to §521.6, concerning Duplication and Other Charges and Refund of Board Fees, without changes to the proposed text as published in the June 6, 2008, issue of the *Texas Register* (33 TexReg 4476). The text of the rule will not be republished.

The amendment to §521.6 will replace the phrase "the person" with the word "anyone"; delete the phrase "to eligible persons"; replace the phrase "to any person" with the word "for"; and replace the phrase "General Services Commission" with the phrase "Texas Facilities Commission" in subsection (a) and in subsections (a), (c) and (d) replace the word "shall" with the word "will".

The amendment will function by providing a clearer rule using terminology that is consistent with other board rules and Texas law.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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.

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## 22 TAC §521.7

The Texas State Board of Public Accountancy adopts an amendment to §521.7, concerning Fee for Transfer of Credits, without changes to the proposed text as published in the June 6, 2008, issue of the *Texas Register* (33 TexReg 4477). The text of the rule will not be republished.

The amendment to §521.7 will replace the word "shall" with the word "will" in subsections (a) and (b).

The amendment will function by providing a clearer rule.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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.

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## 22 TAC §521.8

The Texas State Board of Public Accountancy adopts an amendment to §521.8, concerning Retired or Disabled Status, without changes to the proposed text as published in the June 6, 2008, issue of the *Texas Register* (33 TexReg 4478). The text of the rule will not be republished.

The amendment to §521.8 will replace the word "shall" with the word "will".

The amendment will function by providing a clearer rule.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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.

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## 22 TAC §521.9

The Texas State Board of Public Accountancy adopts an amendment to §521.9, concerning Certification Fee, without changes to the proposed text as published in the June 6, 2008, issue of the *Texas Register* (33 TexReg 4479). The text of the rule will not be republished.

The amendment to §521.9 will replace the word "shall" with the word "will".

The amendment will function by providing a clearer rule.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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.

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## 22 TAC §521.11

The Texas State Board of Public Accountancy adopts an amendment to §521.11, concerning Fee for a Replacement Certificate, without changes to the proposed text as published in the June 6, 2008, issue of the *Texas Register* (33 TexReg 4479). The text of the rule will not be republished.

The amendment to §521.11 will replace the word "shall" with the word "will".

The amendment will function by providing a clearer rule.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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.

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## 22 TAC §521.12

The Texas State Board of Public Accountancy adopts an amendment to §521.12, concerning Filing Fee, without changes to the proposed text as published in the June 6, 2008, issue of the *Texas Register* (33 TexReg 4480). The text of the rule will not be republished.

The amendment to §521.12 will replace the word "shall" with the word "will".

The amendment will function by providing a clearer rule.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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.

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## 22 TAC §521.13

The Texas State Board of Public Accountancy adopts an amendment to §521.13, concerning Firm License Fees, without changes to the proposed text as published in the June 6, 2008, issue of the *Texas Register* (33 TexReg 4481). The text of the rule will not be republished.

The amendment to §521.13 will replace the word "shall" with the word "will" in subsections (a), (b), (e) and (f).

The amendment will function by providing a clearer rule.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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.

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## 22 TAC §521.14

The Texas State Board of Public Accountancy adopts an amendment to §521.14, concerning Eligibility Fee, without changes to the proposed text as published in the June 6, 2008, issue of the *Texas Register* (33 TexReg 4482). The text of the rule will not be republished.

The amendment to §521.14(a) will replace the phrase "Upon implementation of the computer based" with the phrase "The board shall determine the"; delete the word "an"; and add the phrase ", not to exceed \$100 per section, that"; and in paragraphs (1) - (4) delete "\$35.00".

The amendment will function by providing a clearer rule.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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.

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CHAPTER 523. CONTINUING PROFESSIONAL EDUCATION  
SUBCHAPTER C. ETHICS RULES:  
INDIVIDUALS AND SPONSORS

**22 TAC §523.132**

The Texas State Board of Public Accountancy adopts an amendment to §523.132, concerning Board Contracted Ethics Instructors without changes to the proposed text as published in the June 6, 2008, issue of the *Texas Register* (33 TexReg 4482). The text of the rule will not be republished.

The amendment to §523.132 will delete "after January 1, 2005" from the description of the rule; add the text "The" to the beginning of subsection (a); delete the following text "Effective January 1, 2005, the" and the following text "after January 1, 2005". In subsection (a)(1) after the text "Texas" insert the following text "or that the instructor is team teaching with a certified public accountant licensed in Texas". Delete the following text "within the last three years or". In subsection (b)(1) delete the following text "or by June 30, 2005, whichever is later,". In subsection (b)(5) delete the text "Public Accountancy". Add new subsection (d) with the following text "An instructor must submit a current resume with the contract." and renumber subsection (d) with (e).

The amendment will function by providing greater clarity regarding the requirements for ethics course instructors.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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 July 28, 2008.

TRD-200803835

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Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7848

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**TITLE 25. HEALTH SERVICES**

**PART 1. DEPARTMENT OF STATE  
HEALTH SERVICES**

**CHAPTER 100. IMMUNIZATION REGISTRY**

The Executive Commissioner of the Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department), adopts amendments to §§100.1 - 100.6, the repeal of §100.7 and §100.8, and new §§100.7 -

100.10, concerning the Texas Immunization Registry (the Registry). The amendments to §100.4 and §100.5, and new §100.7, §100.8, and §100.10 are adopted with changes to the proposed text as published in the March 21, 2008, issue of the *Texas Register* (33 TexReg 2478). The repeal of §100.7 and §100.8, amendments to §§100.1 - 100.3 and 100.6, and new §100.9 are adopted without changes and, therefore, the sections will not be republished.

**BACKGROUND AND PURPOSE**

The amendments, repeal, and new sections are necessary to implement portions of Senate Bill (SB) 11, 80th Legislature, Regular Session (2007), which amended Health and Safety Code (the Code), Chapter 161. New sections and amendments implement SB 11 requirements regarding the following scenarios: potential and declared disasters; public health emergencies; terrorist attacks; hostile military or paramilitary actions; and/or extraordinary law enforcement emergency events. SB 11 mandates a major expansion in the existing scope of the Registry. Under that legislation, the Registry must contain specified information regarding persons who receive an immunization, antiviral, and/or other medication administered to prepare for, and/or in response to, the listed scenarios. SB 11 also expanded the scope of the Registry by allowing first responders (and their immediate family members, as defined, over 18 years of age) to request that a provider who administers an immunization to that person provide information regarding the immunization to the department for inclusion in the Registry. This rulemaking also makes various clarifying amendments designed to improve the efficiency and readability of these rules sections. Also, the amendments, repeal, and new sections update the department, division, section, and branch names, and reorders text and sections to improve rule clarity.

The only change to the rules from proposal to adoption is the addition of a P.O. Box address for the department in rule language where the department's address is given.

Government Code, §2001.039, requires that each state agency review and consider for readoption every 4 years each rule adopted by that agency pursuant to the Government Code, Chapter 2001. Sections 100.1 - 100.8 have been reviewed and the department has determined that reasons for adopting the sections continue to exist because rules on this subject are needed to carry out the department's responsibilities under statute. Renumbering and revisions resulted in new §100.9 and §100.10.

**SECTION-BY-SECTION SUMMARY**

Section 100.1(2) is adopted to clarify that a managing conservator or legal guardian can also grant the requisite consent. Section 100.1(3) is adopted to reflect the language of the Code, §161.0001(1), including amendments made by SB 11. Section 100.1(4) is adopted to reflect the current name of the department. Former §100.1(5) is adopted and renumbered as §100.1(9), changing "child" to "person" to reflect SB 11 requirements. Former §100.1(6) and (7) are adopted and renumbered as §100.1(10) and (11), respectively. Former §100.1(8) is deleted as confusing and unnecessary language, and replaced with a new definition for "immediate family member" to reflect the requirements of SB 11. Former paragraphs (9), (10), and (11) in §100.1 are adopted and renumbered to §100.1(12), (14), and (17), respectively. Former §100.1(12) is adopted and renumbered to §100.1(18), with "a person" replacing "children" in order to reflect SB 11 requirements. New definitions are



adopted and numbered as paragraphs (5) - (8), (13), (15), and (16) to implement SB 11 requirements.

Section 100.2(a) is adopted to reflect amendments made to the Code, §161.0073(a) by SB 11, and adds language to reflect that a managing conservator or legal guardian may also offer the required consent. Section 100.2(b) is adopted to add a statement which expressly states that Registry information may only be accessed by the persons listed in rule, for the purposes enumerated in the rule. Further amendments are adopted to reflect the new classes of persons brought into the regulatory scheme by SB 11. Amendments are also adopted at subsection (b) to reflect that a managing conservator or legal guardian may also offer the required consent.

Section 100.3 is adopted to change the section title to reflect that "guardian" is a reference to a "legal guardian." Section 100.3(a) is adopted to add managing conservators and legal guardians to the list of those to be informed under the requirement, along with a cross-reference to the method to be used. The subsection is also adopted to add language that reflects changes to §161.007(a) of the Code made by SB 11. Section 100.3(b) is adopted to add managing conservators and legal guardians to the list of persons who will receive the referenced materials. Section 100.3(c) is adopted to add managing conservators and legal guardians to the list of persons who may receive the referenced notices. Section 100.3(d) is adopted to add managing conservators and legal guardians to the list of persons that will receive the referenced notices. Section 100.3(d)(6) is adopted to add managing conservators and legal guardians to the list of persons regarding reporting the referenced violation, and to insert "alleged" in front of "violation" to reflect that such a violation will not have been proven at that point in the process.

Section 100.4 is adopted to change the section title, and subsection (a), to reflect that this rule section is only applicable to Registry consent and withdrawal relating to minors, since these same issues are dealt with separately in new §100.7 and §100.8 regarding SB 11 requirements as to certain adults. Section 100.4(a)(2) is adopted to update the current name and contact information of the department. Former subsection (b) is adopted and renumbered as subsection (c), with a new subsection (b) adopted which describes the consent process by which information on minors is included in the Registry. In the new subsection (b), the cross-reference to new §100.7 is necessary because SB 11 provides for inclusion of information regarding minors into the Registry without consent (and therefore without consent needing to be verified) in the limited situations described in that new rule section. New subsection (b) specifies how the department will handle consent verifications in situations involving minors where such verification is required, which is authorized under the authority given to the department under changes to the Code, §161.007(a)(5) made by SB 11. This process is designed to maximize efficiency of Registry operations. Former subsection (c) is adopted as new subsection (d), and is adopted to add managing conservators and legal guardians to the list of persons regarding withdrawal of consent, and is also adopted to add a cross-reference to new §100.7 to reflect the exception to the ability to withdraw consent, per SB 11. Former subsection (d) is adopted and renumbered as new subsection (e) to add managing conservators and legal guardians to the list of persons who may request exclusion of the information, while paragraph (2) updates the department's current name and contact information and also includes a cross-reference to new §100.7 to reflect the exception to the ability to request exclusion, per SB 11.

Section 100.5 is adopted to renumber former subsection (a) as new subsection (b), with changes that: reflect the new classes of persons brought into the Registry via SB 11; clarify that managing conservators and legal guardians are included in the list of persons who can submit the referenced information; improve readability; and expressly state that submissions of the referenced information must be according to department requirements. New subsection (a) is adopted to provide a comprehensive list of the classes of persons who will have information contained in the Registry, given SB 11 requirements. Former subsection (b) is adopted as new subsection (c), with changes that reflect the new classes of persons brought into the Registry via SB 11, as well as changes to improve readability. Former subsection (c) is adopted as new subsection (e), with changes that: effectively reflect the statutory scheme for release of immunization records; expressly states the limitations of use (if any) for each class of person listed, to prohibit parties allowed direct access to the Registry from viewing records beyond those they are authorized to see, given state and federal confidentiality laws; and expresses the limitation of direct electronic access to the Registry, which is necessary due to resource constraints of the department and is advisable to help preserve confidentiality. Former subsection (d) is adopted as subsection (h), with changes that better express liability limitations by cross-referencing the applicable Code provision, rather than attempting to paraphrase statutory language. A new subsection (d) is adopted to concisely set out the methods the department has to choose from when verifying consent, under the authority granted the department under §161.007(a)(5) of the Code as amended by SB 11. Former subsection (e) is adopted as new subsection (i), with changes to reflect the new classes of persons brought into the Registry via SB 11. New subsection (f) is adopted to provide a cross-reference to new §100.7 regarding release of information under the scenarios described in that rule. New subsection (g) is adopted to provide a cross-reference to new §100.8 relating to release of information regarding first responders and their immediate family under that rule.

Section 100.6 is adopted to add language to the section title which states that the section covers medical verifications as well, and that the entire section is applicable only to minors (as opposed to adults added to the Registry scheme under SB 11, which are covered elsewhere in the rules). Amended subsection (a) is adopted with improvements to readability and clarity. Amended subsection (b) is adopted to delete confusing and outdated text and replace it with a clear statement regarding the providers' obligation to submit the required data elements to the department within the stated 30-day deadline. Amended subsection (c) is adopted in an approach similar to subsection (b), except that (c) applies to applicable payors as opposed to providers. Amended subsection (d) is adopted to add managing conservator and legal guardian to the list of persons who can provide a child's immunization history to the department. Former subsection (e) is deleted because its subject matter is covered under other provisions under this section as reorganized. Former subsection (f) is adopted as subsection (e), with changes to improve clarity. Former subsection (g) is adopted as subsection (f).

The text in existing §100.7 and §100.8 is adopted as §100.9 and §100.10, respectively, with changes as part of the reorganization of this chapter (see discussion as follows).

New §100.7 is adopted to implement changes to the Code, Chapter 161, amended by SB 11 regarding the following scenarios: potential and declared disasters; public health

emergencies; terrorist attacks; hostile military or paramilitary actions; and/or extraordinary law enforcement emergency events. Senate Bill 11 mandates a major expansion in the existing scope of the Registry. Under that legislation, the Registry must contain specified information regarding persons who receive an immunization, antiviral, and/or other medication administered to prepare for, and/or in response to, the listed scenarios--as stated in adopted new subsection (a) in this section. The provider deadline to submit data elements is set at 30 days in the new subsection (b). This will allow the Registry to reflect an accurate picture of the immunizations, etc. being administered in the emergency so that information will be available to those who need it. Senate Bill 11 amends §161.00705 of the Code to include requirements for the department to track adverse reactions in these situations, and adopted new rule subsection (c) implements this requirement. The rule language states that such tracking will be based on reports the department receives from health care providers, as opposed to being based on an impractical attempt by the department to proactively contact all providers who were active in any given disaster/emergency. The statute does not make such reporting mandatory for providers, and the department does not have the resources to attempt to identify and contact all these providers who administered health care during the emergency. Senate Bill 11 provides that consent is not necessary for the health care information at issue to be included in the Registry, but goes on to charge the department with determining the time period following the disaster/emergency event after which consent would be required for continued inclusion. Department Preparedness Program staff have analyzed this situation, using their long expertise in public health and emergency management in Texas, and have determined that the appropriate time period is five years after the end date of the emergency scenario. Reasons for choosing this time period are based on public health needs:

(1) The 5-year period is commonly used as the interval for when boosters are recommended (e.g., tetanus, pneumonia if >64 years). To avoid over-immunizing individuals under adopted §100.7, and to avoid the costs of revaccinating persons who don't keep personal records, a five-year period in the Registry would be sufficient for record-checking purposes.

(2) Adequate time is needed to track individuals with adverse reactions that are reported to the department by the providers at issue. It is currently unknown how many adverse reactions will result from use of antiviral drugs, antibiotics, vaccines, or emergency use authorization (EUA) drugs that may be used during a scenario described in adopted §100.7. The department tracking of adverse reactions following such a scenario may take years, especially if a large number of individuals are affected. Five years is a minimal time in which to examine trends.

New §100.7(d) specifies the details of how this post-emergency transition period will work. Since the Texas Legislature did not define the various emergency terms used in SB 11, and did not include an explicit method for determining their duration, the adopted new subsection (d) states that: for types of emergencies where existing statutes provide for the duration, that will be the controlling trigger dates; for types of emergencies where the law does not so provide, the department will determine the end date and post it on the department website. The department will use its expertise in public health and emergency management to make the latter determinations, and the website posting should be an effective method of getting this information disseminated. Once the time period referenced in subsection (d) has passed, consent is required under SB 11 and adopted new subsection (e)

details the mechanics of that process. Adopted new subsection (f) pertains to department release of the information, and implements SB 11 changes to the Code, §161.00705(g).

New §100.8 implements changes to the Code, Chapter 161, amended by SB 11 regarding immunization information of first responders and their immediate families. SB 11 contains a second major expansion in the existing scope of the Registry. Under that legislation, first responders (and immediate family members, as defined, over 18 years of age) may request that a provider who administers an immunization to the person provide information regarding that immunization to the department for inclusion in the Registry, as described in adopted new rule subsection (a). Unlike the scenarios described in adopted new §100.7, SB 11 does not make this requirement mandatory. Rather, it is an available option for the persons covered. Adopted new subsection (b) requires the provider to submit that information, upon receiving such a request, as mandated by SB 11 through amendments to §161.00706(b) of the Code. The language in this rule subsection goes on to articulate deadlines and mechanics for how this works, including the logistics and methodologies for verification of the request for inclusion in the Registry. Adopted new subsection (c) describes the logistics of making the request. Adopted subsection (d) covers the issue of medical verification regarding information submitted under this section, and lists documents that will be acceptable for that purpose. Adopted new subsection (e) details when the department can release such information, and this language tracks SB 11 amendments to §161.00706(d) of the Code. Adopted new subsection (f) details the ability of persons to have their information removed from the Registry, and this language tracks SB 11 amendments to §161.00706(e) of the Code.

New §100.9 provides the definition for an official immunization record, and is merely the language from existing §100.7 moved as part of the reorganization of this chapter.

New §100.10 provides instructions for filing complaints about the Registry, and details the department's associated reporting requirements. This is the language from existing §100.8 moved as part of the reorganization of this chapter, but with changes that: insert "alleged" in front of "failure to comply" to reflect that such a violation will not have been proven at that point in the process; improve readability; and include new reporting requirements associated with SB 11.

## 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 two individuals and the following associations: Texas Children's Hospital, Houston Area Immunization Partnership, and the Texas Pediatric Society. The commenters were not against the rules in their entirety; however, the commenters suggested recommendations for change as discussed in the summary of comments.

### Preliminary Comments

The department communicated with stakeholders during the rules development process and provided proposed rules to stakeholders in advance of the 30-day public comment period. The department requested preliminary comments from stakeholders. The department received written comments from stakeholders in response to the request for preliminary comments. All but one of the comments received during the preliminary comment period were also submitted or raised by

other commenters during the formal (30-day) comment period. Comments and the department responses are summarized as follows.

Preliminary Comment: Concerning §100.3(a), one commenter suggested that "childhood" be removed, as most vaccine protection extends throughout the lifespan and adolescent vaccines are becoming more prominent.

Response: Although the department is not required by the Administrative Procedure Act (APA) to respond to this preliminary comment, the department offers the following reply: the department disagrees with this preliminary comment because the term "childhood" reflects the primary purpose of the registry as stated in Code, §161.007 and §100.3 specifically only covers persons under 18 years of age. No change was made to the rule as a result of this comment.

#### Formal Comments (30-day comment period)

Comment: Concerning new §100.5(b), several commenters expressed concern that the language will restrict reporting by some entities, listing as examples local immunization registries, health information exchanges, daycare providers, insurance companies, and elementary, middle and high schools. Some commenters suggested that "any verifiable source" be able to submit data and that the burden should be on the department to accept data from as many sources and in as many formats as possible. Some commenters objected to the requirement for data submission "according to the procedures and format prescribed by the department," saying such language could limit what entities can submit data to the Registry and also saying that such language would put the responsibility on those parties submitting data electronically into the Registry to interface with the computer system the department uses. One commenter said that if that phrase was meant to refer to "technical procedures" or "administrative requirements," then "it may be a reasonable requirement."

Response: Long-standing language in the Code, §161.008(c), which was unchanged by SB 11, limits what types of entities and individuals can submit data to the Registry. The new language for §100.5(b), and indeed all the language in this rule chapter, reflects this statutory limitation. The department does not have the authority to expand acceptable data sources by rule. Local immunization registries, health information exchanges, daycares, and schools are not listed in the statutory provision. Insurance companies are, however, under the term "payor." The only place in the Code, Chapter 161, that mentions local immunization registries or "regional health information exchanges" at all is at §161.007(a)(5), which was added by SB 11 and which only has the effect of including these entities (which are not defined) in the consent verification process. This language has no bearing whatsoever on the allowable entities from which the department can accept data in the first place, as limited by §161.008(c).

The Code requires that data elements be "submitted in a format prescribed by the department." The language added to the end of §100.5(b) is in recognition of the fact that numerous methods and procedures now exist for transmitting electronic data. However, some methods, though technologically feasible, may not be appropriate for secure transmission of confidential public health data. Also, the department has very limited information technology resources and is, therefore, constrained in what kind of electronic computer system it can implement. This new requirement in §100.5(b) is designed to allow the department to establish appropriate standards for secure data submission, to maxi-

mize Registry efficiency and control department costs. This new rule language does not prevent the department from expanding the acceptable formats for submitting data if additional funding becomes available. Based on stakeholder input, and working with providers and electronic medical records vendors, the department is researching technology to allow the submission of data in as numerous appropriate data formats as resources allow. No change was made to the rule as a result of these comments.

Comment: Concerning §100.5(c), commenters expressed concern that the new rule language would prohibit the department from retaining submitted data for a set period of months while consent is verified. Periods as long as 6 months were suggested to be put in the rule for retention of unconsented data to allow for verification of consent.

Response: The Code does not allow the department to retain Registry data for which consent cannot be verified (except under the emergency circumstances as described in new §100.7 where consent is not required). While there is an implied period of time in the statute where consent verification is sought, the department does not believe it has the authority to implement a specific retention period for unconsented data by rule. However, the improvements in this rulemaking to the consent verification process are intended to increase the efficiency (and thus the speed) of consent verification. Also, the department notes that old rule language at §100.6(e), was moved in substantially similar form to §100.4(b) as part of the overall chapter reorganization, calls for the provider to be notified when consent cannot be verified which should help clear up consent verification miscommunication or glitches. No change was made to the rule as a result of these comments.

Comment: Concerning §100.5(d)(1), some commenters suggested that the parent be allowed to grant consent by electronic signature directly on the birth certificate in order to facilitate the enrollment of newborns into the Registry, and argue that the Code requires this option. It is argued that the current newborn enrollment system as well as the system that is set up under the new rule would be less efficient than one that was in place at some point in the past where a parent checked a "consent" box on the birth certificate itself.

Response: The Code, §161.007(a-1) and §161.0071(e), were written to authorize a parent, managing conservator, or guardian of a child to provide written consent, or request exclusion, by using an electronic signature on the child's birth certificate. The Code, §161.007(c) and §161.007(d), require the department to verify consent prior to including information in the Registry, and prohibit the department from retaining information about a person for whom consent cannot be verified. It is the department's position that verification of consent must require that the parent be provided with sufficient information regarding the Registry to ensure that the parent understands what the Registry is and what they are agreeing to. This interpretation is consistent with the circumstances surrounding the passage of House Bill (HB) 1921 (78th Legislature, 2003), which amended the Code to require the department to implement new procedures for allowing a parent to request exclusion from the Registry during the birth registration process and for verifying consent prior to inclusion of client information in the Registry.

Prior to implementation of HB1921, which was implemented in January 2005, the parent's consent for a newborn's participation in ImmTrac was obtained by checking a box on the birth registration worksheet that hospital birth registrars commonly used

to collect information for preparation of the birth certificate. The birth certificate was typically prepared and filed several days or weeks later. From a process perspective, obtaining the parent's signature "on" the birth certificate document was not feasible because the birth certificate was typically not prepared and filed until after the parent left the birthing facility.

The requirements of HB1921 relating to the requirement to provide the parent an option to either grant consent or request exclusion, and the requirement for verification of consent by the department, as well as the department's determination that verification of consent would require that the parent was sufficiently educated about the Registry so that consent could be considered to be informed, resulted in implementation of the process being replaced by the new rules. Also, the use of birth registration worksheets was being phased out as part of a move toward an electronic birth registration system. The department asserts that the new rules, which authorize the department to verify consent by accepting electronic affirmation by a birth registrar that consent has been obtained, will simplify and streamline the newborn consent process and facilitate the enrollment of newborns in the Registry at a higher level than previous processes. Under this new system, there will be no need for multiple visits with the parents and there will be no need for faxing forms or processing and storing electronic images in order to obtain and verify consent.

The department asserts that the new rules will result in a greater number of children participating in the Registry generally, while also fulfilling the necessity for the department to verify that informed consent has been obtained. No change was made to the rule as a result of this comment.

Comment: Concerning §100.5(d)(3), several commenters stated that the department does not have the authority under the Code to prescribe the "manner" in which parental consent is obtained, and suggested that the department allow parental consent by use of private physician electronic medical records software and local immunization registry consent forms.

Response: For years, the Code has required that the department verify that consent has been given for inclusion of the information in the Registry. Two elements the department sees as inherent in this legislatively-mandated duty are: (1) ensuring that the consent is for inclusion of the data in ImmTrac, as opposed to some other registry; and (2) taking steps to ensure that the consent was informed. Regarding the first point, consent for inclusion in a local registry, for example, is not the same as consent for ImmTrac inclusion. Even if a form used by some third party attempted to include language, which also covered ImmTrac consent, there would always be the matter of whether such language was legally sufficient to actually achieve that additional consent. Regarding the second point, it is the department's position that only informed consent equals "consent." If the person granting consent has not been given enough information to know what they are agreeing to, then it is not true consent and thus the department cannot verify that proper consent has been given. Legislative intent when consent verification legislation was passed would appear to be that the department was to begin verifying consent in order to provide consistency in the way consent is obtained, so that it would truly be informed consent. Private physician electronic medical sources and local registry consent forms may not contain information to address either of the two concerns outlined previously in this preamble. Senate Bill 11 specifically allows the department to determine the "process" by which consent is verified, including affirmation by

the parties listed at the Code, §161.007(a)(5), and it did not relax the underlying consent verification itself that the department must conduct. No change was made to the rule as a result of this comment.

Comment: Concerning §100.5(e)(2), some commenters suggested the addition of language that would specifically allow for the release of ImmTrac data to immunization registries in other states.

Response: While the department may feel that such sharing of data is beneficial from a public health standpoint, the Code unfortunately does not allow for such a release of information. The department does not have the authority to address this issue by rule. The Code, §161.008(c) and (d), include "local health departments," and "public health districts," as entities that may submit information to, and view information from, ImmTrac. These two terms are established at the Code, §121.031 and §121.041, and are entities created under Texas statute. Under existing law, these definitions cannot be interpreted to include out-of-state counterparts. To the extent that any ImmTrac information would "relate to cases or suspected cases of diseases or health conditions," the release the commenters suggest would also be prohibited by the Code, §81.046. Amendments to the Code at all these sections would be necessary before the department may write the rule language as sought by the commenters.

Comment: Concerning §100.5(e)(2)(A), several commenters objected to language which limits use of Registry data by local health departments and public health districts for public health purposes "within their areas of jurisdiction." Commenters suggested that providers and local health departments should be authorized to view records for any client who seeks treatment in their facility, regardless of in which jurisdiction that child resides. Commenters also object to the rule language that would limit use of Registry data by providers to that of "treating the child as a patient," based on the supposition that such language would block data exchange between ImmTrac and local immunization registries and/or regional health information exchanges. One commenter suggested that the department should limit its revisions to those based on statutory language changes in SB 11.

Response: The phrase "within their areas of jurisdiction" in the new rule language refers to the public health purposes, not to the original residence or origin of the individual patient being treated by that local health entity. This limitation would not limit data exchange or restrict access for any public health purpose that occurs within a public health entity's jurisdiction. Therefore, in the situations mentioned by the commenters where people flee the scene of an emergency and receive health care from a local health department in a different part of the state, that health department would still be able to access the Registry data regardless of whether the child resides within the jurisdiction of that local health department. Because of confidentiality restrictions in federal and state law, the proposed language is intended to state what the department believes is a non-controversial, long-standing proposition--namely, that a public health district or local health department cannot see this confidential information unless it is for a legitimate public health purpose. For example, a local health department in the Panhandle region of North Texas could not legitimately look at the ImmTrac records for a child who lives in the Valley area of South Texas and who is not being treated by that Panhandle local health department.

The immunization records at issue here are confidential under a variety of state and federal statutes and regulations, and any exemption to that confidentiality requires specific statutory author-

ity. Not all doctors may see the records of all persons who are being treated by a doctor, for example. In the case of ImmTrac, the Code, §161.008(c), the exemption is phrased as being applicable to "a physician to the child." The proposed rule merely reflects that statutory requirement. The fact that the statutory language in question was enacted prior to SB 11 is irrelevant...nothing in SB 11 changed that language or its effect, and the department is not limited in its rulemaking powers to only implementing new legislative amendments. In fact, the 4-year regulatory review required in Government Code, §2001.039, is designed to make agencies periodically review the appropriateness of their rules, which includes a fresh look at how the rules in question flow from the statutory authority for those rules. In this instance, the rule language is amended to better reflect a clear statutory limitation on the exception regarding provider access to confidential information. Additionally, as stated previously in the department's answer to comments regarding §100.5(b), long-standing language in the Code, §161.008(c) and (d), which was unchanged by SB 11, limits what types of entities and individuals can submit data to, and view information in, the Registry. Nothing in the statute gives local immunization registries or health information exchanges the ability to conduct "data exchanges" as referenced by the commenters. So any rule changes sought to create or facilitate this type of Registry access by these two types of entities are invalid on their face and will not be considered. No change was made to the rule as a result of this comment.

Comment: Concerning §100.5(e)(3), several commenters suggested striking this language because it could be interpreted to prevent electronic interfaces or other types of two-way exchanges with other state and local registries in the event of an emergency; and could also be interpreted to limit data sharing with local immunization registry systems or health information exchanges, thereby limiting the ability of local communities to populate their local database and increase the over-all number of immunization records captured. One commenter claims that the most recent consent system for "older children" under the rules was "very unmanageable" and that the department conducts "no outreach" into local communities to populate the Registry.

Response: The department disagrees because §100.5(e)(3) specifies that direct electronic access to the Registry shall be limited to the same entities, and under the same limitations of use, as specified in §100.5(e)(2), which relates only to the release of data constituting an immunization record. This is consistent with the Code, §161.008(c) and (d). The commenters say that the rule could be interpreted to prevent the development of electronic interfaces linking users directly to ImmTrac from local registries or health information exchanges. It is the statute, under which these rules are promulgated, that prevents the linkage referenced in the comment. The two types of entities the commenter references are not included in the statutory list of entities that may submit information to, and access information from, ImmTrac. Further, while the department does not agree with the commenter's characterization of the system under the previous version of the rules, the improvements to consent processes that will be implemented under these new rules will add efficiency and ease-of-use to the system. All entities allowed by law to interface with the system should benefit from these improvements. Out of state registries are not allowed under Texas law to interface with the Registry, as detailed in the department response to the comments regarding §100.5(e)(2). Further, the statutory limitations on Registry interface found in the Code, §161.008(c) and (d), are not trumped by any language in the Code, §161.010 and §161.0101. The outreach

activities referenced in these statutory provisions are one that the department, in fact, conducts and these activities include collaboration with a wide variety of public and private, regional and local entities around the state. However, it is not a prerequisite of that outreach that entities the department works with in spreading awareness about the vaccines and the Registry have direct access to ImmTrac. The provisions of the Code, §161.008(c) and (d), control in this matter and there is no conflict within the statute on this question. The department notes that it has conducted outreach to increase ImmTrac registration for many years, and will continue to do so in an effort to maximize the number of individuals with records in the Registry and the number of health care providers and other allowed users participating in, and reporting immunizations to, the Registry. The department provides support and coordinates outreach activities with its regional offices and local health departments to educate parents about the Registry, encourage enrollment of children in the Registry, recruit providers and promote provider participation, and encourage providers to use Registry data in an effective way to promote public health. The department's education, promotion, and outreach activities, in coordination with the work of many stakeholders across the state, have contributed to significant growth in the Registry's total client participation, immunization records reported, and participation by providers and other allowed users.

The Code, §161.007(a), directs the department to establish and maintain an immunization registry for the primary purpose of "establishing and maintaining a single repository" of immunization records. The Code does not direct (or allow) the department to enter into data sharing relationships, with the entities referenced by the commenters, to populate local community databases. No change was made to the rule as a result of this comment.

Comment: Concerning §100.6(a), several commenters objected to language stating that electronic data submissions be in the "format and manner" prescribed by the department. Commenters stated that the burden should fall on the department to accept data from as many potential data sources and in as many data formats as possible from "any verifiable source."

Response: Please reference the department answers to comments on §100.5(b) regarding entities that can input data, and have access, to ImmTrac. No change was made to the rule as a result of this comment.

Comment: Concerning §100.6(e), several commenters objected to removal of the requirement that the department notify providers when consent cannot be verified; commenters requested that previous language not be deleted.

Response: As stated in the proposal preamble for this rulemaking, and during subsequent stakeholder discussions, the requirement that the department notify the provider if consent cannot be verified has not been eliminated. For more efficient organization of the chapter, the notification requirement has been removed from §100.6(e) and substantially similar language is now included in §100.4(b), which relates specifically to consent requirements. The department agrees that provider notification under this language is important. No change was made to the rule as a result of these comments.

Comment: Concerning §100.7(d), a commenter stated that 4 years is a significant time to collect data, however it is far too long a time to commit to a valid epidemiological record. This commenter suggested that an 18 to 24 month period is a more appropriate period to collect data relating to a disaster, and rec-

ommended that statistical analysis with consideration for disaster/population dynamics be applied to control, contain, and prevent possible disease migration. Another commenter recommended that the department extend the period of time for retention of unconsented disaster-related Registry information to a period longer than five years.

Response: The department did not fully understand the comment relating to a period of time to collect data. Section 100.7(d) pertains to the period of time that data collected during a disaster or emergency event will be retained in the Registry after the end of the event if consent is not obtained. The department disaster preparedness experts have determined that 5 years is the appropriate retention time period, for all the reasons listed in the Section-by-Section summary above regarding this rule section. It does not appear to the department that this commenter has provided any basis for re-evaluating that 5-year period.

The commenter that recommended an extended retention period did not put forward substantive information for the department to consider regarding why a longer time period would be appropriate. No change was made to the rule as a result of this comment.

Comment: Concerning §100.7(f), some commenters suggested the language be modified to clarify that providers would not need to re-consent patients in order to share immunization records with other providers and health departments in the event of a disaster.

Response: The language now §100.7(f) reflects the language in SB 11, which amended the Code, §161.00705(g). The proposed rule does not add an additional consent requirement--one proper consent is all that would be required. If consent is informed, as these proposed rules would ensure, then consent to have data included in ImmTrac includes consent to have that data viewed in ImmTrac by the persons listed in the statute/rules. Also, see department response to comments regarding §100.5(d)(3) previously. No change was made to the rule as a result of this comment.

Comment (general): Some commenters expressed concern that, through promulgation of the proposed rules, the department appears to be attempting to narrow the scope of with whom data may be properly exchanged going beyond the language and intent of the statute. Commenters object to any language in the rules, which has this effect, with specific concerns relating to data exchange with local registries and health information exchanges, as a misuse of the department's discretion pursuant to the APA set forth in Government Code, §2001.174(2). One commenter also urges the department to "consider future technological advancements and how Texas communities will use these tools over the coming decades to improve and enhance the public health and well-being of residents across this state."

Response: The department shares the desire of these commenters to maximize immunization data in the Registry as a way of improving the public health in Texas. However, long-standing language in The Code, §161.008(c), which was unchanged by SB 11, limits what types of entities and individuals can submit data to the Registry. New language in this rule chapter reflects this statutory limitation. The department does not have the authority to expand acceptable data sources by rule. Local immunization registries and health information exchanges are not listed in the statutory provision. The only place in the Code, Chapter 161, that mentions local immunization registries or "regional health information exchanges" at all is at §161.007(a)(5), which was added by SB 11 and which only has the effect of in-

cluding these entities (which are not defined) in the consent verification process. This language has no bearing whatsoever on the allowable entities from which the department can accept data in the first place, as limited by §161.008(c).

The APA provision cited by commenter actually supports the department's position in this matter. While the cited provision concerns how the standard of review in a suit challenging an agency rulemaking is determined, it is instructive to note that the trigger for a court action adverse to an agency is when that agency adopts a rule that is at odds with the agency's statutory authority to promulgate that rule. As discussed immediately above, and throughout this preamble, it is precisely the limitations of the Health and Safety Code, which prohibit the department from writing a rule with the content the commenters seek. If the department were to allow, by rule, entities beyond those provided for at the Code, §161.008(c) and (d), to submit information to, and access information from, the Registry--that would constitute the improper department action, which the APA provision contemplates.

Regarding the general statement concerning "future technological advancements," the department responds that it does try to stay abreast of such developments and to incorporate those, which our very-limited electronic information systems resources allow. The department is working to maximize the efficiency and effectiveness of the ImmTrac system and associated processes within these very real limitations. No change was made to the rule as a result of these comments.

The only change to the rule text from proposal to adoption is the addition of a P.O. Box address each place that the department's physical address is located.

#### LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the rules, as adopted, have been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

#### 25 TAC §§100.1 - 100.10

#### STATUTORY AUTHORITY

The amendments and new rules are adopted under Health and Safety Code, §81.021, which requires the department to protect the public from communicable disease; §81.004, which allows the department to adopt rules for the effective administration of the Communicable Disease Act; and Chapter 161, concerning the Immunization Registry; 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.

#### §100.4. Registry Consent and Withdrawal Relating to a Minor.

(a) A parent, managing conservator or legal guardian of a patient younger than 18 years of age may consent to the inclusion of the child's immunization history in the immunization registry by doing one of the following:

(1) indicating consent at birth certificate registration, including by electronic signature;

(2) submitting written notification to the department in a format prescribed by the department or substantially similar and

mailed to the Department of State Health Services, Immunization Branch, MC-1946, P.O. Box 149347, Austin, Texas 78714-9347, or by courier to Department of State Health Services, Immunization Branch, 1100 West 49th Street, MC-1946, Austin, Texas 78756, or by calling the Immunization Branch at (800) 252-9152 to request a consent form;

(3) completing written consent to be submitted to a health care provider, birth registrar, regional health information exchange, or local immunization registry, who may review that consent and affirm that consent has been obtained via an affirmation process as directed by the department.

(b) Unless otherwise provided by §100.7 of this title (relating to Potential and Declared Disasters, Public Health Emergency, Terrorist Attack, Hostile Military or Paramilitary Action, and Extraordinary Law Enforcement Emergency Event), the department shall verify consent before including the reported information regarding the child in the immunization registry. Under Health and Safety Code, §161.007(a)(5), the department may elect to verify consent by receiving affirmation from a health care provider, birth registrar, regional health information exchange, or local immunization registry that consent has been obtained. The department shall provide notice to a provider that submits data elements for a person for whom consent cannot be verified. The notice shall contain instructions for obtaining and affirming consent and resubmitting the data elements to the department.

(c) Consent is required to be obtained only one time, and is valid until the child becomes 18 years of age, unless the consent is withdrawn in writing.

(d) A parent, managing conservator or legal guardian of a patient younger than 18 years of age may withdraw consent for the child to be included in the registry at any time by submitting written notification to the department in a format prescribed by the department or substantially similar and mailed to the Department of State Health Services, Immunization Branch, MC-1946, P.O. Box 149347, Austin, Texas 78714-9347, or by courier to Department of State Health Services, Immunization Branch, 1100 West 49th Street, MC-1946, Austin, Texas 78756, or by calling the Immunization Branch at (800) 252-9152 to request a consent withdrawal form. Unless otherwise provided by §100.7 of this title, the department shall remove information from the immunization registry for any person for whom consent has been withdrawn, and the department shall send the parent, managing conservator or legal guardian a written confirmation of the removal of the information. The department may not retain individually identifiable information about any person for whom consent has been withdrawn except as provided for by §100.7 of this title.

(e) A parent, managing conservator or legal guardian may request exclusion of a child's immunization history from the immunization registry by doing one of the following:

(1) indicating the request for exclusion at birth certificate registration, including by electronic signature; or

(2) submitting written notification to the department in a format prescribed by the department or substantially similar and mailed to the Department of State Health Services, Immunization Branch, MC-1946, P.O. Box 149347, Austin, Texas 78714-9347, or by courier to Department of State Health Services, Immunization Branch, 1100 West 49th Street, MC-1946, Austin, Texas 78756, or by calling the Immunization Branch at (800) 252-9152 to request an exclusion form. Unless otherwise provided by §100.7 of this title, on receipt of a written request to exclude a child's immunization records from the registry, the department shall send the parent, managing conservator or legal guardian a written confirmation of receipt of the request, and shall exclude the child's records from the registry. The department may not retain individually identifiable information about any person

for whom an exclusion has been requested, unless otherwise allowed under §100.7 of this title.

*§100.5. Receipt and Release of Registry Data.*

(a) The immunization registry must contain information on the immunization history obtained by the department under this chapter regarding:

(1) a person who is younger than 18 years of age and for whom consent has been obtained;

(2) persons immunized to prepare for or in response to an event under §100.7 of this title (relating to Potential and Declared Disasters, Public Health Emergency, Terrorist Attack, Hostile Military or Paramilitary Action, and Extraordinary Law Enforcement Emergency Event); and

(3) first responders and/or their immediate family members for whom a request has been submitted, as described at §100.8 of this title (relating to First Responder Immunization Information).

(b) The department may obtain the data constituting an immunization record for a person from a public health district, a local health department, the parent, managing conservator or legal guardian of a patient younger than 18 years of age, a physician, a payor, or from any health care provider licensed (or otherwise legally authorized) to administer vaccines. Submission of this information must be according to the procedures and in the format prescribed by the department.

(c) Except as provided by §100.7 and §100.8 of this title, the department shall verify consent before including information received under subsection (b) of this section in the immunization registry. The department may not retain individually identifiable information about a person for whom consent cannot be verified.

(d) When the department verifies consent under subsection (c) of this section, it may do so by any of the following, at its discretion:

(1) manual or electronic review of the consent form document signed (including by electronic signature) by a parent, managing conservator or legal guardian at birth certificate registration;

(2) manual or electronic review of a consent form signed by a parent, managing conservator or legal guardian and submitted to the department by mail to the Department of State Health Services, Immunization Branch, MC-1946, P.O. Box 149347, Austin, Texas 78714-9347, or by courier to Department of State Health Services, Immunization Branch, 1100 West 49th Street, MC-1946, Austin, Texas 78756 (consent forms may also be received by facsimile);

(3) affirmation by a health care provider, birth registrar, regional health information exchange, or local immunization registry that consent has been obtained, as described in Health and Safety Code, §161.007(a)(5), and in a manner prescribed by the department.

(e) Except as limited by subsections (f) and (g) of this section, the department may release the data constituting an immunization record:

(1) to the parent, managing conservator, and/or legal guardian of a person younger than 18 years of age; and/or

(2) to the following entities, with those entities subject to the stated limitations:

(A) a Texas public health district or a Texas local health department, for public health purposes within their areas of jurisdiction;

(B) a physician or any health care provider licensed (or otherwise legally authorized) to administer vaccines in Texas, for treating the child as a patient;

(C) a Texas school or Texas child care facility, for a child enrolled in that school or child care facility;

(D) a payor currently authorized by the Texas Department of Insurance to operate in Texas, for immunization records related to the specific person in Texas covered under the payor's policy; and/or

(E) a state agency having legal custody of a child.

(3) Direct electronic access to the immunization registry information shall be limited to entities described in paragraph (2) of this subsection, for use under the stated limitations and subject to registration and access requirements as provided by the department.

(f) For persons immunized to prepare for, or in response to, an event covered by §100.7 of this title, the department may release information from the registry as provided in §100.7(f) of this title.

(g) For first responders and/or their immediate family members 18 years of age or older, the department may release information from the registry as provided in §100.8(e) of this title.

(h) Health and Safety Code, §161.0105, provides limited liability protections, as described in those provisions.

(i) The department may release nonidentifying summary statistics related to the registry that do not individually identify an individual.

*§100.7. Potential and Declared Disasters, Public Health Emergency, Terrorist Attack, Hostile Military or Paramilitary Action, and Extraordinary Law Enforcement Emergency Event.*

(a) The immunization registry shall contain information regarding persons who receive an immunization, antiviral, and/or other medication administered:

(1) to prepare for a potential disaster, public health emergency, terrorist attack, hostile military or paramilitary action, and/or an extraordinary law enforcement emergency event, as those terms are defined in §100.1 of this title (relating to Definitions);

(2) in response to a declared disaster, public health emergency, terrorist attack, hostile military or paramilitary action and/or extraordinary law enforcement emergency event, as those terms are defined in §100.1 of this title.

(b) A health care provider who administers an immunization, antiviral, and/or other medication as described in subsection (a) of this section shall provide the data elements to the department, within 30 days of that medical treatment, in a format and manner prescribed by the department.

(c) The department shall track, in the immunization registry, adverse reactions to an immunization, antiviral, and/or other medication administered as described in subsection (a) of this section. A health care provider who administers such an immunization, antiviral, and/or other medication may provide data related to adverse reactions to the department, in a format and manner prescribed by the department, for inclusion in the immunization registry. Department tracking will be based on the reports it receives under this subsection.

(d) Unless consent is obtained and verified, the individually identifiable information collected in the registry under this section shall only be retained in the registry for a period of 5 years following the end of the event as described in subsection (a) of this section. The end date of these occurrences shall be as specifically provided for by law. In the absence of law which specifically determines the end date, the department shall determine such an end date and post that date on its website.

(e) An individual or, if a child, the child's parent, managing conservator or legal guardian, may consent in writing to the continued inclusion of the person's information collected under this section in the registry past the retention time period specified in subsection (d) of this section by:

(1) mailing (or faxing) written notification to the department, in a format prescribed by the department, at: Department of State Health Services, Immunization Branch, MC-1946, P.O. Box 149347, Austin, Texas 78714-9347, or by courier to Department of State Health Services, Immunization Branch, 1100 West 49th Street, MC-1946, Austin, Texas 78756, (a consent form may be obtained by calling the Immunization Branch at (800) 252-9152, or online at [www.ImmTrac.com](http://www.ImmTrac.com)); or

(2) completing a consent form document, which must be verified by affirmation by a health care provider in a manner prescribed by the department.

(f) The department may release the information collected in the registry under this section with consent of the individual or, if a child, the child's parent, managing conservator or legal guardian, or to a state agency or health care provider for:

(1) the purposes outlined in Health and Safety Code, Chapter 161, Subsection A; and/or

(2) the purpose of aiding and coordinating communicable disease prevention and control efforts during an event as described in subsection (a) of this section.

*§100.8. First Responder Immunization Information.*

(a) A person 18 years of age or older who is a first responder or an immediate family member of a first responder may request that a health care provider who administers an immunization to the person provide the data elements regarding the immunization to the department for inclusion in the registry.

(b) A health care provider, on receipt of a request under subsection (a) of this section, shall submit the data elements to the department within 30 days of administration of the vaccine in a format and manner prescribed by the department. The department shall verify the request before including the information in the registry. The department may elect to verify the request for inclusion in the registry by obtaining an affirmation from the health care provider that a request has been received.

(c) A person 18 years of age or older who is a first responder or an immediate family member of a first responder may request inclusion of that person's immunization history in the registry by:

(1) mailing written notification to the department, in a format prescribed by the department, at: Department of State Health Services, Immunization Branch, MC-1946, P.O. Box 149347, Austin, Texas 78714-9347, or by courier to Department of State Health Services, Immunization Branch, 1100 West 49th Street, MC-1946, Austin, Texas 78756, (a request form may be obtained by calling the Immunization Branch at (800) 252-9152, or online at [www.ImmTrac.com](http://www.ImmTrac.com)); or

(2) completing a written request to the person's health care provider, to be verified by affirmation (in a manner prescribed by the department) by the health care provider that such a request has been received.

(d) The department shall ensure that the immunization history submitted by the individual under subsection (c)(1) of this section is medically verified immunization information by requiring the individual to submit evidence that includes a true and accurate copy of one or more of the following:



(1) the individual's medical record indicating the immunization history and including a provider's signature and the name and address of the provider;

(2) a vaccine-specific invoice from a health care provider for the immunization;

(3) vaccine-specific documentation showing that a claim for the immunization was paid by a payor;

(4) an immunization record signed by a school official; or

(5) an immunization history provided by a local or state immunization registry.

(e) The department may release the information collected in the registry under this section with consent of the individual or to any health care provider licensed or otherwise authorized to administer vaccines.

(f) A person whose immunization records are included in the registry under this section may request in writing that the department remove the information from the registry. The department shall remove the person's immunization records from the registry not later than the 10th day after receiving a request.

#### *§100.10. Complaints.*

(a) A person may file a complaint with the department related to the department's alleged failure to comply with a request for exclusion of an individual from the registry by mailing such a complaint to: Manager, Department of State Health Services, Immunization Branch, MC-1946, P.O. Box 149347, Austin, Texas 78714-9347, or by courier to Manager, Immunization Branch, Department of State Health Services, 1100 West 49th Street, MC-1946, Austin, Texas 78756; or by e-mail to the attention of Manager, Immunization Branch at [feedback.ImmDirector@dshs.state.tx.us](mailto:ImmDirector@dshs.state.tx.us). The department shall respond to the written complaint within 30 days of that receipt of that complaint.

(b) A person may report an incident of discrimination for requesting exclusion of an individual from the registry, or for using an exemption for a required immunization, by mailing written notification to: Manager, Department of State Health Services, Immunization Branch, MC-1946, P.O. Box 149347, Austin, Texas 78714-9347, or by courier to Manager, Immunization Branch, Department of State Health Services, 1100 West 49th Street, MC-1946, Austin, Texas 78756; or by e-mail to the attention of Manager, Immunization Branch at [feedback.ImmDirector@dshs.state.tx.us](mailto:feedback.ImmDirector@dshs.state.tx.us). The department shall respond to the written notification within 30 days of receipt of that notification.

(c) The department shall report to the Legislative Budget Board, the governor, the lieutenant governor, the speaker of the House of Representatives, and appropriate committees of the legislature not later than September 30 of each even-numbered year. The report shall:

(1) include the number of complaints received by the department related to the department's alleged failure to comply with requests for exclusion of individuals from the registry;

(2) identify all reported incidents of discrimination for requesting exclusion of individuals from the registry or for using an exemption for a required immunization;

(3) include the number of complaints received by the department related to the department's alleged failure to remove information from the registry as required by §100.7 of this title (relating to Potential and Declared Disasters, Public Health Emergency, Terrorist Attack, Hostile Military or Paramilitary Action, and Extraordinary Law Enforcement Emergency Event) after an event described in that section; and

(4) include the number of complaints received by the department related to the department's alleged failure to comply with written requests for the removal of information relating to first responders and their immediate family under §100.8 of this title (relating to First Responder Immunization Information).

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 July 28, 2008.

TRD-200803893

Lisa Hernandez  
General Counsel

Department of State Health Services

Effective date: August 17, 2008

Proposal publication date: March 21, 2008

For further information, please call: (512) 458-7111 x6972



### **25 TAC §100.7, §100.8**

#### **STATUTORY AUTHORITY**

The repeals are adopted under Health and Safety Code, §81.021, which requires the department to protect the public from communicable disease; §81.004, which allows the department to adopt rules for the effective administration of the Communicable Disease Act; and Chapter 161, concerning the Immunization Registry; 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.

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Lisa Hernandez  
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Department of State Health Services

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### **CHAPTER 129. OPTICIANS' REGISTRY**

#### **25 TAC §§129.1, 129.2, 129.4, 129.5, 129.7 - 129.13**

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 §§129.1, 129.2, 129.4, 129.5, and 129.7 - 129.13, concerning the voluntary registration and regulation of opticians without changes to the proposal as published in the March 7, 2008, issue of the *Texas Register* (33 TexReg 1959) and, therefore, the sections will not be republished.

## BACKGROUND AND PURPOSE

The repeals are necessary to consolidate existing Professional Licensing and Certification Unit program rules in 25 Texas Administrative Code (TAC) Chapter 140, Health Professions Regulation. The new rules transfer and update existing language, and do not impose any new requirements or fees on applicants or licensees. The new rules also clarify that one registration certificate, not two, will be issued to a dual registrant, and eliminate language permitting the "carryover" of hours from one continuing education period to the next.

## SECTION-BY-SECTION SUMMARY

The repeal of §§129.1, 129.2, 129.4, 129.5, and 129.7 - 129.13 is necessary to combine the Professional Licensing and Certification Unit rules in one chapter, 25 TAC Chapter 140, Health Professions Regulation.

## COMMENTS

The department, on behalf of the commission, did not receive any comments regarding the proposed repeal during the comment period.

## LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the repeal, as adopted, has been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

## STATUTORY AUTHORITY

The repeal is authorized by Occupations Code, Chapter 352, which authorizes the adoption of rules regarding the regulation of opticians; 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.

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 July 25, 2008.

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Lisa Hernandez  
General Counsel

Department of State Health Services  
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Proposal publication date: March 7, 2008

For further information, please call: (512) 458-7111 x6972



## CHAPTER 140. HEALTH PROFESSIONS REGULATION

### SUBCHAPTER G. OPTICIANS

#### 25 TAC §§140.275 - 140.285

The Executive Commissioner of the Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department), adopts new §§140.275 - 140.285, concerning the voluntary registration and regulation of opticians without changes to the proposed text as published in the March

7, 2008, issue of the *Texas Register* (33 TexReg 1961) and, therefore, the sections will not be republished.

## BACKGROUND AND PURPOSE

The repeal of §§129.1, 129.2, 129.4, 129.5, and 129.7 - 129.13 and the new rules are necessary to consolidate existing Professional Licensing and Certification Unit program rules in 25 Texas Administrative Code (TAC) Chapter 140, Health Professions Regulation. The new rules transfer and update existing language, and do not impose any new requirements or fees on applicants or licensees. The new rules also clarify that one registration certificate, not two, will be issued to a dual registrant, and eliminate language permitting the "carryover" of hours from one continuing education period to the next.

## SECTION-BY-SECTION SUMMARY

New §140.275 sets forth purpose and scope of the rules. New §140.276 includes definitions for terms used within the rules. New §140.277 lists the fees required for application, registration, renewal, and issuance of a duplicate certificate. New §140.278 describes application procedures and qualifications for registration as an optician. New §140.279 covers procedures related to the issuance of a certificate of registration, including duplicate certificates, titles, and expiration date of an initial certificate. New §140.280 sets forth information concerning registration renewal and late renewal, including renewal procedures for a registration on active military duty. New §140.281 sets forth continuing education requirements. New §140.282 sets forth procedures for a change of name or address. New §140.283 sets out violations, procedures concerning complaints and investigations, and actions the department may take against a person when violations have occurred. New §140.284 sets out the guidelines and criteria on the eligibility of persons with criminal backgrounds to obtain registration. New §140.285 details professional and ethical standards, including standards related to advertising by a registrant.

## 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 new rules are authorized by Occupations Code, Chapter 352, which authorizes the adoption of rules regarding the regulation of opticians; 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.

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.

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Lisa Hernandez  
General Counsel  
Department of State Health Services  
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For further information, please call: (512) 458-7111 x6972



## CHAPTER 157. EMERGENCY MEDICAL CARE

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 §157.11, new §157.11, and amendments to §157.38 and §157.44, concerning the regulation of emergency medical services (EMS) providers, continuing education (CE) and instructors without changes to the proposed text as published in the March 28, 2008, issue of the *Texas Register* (33 TexReg 2655) and, therefore, the sections will not be republished.

### BACKGROUND AND PURPOSE

The repeal and new §157.11 are necessary to implement two recent legislative changes to the Texas Health and Safety Code. The Texas Health and Safety Code, Subchapter A, §773.004 and §773.041 were amended by the 80th Legislature, Regular Session, 2007, (Senate Bill 10) to remove exemptions for physician-directed ground ambulance transfers of patients and to require that all ground transport of patients by stretcher be completed by a licensed EMS provider. Texas Health and Safety Code, §773.014, was amended by the 80th Legislature, Regular Session, 2007, (House Bill 2827) to require the department to adopt rules requiring EMS vehicles to be equipped with an epinephrine auto-injector device or similar device to treat anaphylaxis and requiring EMS personnel to complete continuing education training in the administration of anaphylaxis treatment. New §157.11 also contains some clean-up and other new language regarding mutual aide, volunteer EMS personnel exemptions, EMS medical director documentation, signage on ambulances, EMS provider advertisements, subscription program requirements, and EMS provider operating policies.

The amendments to the graphic in §157.38(c), EMS Continuing Education, added a new continuing education content area, regarding pediatrics, to maintain and enhance EMS personnel's knowledge of pediatric care. Also, continuing education hours were amended in two other areas of the graphic.

The amendments to §157.44, EMS Instructor Certification, clarify instructor responsibilities, curriculum requirements, clarify and add reasons for instructor disciplinary actions and surrender of instructor certification.

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 157.11, 157.38 and 157.44 have been reviewed and the department has determined that reasons for adopting the sections continue to exist because rules on this subject are needed.

### SECTION-BY-SECTION SUMMARY

New §157.11 requires ground ambulance transfers of patients by stretcher to be performed by licensed EMS providers. New §157.11 requires EMS vehicles to be equipped with an epineph-

rine auto-injector device or similar device to treat anaphylaxis and requires EMS personnel complete continuing education training in the administration of anaphylaxis treatment. New §157.11 clarifies that EMS providers licensed in adjoining states responding to provide mutual aid in Texas may be exempt from holding a Texas EMS provider license, that EMS providers staffed with 75% volunteer personnel are exempt from payment of licensing fees, that EMS providers maintain documentation of medical director contracts, that EMS providers may obtain liability insurance from a company eligible to do business in Texas, that EMS vehicles must comply with federal specifications for body types, that current EMS provider license numbers must be displayed on the provider's ambulance vehicles, that EMS providers must place notices in the local media when providers are unable to provide continuous coverage, that clarifies the location of no smoking signs inside an ambulance, and that clarifies equipment requirements when lower level EMS vehicles are authorized to provide advanced level capabilities. New §157.11 clarifies that EMS provider subscription programs requirements will include written authorization from the highest local elected officials, written authorization by the county judge or city mayor as appropriate, and documentation of the beginning and ending dates of subscription enrollment periods, and requires EMS providers to develop, implement and enforce written operating policies.

Amendments to the graphic in §157.38(c) added a new CE content area, entitled: "Pediatric." The required number of hours for the content area entitled: "Minimum Units in Content Areas" was increased and the required number of hours for the content area, entitled: "Additional Units in any Approved Category" was reduced to reconcile the total number of CE hours required for recertification eligibility.

Amendments to §157.44 eliminated EMS skills verification orientation requirements, added wording to allow for EMS instructor examination by non-department entities, clarified curriculum requirements, itemized additional EMS instructor responsibilities, replaced language outdated as a result of the department's reorganization and further defined reasons for EMS instructor disciplinary action and surrender of the EMS instructor certificate.

### 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.

## SUBCHAPTER B. EMERGENCY MEDICAL SERVICES PROVIDER LICENSES

### 25 TAC §157.11

#### STATUTORY AUTHORITY

The repeal is authorized by Health and Safety Code, §773.050, which allows the department to set the minimum standard for EMS providers, EMS personnel recertification and EMS instructors; 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 rule 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 July 28, 2008.

TRD-200803879

Lisa Hernandez  
General Counsel

Department of State Health Services

Effective date: August 17, 2008

Proposal publication date: March 28, 2008

For further information, please call: (512) 458-7111 x6972



## 25 TAC §157.11

### STATUTORY AUTHORITY

The new section is authorized by Health and Safety Code, §773.050, which allows the department to set the minimum standard for EMS providers, EMS personnel recertification and EMS instructors; 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 rule 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 July 28, 2008.

TRD-200803880

Lisa Hernandez  
General Counsel

Department of State Health Services

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For further information, please call: (512) 458-7111 x6972



## SUBCHAPTER C. EMERGENCY MEDICAL SERVICES TRAINING AND COURSE APPROVAL

### 25 TAC §157.38

#### STATUTORY AUTHORITY

The amendment is authorized by Health and Safety Code, §773.050, which allows the department to set the minimum

standard for EMS providers, EMS personnel recertification and EMS instructors; 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 rule 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 July 28, 2008.

TRD-200803877

Lisa Hernandez  
General Counsel

Department of State Health Services

Effective date: August 17, 2008

Proposal publication date: March 28, 2008

For further information, please call: (512) 458-7111 x6972



## SUBCHAPTER D. EMERGENCY MEDICAL SERVICES PERSONNEL CERTIFICATION

### 25 TAC §157.44

#### STATUTORY AUTHORITY

The amendment is authorized by Health and Safety Code, §773.050, which allows the department to set the minimum standard for EMS providers, EMS personnel recertification and EMS instructors; 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 rule 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 July 28, 2008.

TRD-200803878

Lisa Hernandez  
General Counsel

Department of State Health Services

Effective date: August 17, 2008

Proposal publication date: March 28, 2008

For further information, please call: (512) 458-7111 x6972



# 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.

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## Agency Rule Review Plan

State Board of Dental Examiners

### Title 22, Part 5

TRD-200803983

Filed: July 30, 2008

## Proposed Rule Reviews

State Board of Dental Examiners

### Title 22, Part 5

The Texas State Board of Dental Examiners (Board) files this notice of intention to review 22 TAC Chapter 101, Dental Licensure. This review is pursuant to §2001.039 of the Texas Government Code, pertaining to agency review of existing rules.

Comments relating to whether these rules should be repealed, readopted, or readopted with changes must be received within 30 days, and may be submitted to Sherri Sanders Meek, Executive Director, Texas State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, (512) 475-0972.

To ensure consideration, comments must clearly specify the particular section of the rule to which they apply. General comments should be labeled as such. Comments should include proposed alternative language as appropriate.

Chapter 101. Dental Licensure.

§101.1. General Qualifications for Licensure.

§101.2. Licensure by Examination.

§101.3. Licensure by Credentials.

§101.4. Temporary Licensure by Credentials.

§101.5. Staggered Dental Registrations.

§101.6. Emergency Provisional Licensure for Dentists Displaced by Hurricane Katrina.

§101.7. Retired License Status.

§101.8. Persons with Criminal Backgrounds.

TRD-200803985

Sherri Sanders Meek

Executive Director

State Board of Dental Examiners

Filed: July 30, 2008

◆ ◆ ◆  
The Texas State Board of Dental Examiners files this notice of intention to review 22 TAC Chapter 103, Dental Hygiene Licensure. This review is pursuant to §2001.039 of the Texas Government Code, pertaining to agency review of existing rules.

Comments relating to whether these rules should be repealed, readopted, or readopted with changes must be received within 30 days, and may be submitted to Sherri Sanders Meek, Executive Director, Texas State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, (512) 475-0972.

To ensure consideration, comments must clearly specify the particular section of the rule to which they apply. General comments should be labeled as such. Comments should include proposed alternative language as appropriate.

Chapter 103. Dental Hygiene Licensure.

§103.1. General Qualifications for Licensure.

§103.2. Licensure by Examination.

§103.3. Licensure by Credentials.

§103.4. Temporary Licensure by Credentials.

§103.5. Staggered Dental Hygiene Registrations.

§103.6. Emergency Provisional Licensure for Dental Hygienists Displaced by Hurricane Katrina.

§103.7. Retired License Status.

TRD-200803986

Sherri Sanders Meek

Executive Director

State Board of Dental Examiners

Filed: July 30, 2008

◆ ◆ ◆  
Texas Department of Insurance, Division of Workers' Compensation

### Title 28, Part 2

The Texas Department of Insurance, Division of Workers' Compensation files this notice of intention to review the rules contained in Chapter 102 concerning Practices and Procedures--General Provisions. This review is pursuant to the General Appropriations Act, Article IX, §167, 75th Legislature, the General Appropriations Act, Section 9 - 10, 76th Legislature, and Texas Government Code §2001.039 as added by SB 178, 76th Legislature.

The Division's reason for adopting the following rules contained in this chapter continues to exist, and it proposes to readopt these rules:

§102.2. Gifts, Grants, and Donations.

§102.3. Computation of Time.

§102.4. General Rules for Non-Commission Communications.

§102.5. General Rules for Written Communications to and from the Commission.

§102.7. Abbreviations.

§102.8. Information Requested on Written Communications to the Commission.

§102.9. Submission of Information Requested by the Commission.

§102.10. Interest, General.

§102.11. Electronic Formats for Electronic Claim Data Request and Report.

Comments regarding whether the reason for adopting these rules continues to exist must be received by 5:00 p.m. on September 8, 2008 and submitted to Victoria Ortega, Texas Department of Insurance, Division of Workers' Compensation, 7551 Metro Center Drive, Suite 100, MS-4D, Austin, Texas 78744-1609.

TRD-200803981

Stanton K. Strickland

Deputy Commissioner, Legal Services

Texas Department of Insurance, Division of Workers' Compensation

Filed: July 30, 2008



## Adopted Rule Review

Texas Department of Housing and Community Affairs

**Title 10, Part 1**

The Texas Department of Housing and Community Affairs ("Department") readopts the following sections of Title 10 of the Texas Administrative Code, Chapter 1, concerning Administration, Subchapter A, concerning General Policies and Procedures:

§1.3. Delinquent Audits and Related Issues

§1.4. Protest Procedures for Contractors

§1.6. Historically Underutilized Businesses

§1.7. Staff Appeals Process

§1.8. Board Appeals Process

§1.16. Ethics and Disclosure Requirements for Outside Financial Advisors and Service Providers

§1.17. Alternative Dispute Resolution and Negotiated Rulemaking

These rules are reviewed and readopted pursuant to Texas Government Code §2001.039 which requires state agencies to review and consider for re-adoption each of their rules every four years. Notice of this rule review was published in the *Texas Register* on May 23, 2008 (33 TexReg 4199). Public comment was solicited on the issue of whether the original justifications for the rules continue to exist. No public comments were received. The Department finds that each of the rules continue to reflect current law and authorized policies of the governing board of the Department. Therefore, the original justifications for the rules continue to exist.

These rules, as adopted, have been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

TRD-200803895

Michael Gerber

Executive Director

Texas Department of Housing and Community Affairs

Filed: July 28, 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: 22 TAC §519.9(a)

No.	Violation	Citation	Administrative Penalty Range
1	Failure to follow Generally Accepted Auditing Standards; Yellow Book Auditing Standards; AICPA Auditing Standards; and other auditing standards.	22 TEX. ADMIN. CODE §§501.60 & 501.74;  TEX. OCC. CODE §§901.502(6) & 901.502(11)	<b>Minor:</b> \$0 to \$25,000 per violation.  <b>Moderate:</b> \$25,000 to 75,000 per violation.  <b>Major:</b> \$75,000 to \$100,000 per violation.
2	Failure to follow Generally Accepted Accounting Principles	22 TEX. ADMIN. CODE §§501.53, 501.61 & 501.74;  TEX. OCC. CODE §§901.502(6) & 901.502(11)	<b>Minor:</b> \$0 to \$25,000 per violation.  <b>Moderate:</b> \$25,000 to 75,000 per violation.  <b>Major:</b> \$75,000 to \$100,000 per violation.
3	Failure to follow other Professional Standards  (e.g. Compilation Standards)	22 TEX. ADMIN. CODE §§501.62 & 501.74;  TEX. OCC. CODE §§901.502(6) & 901.502(11)	<b>Minor:</b> \$0 to \$25,000 per violation.  <b>Moderate:</b> \$25,000 to 75,000 per violation.  <b>Major:</b> \$75,000 to \$100,000 per violation.
4	Lack of independence	22 TEX. ADMIN. CODE §§501.70 & 501.73  TEX. OCC. CODE §§901.458, 901.502(6) & 901.502(11)	<b>Minor:</b> \$0 to \$25,000 per violation.  <b>Moderate:</b> \$25,000 to 75,000 per violation.  <b>Major:</b> \$75,000 to \$100,000 per violation.



5	Violation of rules regarding receipt of commissions and other compensation	22 TEX. ADMIN. CODE §501.71;  TEX. OCC. CODE §§901.502(6) & 901.502(11)	<b>Minor:</b> \$0 to \$25,000 per violation.  <b>Moderate:</b> \$25,000 to 75,000 per violation.  <b>Major:</b> \$75,000 to \$100,000 per violation.
6	Violation of rules regarding contingency fees	22 TEX. ADMIN. CODE §501.72;  TEX. OCC. CODE §§901.502(6) & 901.502(11)	<b>Minor:</b> \$0 to \$25,000 per violation.  <b>Moderate:</b> \$25,000 to 75,000 per violation.  <b>Major:</b> \$75,000 to \$100,000 per violation.
7	Lack of integrity and objectivity	22 TEX. ADMIN. CODE §501.73;  TEX. OCC. CODE §§901.502(6) & 901.502(11)	<b>Minor:</b> \$0 to \$25,000 per violation.  <b>Moderate:</b> \$25,000 to 75,000 per violation.  <b>Major:</b> \$75,000 to \$100,000 per violation.
8	Incompetence	22 TEX. ADMIN. CODE §501.74;  TEX. OCC. CODE §§901.502(6) & 901.502(11)	<b>Minor:</b> \$0 to \$25,000 per violation.  <b>Moderate:</b> \$25,000 to 75,000 per violation.  <b>Major:</b> \$75,000 to \$100,000 per violation.
9	Breach of confidential communications	22 TEX. ADMIN. CODE §501.75;  TEX. OCC. CODE §§901.502(6) & 901.502(11)	<b>Minor:</b> \$0 to \$25,000 per violation.  <b>Moderate:</b> \$25,000 to 75,000 per violation.  <b>Major:</b> \$75,000 to \$100,000 per violation.

10	Failure to return client records or client's portion of work papers	22 TEX. ADMIN. CODE §501.76; TEX. OCC. CODE §§901.502(6) & 901.502(11)	\$0 to \$25,000 per violation.
11	Acting through others	22 TEX. ADMIN. CODE §501.77 (AND THE RULE VIOLATED BY THE ACTOR); TEX. OCC. CODE §§901.502(6) & 901.502(11)	<b>Minor:</b> \$0 to \$25,000 per violation. <b>Moderate:</b> \$25,000 to 75,000 per violation. <b>Major:</b> \$75,000 to \$100,000 per violation.
12	Practicing without a license	22 TEX. ADMIN. CODE §501.80; TEX. OCC. CODE §§901.401, 901.453, 901.456, 901.502(6) & 901.502(11)	\$0 to \$25,000 per violation.
13	Practicing through an unregistered entity	22 TEX. ADMIN. CODE §501.81; TEX. OCC. CODE §§901.401, 901.502(6) & 901.502(11)	\$0 to \$25,000 per violation.
14	False, fraudulent, misleading, or deceptive advertising	22 TEX. ADMIN. CODE §501.82; TEX. OCC. CODE §§901.502(6) & 901.502(11)	<b>Minor:</b> \$0 to \$1,000 per violation. <b>Moderate:</b> \$1,000 to \$50,000 per violation. <b>Major:</b> \$50,000 to \$100,000 per violation.

15	Improper firm name	22 TEX. ADMIN. CODE §501.83;  TEX. OCC. CODE §§901.502(6) & 901.502(11)	\$0 to \$10,000 per violation.
16	Improper form of practice	22 TEX. ADMIN. CODE §501.84;  TEX. OCC. CODE §§901.502(6) & 901.502(11)	\$0 to \$10,000 per violation.
17	Performing discreditable acts  (1) fraud or deceit in obtaining a certificate as a certified public accountant or in obtaining registration under the Act or in obtaining a license to practice public accounting	22 TEX. ADMIN. CODE §501.90(1);  TEX. OCC. CODE §§901.502(1), 901.502(6) & 901.502(11)	<b>Minor:</b> \$0 to \$25,000 per violation.  <b>Moderate:</b> \$25,000 to 75,000 per violation.  <b>Major:</b> \$75,000 to \$100,000 per violation.
18	Performing discreditable acts  (2) dishonesty, fraud or gross negligence in the practice of public accountancy	22 TEX. ADMIN. CODE §501.90(2);  TEX. OCC. CODE §§901.502(2), 901.502(6) & 901.502(11)	<b>Minor:</b> \$0 to \$25,000 per violation.  <b>Moderate:</b> \$25,000 to 75,000 per violation.  <b>Major:</b> \$75,000 to \$100,000 per violation.
19	Performing discreditable acts  (3) violation of any of the provisions of Subchapter J or §901.458 of the Act applicable to a person certified or registered by the board	22 TEX. ADMIN. CODE §501.90(3);  TEX. OCC. CODE §§901.502(5), 901.502(6) & 901.502(11)	<b>Minor:</b> \$0 to \$25,000 per violation.  <b>Moderate:</b> \$25,000 to 75,000 per violation.  <b>Major:</b> \$75,000 to \$100,000 per violation.

20	<p>Performing discreditable acts</p> <p>(4) final conviction of a felony or imposition of deferred adjudication or community supervision in connection with a criminal prosecution of a felony under the laws of any state or the United States</p>	<p>22 TEX. ADMIN. CODE §501.90(4);</p> <p>TEX. OCC. CODE §§901.502(6), 901.502(10), &amp; 901.502(11)</p> <p>TEX. OCC. CODE CHAP. 53</p>	\$0 to \$100,000 per violation.
21	<p>Performing discreditable acts</p> <p>(5) final conviction of any crime or imposition of deferred adjudication or community supervision in connection with a criminal prosecution, an element of which is dishonesty or fraud under the laws of any state or the United States; moral turpitude; abuse of alcohol or controlled substances; or physical injury or threats of physical injury to a person</p>	<p>22 TEX. ADMIN. CODE §501.90(5);</p> <p>TEX. OCC. CODE §§901.502(6), 901.502(10), &amp; 901.502(11)</p>	\$0 to \$100,000 per violation.
22	<p>Performing discreditable acts</p> <p>(6) cancellation, revocation, suspension or refusal to renew authority to practice as a certified public accountant or a public accountant by any other state for any cause other than failure to pay the appropriate registration fee in such other state</p>	<p>22 TEX. ADMIN. CODE §501.90(6);</p> <p>TEX. OCC. CODE §§901.502(6), 901.502(8), 901.502(9), &amp; 901.502(11)</p>	\$0 to \$100,000 per violation.

23	Performing discreditable acts  (7) suspension or revocation of or a voluntary consent decree concerning the right to practice before any state or federal agency for a cause which in the opinion of the board warrants its action	22 TEX. ADMIN. CODE §501.90(7);  TEX. OCC. CODE §§901.502(6), 901.502(8), 901.502(9), & 901.502(11)	<b>Minor:</b> \$0 to \$25,000 per violation.  <b>Moderate:</b> \$25,000 to 75,000 per violation.  <b>Major:</b> \$75,000 to \$100,000 per violation.
24	Performing discreditable acts  (8) knowingly participating in the preparation of a false or misleading financial statement or tax return	22 TEX. ADMIN. CODE §501.90(8);  TEX. OCC. CODE §§901.502(2), 901.502(6) & 901.502(11)	<b>Minor:</b> \$0 to \$25,000 per violation.  <b>Moderate:</b> \$25,000 to 75,000 per violation.  <b>Major:</b> \$75,000 to \$100,000 per violation.
25	Performing discreditable acts  (9) fiscal dishonesty or breach of fiduciary responsibility of any type	22 TEX. ADMIN. CODE §501.90(9);  TEX. OCC. CODE §§901.502(6) & 901.502(11)	<b>Minor:</b> \$0 to \$25,000 per violation.  <b>Moderate:</b> \$25,000 to 75,000 per violation.  <b>Major:</b> \$75,000 to \$100,000 per violation.
26	Performing discreditable acts  (10) failure to comply with a final order of any state or federal court	22 TEX. ADMIN. CODE §501.90(10);  TEX. OCC. CODE §§901.502(6) & 901.502(11)	<b>Minor:</b> \$0 to \$25,000 per violation.  <b>Moderate:</b> \$25,000 to 75,000 per violation.  <b>Major:</b> \$75,000 to \$100,000 per violation.
27	Performing discreditable acts  (11) repeated failure to respond to a client's inquiry within a reasonable time without good cause	22 TEX. ADMIN. CODE §501.90(11);  TEX. OCC. CODE §§901.502(6) & 901.502(11)	<b>Minor:</b> \$0 to \$25,000 per violation.  <b>Moderate:</b> \$25,000 to 75,000 per violation.  <b>Major:</b> \$75,000 to \$100,000 per violation.

28	Performing discreditable acts  (12) misrepresenting facts or making a misleading or deceitful statement to a client	22 TEX. ADMIN. CODE §501.90(12);  TEX. OCC. CODE §§901.502(6) & 901.502(11)	<b>Minor:</b> \$0 to \$25,000 per violation.  <b>Moderate:</b> \$25,000 to 75,000 per violation.  <b>Major:</b> \$75,000 to \$100,000 per violation.
29	Performing discreditable acts  (13) false swearing or perjury in any communication to the board or any other federal or state regulatory or licensing authority	22 TEX. ADMIN. CODE §501.90(13);  TEX. OCC. CODE §§901.502(6) & 901.502(11)	<b>Minor:</b> \$0 to \$25,000 per violation.  <b>Moderate:</b> \$25,000 to 75,000 per violation.  <b>Major:</b> \$75,000 to \$100,000 per violation.
30	Performing discreditable acts  (14) threats of bodily harm or retribution to a client	22 TEX. ADMIN. CODE §501.90(14);  TEX. OCC. CODE §§901.502(6) & 901.502(11)	<b>Minor:</b> \$0 to \$25,000 per violation.  <b>Moderate:</b> \$25,000 to 75,000 per violation.  <b>Major:</b> \$75,000 to \$100,000 per violation.
31	Performing discreditable acts  (15) public allegations of a lack of mental capacity of a client which cannot be supported in fact	22 TEX. ADMIN. CODE §501.90(15);  TEX. OCC. CODE §§901.502(6) & 901.502(11)	<b>Minor:</b> \$0 to \$25,000 per violation.  <b>Moderate:</b> \$25,000 to 75,000 per violation.  <b>Major:</b> \$75,000 to \$100,000 per violation.
32	Performing discreditable acts  (16) causing a breach in the security of the CPA examination	22 TEX. ADMIN. CODE §501.90(16);  TEX. OCC. CODE §§901.502(6) & 901.502(11)	<b>Minor:</b> \$0 to \$25,000 per violation.  <b>Moderate:</b> \$25,000 to 75,000 per violation.  <b>Major:</b> \$75,000 to \$100,000 per violation.

33	<p>Performing discreditable acts</p> <p>(17) voluntarily disclosing information communicated to the certificate holder by an employer, past or present, or through the certificate holder's employment in connection with accounting services rendered to the employer, except:</p> <p>(A) by permission of the employer;</p> <p>(B) pursuant to the Government Code, Chapter 554 (commonly referred to as the "Whistle Blowers Act");</p> <p>(C) pursuant to a <u>court order</u> [subpoena] or other compulsory process in a court proceeding;</p> <p>(D) in an investigation or proceeding by the board under the Public Accountancy Act; or</p> <p>(E) in an ethical investigation conducted by a professional organization of certified public accountants</p>	<p>22 TEX. ADMIN. CODE §501.90(17);</p> <p>TEX. OCC. CODE §§901.502(6) &amp; 901.502(11)</p>	<p><b>Minor:</b> \$0 to \$25,000 per violation.</p> <p><b>Moderate:</b> \$25,000 to 75,000 per violation.</p> <p><b>Major:</b> \$75,000 to \$100,000 per violation.</p>
34	<p>Performing discreditable acts</p> <p>(18) breaching the terms of an agreed consent order entered by the Board or violating any Board Order</p>	<p>22 TEX. ADMIN. CODE §501.90(18);</p> <p>TEX. OCC. CODE §§901.502(6), 901.502(11) &amp; 901.502(12)</p>	<p><b>Minor:</b> \$0 to \$25,000 per violation.</p> <p><b>Moderate:</b> \$25,000 to 75,000 per violation.</p> <p><b>Major:</b> \$75,000 to \$100,000 per violation.</p>

35	Failure to report reportable events	22 TEX. ADMIN. CODE §501.91  TEX. OCC. CODE §§901.502(6) & 901.502(11)	<b>Minor:</b> \$0 to \$25,000 per violation.  <b>Moderate:</b> \$25,000 to 75,000 per violation.  <b>Major:</b> \$75,000 to \$100,000 per violation.
36	Filing a frivolous complaint	22 TEX. ADMIN. CODE §501.92  TEX. OCC. CODE §§901.502(6) & 901.502(11)	\$0 to \$10,000 per violation.
37	Failure to respond to Board communications	22 TEX. ADMIN. CODE §501.93  TEX. OCC. CODE §§901.502(6) & 901.502(11)	<b>Minor:</b> \$0 to \$1,000 per violation.  <b>Moderate:</b> \$1,000 to \$50,000 per violation.  <b>Major:</b> \$50,000 to \$100,000 per violation.
38	Failure to comply with mandatory CPE	22 TEX. ADMIN. CODE §§501.94 & 523.62  TEX. OCC. CODE §§901.502(6), 901.502(11) & 901.502(12)	\$0 to \$10,000 per violation.
39	Three year no-pay individual	TEX. OCC. CODE §§901.502(4) & 901.502(11)	\$0 to \$10,000 per violation.



40	CPA exam irregularities	22 TEX. ADMIN. CODE §511.70  TEX. OCC. CODE §§901.502(11) & 901.502(12)	<b>Minor:</b> \$0 to \$25,000 per violation.  <b>Moderate:</b> \$25,000 to 75,000 per violation.  <b>Major:</b> \$75,000 to \$100,000 per violation.
41	Ineligible applicant certification hearings	22 TEX. ADMIN. CODE §§511.161 & 511.176  TEX. OCC. CODE §§901.502(11) & 901.502(12)	\$0 to \$10,000 per violation.
42	Moral character	22 TEX. ADMIN. CODE §§511.27 & 525.1  TEX. OCC. CODE §§901.502(11) & 901.502(12)	<b>Moderate:</b> \$1,000 to \$50,000 per violation.  <b>Major:</b> \$50,000 to \$100,000 per violation.
43	Failure to satisfy peer review requirements	22 TEX. ADMIN. CODE §527.4  TEX. OCC. CODE §§901.502(11) & 901.502(12)	<b>Minor:</b> \$0 to \$1,000 per violation.  <b>Moderate:</b> \$1,000 to \$50,000 per violation.  <b>Major:</b> \$50,000 to \$100,000 per violation.

Figure: 40 TAC §97.602(h)(2)(D)

<b>SEVERITY LEVEL A VIOLATIONS</b> <b>\$100 - \$250 per violation</b>	
<b>Rule Cite</b>	<b>Subject Matter</b>
§97.212	Prohibiting material alteration of a license.
§97.213(a)-(b) separate penalties	Agency relocation.
§97.214(a)-(b) separate penalties	Notification procedures for reporting a change in agency telephone number and agency operating hours.
§97.216(a)	Change in agency certification or accreditation status.
§97.217(b)(1)-(2) separate penalties	Procedures for notifying DADS of a voluntary suspension of operations.
§97.218(a)-(b) separate penalties	Notice of agency organizational changes and submitting criminal history check consent forms.
§97.219	Procedure for adding or deleting a category of service to the agency's license.
§97.220(a)(2)	Providing services only within an agency's licensed service area.
§97.220(c)	Providing a written notification of an expansion of an agency's licensed service area.
§97.220(d)	Providing written notification of a reduction of an agency's licensed service area.
§97.242(a)-(b) separate penalties	Preparing and maintaining a current written description of the agency's organizational structure.
§97.243(b)(1)(A)-(B) and (D)-(G) separate penalties	Responsibilities of the administrator.
§97.243(b)(3)	Requirement that the administrator designate in writing an agency employee who must provide DADS surveyors entry to the agency.
§97.243(d)	Adoption of a written policy for the supervision of branch offices or alternate delivery sites, if established.
§97.244(b)(1)-(5) separate penalties	Conditions of the agency administrator and alternate administrator.
§97.245(a)-(b)(1)-(10) separate penalties	Adoption and enforcement of written policies governing all personnel staffed by the agency.
§97.246(a)(1)-(4) and (b) separate penalties	An agency's personnel records and content of such records.
§97.247(a)(5), (b)(5), and (c)(5) separate penalties	Providing unlicensed staff with written information about the employee misconduct registry.
§97.247(d)	Documentation of compliance with verifying the employability and use of unlicensed staff.
§97.248(a)-(b) separate penalties	The use of volunteers in an agency.
§97.249(b)	Adoption of a written policy for the reporting of alleged acts of abuse, neglect, and exploitation of clients.

<b>SEVERITY LEVEL A VIOLATIONS</b> <b>\$100 - \$250 per violation</b>	
<b>Rule Cite</b>	<b>Subject Matter</b>
§97.250(a)	Adoption of a written policy covering procedures for investigating known and alleged acts of abuse, neglect, and exploitation and other complaints.
§97.250(e)	Prohibiting an agency from retaliating against a person for filing a complaint, presenting a grievance, or providing, in good faith, information about the services provided by the agency.
§97.251	Adoption of a written policy for ensuring that all professional disciplines comply with their respective professional practice acts or title acts for reporting and peer review.
§97.253	Adoption of a written policy describing whether an agency will conduct drug testing of employees that describes the method and provides a copy of the policy.
§97.254	Adoption of a written policy for ensuring that the agency submits accurate billings and insurance claims.
§97.255	Adoption of a written policy for prohibition of illegal remuneration for securing or soliciting clients or patronage.
§97.256	Development and documentation of a written emergency preparedness and response plan.
§97.256(1)(A)-(M) separate penalties	Developing, maintaining and implementing a written emergency preparedness and response plan.
§97.259(g)	Prohibiting use of the presurvey conference to meet initial training requirements for a first-time administrator and alternate administrator.
§97.260(d)	Prohibiting use of the pre-survey conference to meeting continuing education requirements for an administrator and alternate administrator.
§97.281(1)-(16) separate penalties	Adoption of a written policy that specifies the agency's client care practices.
§97.282(a)-(b), (d)-(f)(1)-(8), and (g)-(h) separate penalties	Adoption of a written policy governing client conduct and responsibility and client rights.
§97.284	Adoption of a written policy for complying with the Clinical Laboratory Improvement Amendments of 1988, 42 USC, §263a, Certification of Laboratories (CLIA 1988).
§97.285	Adoption of written policies addressing infection control.
§97.285(1)(A)-(C) and (2) separate penalties	Adoption and compliance with a written policy that addresses infection control.
§97.286(a)	Adoption of a written policy for safe handling and disposal of biohazardous waste and materials, if applicable.
§97.288(a)	Adoption of a written policy that all service providers involved in the care of a client effectively coordinate the client's care.
§97.290(a)	Adoption of a written policy for ensuring that backup services are available when an agency employee or contractor is not available to deliver the services.

**SEVERITY LEVEL A VIOLATIONS**  
**\$100 - \$250 per violation**

<b>Rule Cite</b>	<b>Subject Matter</b>
97.290(a)(1)-(2)	Documentation that a client's designee agreed to provide backup services.
97.290(a)(3)	Not coercing a client to accept backup services.
§97.290(b)	Adoption of a written policy for ensuring that clients are educated in how to access care from the agency or another health care provider after regular business hours.
§97.291	Adoption of a written policy for an agency's written contingency plan.
§97.292(a)	Providing a client or a client's family with a written agreement for services, ensuring appropriate content of the agreement, obtaining an acknowledgment of receipt, and ensuring that the acknowledgment is in the client's record.
97.292(b)	Acknowledgment the client received a written agreement for services.
§97.293	Maintaining a current list of clients for each category of service licensed.
§97.294	Adoption of a written policy for establishing a time frame for the initiation of care or services.
§97.295(c), (d), and (f) separate penalties	Delivery of written notice and documentation requirements pertaining to an agency's transfer or discharge of a client.
§97.296(a)	Adoption of a written policy that states whether physician delegation will be honored by the agency.
97.296(b)	Information the agency must receive to accept physician delegation.
§97.297	Adoption of a written policy describing protocols and procedures agency staff must follow when receiving physician orders, if applicable.
§97.297(2)	Physician orders received by facsimile.
§97.298	Adoption of a written policy for ensuring compliance with rules adopted by the Texas Board of Nursing in 22 TAC Chapter 224 (Delegation of Nursing Tasks by Registered Professional Nurses to Unlicensed Personnel for Clients with Acute Conditions or in Acute Care Environments) and 22 TAC Chapter 225 (RN Delegation to Unlicensed Personnel and Tasks Not Requiring Delegation in Independent Living Environments for Clients with Stable and Predictable Conditions).
§97.299	Adoption of a written policy for ensuring compliance with rules of the Texas Board of Nursing adopted at 22 TAC Chapters 211-226 (Nursing Continuing Education, Licensure, and Practice in the State of Texas).
§97.300(b)	Adoption of a written policy for maintaining a current medication list and a current medication administration record.
§97.300(b)(2)(A)-(B) separate penalties	The administration of medication.
§97.301(a)(1)-(9)(A)-(P) separate penalties	Requirements for maintaining an agency's client records.

<b>SEVERITY LEVEL A VIOLATIONS</b> <b>\$100 - \$250 per violation</b>	
<b>Rule Cite</b>	<b>Subject Matter</b>
§97.301(b)(1)-(3) separate penalties	Adoption and enforcement of a written policy for retention of records.
§97.302	Adoption of a written policy for pronouncement of death if that function is carried out by an agency registered nurse.
§97.321(a)	Branch office compliance with the regulations of its parent agency.
§97.321(c)(1)	Providing services only within a branch office licensed service area.
§97.321(c)(3)	Providing a written notification of an expansion of a branch office service area.
§97.321(c)(4)	Providing written notification of a reduction of a branch office licensed service area.
§97.321(d)(1)-(3) separate penalties	Requirements for branch offices.
§97.321(f)	Requirement prohibiting branch offices from providing services not offered by the parent agency.
§97.322(a)	Alternate delivery site compliance with hospice services standards.
§97.322(b)	An alternate delivery site's independent compliance with §97.403(c), (f)(1), (i), and §97.301.
§97.322(c)(1)	Providing services only within an alternate delivery site licensed service area.
§97.322(c)(3)	Providing a written notification of an expansion of an alternate delivery site service area.
§97.322(c)(4)	Providing written notification of a reduction of an alternate delivery site licensed service area.
§97.322(d)(1)-(3) separate penalties	Requirements for hospices and alternate delivery sites.
§97.401(f)	The use of home health aides.
§97.402(b)	Requirement for implementing a home health aide training and competency program.
§97.403(b)	Restriction on use of the word "hospice" in a title or description of a facility, organization, program, service provider, or services without a license.
§97.403(c)	Adoption of a written policy for the provision of hospice services.
§97.403(e)(3)	Designating which among multiple interdisciplinary teams is responsible for establishing the policies governing day-to-day hospice functions.
§97.403(f)(4)	Retaining responsibility for payment for services.
§97.403(j)	Requirement that reassessment of a client must not reduce core services.
§97.403(k)	Informing the client of the availability of short-term inpatient care.
§97.403(l)	Making and documenting efforts to arrange for visits of clergy and other members of spiritual and religious organizations.

**SEVERITY LEVEL A VIOLATIONS**  
**\$100 - \$250 per violation**

<b>Rule Cite</b>	<b>Subject Matter</b>
§97.403(u)(4)	Specifying the persons authorized to administer medications in the client's plan of care.
§97.403(w)(2)(A)-(G) separate penalties	Development and documentation of a written emergency preparedness and response plan for a freestanding hospice in the event of a disaster.
§97.403(w)(5)-(6) and (8) separate penalties	Physical plant requirements in a freestanding hospice that provides inpatient care.
§97.403(w)(11)(A)-(D) separate penalties	Providing and supervising meal service in a freestanding hospice that provides inpatient care.
§97.404(e)	Requirement that an agency develops operational policies that are considerate of the principles of individual and family choice and control, functional need, and accessible and flexible services.
§97.404(f)(1)-(3) separate penalties	Additional requirements for maintaining client records in an agency that provides personal assistance services.
§97.404(g)	Adoption of a written policy that addresses the supervision of agency personnel with input from the client or family on the frequency of supervision.
§97.404(g)(1)-(2) separate penalties	Conditions and qualifications for supervision of agency personnel delivering personal assistance services.
§97.405(d)	Requirement for individual personnel files on all physicians.
§97.405(g)	A written transfer agreement with a local hospital for an agency that provides home dialysis services.
§97.405(h)	An agreement with a licensed end stage renal disease facility to provide backup outpatient dialysis services.
§97.405(j)	Ensuring that names of clients awaiting a donor transplant are entered in the recipient registry program.
§97.405(s)(1) and (4)-(7) separate penalties	Additional requirements for maintaining client records in an agency that provides home dialysis services.
§97.405(v)	Development of a written preventive maintenance program for home dialysis equipment.
§97.405(v)(1)(B)	Maintaining written evidence of preventive maintenance and equipment repairs.
§97.405(z)	Adoption of policies and procedures for medical emergencies and emergencies resulting from a disaster required of an agency that provides home dialysis services.
§97.406(1)	Adoption of a written policy for the provision of psychoactive treatments, if applicable.
§97.521(a)	Requirement for initiation of services for receiving an initial license.
§97.523(a)	Staff availability for the initial survey.
§97.523(b)	Staff availability for survey other than the initial survey.
§97.523(e)	Providing surveyor entry to the agency during regular business hours and within two hours of the surveyor's arrival at the agency.
97.525(c)	Having documentation of accreditation available at the time of a survey.

<b>SEVERITY LEVEL A VIOLATIONS</b> <b>\$100 - \$250 per violation</b>	
<b>Rule Cite</b>	<b>Subject Matter</b>
§97.527(b)	Providing surveyor with audio recording of the exit conference if made by the agency.
§97.527(c)	Providing surveyor with video recording of the exit conference if made by the agency.
§97.527(g)(1)-(2)(A)-(D)	Submitting an acceptable plan of correction and correcting a violation within the required time frame.

Figure: 40 TAC §97.602(h)(3)(E)

<b>SEVERITY LEVEL B VIOLATIONS</b> <b>\$500 - \$1,000 per violation</b>	
<b>Rule Cite</b>	<b>Subject Matter</b>
§97.11(d)	Requirement to have a separate license for each place of business.
§97.23	A license may not be sold or assigned to another person.
§97.220(b)	Maintaining adequate staff to provide services and supervise the provision of services within the service area.
§97.241(a), (c), and (d) separate penalties	Management responsibilities.
§97.243(a)(1)	Designating a qualified agency administrator.
§97.243(a)(2)	Designating a qualified agency alternate administrator.
§97.243(b)(1)(A)-(F) and (2)-(3) separate penalties	Responsibilities of an agency administrator.
§97.243(c)(1)	Requirement to directly employ or contract with a qualified individual to serve as the supervising nurse.
§97.243(c)(2)	Requirement to designate a qualified alternate supervising nurse.
§97.243(c)(2)(A)(i)-(iv) separate penalties	Supervisory responsibilities of the supervising nurse or alternate supervising nurse.
§97.243(c)(2)(B)	Allowing the supervising nurse to be the administrator if the supervising nurse meets the qualifications of the administrator.
§97.243(c)(3)	Requirements for the supervision of physical, occupational, speech, or respiratory therapy; medical social services; or nutritional counseling.
§97.243(d)	Enforcing a written policy for the supervision of branch offices or alternate delivery sites, if established.
§97.244(a)(1)	Qualifications of the agency administrator and alternate administrator for agencies licensed to provide licensed home health services, licensed and certified home health services or hospice services.
97.244(a)(2)	Qualifications of the agency administrator and alternate administrator for agencies licensed to provide only personal assistance services.
§97.244(b)(1)-(5) separate penalties	Conditions of the agency administrator and alternate administrator.
§97.244(c)(1)	Qualifications of the supervising nurse and alternate supervising nurse for agencies without the home dialysis designation.
§97.244(c)(2)	Qualifications of the supervising nurse and alternate supervising nurse for agencies with the home dialysis designation.
§97.245(a)-(b)(1)-(10) separate penalties	Enforcement of staffing policies that govern all personnel used by the agency.
§97.247(a)(1)-(4) and (6); (b)(1)-(4) and (6); (c)(1)-(4) and (6) separate penalties	Employability and use of unlicensed persons.
§97.249(c)	Reporting alleged acts of abuse, neglect, and exploitation of clients.



<b>SEVERITY LEVEL B VIOLATIONS</b> <b>\$500 - \$1,000 per violation</b>	
<b>Rule Cite</b>	<b>Subject Matter</b>
§97.250(b)(1)-(3), (c)(1)-(2), and (d)-(e) separate penalties	Enforcement of an agency's written policy for investigation of known and alleged acts of abuse, neglect, and exploitation and other complaints.
§97.251	Compliance with the agency's written policy to ensure that all professional disciplines comply with their respective professional practice acts or title acts for reporting and peer review.
§97.252(1)-(2)	An agency's financial ability to carry out its functions.
§97.256(1)(A)-(M) and (2) separate penalties	Developing, maintaining and implementing a written emergency preparedness and response plan.
§97.256(4) and (5)(A)-(B) separate penalties	Compliance with rules related to written records and notice of temporary changes due to an emergency or disaster.
§97.259(b)-(e) separate penalties	Initial educational training requirements for a first-time agency administrator and alternate administrator.
§97.259(f)	Documentation requirements for initial educational training of a first-time administrator and alternate administrator.
§97.260(a)	Annual continuing education requirements for an agency administrator and alternate administrator.
§97.260(b)	Continuing education requirements for an agency administrator and alternate administrator who has not served for 180 days or more immediately preceding the date of designation.
§97.260(c)	Documentation requirements for continuing education of an administrator and alternate administrator.
§97.281(1)-(16) separate penalties	Enforcement of a written policy for client care practices.
§97.282(a)-(f)(1)-(8) and (g)-(h) separate penalties	Compliance with an agency policy on client conduct and responsibility and client rights.
§97.284	Compliance with the Clinical Laboratory Improvement Amendments of 1988.
§97.285	Compliance with written policies addressing infection control.
§97.285(1)(A)-(C) and (2) separate penalties	Enforcement and compliance with written policies on infection control.
§97.286(b)	Compliance with 25 TAC §§1.131-1.137 concerning the Definition, Treatment, and Disposition of Special Waste from Health Care-Related Facilities.
§97.287(a)(1)-(3) and (b)-(c) separate penalties	An agency's Quality Assessment and Performance Improvement Program.
§97.288(a)-(b) separate penalties	Compliance with an agency's written policy for coordination of services and documentation requirements.
§97.289(a)-(b) separate penalties	An agency's use of and agreement with independent contractors and arranged services.
§97.290(a)	Enforcing a written policy that backup services are available when needed.

**SEVERITY LEVEL B VIOLATIONS****\$500 - \$1,000 per violation**

<b>Rule Cite</b>	<b>Subject Matter</b>
§97.290(a)(1)-(2)	Documentation that a client's designee agreed to provide backup services.
§97.290(b)	Enforcing a written policy that clients are educated in how to access care after hours.
§97.291(1)-(2) separate penalties	Implementing a written policy for an agency's written contingency plan.
§97.292(a)	Complying with the terms of a written agreement for services that the agency provided to a client or a client's family.
§97.295(a)(1)-(2) separate penalties	Providing a client with written notification, and notifying a client's attending physician if applicable, of transfer or discharge.
§97.295(b)	An agency providing written notification of a client's transfer or discharge within the required time frame.
§97.296(a)	Enforcement of an agency's policy regarding acceptance of physician delegation orders.
§97.296(b)	Information the agency must receive to accept physician delegation.
§97.297	Enforcement of a written policy describing protocols and procedures agency staff must follow when receiving physician orders, if applicable.
§97.297(1)	Countersignature of physician verbal orders.
§97.298	Enforcement of a written policy for ensuring compliance with the rules adopted by the Texas Board of Nursing in 22 TAC Chapter 224 (Delegation of Nursing Tasks by Registered Professional Nurses to Unlicensed Personnel for Clients with Acute Conditions or in Acute Care Environments) and 22 TAC Chapter 225 (RN Delegation to Unlicensed Personnel and Tasks Not Requiring Delegation in Independent Living Environments for Clients with Stable and Predictable Conditions).
§97.300(b)	Enforcement of a written policy for maintaining a current medication list and a current medication administration record.
§97.300(b)(1)-(2)(A)-(B) and (3) separate penalties	The administration of medication.
§97.303(1)-(3)(A)-(F) separate penalties	The possession and use of sterile water or saline, certain vaccines or tuberculin, and certain dangerous drugs.
§97.321(c)(2)	Maintaining adequate staff to provide and supervise services at a branch office.
§97.322(c)(2)	Maintaining adequate staff to provide and supervise services at an alternate delivery site.
§97.401(b)(1)-(2)(A)-(B) separate penalties	Acceptance of a client for home health services and the initiation of services.
§97.401(d)	Requirement that qualified personnel provide and supervise all services.
§97.401(e)	Requirement that all staff providing services, delegation, and supervision be employed by or be under contract with the agency.

<b>SEVERITY LEVEL B VIOLATIONS</b> <b>\$500 - \$1,000 per violation</b>	
<b>Rule Cite</b>	<b>Subject Matter</b>
§97.401(g)	Age and competency of unlicensed persons providing licensed home health services.
§97.402(a)	Compliance with the Medicare Conditions of Participation (Social Security Act, Title 42, Code of Federal Regulations, Part 484.)
§97.402(c)-(e) separate penalties	Compliance with §97.701(f) of this chapter (relating to Home Health Aides) for an agency that implements a competency evaluation program.
§97.403(a)	Compliance with the Social Security Act and the regulations in Title 42, Code of Federal Regulations, Part 418.
§97.403(c)	Enforcement of a written policy for the provision of hospice services.
§97.403(d)(1)-(3) separate penalties	Requirement and conditions of the medical director for an agency that provides hospice services.
§97.403(e)(1)(A)-(D) separate penalties	Composition of an interdisciplinary team or teams.
§97.403(e)(2)(A)-(D) separate penalties	Responsibilities of the interdisciplinary team.
§97.403(e)(4)	Designating a registered nurse to coordinate implementation of the plan of care for each client.
§97.403(f)(1)	Ensuring continuity of client and family care in home and outpatient and inpatient settings.
§97.403(f)(2)	Contract requirements for providing arranged services.
§97.403(f)(3)	Professional management responsibility for arranged services.
§97.403(f)(5)	Ensuring that inpatient care is furnished only in a licensed facility and according to contract requirements.
§97.403(g)(1)-(3) separate penalties	Time requirements for contacting the client or client's representative, performing the initial health assessment visit, and initiation of services.
§97.403(h)	Performing and making available to each client a comprehensive health assessment that identifies the client's needs.
§97.403(h)(1)	Completing the comprehensive health assessment in a timely manner.
§97.403(h)(2)(A)-(C) separate penalties	Composition of the comprehensive health assessment.
§97.403(h)(3)(A)-(B) separate penalties	Requirement for updating and revising the comprehensive health assessment.
§97.403(i)(1)-(3) separate penalties	Requirements for a written plan of care.
§97.403(m)	Ensuring that all core services are provided, and requirements for using contracted staff, if necessary.
§97.403(n)(1)-(3) separate penalties	Requirements for providing nursing care and services.
§97.403(o)	Qualifications of the social worker performing hospice services.
§97.403(p)	Requirements for ensuring that general medical needs of clients are met.

**SEVERITY LEVEL B VIOLATIONS**  
**\$500 - \$1,000 per violation**

<b>Rule Cite</b>	<b>Subject Matter</b>
§97.403(q)(1)-(4) separate penalties	Requirements for providing counseling services.
§97.403(r)	Requirements for providing services, maintaining a system for ensuring identification of client needs, communication across all disciplines, and integration of services.
§97.403(s)	Requirements for having therapy services available.
§97.403(t)	Requirements for having home health aide and homemaker services available.
§97.403(t)(1)-(2) separate penalties	Requirements for RN supervisory visits to assess aide services.
§97.403(u)(1)-(3) separate penalties	Requirements for providing medical supplies, appliances, and medications, as needed, for palliation and management of terminal illness and related conditions.
§97.403(v)	Requirements that inpatient care be available for pain control, symptom management, and respite.
§97.403(v)(1)	Requirements for providing inpatient care.
§97.403(v)(2)(A)-(B) separate penalties	Requirements for a quality assessment and performance improvement plan for hospice services.
§97.403(w)(1)(A)-(B) separate penalties	Requirements for having on-site 24-hour nursing services provided by RNs and LVNs.
§97.403(w)(2)(A)-(G) separate penalties	Implementation of a written disaster preparedness and response plan for a freestanding hospice in the event of a disaster.
§97.403(w)(3)	Meeting all federal, state, and local laws, regulations, and codes pertaining to health and safety.
§97.403(w)(4)	Meeting the National Fire Protection Association Life Safety Code for fire in buildings and structures.
§97.403(w)(9)	Having available at all times a quantity of linen essential for proper care of clients and requirements to prevent the spread of infection on linens.
§97.403(w)(10)	Making provisions for isolating clients with infectious diseases.
§97.403(w)(12)(A)-(I) separate penalties	Methods and procedures for dispensing and administering medications.
§97.404(c)	Qualifications of agency staff performing personal assistance services.
§97.404(d)	Tasks authorized under a personal assistance services license category.
§97.404(g)	Enforcement of a written policy that addresses the supervision of agency personnel with input from the client or family on the frequency of supervision.
§97.404(g)(1)-(2) separate penalties	Conditions and qualifications for supervising agency personnel delivering personal assistance services.

<b>SEVERITY LEVEL B VIOLATIONS</b> <b>\$500 - \$1,000 per violation</b>	
<b>Rule Cite</b>	<b>Subject Matter</b>
§97.404(h)(1)-(5) separate penalties	Performance of gastrostomy tube feedings and medication administration for an agency that provides personal assistance services.
§97.405(a)	Requirements for agencies that provide peritoneal dialysis or hemodialysis services.
§97.405(c)(1)-(2) separate penalties	Qualifications and responsibilities of the medical director for an agency that provides home dialysis services.
§97.405(e)(1)(A)-(C) separate penalties	Provision and supervision of nursing services for an agency that provides home dialysis services.
§97.405(e)(2)	Provision of nutritional counseling for an agency that provides home dialysis services.
§97.405(e)(3)	Provision of medical social services for an agency that provides home dialysis services.
§97.405(f)(1)	Requirements for orientation and training of personnel providing direct care to clients receiving home dialysis services.
§97.405(f)(2)(A)-(G) separate penalties	Requirement for an orientation and skills education period for licensed nurses.
§97.405(i)	Requirement that an agency coordinate the exchange of medical and other important information when transferring a home dialysis client to a health-care facility for treatment.
§97.405(k)	Requirement for routine hepatitis testing of home dialysis clients and agency employees providing dialysis care.
§97.405(k)(1)(A)-(C) separate penalties	Requirements for hepatitis B screening and vaccinations for staff.
§97.405(k)(2)(A)-(E) separate penalties	Requirements for hepatitis B screening and vaccinations for clients.
§97.405(l)	Requirements for employees providing direct care to clients to have a current CPR certification.
§97.405(m)	Requirement for initial admission assessment of a client for home dialysis services.
§97.405(n)	Requirement for development of a long-term program for a client receiving home dialysis services.
§97.405(o)	Requirement that the agency conducts a history and physical of a home dialysis client at admission and annually.
§97.405(p)(1)-(2) separate penalties	Requirement for physician orders for home self-assisted dialysis treatment.
§97.405(q)(1)-(7) separate penalties	Requirements for development and implementation of a care plan for a home dialysis client.
§97.405(r)	Requirement for medication administration by licensed personnel for an agency that provides home dialysis services.
§97.405(s)(2)-(3) separate penalties	Additional requirements for maintaining client records in an agency that provides home dialysis services.

<b>SEVERITY LEVEL B VIOLATIONS</b> <b>\$500 - \$1,000 per violation</b>	
<b>Rule Cite</b>	<b>Subject Matter</b>
§97.405(t)(1)-(4) separate penalties	Requirements for use of water in the home dialysis setting.
§97.405(u)	Adoption and enforcement of a policy to test dialysis equipment prior to each treatment.
§97.405(v)	Enforcing the agency's written preventive maintenance program for home dialysis equipment.
§97.405(v)(1), (1)(A), (1)(C)-(D), and (2) separate penalties	Implementing requirements for a written preventive maintenance program for home dialysis equipment.
§97.405(w)(1)-(6) separate penalties	Reuse of disposable medical devices in the home dialysis setting.
§97.405(x)(1)-(2)	Provision of laboratory services.
§97.405(x)(3)-(4) separate penalties	Provision of laboratory services.
§97.405(y)(1)-(2) separate penalties	Supplies for home dialysis services.
§97.405(z)(1)-(7) separate penalties	Compliance with policies and procedures for medical emergencies and emergencies resulting from a disaster required of an agency that provides home dialysis services.
§97.406(2)-(5) separate penalties	Provision of psychoactive services.
§97.407(1)-(11) separate penalties	Provision of intravenous therapy services.
§97.523(e)	Requirement to grant the surveyor entry to the agency if closed when the surveyor arrives during regular business hours.
§97.701(a)-(f)(1)-(7) separate penalties	Home health aides.

**IN**

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**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.

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**Department of Aging and Disability Services**

Notice - Procurement of Services by Area Agencies on Aging

The Department of Aging and Disability Services' Access and Intake Division Area Agencies on Aging Section oversees the delivery of Older Americans Act services for individuals 60 years of age and older, their family members, and other caregivers through contracts with area agencies on aging located throughout the state. These 28 area agencies on aging are currently seeking qualified entities to provide services such as: Congregate Meals, Home Delivered Meals, Transportation,

Personal Assistance, Homemaker, and Caregiver, as well as other related services. Parties interested in providing services must contact the area agency on aging operating within their service area to obtain information relating to vendor open enrollment, requests for proposals (RFP), the contracting process, the types of services being considered, and the actual funding available.

Identified in the comprehensive list are all area agencies on aging, contact information, addresses, telephone numbers, and service areas:

List of Area Agencies on Aging

## Area Agencies on Aging with COG Information

7/17/2008

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### 83101-Area Agency on Aging of the Alamo Area

8700 Tesoro, Suite 700; San Antonio, Texas 78217

8700 Tesoro, Suite 700; San Antonio, Texas 78217

Ph: 210-362-5200 1-866-231-4922 Fax: 210-225-5937

### AAA Director:

Ms. Deborah Billa, Director

dbilla@aacog.com

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### Alamo Area Council of Governments

Ms. Gloria C. Arriaga, Executive Director

garriaga@aacog.com

8700 Tesoro, Suite 700 Zip: 78217

Atascoca, Bandera, Comal, Frio, Gillespie, Guadalupe; Karnes, Kendall, Kerr, Medina, Wilson

### Fiscal Director:

Blanca Tapia

btapia@aacog.com

8700 Tesoro, Suite 700 Zip: 78217

### Fiscal Contact:

Andrew Perez

aperez@aacog.org

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### 83102-Area Agency on Aging of Ark-Tex

4808 Elizabeth St.; Texarkana, Texas 75503

P. O. Box 5307; Texarkana, Texas 75505-5307

Ph: 903-832-8636 1-800-372-4464 Fax: 903-832-3441

### AAA Director:

Ms. Diane McKinnon, Manager

dmckinnon@atcog.org

---

### Ark-Tex Council of Governments

Mr. L.D. Williamson, Executive Director

ldwilliamson@atcog.org

122 Plaza West Zip: 75501

Bowie, Cass, Delta, Franklin, Hopkins, Lamar, Morris, Red River, Titus

### Fiscal Director:

Brenda Davis

bdavis@atcog.org

P. O. Box 5307 Zip: 75505-5307

### Fiscal Contact:

Debra Newton

dnewton@atcog.org

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### 83103-Area Agency on Aging of Bexar County

8700 Tesoro, Suite 700; San Antonio, Texas 78217

8700 Tesoro, Suite 700; San Antonio, Texas 78217

Ph: 210-362-5254 1-800-960-5201 Fax: 210-225-5937

### AAA Director:

Ms. Carol Zernial, Director

czernial@aacog.com

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### Alamo Area Council of Governments

Ms. Gloria C. Arriaga, Executive Director

garriaga@aacog.com

8700 Tesoro, Suite 700 Zip: 78212

Bexar

### Fiscal Director:

Blanca Tapia

btapia@aacog.com

8700 Tesoro, Suite 700 Zip: 78217

### Fiscal Contact:

Andrew Perez

aperez@aacog.org

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### 83104-Area Agency on Aging of Brazos Valley

3991 E. 29th; Bryan, Texas 77802

P. O. Box 4128; Bryan, Texas 77805-4128

Ph: 979-595-2806 1-800-994-4000 Fax: 979-595-2810

### AAA Director:

Mr. Ronnie Gipson, Director

rgipson@bvcog.org

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### Brazos Valley Council of Governments

Mr. Tom M. Wilkinson, Jr., Executive Director

twilkinson@bvcog.org

3991 E. 29th St. Zip: 77802

Brazos, Burleson, Grimes, Leon, Madison, Robertson, Washington

### Fiscal Director:

John Jackson

jjackson@bvcog.org

P. O. Box 4128 Zip: 77805-4128

### Fiscal Contact:

Kay Wilson

kwilson@bvcog.org



## Area Agencies on Aging with COG Information

7/17/2008

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### 83105-Area Agency on Aging of the Capital Area

6800 Burseson Rd. Bldg. 310, Suite 165; Austin, Texas 78744  
PO Box 17848; Austin, Texas 78760

Ph: 512-916-6062 1-888-622-9111 Fax: 512-916-6042

### AAA Director:

Ms. Glenda Rogers, Director  
grogers@capcog.org

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### Capital Area Council of Governments

Ms. Betty Voights, Executive Director  
bvoights@capcog.org

2512 South IH35, Suite 200 Zip: 78704-5798

Bastrop, Blanco, Burnet, Caldwell, Fayette, Hays, Lee, Llano, Travis, Williamson

### Fiscal Director:

Clay Collins  
ccollins@capcog.org

2512 South IH35, Suite 200 Zip: 78704-5798

### Fiscal Contact:

Michael Weddell  
mjweddell@capcog.org

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### 83106-Area Agency on Aging of Central Texas

2180 North Main Street; Belton, Texas 76513  
P.O. Box 729; Belton, Texas 76513

Ph: 254-770-2330 1-800-447-7169 Fax: 252-770-2349

### AAA Director:

Mr. H. Richard McGhee, Director  
richard.mcgee@ctcog.org

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### Central Texas Council of Governments

Mr. Jim Reed, Executive Director  
jreed@ctcog.org

302 E. Central Avenue Zip: 76513

Bell, Coryell, Hamilton, Lampasas, Milam, Mills, San Saba

### Fiscal Director:

Michael Irvine  
mirvine@ctcog.org

P. O. Box 729 Zip: 76513

### Fiscal Contact:

Richard McGhee  
richard.mcgee@ctcog.org

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### 83107-Area Agency on Aging of the Coastal Bend

2910 Leopard; Corpus Christi, Texas 78649  
P. O. Box 9909; Corpus Christi, Texas 78649

Ph: 361-883-3935 1-800-817-5743 Fax: 361-883-5749

### AAA Director:

Ms. Betty Lamb, Director  
betty@cbcogaaa.org

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### Coastal Bend Council of Governments

Mr. John P. Buckner, Executive Director  
john@cbcog98.org

2910 Leopard Zip: 78649

Aransas, Bee, Brooks, Duval, Jim Wells, Kenedy, Kleberg, Live Oak, McMullen, Nueces, Refugio, San Patricio

### Fiscal Director:

Veronica Toomey  
veronica@cbcog98.org

P. O. Box 9909 Zip: 78649

### Fiscal Contact:

Karen Royal  
karen@fin.cbcog98.org

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### 83108-Area Agency on Aging of Concho Valley

2801 W. Loop 306; San Angelo, Texas 76904  
P. O. Box 60050; San Angelo, Texas 76906

Ph: 325-223-5704 1-877-944-9666 Fax: 325-223-8233

### AAA Director:

Ms. Rosie Quintela, Director  
rosie@cvcog.org

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### Concho Valley Council of Governments

Mr. Jeffrey K. Sutton, Executive Director  
jsutton@cvcog.org

2801 W. Loop 306 Zip: 76904

Coke, Concho, Crockett, Irion, Kimble, Mason, McCulloch, Menard, Reagan, Schleicher, Sterling, Sutton, Tom Green

### Fiscal Director:

Nancy Pahira  
nancy@cvcog.org

P. O. Box 60050 Zip: 76906

### Fiscal Contact:

Rosie Quintela  
rosie@cvcog.org

## Area Agencies on Aging with COG Information

7/17/2008

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### 83109-Area Agency on Aging of Dallas County

1349 Empire Central, Suite 400; Dallas, Texas 75247

1349 Empire Central, Suite 400; Dallas, Texas 75247

Ph: 214-871-5065 1-800-548-1873 Fax: 214-871-7442

### AAA Director:

Ms. Monita McGhee, Director

mcmghee@ccgd.org

---

### Community Council of Greater Dallas

Ms. Martha Blaine, Executive Director

mblaine@ccgd.org

1349 Empire Central, Ste. 400 Zip: 75247

Dallas

### Fiscal Director:

Vicki White

vwhite@ccgd.org

1349 Empire Central, Ste. 400 Zip: 75247

### Fiscal Contact:

Dena Boyd

dboyd@ccgd.org

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### 83110-Area Agency on Aging of Deep East Texas

210 Premier Drive; Jasper, Texas 75951

210 Premier Drive; Jasper, Texas 75951

Ph: 409-384-7614 1-800-435-3377 Fax: 409-384-5390

### AAA Director:

Ms. Holly Anderson, Director

handerson@detcog.org

---

### Deep East Texas Council of Governments

Mr. Walter Diggles, Executive Director

wdiggles@detcog.org

210 Premier Drive Zip: 75951

Angelina, Houston, Jasper, Nacogdoches, Newton, Polk, Sabine, San Augustine, San Jacinto, Shelby, Trinity, Tyler

### Fiscal Director:

Patricia DuBose

pdubose@detcog.org

210 Premier Drive Zip: 75951

### Fiscal Contact:

Holly Anderson

handerson@detcog.org

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### 83111-Area Agency on Aging of East Texas

3800 Stone Road; Kilgore, Texas 75662

3800 Stone Road; Kilgore, Texas 75662

Ph: 903-984-8641 1-800-442-8845 Fax: 903-984-4482

### AAA Director:

Mr. Claude I. Andrews, Director

Claude.Andrews@twc.state.tx.us

---

### East Texas Council of Governments

Mr. David Cleveland, Executive Director

david.cleveland@etcog.org

3800 Stone Road Zip: 75662

Anderson, Camp, Cherokee, Gregg, Harrison, Henderson, Marion, Panola, Rains, Rusk, Smith, Upshur, VanZandt, Wood

### Fiscal Director:

Judy Durland

judy.durland@twc.state.tx.us

3800 Stone Road Zip: 75662

### Fiscal Contact:

Beverly Brown

beverly.brown3@twc.state.tx.us

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### 83112-Area Agency on Aging of the Golden Crescent Region

568 Big Bend Drive; Victoria, Texas 77904

568 Big Bend Drive; Victoria, Texas 77904

Ph: 361-578-1587 1-800-574-9745 Fax: 361-578-8865

### AAA Director:

Ms. Cindy Cornish, Director

cindyco@gcrpc.org

---

### Golden Crescent Regional Planning Commission

Mr. Joe E. Brannan, Executive Director

jbrannan@gcrpc.org

568 Big Bend Dr. Zip: 77904

Calhoun, DeWitt, Goliad, Gonzales, Jackson, Lavaca, Victoria

### Fiscal Director:

Cynthia Skarpa

cindys@gcrpc.org

568 Big Bend Drive Zip: 77904

### Fiscal Contact:

Cynthia Skarpa

cindys@gcrpc.org

## Area Agencies on Aging with COG Information

7/17/2008

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### 83113-Area Agency on Aging of Harris County

8000 North Stadium Drive, 3rd. Floor; Houston, Texas 77054

8000 North Stadium Drive, 3rd. Floor; Houston, Texas 77054

Ph: 713-794-9001 1-800-213-8471 Fax: 713-794-9238

### AAA Director:

Ms. Deborah A. Moore, Director

deborahA.moore@cityofhouston.net

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### Houston Dept. of Health & Human Services

Stephen Williams, Director

stephen.williams@cityofhouston.net

8000 North Stadium Drive, 8th Floor Zip: 77054

Harris

### Fiscal Director:

Sally Switek

sally.switek@cityofhouston.net

8000 North Stadium Drive, 8th Floor Zip: 77054

### Fiscal Contact:

Molly Nem

molly.nem@cityofhouston.net

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### 83114-Area Agency on Aging of the Heart of Texas

1514 S. New Road; Waco, Texas 76711

PO Box 20847; Waco, Texas 76712

Ph: 254-292-1800 1-866-772-9600 Fax: 254-756-0102

### AAA Director:

Mr. Gary Luft, Director

gary.luft@hot.cog.tx.us

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### Heart of Texas Council of Governments

Kenneth L. Simons, Executive Director

ken.simons@hot.cog.tx.us

1514 South New Road Zip: 76711

Bosque, Falls, Freestone, Hill, Limestone, McLennan

### Fiscal Director:

John Minnix

john.minnix@hot.cog.tx.us

PO Box 20847 Zip: 76712

### Fiscal Contact:

Donnis Cowan

donnis.cowan@hot.cog.tx.us

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### 83115-Area Agency on Aging of Houston-Galveston

3555 Timmons Ln., Suite 120; Houston, Texas 77027

P. O. Box 22777; Houston, Texas 77227-2777

Ph: 713-627-3200 1-800-437-7396 Fax: 713-993-4578

### AAA Director:

Mr. Curtis M. Cooper, Manager

curtis.cooper@h-gac.com

---

### Houston-Galveston Area Council

Mr. Jack Steele, Executive Director

jack.steele@h-gac.com

3555 Timmons Ln., Suite 120 Zip: 77027

Austin, Brazoria, Chambers, Colorado, Fort Bend, Galveston, Liberty, Matagorda, Montgomery, Walker, Waller, Wharton

### Fiscal Director:

Nancy Haussler

nancy.haussler@h-gac.com

P. O. Box 22777 Zip: 77227

### Fiscal Contact:

Shaun Downie

sdavis@setrpc.org

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### 83116-Area Agency on Aging of the Lower Rio Grande Valley

311 N. 15th Street; McAllen, Texas 78501-4705

311 N. 15th Street; McAllen, Texas 78501-4705

Ph: 956-682-3481 1-800-365-6131 Fax: 956-682-8852

### AAA Director:

Mr. Jose L. Gonzalez, Director

jgonzalez@lrgvdc.org

---

### Lower Rio Grande Valley Development Council

Mr. Kenneth N. Jones, Executive Director

knjones@lrgvdc.org

311 N. 15th Street Zip: 78501-4705

Cameron, Hidalgo, Willacy

### Fiscal Director:

Ann Lyles

lyles@acnet.net

311 N. 15th Street Zip: 78501-4705

### Fiscal Contact:

Crystal Balboa

cbalboa@lrgvdc.org

## Area Agencies on Aging with COG Information

7/17/2008

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**83117-Area Agency on Aging of the Middle Rio Grande Area**      **AAA Director:**  
307 W. Nopal Street; Carrizo Springs, Texas 78834      Mr. Conrado Longoria, Jr., Director  
P. O. Box 1199; Carrizo Springs, Texas 78834      conrado.longoria@mrgdc.org  
Ph: 830-876-3533    1-800-224-4262      Fax: 830-876-9415

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<b>Middle Rio Grande Development Council</b>	<i>Fiscal Director:</i>	<i>Fiscal Contact:</i>
Mr. Leodoro Martinez, Executive Director	Joe D. Cruz, Jr.	Pete Perez
leodoro.martinez@mrgdc.org	joe.cruz@mrgdc.org	pete.perez@mrgdc.org
307 W. Nopal Street Zip: 78834	P. O. Box 1199 Zip: 78834	
Dimmit, Edwards, Kinney, LaSalle, Maverick, Real, Uvalde, Val Verde, Zavala		

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**83118-Area Agency on Aging of North Central Texas**      **AAA Director:**  
616 Six Flags Drive, Suite 200; Arlington, Texas 76011      Ms. Doni Van Ryswyk, Manager  
P. O. Box 5888; Arlington, Texas 76005-5888      dvanryswyk@nctcog.org  
Ph: 817-695-9194    1-800-272-3921      Fax: 817-695-9274

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<b>North Central Texas Council of Governments</b>	<i>Fiscal Director:</i>	<i>Fiscal Contact:</i>
Mr. Mike Eastland, Executive Director	Shannan Ramirez	Mona Barbee
meastland@nctcog.org	mbarbee@nctcog.org	mbarbee@nctcog.org
616 Six Flags Drive, Suite 200 Zip: 76011	P. O. Box 5888 Zip: 76005-5888	
Collin, Denton, Ellis, Erath, Hood, Hunt, Johnson, Kaufman, Navarro, Palo Pinto, Parker, Rockwall, Somervell, Wise		

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**83119-Area Agency on Aging of North Texas**      **AAA Director:**  
4309 Jacksboro Hwy., Suite 2; Wichita Falls, Texas 76302-2745      Ms. Rhonda K. Pogue, Director  
P. O. Box 5144; Wichita Falls, Texas 76307-5144      rpogue@nortexrpc.org  
Ph: 940-322-5281    1-800-460-2226      Fax: 940-322-6743

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<b>Nortex Regional Planning Commission</b>	<i>Fiscal Director:</i>	<i>Fiscal Contact:</i>
Mr. Dennis Wilde, Executive Director	James Springer	James Springer
dwilde@nortexrpc.org	jspringer@nortexrpc.org	jspringer@nortexrpc.org
4309 Jacksboro Hwy., Suite 2 Zip: 76302-2745	P. O. Box 5144 Zip: 76307-5144	
Archer, Baylor, Clay, Cottle, Foard, Hardeman, Jack, Montague, Wichita, Wilbarger, Young		

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**83120-Agency on Aging of the Panhandle Area**      **AAA Director:**  
415 West 8th; Amarillo, Texas 79101      Ms. Melissa Carter, Director  
P. O. Box 9257; Amarillo, Texas 79105-9257      mcarter@prpc.cog.tx.us  
Ph: 806-331-2227    1-800-642-6008      Fax: 806-373-3268

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<b>Panhandle Regional Planning Commission</b>	<i>Fiscal Director:</i>	<i>Fiscal Contact:</i>
Mr. Gary Pitner, Executive Director	Cindy Boone	Christy Henderson
gpitner@theprpc.org	cboone@theprpc.org	chenderson@theprpc.org
415 West 8th Zip: 79101	P. O. Box 9257 Zip: 79105-9257	
Armstrong, Briscoe, Carson, Castro, Childress, Collingsworth, Dallam, Deaf Smith, Donley, Gray, Hall, Hansford, Hartley, Hemphill, Hutchinson, Lipscomb, Moore, Ochiltree, Oldham, Parmer, Potter, Randall, Roberts, Sherman, Swisher, Wheeler		

## Area Agencies on Aging with COG Information

7/17/2008

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### 83121-Area Agency on Aging of the Permian Basin

2910 Laforce Blvd.; Midland, Texas 79711

P.O. Box 60660; Midland, Texas 79711

Ph: 432-563-1061 1-800-491-4636 Fax: 432-563-1009

### AAA Director:

Ms. Jeannie Raglin, Interim Director

jraglin@aaapb.com

---

### Permian Basin Regional Planning Commission

Ms. Terri Moore, Executive Director

tmoore@pbrpc.org

2910 Laforce Blvd. Zip: 79711

Andrews, Borden, Crane, Dawson, Ector, Gaines, Glasscock, Howard, Loving, Martin, Midland, Pecos, Reeves, Terrell, Upton, Ward, Winkler

### Fiscal Director:

Helen Grady

heleng@pbrpc.org

P. O. Box 60660 Zip: 79711

### Fiscal Contact:

Jeannie Raglin

jraglin@aaapb.com

---

### 83122-Agency on Aging of the Rio Grande Area

1100 North Stanton, Suite 610; El Paso, Texas 79902

1100 North Stanton, Suite 610; El Paso, Texas 79902

Ph: 915-533-0998 1-800-333-7082 Fax: 915-544-5402

### AAA Director:

Mr. Adan Dominguez, Director

adand@riocog.org

---

### Rio Grande Council of Governments

Mr. Jake Brisbin, Jr., Executive Director

jakeb@riocog.org

1100 North Stanton, Suite 610 Zip: 79902

Brewster, Culberson, El Paso, Hudspeth, Jeff Davis, Presidio

### Fiscal Director:

Hector F. Diaz

hectord@riocog.org

1100 North Stanton, Suite 610 Zip: 79902

### Fiscal Contact:

Lorena Estrada

lorenae@riocog.org

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### 83123-Area Agency on Aging of Southeast Texas

2210 Eastex Freeway; Beaumont, Texas 77703

2210 Eastex Freeway; Beaumont, Texas 77703

Ph: 409-899-8444 1-800-395-5465 Fax: 409-899-4829

### AAA Director:

Ms. Colleen Halliburton, Director

challiburton@setrpc.org

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### South East Texas Regional Planning Commission

Mr. Shaun Davis, Executive Director

sdavis@setrpc.org

2210 Eastex Freeway Zip: 77703

Hardin, Jefferson, Orange

### Fiscal Director:

Jim Borel

jborel@setrpc.org

2210 Eastex Freeway Zip: 77703

### Fiscal Contact:

Teri Barnes

tbarnes@setrpc.org

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### 83124-Area Agency on Aging of South Plains

1323 58th Street; Lubbock, Texas 79412

P. O. Box 3730 / Freedom Station; Lubbock, Texas 79452

Ph: 806-687-0940 1-888-418-6564 Fax: 806-765-9544

### AAA Director:

Ms. Liz Castro, Interim Director

lcastro@spag.org

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### South Plains Association of Governments

Mr. Tim C. Pierce, Executive Director

tpierce@spag.org

1323 58th Street Zip: 79412

Bailey, Cochran, Crosby, Dickens, Floyd, Garza, Hale, Hockley, King, Lamb, Lubbock, Lynn, Motley, Terry, Yoakum

### Fiscal Director:

Cindy Shaver

cshaver@spag.org

P. O. Box 3730 / Freedom Station Zip: 79452

### Fiscal Contact:

Suzette Forestier

sforestier@spag.org

## Area Agencies on Aging with COG Information

7/17/2008

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### 83125-Area Agency on Aging of South Texas

1002 Dicky Lane; Laredo, Texas 78043  
P.O. Box 2187; Laredo, Texas 78044-2187

Ph: 956-722-3995 1-800-292-5426 Fax: 956-722-2670

### AAA Director:

Mr. Alberto Rivera, Jr., Aging Services  
arivera@stdc.cog.tx.us

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### South Texas Development Council

Mr. Amando Garza, Jr., Executive Director  
agarzajr@stdc.cog.tx.us  
1002 Dicky Lane Zip: 78043  
Jim Hogg, Starr, Webb, Zapata

### Fiscal Director:

Robert Mendiola  
mendiola@stdc.cog.tx.us  
P.O. Box 2187 Zip: 78044-2187

### Fiscal Contact:

Robert Mendiola  
mendiola@stdc.cog.tx.us

---

### 83126-Area Agency on Aging of Tarrant County

1500 N. Main St. Suite 200; Fort Worth, Texas 76106  
PO Box 4448; Fort Worth, Texas 76164-0448

Ph: 817-258-8081 1-877-886-4833 Fax: 817-258-8074 817-258-8039

### AAA Director:

Mr. Don Smith, Director  
dsmith@uwmtc.org

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### United Way Metropolitan Tarrant County

Ms. Ann Rice, Senior Vice President  
arice@uwmtc.org  
1500 N. Main St. Zip: 76164-0448  
Tarrant

### Fiscal Director:

Mitch Leach  
mleach@uwmtc.org

### Fiscal Contact:

Chan Souvannavong  
csouvannavong@uwmtc.org

PO Box 4448 Zip: 76164-0448

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### 83127-Area Agency on Aging of Texoma

1117 Gallagher, Gallagher Bldg., Suite 200; Sherman, Texas 75090  
1117 Gallagher, Gallagher Bldg., Suite 200; Sherman, Texas 75090

Ph: 903-813-3580 1-800-677-8264 Fax: 903-813-3573 903-813-3515

### AAA Director:

Mr. Ron Michael, Director  
rmichael@texoma.cog.tx.us

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### Texoma Council of Governments

Mrs. Frances Pelley, Executive Director  
fpelley@texoma.cog.tx.us  
1117 Gallagher, Gallagher Prof. Bldg, Suite 100 Zip: 75090  
Cooke, Fannin, Grayson

### Fiscal Director:

Terrell Culbertson  
tculbertson@texoma.cog.tx.us

### Fiscal Contact:

Rodrigo Moyshondt  
rmuyshondt@texoma.cog.tx.us

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### 83128-Area Agency on Aging of West Central Texas

3702 Loop 322; Abilene, Texas 79602  
P. O. Box 3195; Abilene, Texas 79604

Ph: 325-672-8544 1-800-928-2262 Fax: 325-675-5214

### AAA Director:

Ms. Gail Kaiser, Director  
gkaiser@wctcog.org

---

### West Central Texas Council of Governments

Mr. Tom K. Smith, Executive Director  
tsmith@wctcog.org  
3702 Loop 322 Zip: 79602  
Brown, Callahan, Coleman, Comanche, Eastland, Fisher, Haskell, Jones, Kent, Knox, Mitchell, Nolan, Runnels, Scurry, Shackelford, Stephens, Stonewall, Taylor, Throckmorton

### Fiscal Director:

Christy Marlar  
cmarlar@wctcog.org

### Fiscal Contact:

Theresa Edwards  
tedwards@wctcog.org

P. O. Box 3195 Zip: 79604

Contact the Department of Aging and Disability Services, Access and Intake Division - Area Agencies on Aging Section at (512) 438-4290 for questions about this general notice.

TRD-200803978

Marianne Reat

Interim General Counsel

Department of Aging and Disability Services

Filed: July 30, 2008



## Texas Bond Review Board

### Request for Proposals

Pursuant to the Texas Government Code §2254.029, the Texas Bond Review Board (BRB) announces its intent to invite consultants with documented expertise and experience with interest rate management contracts (swaps) to submit offers for a consulting services contract.

The BRB's objective is to contract for consulting services to assist in the development of a state interest rate management policy.

The BRB proposes to obtain the consulting services described above, with services commencing on or after August 29, 2008. The contract term is to be for an initial term from date of award, and ending October 31, 2008 with an option to renew by mutual agreement, for one (1) additional term of up to three (3) months. This announcement is intended to provide potential proposers with notice of the BRB's interest in obtaining such assistance.

The BRB has notified the Legislative Budget Board of the BRB's intent to engage a consultant and received from the Governor's Office of Budget, Planning and Policy a finding of fact that the requested consulting services are necessary.

Required Deliverables include:

- A. A comprehensive state interest rate management agreement policy;
- B. Recommended procedures, guidelines and standards for the evaluation and analysis of the State interest rate management agreement portfolio, as appropriate;
- C. Board and staff training on interest rate management agreements and proposed policies, procedures, guidelines and standards.

The award for consulting services will be made by the BRB basing 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, the BRB will 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.

Inquiries: Questions regarding this RFP should be submitted by electronic mail to Dana Edwards at [dana.edwards@cpa.state.tx.us](mailto:dana.edwards@cpa.state.tx.us). Questions must be submitted by 5:00 p.m. (CDT), August 7, 2008. Questions submitted later than August 7, 2008 may not be answered. All inquiries will result in written responses with copies posted to the Electronic State Business Daily (ESBD).

If a respondent does not have internet access, a copy of all written responses may be obtained through the point of contact listed above. Respondents are strongly encouraged to submit written questions during the official question and answer period regarding any term or condition of this RFP and whether the Texas Bond Review Board may negotiate that provision under this particular RFP.

Delivery of Proposals: Proposals shall be submitted to TPASS by one of the following methods: U.S. Postal Service: TPASS Bid Services, Comptroller of Public Accounts, P.O. Box 13186, Austin,

Texas 78711-3186; Overnight/Express Mail: TPASS-Mail Room #176, Central Services Building, 1711 San Jacinto Boulevard, Austin, Texas 78701, Hours--7:45 a.m. to 4:45 p.m. (CDT); or Hand Deliver: TPASS-Bid Services, 1711 San Jacinto Boulevard 1st Floor (Lobby) Room #100 - Central Services Building, Austin, Texas 78701, Hours--8:00 a.m. to 5:00 p.m. (CDT).

The entire RFP is available electronically on the ESBD. The website is <http://esbd.cpa.state.tx.us>.

E-mail inquiries should be sent to [dana.edwards@cpa.state.tx.us](mailto:dana.edwards@cpa.state.tx.us); include in the subject line: "IRMC RFP"

The deadline for proposals is August 25, 2008. All submissions must be received by the BRB by 5:00 p.m. (CDT) on the due date.

TRD-200803943

Bob Kline

Executive Director

Texas Bond Review Board

Filed: July 29, 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 July 18, 2008, through July 24, 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 July 30, 2008. The public comment period for this project will close at 5:00 p.m. on August 29, 2008.

#### FEDERAL AGENCY ACTIONS:

**Applicant: Chambers County Improvement District No. 1;** Location: The project is located in the Cedar Bayou area, on a 280-acre tract located southwest of the FM 1405 and Highway 99 intersection, in western Chambers County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Morgans Point, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 313852; Northing: 3287985. Project Description: The applicant has revised the mitigation plan associated with a proposal to fill approximately 5.13 acres of jurisdictional headwater wetlands within a 280-acre tract during the construction of a commercial warehouse development and associated railroad spur. To compensate for the impacted 5.13 acres of jurisdictional wetlands and 8.14 of non-jurisdictional wetlands, the applicant is proposing off-site mitigation of a total of 13.13 acres. Within the mitigation tract, planting will consist of *Sagittaria latifolia* in open water areas and *Juncus effusus*, *Polygonum hydropiperoides*, *Phyla nodiflora*, *Spartina patens* and associated species in areas with increased elevations. Black willow trees will be transplanted from the proposed fill area at the project site. The applicant also proposes to dispose of the excavated material resulting from the mitigation site onto an 18.26-acre site north of the mitigation tract. CCC Project No.: 08-0202-F1. Type of Application: U.S.A.C.E.

permit application #SWG-2007-00030 (Rev.) is being evaluated under §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451 - 1464), as amended, interested parties are invited to submit comments on whether a proposed action 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, including a copy the consistency certifications for inspection, 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. Comments should be sent to Ms. Brooks at the above address or by fax at (512) 475-0680.

TRD-200803950

Larry L. Laine

Chief Clerk/Deputy Land Commissioner, General Land Office

Coastal Coordination Council

Filed: July 29, 2008



## Comptroller of Public Accounts

### Notice of Contract Award

The Texas Treasury Safekeeping Trust Company (Trust Company), by and through the Texas Comptroller of Public Accounts, announces this notice of contract award.

The notice of request for proposals (RFP #184b) was published in the April 25, 2008, issue of the *Texas Register* (33 TexReg 3458).

The successful respondent will provide certified public accountant services to conduct audits of the Trust Company and certain Trust Company managed funds.

The contract was awarded to: Padgett Stratemann & Co., LLP, 515 Congress Avenue, Suite 1212, Austin, Texas 78701. The total contract compensation amount shall not exceed \$200,000.00.

The initial term of the contract is July 24, 2008 through May 31, 2009. The Texas Treasury Safekeeping Trust Company shall have the right to renew the contract for two (2) additional one-year terms one year at a time, through May 31, 2011.

TRD-200803791

Pamela Smith

Deputy General Counsel for Contracts

Comptroller of Public Accounts

Filed: July 25, 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, 303.009, and 304.003, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 07/28/08 - 08/03/08 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 07/28/08 - 08/03/08 is 18% for Commercial over \$250,000.

The judgment ceiling as prescribed by §304.003 for the period of 08/01/08 - 08/31/08 is 5.00% for Consumer/Agricultural/Commercial/credit through \$250,000.

The judgment ceiling as prescribed by §304.003 for the period of 08/01/08 - 08/31/08 is 5.00% 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-200803776

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: July 23, 2008



### 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 08/04/08 - 08/10/08 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 08/04/08 - 08/10/08 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-200803948

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: July 29, 2008



## Texas Education Agency

### Request for Applications Concerning the Texas Science, Technology, Engineering, and Mathematics (T-STEM) Academies - Startup Grants, Cycle 4

Eligible Applicants. The Texas Education Agency (TEA) is requesting applications under Request for Applications (RFA) #701-08-123 from eligible school districts and open-enrollment charter schools. An eligible school district or open-enrollment charter school shall serve a student population of greater than 40 percent economically disadvantaged students and shall have received a rating of *Exemplary*, *Recognized*, or *Academically Acceptable* under the 2008 state accountability rating system. Special consideration or priority will be given to applicants that serve student populations of greater than 50 percent economically disadvantaged students. An eligible school district or open-enrollment charter school shall also demonstrate how it will meet all of the requirements in this RFA for opening a Texas Science, Technology, Engineering, and Mathematics (T-STEM) Academy no later than the fall of 2009. A T-STEM Academy shall: (1) be an autonomous school located on a stand-alone facility or sharing a facility with an existing school; (2) serve Grades 6 - 12 or Grades 9 - 12 with an active relationship with the feeder middle school(s); (3) be small, serving approximately 100 students per grade; (4) be open enrollment, hosting lotteries for admission; (5) serve a student population of greater than



40 percent economically disadvantaged students; (6) be located on a new campus or be located on a campus that exhibited characteristics that strongly correlate with high school dropout rates (including, but not limited to, high 9th grade retention rates) during the 2005-2006, 2006-2007, and 2007-2008 school years; (7) not share a facility with a campus that received a rating of *Academically Unacceptable* under the state accountability rating system in 2006, 2007, or 2008; and (8) follow all requirements and indicators outlined in the RFA and in the T-STEM Academy Design Blueprint included as an attachment to the RFA. Campuses receiving funding from the TEA or the Communities Foundation of Texas (CFT) under any of the following grant programs are not eligible to receive funds under this grant program: a TEA Texas High School Redesign and Restructuring Grant, Cycle 3 or Cycle 4; a TEA or CFT Early College High School Grant; a TEA or CFT T-STEM Academy Grant; a CFT Redesigned High School Grant; or a CFT New Schools Grant.

**Description.** The purpose of T-STEM Academies is to increase student achievement by engaging students in and exposing students to innovative science and mathematics instruction while simultaneously acting as demonstration sites to inform mathematics and science teaching and learning statewide. To that end, every academy will provide a rigorous, well-rounded education with outstanding science and mathematics instruction, integrating technology across the curriculum. The goals of this program for the T-STEM Academies are to: (1) develop the nation's leading innovation economy workforce by aligning high school courses, postsecondary education, and economic development activities; (2) establish T-STEM Academies in high-need areas across the state that will prepare Texas high school graduates from diverse backgrounds to pursue careers in STEM-related fields; and (3) establish a statewide best-practices network for STEM education to promote broad dissemination and adoption of promising practices from the initiative and improve mathematics and science performance for students across Texas.

**Dates of Project.** The T-STEM Academies - Startup Grants, Cycle 4, will be implemented during the 2009-2010 and 2010-2011 school years. Applicants should plan for a starting date of no earlier than March 1, 2009, and an ending date of no later than February 28, 2011. Schools districts or open-enrollment charter schools selected will be required to open a T-STEM Academy no later than the fall of 2009.

**Project Amount.** A total of approximately \$3 million is available for funding the T-STEM Academies - Startup Grants, Cycle 4. Each project will receive a maximum of \$480,000 for a campus serving Grades 9 - 12 or \$840,000 for a campus serving Grades 6 - 12 for the 2009-2010 and 2010-2011 school years. The funding will be available in two phases. For the Planning Phase, each project may receive a maximum award amount of \$80,000. Upon approval of the project's Academy Design Proposal, an additional amount not to exceed \$400,000 for a campus serving Grades 9 - 12 or \$760,000 for a campus serving Grades 6 - 12 will be made available for the Implementation Phase. This project is funded 100 percent from general revenue funds appropriated by the state legislature.

**Selection Criteria.** Applications will be selected based on the independent reviewers' assessment of each applicant's ability 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 and that are most advantageous to the project.

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.** Due to the high cost of printing and mailing RFAs, they will no longer be available in print. The announcement letter and complete RFA will be posted on the TEA website at <http://burlleson.tea.state.tx.us/GrantOpportunities/forms> for viewing and downloading. 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, TEA, (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>.

**Deadline for Receipt of Applications.** Applications must be received in the Document Control Center of the TEA by 5:00 p.m. (Central Time), Thursday, October 16, 2008, to be considered for funding.

TRD-200803982

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Filed: July 30, 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 **September 8, 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 September 8, 2008**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs shall be submitted to the commission in **writing**.

(1) COMPANY: AL-AZAR ENTERPRISES, INC. dba I & A Food Store; DOCKET NUMBER: 2008-0525-PST-E; IDENTIFIER: RN102822780; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 Texas Administrative Code (TAC) §115.244(3) and Texas Health and Safety Code (THSC), §382.085(b), by failing to conduct monthly inspections of the Stage II vapor recovery system (VRS); 30 TAC §115.242(3) and THSC, §382.085(b), by failing to maintain the Stage II VRS in proper operating condition; 30 TAC §115.242(9) and THSC, §382.085(b), by failing to post operating instructions conspicuously on the front of each gasoline dispensing pump; 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to monitor underground storage tanks (USTs) for releases; 30 TAC §334.50(b)(2)(A)(i) and the Code, §26.3475(a), by failing to equip each pressurized line with an automatic line leak detector; 30 TAC §334.50(b)(2)(A)(i)(III) and the Code, §26.3475(a), by failing to test the line leak detectors at least once per year for performance and operational reliability; 30 TAC §334.50(d)(1)(B)(ii) and the Code, §26.3475(c)(1), by failing to conduct reconciliation of detailed inventory control records; 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures for all USTs; and 30 TAC §115.246(1) and THSC, §382.085(b), by failing to maintain all required Stage II records at the station and make them immediately available for review; PENALTY: \$9,875; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(2) COMPANY: City of Bishop; DOCKET NUMBER: 2008-0557-MWD-E; IDENTIFIER: RN101920684; LOCATION: Nueces County; TYPE OF FACILITY: wastewater treatment system; RULE VIOLATED: 30 TAC §305.125(1), Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010427001, Final Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a)(1), by failing to comply with its permitted effluent limits for flow, five-day carbonaceous biochemical oxygen demand, and ammonia nitrogen; and 30 TAC §305.125(17) and TPDES Permit Number WQ0010427001, Sludge Provisions, by failing to submit the annual sludge report; PENALTY: \$6,000; Supplemental Environmental Project (SEP) offset amount of \$4,800 applied to - Cleanup of Illegal Dumpsites; ENFORCEMENT COORDINATOR: Pamela Campbell, (512) 239-4493; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(3) COMPANY: Chevron Phillips Chemical Company LP; DOCKET NUMBER: 2008-0550-AIR-E; IDENTIFIER: RN102200482; LOCATION: Brazoria, Brazoria County; TYPE OF FACILITY: chemical company; RULE VIOLATED: 30 TAC §116.115(c), 40 Code of Federal Regulations, §60.18(c)(2), Air Permit Number 19718, Special Condition (SC) Numbers 1 and 5, and THSC, §382.085(b), by failing to maintain a pilot flame on flare; and 30 TAC §101.201(a)(1)(B) and (c) and THSC, §382.085(b), by failing to submit the initial report for the May 11, 2007 emissions event; PENALTY: \$3,213; SEP offset amount of \$1,285 applied to Houston-Galveston AERCO's Clean Cities/Clean Vehicles Program; ENFORCEMENT COORDINATOR: John Muennink, (361) 825-3100; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(4) COMPANY: Chisholm Operating, Inc.; DOCKET NUMBER: 2008-1107-WR-E; IDENTIFIER: RN105484935; LOCATION: Winfers, Runnels County; TYPE OF FACILITY: oil and gas production; RULE VIOLATED: the Code, §11.081 and §11.121, by impounding, diverting, or using state water without a required permit; PENALTY: \$350; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(5) COMPANY: Dessau Fountains Estates, L.L.C.; DOCKET NUMBER: 2008-0511-MWD-E; IDENTIFIER: RN102080637; LOCATION: Travis County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0012733001, Effluent Limitations and Monitoring Requirements Number 4, and the Code, §26.121, by failing to prevent an unauthorized discharge to water in the state; PENALTY: \$31,500; ENFORCEMENT COORDINATOR: Tom Jecha, (512) 239-2576; REGIONAL OFFICE: 2800 South IH 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929.

(6) COMPANY: Dolphin Petroleum, LP; DOCKET NUMBER: 2008-0513-AIR-E; IDENTIFIER: RN100216902; LOCATION: Refugio, Refugio County; TYPE OF FACILITY: oil and gas production plant; RULE VIOLATED: 30 TAC § 122.146(1), General Operating Permit Number O-00257, Terms (b)(2), and THSC, §382.085(b), by failing to submit the annual compliance certification; PENALTY: \$2,300; ENFORCEMENT COORDINATOR: Audra Ruble, (361) 825-3100; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(7) COMPANY: Feron Corporation dba Zebra Show Bar; DOCKET NUMBER: 2008-0546-PWS-E; IDENTIFIER: RN105449151; LOCATION: Anthony, El Paso County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.41(c)(1)(F), by failing to provide a sanitary control easement; 30 TAC §290.41(c)(3)(G), by failing to conduct a physical and chemical analysis of water produced from a new well; 30 TAC §290.41(c)(3)(K), by failing to seal the well-head with a gasket or sealing compound; 30 TAC §290.41(c)(3)(M), by failing to provide a suitable sampling cock on the discharge pipe of the well pump; 30 TAC §290.41(c)(3)(Q), by failing to properly install an air-release device on the discharge piping of the well; 30 TAC §290.42(b)(6), by failing to provide a proper sampling tap for the raw water; 30 TAC §290.42(b)(7), by failing to properly cover the air release device with a 16-mesh or finer corrosion-resistant screen; 30 TAC §290.42(j), by failing to use an approved chemical or media for the disinfection of potable water that conforms to American National Standards Institute/National Sanitation Foundation standards; 30 TAC §290.43(c)(1) - (3), by failing to maintain the facility's storage tank in strict accordance with current American Water Works Association standards; 30 TAC §290.43(d)(2), by failing to provide the three pressure tanks with pressure release devices; 30 TAC §290.44(a)(4), by failing to locate the water line a minimum of 24 inches below the ground surface; 30 TAC §290.40(a) and §290.46(a) and THSC, §341.035(a), by failing to obtain approval by the executive director for the construction of a public water system; 30 TAC §290.46(d)(1) and (2)(A) and THSC, §341.0315(c), by failing to operate the disinfection equipment to maintain a disinfectant residual of at least 0.2 milligrams per liter of free chlorine; 30 TAC §290.46(f)(2), (3)(B)(iii), and (D)(i), by failing to provide water system records to commission personnel; 30 TAC §290.46(m)(1)(A), by failing to conduct an annual inspection of the ground storage tank; 30 TAC §290.46(m)(1)(B), by failing to conduct an annual inspection of each of the three pressure tanks; 30 TAC §290.46(n), by failing to maintain plans, specifications, maps, and other pertinent information on file; 30 TAC §290.46(q)(1), by failing to issue a boil water notification within 24 hours; 30 TAC §290.46(v), by failing to ensure that all water system electrical wiring

is securely installed in compliance with a local or national electrical code; 30 TAC §290.121(a), by failing to develop and maintain an up-to-date chemical and microbiological monitoring plan; and 30 TAC §290.110(d)(3), by failing to measure the free chlorine residual within the distribution system with a colorimeter, spectrophotometer, or color comparator test kit; PENALTY: \$7,640; ENFORCEMENT COORDINATOR: Epifanio Villareal, (210) 490-3096; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(8) COMPANY: Houston Oaks Golf Management Company, L.P.; DOCKET NUMBER: 2008-0736-MWD-E; IDENTIFIER: RN102681483; LOCATION: Waller County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.65 and §305.125(2) and the Code, §26.121(a)(1), by failing to maintain a TPDES permit; PENALTY: \$3,120; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(9) COMPANY: J.C. Evans Construction Company, LP; DOCKET NUMBER: 2008-0874-AIR-E; IDENTIFIER: RN105062459; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: portable rock crusher; RULE VIOLATED: 30 TAC §116.115(b) and §116.615(2) and THSC, §382.085(b), by failing to comply with the standard permit condition limiting the number of operating hours; and 30 TAC §116.115(b) and §116.615(8) and THSC, §382.085(b), by failing to comply with the recordkeeping requirements of the standard permit; PENALTY: \$1,900; ENFORCEMENT COORDINATOR: Terry Murphy, (512) 239-5025; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(10) COMPANY: Kamary Development, Ltd.; DOCKET NUMBER: 2008-0677-EAQ-E; IDENTIFIER: RN105379333; LOCATION: Bexar County; TYPE OF FACILITY: mixed use development property; RULE VIOLATED: 30 TAC §213.4(a)(1), by failing to obtain approval of a Water Pollution Abatement Plan; PENALTY: \$14,625; ENFORCEMENT COORDINATOR: Lauren Smitherman, (512) 239-5223; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(11) COMPANY: Oiltanking Beaumont Partners, L.P.; DOCKET NUMBER: 2008-0688-AIR-E; IDENTIFIER: RN101042885; LOCATION: Beaumont, Jefferson County; TYPE OF FACILITY: marine storage terminal; RULE VIOLATED: 30 TAC §116.715(a) and (c)(7), §122.143(4), Flexible Permit 21356, General Condition 10, Permit by Rule 79734, Federal Operating Permit (FOP) Number O-01804, General Terms and Conditions (GTC), and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$2,650; ENFORCEMENT COORDINATOR: Aaron Houston, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(12) COMPANY: The Goodyear Tire & Rubber Company; DOCKET NUMBER: 2008-0451-AIR-E; IDENTIFIER: RN102561925; LOCATION: Beaumont, Jefferson County; TYPE OF FACILITY: rubber manufacturing plant; RULE VIOLATED: 30 TAC §116.115(b)(2)(F) and (c), §122.143(4), Air Permit Number 9481, SC Numbers 1 and 6, FOP Number O-01593, GTC, SC Number 12, and THSC, §382.085(b), by failing to adhere to the permitted weekly maximum allowable emission rate averages; PENALTY: \$16,650; SEP offset amount of \$6,660 applied to South East Texas Regional Planning Commission-West Port Arthur Home Energy Efficiency Program; ENFORCEMENT COORDINATOR: Suzanne Walrath, (512) 239-2134; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(13) COMPANY: Trans Health Management, Inc.; DOCKET NUMBER: 2008-1100-PST-E; IDENTIFIER: RN102048923; LOCATION: Lubbock, Lubbock County; TYPE OF FACILITY: hospital; RULE VIOLATED: 30 TAC §334.8(c), by failing to submit an initial/renewal UST registration and self-certification form; PENALTY: \$875; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 4630 50th Street, Suite 600, Lubbock, Texas 79414-3520, (806) 796-7092.

(14) COMPANY: TXI Operations, LP; DOCKET NUMBER: 2008-0774-WQ-E; IDENTIFIER: RN100670983; LOCATION: Dallas County; TYPE OF FACILITY: concrete batch plant; RULE VIOLATED: 30 TAC §305.125(1), TPDES General Permit Number TXG110184, Permit Requirements Part III Section A, and the Code, §26.121(a), by failing to comply with the permitted effluent limitations for total suspended solids and oil and grease; PENALTY: \$4,950; ENFORCEMENT COORDINATOR: Lauren Smitherman, (512) 239-5223; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-200803939

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: July 29, 2008



#### Correction of Error

The Texas Commission on Environmental Quality adopted amendments to 30 TAC §§230.1 - 230.3 and 230.9 concerning Groundwater Availability Certification for Plating in the July 25, 2008, issue of the *Texas Register* (33 TexReg 5933). An error appears on page 5935, second column, third paragraph. The letter "t" was omitted from the first word of the phrase "the source of the water supply". The corrected sentence reads as follows:

"Specifically, in §230.1(a), NEI recommends that the phrase 'the source of the water supply' be replaced by the phrase 'any portion of the source of water supply' in two instances."

TRD-200803979



#### Correction of Error

The Texas Commission on Environmental Quality adopted amendments to 30 TAC §293.201 and §293.202 concerning Water Districts in the July 25, 2008, issue of the *Texas Register* (33 TexReg 5943). Due to a Texas Register error, the word "a" was omitted from the subchapter title on that page. The correct title of Subchapter P is "Acquisition of Road Powers by a Municipal Utility District".

TRD-200803984



#### Notice of Availability of the Draft July 2008 Update of the Water Quality Management Plan for the State of Texas

The Texas Commission on Environmental Quality (TCEQ or commission) announces the availability of the draft July 2008 Update to the Water Quality Management Plan for the State of Texas (draft WQMP update).

The Water Quality Management Plan (WQMP) is developed and promulgated in accordance with the requirements of the federal Clean Water Act, §208. The draft WQMP update includes projected effluent limits of indicated domestic dischargers useful for water quality manage-

ment planning in future permit actions. Once the commission certifies a WQMP update, the update is submitted to the United States Environmental Protection Agency (EPA) for approval. For some Texas Pollutant Discharge Elimination System (TPDES) permits, the EPA's approval of a corresponding WQMP update is a necessary precondition to TPDES permit issuance by the commission. The draft WQMP update may contain service area populations for listed wastewater treatment facilities, designated management agency information and total maximum daily load (TMDL) updates.

A copy of the draft July 2008 WQMP update may be found on the commission's Web site located at [http://www.tceq.state.tx.us/nav/eq/eq\\_wqmp.html](http://www.tceq.state.tx.us/nav/eq/eq_wqmp.html). A copy of the draft may also be viewed at the TCEQ Library, Building A, 12100 Park 35 Circle, Austin, Texas.

Written comments on the draft WQMP update may be submitted to Nancy Vignali, Texas Commission on Environmental Quality, Water Quality Division, MC 150, P.O. Box 13087, Austin, Texas 78711-3087. Comments may also be faxed to (512) 239-4420, but must be followed up with the submission and receipt of the written comments within three working days of when they were faxed. Written comments must be submitted no later than 5:00 p.m. on September 9, 2008. For further information or questions, please contact Ms. Vignali at (512) 239-1303 or by e-mail at [nvignali@tceq.state.tx.us](mailto:nvignali@tceq.state.tx.us).

TRD-200803938

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: July 29, 2008



## Notice of District Petition

Notice issued July 23, 2008.

TCEQ Internal Control No. 05152008-D01; LP Woodland Lakes Estates, Ltd (Petitioner) filed a petition for creation of Harris County Municipal Utility District No. 518 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states the following: (1) the Petitioner is the owner of a majority in value of the land, consisting of three tracts, to be included in the proposed District; (2) there are four lien holders, Gita Susan Reddy, Gautham Reddy, Ashoka Reddy, and Capital Farm Credit, FLCA, on the property to be included in the proposed District; (3) the proposed District will contain approximately 450.372 acres located in Harris County, Texas; and (4) most of the land within the proposed District is within the corporate limits of the City of Houston, Texas (City) and a small portion is within the extraterritorial jurisdiction of the City. According to the petition, the Petitioner has conducted a preliminary investigation to determine the cost of the project and from the information available at the time, the cost of the project is estimated to be approximately \$22,790,000.

### INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at [www.tceq.state.tx.us/comm\\_exec/cc/pub\\_notice.html](http://www.tceq.state.tx.us/comm_exec/cc/pub_notice.html) or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit

the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing;" (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en Español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at [www.tceq.state.tx.us](http://www.tceq.state.tx.us).

TRD-200803960

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: July 30, 2008



## Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. 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 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 **September 8, 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 A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on September 8, 2008**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the

AO and/or the comment procedure at the listed phone number; however, §7.075 provides that comments on an AO shall be submitted to the commission in **writing**.

(1) COMPANY: Alfonso Garza Jr., Trustee of the Alfonso Garza Testamentary Trust and Emma G. Garza; DOCKET NUMBER: 2007-1276-MSW-E; TCEQ ID NUMBER: RN105237036; LOCATION: 1.8 miles North of the intersection of Iowa Road and 7 Mile Line Road, La Joya, Hildago County, Texas; TYPE OF FACILITY: property; RULES VIOLATED: 30 TAC §330.115( a), by failing to prevent the unauthorized disposal of municipal solid waste; PENALTY: \$1,000; STAFF ATTORNEY: Becky Combs, Litigation Division, MC 175, (512) 239-6939; REGIONAL OFFICE: Harlingen Regional Office, 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(2) COMPANY: Texas Mexican Railway Company; DOCKET NUMBER: 2004-0711-MSW-E; TCEQ ID NUMBER: RN104192182; LOCATION: one mile North of the intersection of Highway 359 and J. C. Perez Road on the east side of J. C. Perez Road, Oilton, Webb County, Texas; TYPE OF FACILITY: railway operation which generated municipal solid waste which was disposed of at unauthorized landfill; RULES VIOLATED: 30 TAC §330.15 (formally 30 TAC §330.5), by generating municipal solid waste from its railway operations which was disposed of in an unauthorized landfill on May 18, 1997, August 6, 1997, August 21 - 23, 1997, May 17, 1999, May 20, 1999, June 9, 1999, May 2, 2001, May 16, 2001, and May 17, 2001; PENALTY: \$22,000; STAFF ATTORNEY: Xavier Guerra, Litigation Division, MC R-13, (210) 403-4016; REGIONAL OFFICE: Laredo Regional Office, 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

TRD-200803949

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: July 29, 2008



### Notice of Radioactive Material License

For the Period of July 28, 2008.

NOTICE OF MINOR AMENDMENT RADIOACTIVE MATERIAL LICENSE NO. R04971. Waste Control Specialists LLC, 1 mile north of S.H. 176 at NW9998 on State Line Road, Andrews, Texas, has applied to the Texas Commission on Environmental Quality (TCEQ) for an amendment of Radioactive Material License No. R04971. Radioactive Material License No. R04971 authorizes radioactive waste processing and storage. The amendment application requests approval for: (1) modifications to their facility and procedures to ensure that liquids discharged from the chemistry laboratory operations are directed into a new dedicated laboratory sump system or into containers within the laboratory to prevent discharges of contaminated water into the environment and (2) for a new ventilation system for the mixed waste treatment facility (MWTF).

The TCEQ Executive Director has completed the technical review of the amendment request and prepared an amended draft license. The draft license: (1) authorizes modifications to their facility and procedures to ensure that liquids discharged from the chemistry laboratory operations are directed into a new dedicated laboratory sump system or into containers within the laboratory to prevent discharges of contaminated water into the environment, (2) authorizes a new ventilation system for the MWTF, (3) removes authorization for all sealed sources used for calibration purposes since these are licensed by the Department of State Health Services (DSHS), (4) removes authorization for sealed source leak testing since this activity is licensed by the DSHS,

(5) removes authorization for calibrating radiation detectors since this activity is licensed by the DSHS, (6) changes the site name from site 000 to the regulated entity number, and (7) changes the regulated entity number from RN104392790 to RN101702439 to correct an error.

The license amendment request, the Executive Director's technical summary, and amended draft license are available for viewing and copying at the TCEQ's central office in Austin, Texas and at the Andrews County Library located at 109 Northwest First Street in Andrews, Texas.

**PUBLIC COMMENT/PUBLIC MEETING.** You may submit public comments or request a public meeting about this application. The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application. TCEQ holds a public meeting if the Executive Director determines that there is a significant degree of public interest in the application. A public meeting is not a contested case hearing. After the deadline for submitting public comments, the Executive Director will consider all timely comments and prepare a response to all relevant and material or significant public comments.

**EXECUTIVE DIRECTOR ACTION.** The Executive Director may issue final approval of the minor amendment after consideration of all timely comments submitted on the application.

**MAILING LIST.** If you submit public comments, you will be added to the mailing list for this specific license to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and license number; and/or (2) the mailing list for a specific county. If you wish to be placed on the permanent and/or the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below. All written public comments and requests must be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087 within 10 days from the date this notice is published in the *Texas Register* which should be on or about August 8, 2008.

**AGENCY CONTACTS AND INFORMATION.** If you need more information about this license application or the licensing process, please call the TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. Si desea información en Español, puede llamar al 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).

Further information may also be obtained from Waste Control Specialists LLC at Three Lincoln Center, 5430 LBJ Freeway, Suite 1700, Dallas, TX 75240 or by contacting Mr. Tim Greene at (888) 789-2783.

Further information may also be obtained from Waste Control Specialists, LLC at P.O. Box 1129, Andrews, TX 79714 or by calling Mr. Tom Jones, Vice-President of Community Relations at (432) 523-4444.

TRD-200803961

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: July 30, 2008



### Notice of Water Quality Applications

The following notices were issued during the period of July 17, 2008 through July 28, 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

AIR LIQUIDE LARGE INDUSTRIES US LP which operates Nederland Air Separation Unit, a cryogenic air separation plant, has applied for a major amendment to TPDES Permit No. WQ0001595000 to authorize the addition of a new outfall (proposed Outfall 002) to the Neches River; establish new permit limits for proposed Outfall 002; and reduce monitoring frequency for Total Suspended Solids and Chemical Oxygen Demand. The current permit authorizes the discharge of treated cooling tower blowdown, filter backwash water, flood drains (i.e., incidental oil/water from equipment within the compressor building and storm water from the process equipment near the compressor building) and miscellaneous equipment cooling water at a daily average flow not to exceed 175,000 gallons per day via Outfall 001. The facility is located on State Highway 347 south of Beaumont, Texas, on the north side of the road at a point approximately three miles south of the intersection of State Highway 347 and U.S. Highway 287, Jefferson 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.

BEST SEA PACK OF TEXAS INC. which operates Best Sea-Pack of Texas Facility, a shrimp processing plant, has applied for a renewal of TPDES Permit No. WQ0003116000, which authorizes the discharge of process wastewater, previously monitored effluent (treated domestic wastewater), and storm water at a daily average flow not to exceed 260,000 gallons per day via Outfall 001. The facility is located on County Road 171 approximately 1.6 miles west of the intersection of County Roads 171 and 203, northeast of the City of Danbury, Brazoria County, Texas.

CHEMICALS INCORPORATED which operates the Hatcherville Plant, an organic chemical manufacturing and processing facility, has applied for a renewal of TPDES Permit No. WQ0003713000, which authorizes the discharge of steam condensate, once-through cooling water, cooling tower blowdown, boiler blowdown, and treated storm water at a daily maximum flow not to exceed 200,000 gallons per day via Outfall 001. The facility is located adjacent to the west side of Hatcherville Road, approximately 1400 feet north of the intersection of Farm-to-Market Road 1942 and Hatcherville Road, approximately two miles west of the City of Mont Belvieu, Chambers County, Texas.

CITY OF TAYLOR LANDING has applied to the TCEQ for a renewal of TPDES Permit No. WQ0011107001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 52,000 gallons per day. The facility is located on Taylors Cove in the City of Taylor Landing, approximately 2 miles north of State Highway 73 and 6 miles west of the City of Port Arthur in Jefferson County, Texas.

FORT BEND COUNTY MUNICIPAL UTILITY DISTRICT NO. 23 has applied to the Texas Commission on Environmental Quality (TCEQ) for a renewal of TPDES Permit No. WQ0011999001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,800,000 gallons per day. The facility is located at 1578 Rabb Road approximately 1.4 miles west of the intersection with Farm-to-Market Road 521, north of Arcola, in Fort Bend County, Texas.

GE PACKAGED POWER INC. has applied for a major amendment to TPDES Permit No. WQ0013365001 to authorize the construction of

a new wastewater treatment facility to replace the existing facility at a daily average flow not to exceed 50,000 gallons per day. The facility is located at 16415 Jacintoport Boulevard in Harris 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.

GEORGIA GULF CHEMICALS AND VINYLs LLC which operates the Pasadena Plant, an organic chemical manufacturing plant that produces cumene, phenol, and acetone as its primary products, has applied for a renewal of TPDES Permit No. WQ0002067000 which authorizes the discharge of cooling tower blowdown, boiler blowdown, steam system blowdown, and storm water at a daily maximum flow not to exceed 320,000 gallons per day via current Outfall 001; cooling tower blowdown, boiler blowdown, steam system blowdown, and storm water at a daily maximum dry weather flow not to exceed 320,000 gallons per day via new Outfall 001 (upon commingling of Outfalls 001, 002, and 003); storm water on an intermittent and flow variable basis via Outfall 002; storm water from the dock area on an intermittent and flow variable basis via Outfall 003; treated process wastewater, utility waters, and treated domestic sewage at a daily average flow not to exceed 450,000 gallons per day via Outfall 004; cooling tower blowdown, steam condensate, and storm water from a lay-down yard at a daily maximum dry weather flow not to exceed 500,000 gallons per day via Outfall 005; and storm water on an intermittent and flow variable basis via Outfall 006. The facility is located at 3503 Pasadena Freeway, on the south bank of the Houston Ship Channel, approximately 7,500 feet north of State Highway 225 in the City of Pasadena, Harris County, Texas.

GULF WEST LANDFILL TX LP which operates an industrial solid waste landfill, has applied for a renewal of TPDES Permit No. WQ0003064000, which authorizes the discharge of storm water on an intermittent and variable basis. The facility is located at 2601 South Jenkins Road, approximately 2.4 miles south of Interstate Highway 10, Chambers County, Texas.

HANSON AGGREGATES CENTRAL INC. which operates The Woodlands Plant, has applied for a major amendment to TPDES Permit No. WQ0002502000 to authorize removal of Outfall 001, re-configuration of the wastewater treatment flows, and expansion of the facility boundary to encompass a new dredging site authorized via a U.S. Army Corps of Engineer's permit (Corps Permit No. 20661(01)). The current permit authorizes the discharge of process wastewater, groundwater, and storm water via Outfall 001 and Outfall 002. The facility is located at 12541 Sleepy Hollow Road, three and one-half miles east of Interstate Highway 45, and approximately seven miles south of the City of Conroe, Montgomery County, Texas.

KINGSLAND MUNICIPAL UTILITY DISTRICT has applied for a renewal of TPDES Permit No. WQ0011549001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 750,000 gallons per day. The facility is located at 100 Ingram Street, at the intersection of Ingram Street and Reynolds Street, south of the Southern Pacific Railroad and approximately 2,000 feet west of the confluence of the Colorado River and Llano River arms of Lake Lyndon B. Johnson in the City of Kingsland in Llano County, Texas.

MONTGOMERY COUNTY MUNICIPAL UTILITY DISTRICT NO. 42 has applied for a renewal of TPDES Permit No. WQ0011963001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 150,000 gallons per day. The facility is located on the east bank of West Fork San Jacinto River, approximately 3,000 feet northwest of the intersection of LaSalle Avenue and State Highway 105 in Montgomery County, Texas.

THE LUBRIZOL CORPORATION which operates a plant manufacturing additives for lubricating oils, grease, and fuels (SIC 2869), has applied for a renewal of TPDES Permit No. WQ0002594000, which authorizes the discharge of storm water associated with industrial activity on an intermittent and flow variable basis via Outfall 001. The facility is located at 41 Tidal Road in Deer Park, Harris County, Texas.

TOTAL PETROCHEMICALS USA INC. which operates a polypropylene manufacturing plant, has applied for a major amendment to TPDES Permit No. WQ0001000000 to increase the permitted daily average flow at Outfall 001 to 1,700,000 gallons per day, increase the permitted daily maximum flow at Outfall 001 to 5,730,000 gallons per day, and increase the effluent limitations for all parameters at Outfall 001 (based on increased production/flow). The current permit authorizes the discharge of process wastewater, utility wastewater, domestic wastewater and storm water at a daily average flow not to exceed 900,000 gallons per day via Outfall 001; and storm water on an intermittent and flow variable basis via Outfall 002. The facility is located on State Highway 134 (Battleground Road) approximately 1.6 miles south of the San Jacinto Monument, in the City of Deer Park, Harris 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.

US STEEL TUBULAR PRODUCTS INC. which operates U.S. Steel Tubular Products, Inc., has applied for a major amendment to TPDES Permit No. WQ0003540000 to authorize the removal of aluminum limits from the permit, to increase the flow rate at internal outfall 101 from a daily average flow not to exceed 6,000 gallons per day to a daily average flow not to exceed 18,000 gallons per day and from a daily maximum flow not to exceed 7,500 gallons per day to a daily maximum flow not to exceed 22,500 gallons per day; reroute the flow from internal outfall 101 to Outfall 002; and to remove Outfalls 003, 004, 005, and 006 and authorize the discharges from these outfalls under the Multi-Sector General Permit for storm water (TPDES No. TXR050000) and the Hydrostatic Test Water General Permit (TPDES No. TXG670000); the removal of total silver limits at Outfall 005; and the revision of total copper and total cyanide final effluent limits at Outfall 001. The current permit authorizes the discharge of cooling tower wastewater, hydrostatic test water, vehicle wash water, storm water, and previously monitored effluent on an intermittent and flow variable basis via Outfall 001; hydrostatic test water and storm water on an intermittent and flow variable basis via Outfall 002; hydrostatic test water and storm water on an intermittent and flow variable basis via Outfall 003; hydrostatic test water, wash water, and storm water on an intermittent and flow variable basis via Outfall 004; process wastewater, hydrostatic test water and storm water on an intermittent and flow variable basis via Outfall 005; and hydrostatic test water and storm water on an intermittent and flow variable basis via Outfall 006. The facility is located at 9393 Sheldon Road, at the intersection of Sheldon Road and U.S. Highway 90, approximately four miles north of the City of Channelview, Harris 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-200803958

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: July 30, 2008

## Notice of Water Rights Applications

Notices issued July 23, 2008.

APPLICATION NO. 12331; Golden Pass Pipeline LLC, Applicant, P.O. Box 4876, Houston, Texas 77210-4876, has applied for a Temporary Water Use Permit to divert and use not to exceed 15 acre-feet of water within a two-year period from Hillebrandt Bayou, Neches-Trinity Coastal Basin, for industrial purposes in Jefferson County, Texas. More information on the application and how to participate in the permitting process is given below. The application and partial fees were received on June 2, 2008. Additional information and fees were received on July 8, 2008. The application was declared administratively complete and accepted for filing on July 8, 2008. Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk, at the address provided in the information section below by August 13, 2008. A public meeting is intended for the taking of public comment, and is not a contested case hearing. A public meeting will be held if the Executive Director determines that there is a significant degree of public interest in the application. The TCEQ may grant a contested case hearing on this application if a written hearing request is filed by August 13, 2008. The Executive Director can consider an approval of the application unless a written request for a contested case hearing is filed by August 13, 2008.

APPLICATION NO. 12332; Golden Pass Pipeline LLC, Applicant, P.O. Box 4876, Houston, Texas 77210-4876, has applied for a Temporary Water Use Permit to divert and use not to exceed 20 acre-feet of water within a two-year period from the Neches River, Neches River Basin, for industrial purposes (hydrostatic testing) in Orange County, Texas. More information on the application and how to participate in the permitting process is given below. The application and partial fees were received on June 2, 2008. Additional information and fees were received on July 8, 2008. The application was declared administratively complete and accepted for filing on July 8, 2008. Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk, at the address provided in the information section below by August 13, 2008. A public meeting is intended for the taking of public comment, and is not a contested case hearing. A public meeting will be held if the Executive Director determines that there is a significant degree of public interest in the application. The TCEQ may grant a contested case hearing on this application if a written hearing request is filed by August 13, 2008. The Executive Director can consider an approval of the application unless a written request for a contested case hearing is filed by August 13, 2008.

### INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at [www.tceq.state.tx.us/comm\\_exec/cc/pub\\_notice.html](http://www.tceq.state.tx.us/comm_exec/cc/pub_notice.html) or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

A public meeting is intended for the taking of public comment, and is not a contested case hearing.

The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement "I/we request a contested case hearing;" and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested applica-

tion which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TCEQ Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Office of Public Assistance at 1-800-687-4040. General information regarding 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-200803959

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: July 30, 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: 30-Day Pre-Election Report due February 4, 2008**

Rogelio Martinez, Hidalgo County Republican Party (CEC), 1305 Fullerton Ave., McAllen, Texas 78504-5748

Lloyd Wayne Oliver, P.O. Box 271503, Houston, Texas 77277-1503

#### **Deadline: 8-Day Pre-Election Report due February 25, 2008**

Rogelio Martinez, Hidalgo County Republican Party (CEC), 1305 Fullerton Ave., McAllen, Texas 78504-5748

David White, Texas Psychology PAC, P.O. Box 1945, Manchaca, Texas 78652-1945

Donald J. Wooten, 10840 Vista Lomas Dr., El Paso, Texas 79935-3704

#### **Deadline: Lobby Activities Report due April 10, 2008**

Joel Romo, P.O. Box 15186, Austin, Texas 78761-5186

#### **Deadline: Personal Financial Statement due February 11, 2008**

Susan Delgado, 2284 Jean St., Houston, Texas 77023-5009

Albert Edwards, 3108 S. MacGregor Way, Houston, Texas 77021-1103

Tracy S. Fleming, 7939 Chateau Point Lane, Houston, Texas 77041-1244

Robert H. Mendoza, 664 Eastwood Dr., Brownsville, Texas 30399

Joe A. Montemayor, P.O. Box 3462, Crosby, Texas 77532-2462

#### **Deadline: Personal Financial Statement due April 30, 2008**

Joaquin Rodriguez, 1570 Hillcrest St., Eagle Pass, Texas 78852

TRD-200803775

David Reisman

Executive Director

Texas Ethics Commission

Filed: July 23, 2008

## Office of the Governor, Economic Development and Tourism Division

### Texas Small Business Industrial Development Corporation Application

The Office of the Governor, Economic Development and Tourism Division (Office) hereby gives notice that the Office is accepting applications for qualified brokers interested in being authorized to engage in investment transactions with the Texas Small Business Industrial Development Corporation's Texas Industry Development Revolving Loan program under Government Code 2256 Public Funds Investment Act.

Interested brokers must submit the following information to the Office of the Governor, Economic Development and Tourism Division; Attn: Texas Industry Development Program at P.O. Box 12428, Austin, Texas 78711, or at 221 East 11th Street, Austin, 4th Floor, Texas 78701:

- (1) name, address, telephone number, and contact person for the dealer;
- (2) proof that the dealer is registered in Texas through the National Association of Securities Dealers, Texas State Securities Board or the Comptroller of the currency;
- (3) documentation regarding whether the dealer is a Historically Underutilized Business (HUB).

The deadline for submittals is September 5, 2008 at 5:00 p.m.

For additional information please contact Donna Weinberger-Rourke with The Office of the Governor Economic Development and Tourism Division at (512) 936-6443.

TRD-200803989

Michael Bryant

General Counsel - Legal Division

Office of the Governor, Economic Development and Tourism Division

Filed: July 30, 2008

## Texas Health and Human Services Commission

### Notice of Public Hearing on Proposed Medicaid Payment Fees for Physician-Administered Drugs and Biologicals

**Hearing.** The Texas Health and Human Services Commission will conduct a public hearing on August 25, 2008, at 1:30 p.m., to receive public comment on 440 proposed Medicaid payment rates for physician-administered drugs and biologicals.

The public hearing will be held in the Lone Star Conference Room of the Health and Human Services Commission, Braker Center, Building H, located at 11209 Metric Blvd, Austin, Texas. Entry is through Security at the main entrance of the building, which faces Metric Boulevard. The hearing will be held in compliance with Human Resources Code §32.0282 and Texas Administrative Code (TAC) Title 1, §355.201(e) - (f), which require public notice and hearings on proposed Medicaid reimbursements.

**Proposal.** The fees for the physician-administered drugs and biologicals procedure codes are proposed to be effective October 1, 2008.

**Methodology and justification.** The proposed payment fees were calculated in accordance with 1 TAC §355.8085, which addresses the



Texas Medicaid Reimbursement Methodology for physicians and certain other practitioners.

**Briefing Package.** A briefing package describing the proposed payment rates will be available on or after August 11, 2008. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Kimbra Rawlings by telephone at (512) 491-1438; by fax at (512) 491-1998; or by e-mail at [Kimbra.rawlings@hhsc.state.tx.us](mailto:Kimbra.rawlings@hhsc.state.tx.us). The briefing package also will be available at the public hearing.

**Written Comments.** Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Kimbra Rawlings, Health and Human Services Commission, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Kimbra Rawlings at (512) 491-1998; or by e-mail to [Kimbra.rawlings@hhsc.state.tx.us](mailto:Kimbra.rawlings@hhsc.state.tx.us). In addition, written comments may be sent by overnight mail or hand delivered to Kimbra Rawlings, HHSC, Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

People with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Kimbra Rawlings at (512) 491-1438 at least 72 hours prior, so appropriate arrangements can be made.

TRD-200803957  
Steve Aragón  
Chief Counsel  
Texas Health and Human Services Commission  
Filed: July 30, 2008



#### Notice of Public Hearing on Proposed Medicaid Payment Rates for Augmentive Communication Devices

**Hearing.** The Texas Health and Human Services Commission will conduct a public hearing on August 25, 2008 at 1:30 p.m. to receive public comment on 10 proposed Medicaid payment rates for durable medical equipment (DME) covering the Augmentive Communication Devices. The public hearing will be held in the Lone Star Conference Room of the Health and Human Services Commission, Braker Center, Building H, located at 11209 Metric Blvd, Austin, Texas. Entry is through Security at the main entrance of the building, which faces Metric Boulevard. The hearing will be held in compliance with Human Resources Code §32.0282 and Texas Administrative Code (TAC) Title 1, §355.201(e) - (f), which require public notice and hearings on proposed Medicaid reimbursements.

**Proposal.** The rates for the 10 Augmentive Communication Device procedure codes that will have a proposed effective date of October 1, 2008.

**Methodology and justification.** The proposed payment rates were calculated in accordance with 1 TAC §355.8021, which addresses the Reimbursement Rates for Home Health Services; and 1 TAC §355.8441(3), relating to the Reimbursement Methodology for Durable Medical Equipment under the Early and Periodic, Screening, Diagnosis, and Treatment (EPSDT) Program (known in Texas as THSteps).

**Briefing Package.** A briefing package describing the proposed payment rates will be available on or after August 11, 2008. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Kimbra Rawlings by telephone at (512) 491-1438; by fax at (512) 491-1998; or by e-mail at [Kimbra.rawlings@hhsc.state.tx.us](mailto:Kimbra.rawlings@hhsc.state.tx.us). The briefing package also will be available at the public hearing.

**Written Comments.** Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Kimbra Rawlings, Health and Human Services Commission, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Kimbra Rawlings at (512) 491-1998; or by e-mail to [Kimbra.rawlings@hhsc.state.tx.us](mailto:Kimbra.rawlings@hhsc.state.tx.us). In addition, written comments may be sent by overnight mail or hand delivered to Kimbra Rawlings, HHSC, Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

People with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Kimbra Rawlings at (512) 491-1438 at least 72 hours in advance, so appropriate arrangements can be made.

TRD-200803954  
Steve Aragón  
Chief Counsel  
Texas Health and Human Services Commission  
Filed: July 30, 2008



#### Public Notice

The Texas Health and Human Services Commission announces its intent to submit Transmittal Number 06-006, Amendment Number 726, to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act.

The purpose of this amendment is to add Private Duty Nursing to the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) services in the Medicaid State Plan. The proposed amendment is effective January 1, 2006.

The proposed amendment is estimated to result in no federal or state fiscal impact.

Interested parties may obtain copies of the proposed amendment by contacting Tamela Griffin by mail at Texas Health and Human Services Commission, P.O. Box 85200, H-370, Austin, Texas 78708-5200; by telephone at (512) 491-1341; by facsimile at (512) 491-1953; or by e-mail at [Tamela.Griffin@hhsc.state.tx.us](mailto:Tamela.Griffin@hhsc.state.tx.us).

TRD-200803792  
Steve Aragón  
Chief Counsel  
Texas Health and Human Services Commission  
Filed: July 25, 2008



#### Department of State Health Services

##### Designation of Bruton Road Family Medical Clinic as a Site Serving Medically Underserved Populations

The Department of State Health Services (department) is required under the Occupations Code, §157.052, to designate sites serving medically underserved populations. In addition, the department is required to publish notice of such designations in the *Texas Register* and to provide an opportunity for public comment on the designations.

Accordingly, the department has proposed designating the following as a site serving medically underserved populations: Bruton Road Family Medical Clinic, 9709 Bruton Road, Dallas, Texas 75217. The designation is based on proven eligibility as a site serving a disproportionate

number of clients eligible for federal, state or locally funded health care programs.

Oral and written comments on this designation may be directed to Brian King, Program Director, Health Professions Resource Center - MC 1898, Center for Health Statistics, Department of State Health Services, P.O. Box 149347, Austin, Texas 78714-9347; telephone (512) 458-7261. Comments will be accepted for 30 days from the publication date of this notice.

TRD-200803901  
Lisa Hernandez  
General Counsel  
Department of State Health Services  
Filed: July 28, 2008



#### Designation of Family Medical Clinic of South Irving as a Site Serving Medically Underserved Populations

The Department of State Health Services (department) is required under the Occupations Code, §157.052, to designate sites serving medically underserved populations. In addition, the department is required to publish notice of such designations in the *Texas Register* and to provide an opportunity for public comment on the designations.

Accordingly, the department has proposed designating the following as a site serving medically underserved populations: Family Medical Clinic of South Irving, 1111 Irving Heights, Irving, Texas 75060. The designation is based on proven eligibility as a site serving a disproportionate number of clients eligible for federal, state or locally funded health care programs.

Oral and written comments on this designation may be directed to Brian King, Program Director, Health Professions Resource Center - MC 1898, Center for Health Statistics, Texas Department of State Health Services, P.O. Box 149347, Austin, Texas 78714-9347; telephone (512) 458-7261. Comments will be accepted for 30 days from the publication date of this notice.

TRD-200803903  
Lisa Hernandez  
General Counsel  
Department of State Health Services  
Filed: July 28, 2008



#### Designation of Northeast Dallas Family Medical Clinic as a Site Serving Medically Underserved Populations

The Department of State Health Services (department) is required under the Occupations Code, §157.052, to designate sites serving medically underserved populations. In addition, the department is required to publish notice of such designations in the *Texas Register* and to provide an opportunity for public comment on the designations.

Accordingly, the department has proposed designating the following as a site serving medically underserved populations: Northeast Dallas Family Medical Clinic, 2636 Walnut Street, Garland, Texas 75042. The designation is based on proven eligibility as a site serving a disproportionate number of clients eligible for federal, state or locally funded health care programs.

Oral and written comments on this designation may be directed to Brian King, Program Director, Health Professions Resource Center - MC 1898, Center for Health Statistics, Texas Department of State Health Services, P.O. Box 149347, Austin, Texas 78714-9347; telephone (512) 458-7261. Comments will be accepted for 30 days from the publication date of this notice.

TRD-200803902  
Lisa Hernandez  
General Counsel  
Department of State Health Services  
Filed: July 28, 2008



#### Designation of Northwest Dallas Family Medical Clinic as a Site Serving Medically Underserved Populations

The Department of State Health Services (department) is required under the Occupations Code, §157.052, to designate sites serving medically underserved populations. In addition, the department is required to publish notice of such designations in the *Texas Register* and to provide an opportunity for public comment on the designations.

Accordingly, the department has proposed designating the following as a site serving medically underserved populations: Northwest Dallas Family Medical Clinic, 4333 Maple Avenue, Dallas, Texas 75219. The designation is based on proven eligibility as a site serving a disproportionate number of clients eligible for federal, state or locally funded health care programs.

Oral and written comments on this designation may be directed to Brian King, Program Director, Health Professions Resource Center - MC 1898, Center for Health Statistics, Texas Department of State Health Services, P.O. Box 149347, Austin, Texas 78714-9347; telephone (512) 458-7261. Comments will be accepted for 30 days from the publication date of this notice.

TRD-200803904  
Lisa Hernandez  
General Counsel  
Department of State Health Services  
Filed: July 28, 2008



#### 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
Arlington	LML Engineering, Inc.	L06173	Arlington	00	07/09/08
Houston	Advanced Nuclear Consultants	L06167	Houston	00	07/01/08
Throughout Tx	Eagle NDT LLC	L06176	Abilene	00	07/03/08

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Abilene	Abilene Cardiology Consultants PA	L04315	Abilene	32	07/03/08
Alice	Christus Spohn Health System Corp DBA Christus Spohn Hospital Alice	L02390	Alice	42	07/10/08
Austin	Ambion, Inc.	L04307	Austin	21	07/02/08
Austin	ARA Imaging	L05862	Austin	36	07/03/08
Austin	Daughters of Charity Health Services of Austin DBA University Medical Ctr. at Brackenridge	L00268	Austin	100	07/03/08
Austin	Austin Heart PA	L04623	Austin	60	07/02/08
Austin	Austin Radiological Association	L00545	Austin	147	07/03/08
Austin	Texas Cardiovascular Consultants PA	L05246	Austin	30	07/03/08
Beaumont	Lamar University Risk Management	L04047	Beaumont	26	07/01/08
Bedford	Columbia North Hills Outpatient Imaging Center Subsidiary LP DBA Bedford Imaging Center	L03455	Bedford	45	07/01/08
Cleburne	Walls Regional Hospital DBA Harris Methodist Walls Regional Hospital	L02039	Cleburne	38	06/30/08
Cleveland	Nadim M. Zacca MD PA DBA Cardiovascular Diseases	L05570	Cleveland	04	07/02/08
Corpus Christi	Driscoll Childrens Hospital	L04606	Corpus Christi	33	06/30/08
Cypress	DMS Imaging, Inc.	L05594	Cypress	08	07/01/08
Dallas	The University of Texas Southwestern Medical Center at Dallas	L00384	Dallas	99	06/30/08
El Paso	El Paso Cardiology Associates PA	L05162	El Paso	07	07/02/08
Electra	Electra Hospital District DBA Electra Memorial Hospital	L03227	Electra	15	06/30/08
Ft Worth	Texas Oncology PA	L05606	Ft Worth	18	06/26/08
Ft Worth	John Peter Smith Hospital	L02208	Ft Worth	66	07/02/08
Gonzales	KI4U, Inc.	L05515	Gonzales	06	06/30/08
Greenville	Mohiudin A. Zeb M.D.	L04154	Greenville	06	06/30/08
Hallettsville	Lavaca Medical Center	L04397	Hallettsville	12	07/09/08
Harlingen	Valley Baptist Medical Center	L01909	Harlingen	68	06/30/08
Houston	Woodlands-North Houston Cardiovascular Imaging Center	L04253	Houston	22	06/26/08
Houston	CHCA West Houston LP, DBA West Houston Medical Center	L06055	Houston	03	07/01/08
Houston	Houston Cardiovascular Associates	L05070	Houston	15	06/30/08
Houston	Houston Northwest Radiotherapy Center	L02416	Houston	37	07/03/08
Houston	Hotwell US Ltd.	L06145	Houston	01	07/08/08
Houston	Petnet Houston LLC DBA Petnet Houston LLC	L05542	Houston	20	07/09/08
Humble	Houston Heart Clinic	L05671	Humble	05	07/01/08
Jourdanton	San Miguel Electric Cooperative, Inc.	L02347	Jourdanton	26	07/03/08

AMENDMENTS TO EXISTING LICENSES ISSUED (CONTINUED)

Location	Name	License #	City	Amendment #	Date of Action
Kingsville	Texas A & M University Kingsville	L01821	Kingsville	34	07/08/08
Lewisville	Texas Oncology PA DBA Lake Vista Cancer Ctr	L05526	Lewisville	14	07/02/08
Lubbock	Radiation Oncology of the South Plains PA, DBA Lubbock Imaging Center	L05418	Lubbock	11	07/01/08
Lufkin	Pickett Heart Clinic	L05681	Lufkin	04	06/30/08
McKinney	Silk Imaging and Healthcare LP DBA Silk Imaging and Healthcare	L06129	McKinney	01	07/10/08
Midlothian	TXI Operations LP	L01421	Midlothian	47	07/03/08
Mineral Wells	Palo Pinto General Hospital	L01732	Mineral Wells	33	07/09/08
Nassau Bay	Christus Health DBA Christus St John Hospital	L03291	Nassau Bay	30	07/09/08
Pasadena	The Dow Chemical Company Clear Lake Ops	L05829	Pasadena	06	07/07/08
Plano	Medical Edge Healthcare Group PA	L05555	Plano	22	06/27/08
Plano	Cardiovascular Consultants of North Texas, DBA Cardiovascular Consultants Plano	L05690	Plano	07	07/09/08
Plano	Columbia Medical Ctr of Plano Subsidiary LP, DBA Medical Center of Plano	L02032	Plano	88	07/09/08
Queen City	International Paper Company	L01686	Queen City	32	07/02/08
Round Rock	Daughters of Charity Health Services of Austin DBA Seton Medical Center Williamson	L06128	Round Rock	02	06/30/08
San Antonio	M. M. Ontiveros, M.D., P.A.	L05675	San Antonio	05	06/30/08
San Antonio	Accord Medical Management LP, DBA Nix Health Care System	L03531	San Antonio	28	06/27/08
San Antonio	Southwest Genetics PA	L04490	San Antonio	13	07/02/08
San Antonio	Southwest Foundation for Biomedical Research	L00468	San Antonio	50	07/01/08
San Antonio	S. Texas Radiology Imaging Centers	L00325	San Antonio	164	07/08/08
San Antonio	San Antonio Endovascular & Heart Institute	L05766	San Antonio	03	07/10/08
San Antonio	VHS San Antonio Partners LLC	L00455	San Antonio	178	07/09/08
San Diego	Sabia, Inc.	L06141	San Diego	01	07/09/08
Stafford	Burzynski Research Institute, Inc.	L02948	Stafford	23	06/30/08
Sweeny	Conocophillips Company Sweeny Complex	L00337	Sweeny	53	07/10/08
Texarkana	Alumax Mill Products, Inc.	L04663	Texarkana	14	07/01/08
The Woodlands	Memorial Hospital The Woodlands	L03772	The Woodlands	59	07/01/08
The Woodlands	St. Lukes Community Medical Center The Woodlands	L05763	The Woodlands	12	07/03/08
Throughout Tx	J-W Wireline Company	L06132	Addison	03	06/30/08
Throughout Tx	J-W Wireline Company	L06132	Addison	04	07/09/08
Throughout Tx	Team Industrial Services, Inc.	L00087	Alvin	186	07/09/08
Throughout Tx	Talon Drilling, Inc., DBA Llano-Permian Environmental	L05641	Amarillo	04	07/08/08
Throughout Tx	Tx Dept. of Transportation Construction Div. Materials & Pavements Section	L00197	Austin	140	06/26/08
Throughout Tx	Tank and Vessel Builders LP	L06168	Baird	01	07/11/08
Throughout Tx	KXR Inspection, Inc.	L01074	Barker	107	07/09/08
Throughout Tx	PMI Specialist, Inc.	L04686	Baytown	17	07/09/08
Throughout Tx	Brazos Valley Inspection Services, Inc.	L02859	Bryan	66	06/27/08
Throughout Tx	Newpark Mats & Integrated Services LLC	L04708	Carencro, LA	17	07/08/08
Throughout Tx	Fugro Consultants LP	L01474	Corpus Christi	31	07/03/08
Throughout Tx	Guardian Industries Corporation	L05213	Corsicana	05	07/11/08
Throughout Tx	Syntec Engineering Group, Inc.	L05978	Dallas	01	07/10/08
Throughout Tx	Enercon Services, Inc.	L05447	Dallas	07	07/09/08
Throughout Tx	Irisndt, Inc.	L04769	Deer Park	57	07/02/08
Throughout Tx	Irisndt, Inc.	L04769	Deer Park	59	07/11/08
Throughout Tx	Irisndt, Inc.	L04769	Deer Park	58	07/09/08
Throughout Tx	H & H X-Ray Services, Inc.	L02516	Flint	72	06/27/08

AMENDMENTS TO EXISTING LICENSES ISSUED (CONTINUED)

Location	Name	License #	City	Amendment #	Date of Action
Throughout Tx	Recon Petrotechnologies, Inc.	L06026	Ft Worth	06	07/03/08
Throughout Tx	Sterigenics US, Inc.	L03851	Ft Worth	37	07/10/08
Throughout Tx	Cobblestone Engineering, Inc.	L04789	Harlingen	05	07/10/08
Throughout Tx	Halliburton Energy Services, Inc.	L00442	Houston	116	06/26/08
Throughout Tx	Halliburton Energy Services, Inc.	L02113	Houston	111	07/01/08
Throughout Tx	Geotest Engineering, Inc.	L02735	Houston	46	07/02/08
Throughout Tx	Ulrich Engineers, Inc.	L03950	Houston	09	07/09/08
Throughout Tx	Oceaneering International, Inc.	L04463	Ingleside	59	07/08/08
Throughout Tx	City of Killeen	L04668	Killeen	07	07/03/08
Throughout Tx	United States Environmental Services LLC	L05801	LaPorte	02	07/09/08
Throughout Tx	City of Lubbock Street/Drainage Engineering	L01735	Lubbock	34	07/03/08
Throughout Tx	American X-Ray & Inspection Services, Inc.	L05974	Midland	13	06/30/08
Throughout Tx	Murphrees Tool Company, Inc.	L04195	Midland	06	07/03/08
Throughout Tx	Harrison Walker & Harper LP DBA Harrison Walker & Harper - We Build, Inc.	L05992	Paris	01	07/09/08
Throughout Tx	Petrochem Inspection Services, Inc.	L04460	Pasadena	88	07/09/08
Throughout Tx	Texas Gamma Ray LLC	L05561	Pasadena	84	07/14/08
Throughout Tx	Science Engineering Ltd.	L04677	Port Arthur	07	07/03/08
Throughout Tx	Silva Contracting Company, Inc.	L05266	Richmond	04	07/02/08
Throughout Tx	Pipe Reclamation, Inc.	L04684	Robstown	10	07/03/08
Throughout Tx	US Ecology Texas, Inc.	L05518	Robstown	07	07/08/08
Throughout Tx	All American Inspection, Inc.	L01336	San Antonio	64	07/02/08
Throughout Tx	Innovative Technical Solutions, Inc.	L06064	San Antonio	01	07/09/08
Throughout Tx	Clough Harbour & Associates LLP	L05355	Sanger	23	07/08/08
Throughout Tx	Clough Harbour & Associates LLP	L05355	Sanger	23	07/08/08
Throughout Tx	Blazer Inspection, Inc.	L04619	Texas City	54	07/03/08
Throughout Tx	ATL-SWL Group, Inc. DBA Southwest Laboratories, Inc.	L05269	Texas City	15	07/09/08
Tomball	Arvind M Pai, M.D., P.A.	L06008	Tomball	02	07/09/08
Tyler	Trinity Mother Frances Health System	L01670	Tyler	136	07/01/08
Wichita Falls	Kell West Regional Hospital LLC	L05943	Wichita Falls	04	07/09/08

RENEWAL OF LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Corpus Christi	Valero Refining - Texas LP, DBA Valero Bill Greehey Refinery	L03360	Corpus Christi	27	07/08/08

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Arlington	Physicians' Metroplex Hospital	L05658	Arlington	01	07/09/08
Houston	River Oaks Medical Center LP, DBA Twelve Oaks Medical Center	L02432	Houston	50	06/27/08
The Woodlands	Sigma Genosys LP	L04555	The Woodlands	16	06/27/08

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 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, Radiation Material Licensing - MC 2835, P.O. Box 149347, Austin, Texas 78714-9347. For information call (512) 834-6688.

TRD-200803784  
Lisa Hernandez  
General Counsel  
Department of State Health Services  
Filed: July 25, 2008

◆ ◆ ◆  
**Texas Department of Insurance**

**Company Licensing**

Application to change the name of CONSECO SENIOR HEALTH INSURANCE COMPANY to SENIOR HEALTH INSURANCE COMPANY OF PENNSYLVANIA, a life, accident and/or health company. The home office is in Bensalem, Pennsylvania.

Application for admission to the State of Texas by PRIVILEGE UNDERWRITERS RECIPROCAL EXCHANGE, a foreign fire and/or casualty company. The home office is in Ft. Lauderdale, Florida.

Application for incorporation in the State of Texas by STAR OF TEXAS TITLE INSURANCE, a domestic title company. The home office is in Austin, Texas.

Application for incorporation in the State of Texas by TEXAS STAR TITLE INSURANCE, a domestic title company. The home office is in Austin, Texas.

Application for admission to the State of Texas by SOUTHWEST MARINE AND GENERAL INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Phoenix, Arizona.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of this *Texas Register* publication, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-200803980  
Gene C. Jarmon  
Chief Clerk and General Counsel  
Texas Department of Insurance  
Filed: July 30, 2008

◆ ◆ ◆  
**Correction of Error**

The Texas Department of Insurance proposed amendments to 28 TAC §§3.3821, 3.3826, 3.3829, 3.3830, 3.3833, 3.3834, 3.3837 - 3.3839, 3.3842, 3.3844, 3.3846, 3.3848 and 3.3849 in the July 18, 2008, issue of the *Texas Register* (33 TexReg 5676). Due to an error in the submitted document, rule language was omitted from §3.3842(j) on page 5681, second column, last paragraph. As published, the last line reads: "...the following specifies the Suitability Letter requirements and procedures apply:". As corrected, the final sentence of subsection (j) reads as follows:

"If the issuer elects to send the applicant a Suitability Letter to comply with the requirements of this subsection, the following specifies the Suitability Letter and the requirements and procedures that apply:"

TRD-200803898

◆ ◆ ◆  
**Correction of Error**

The Texas Department of Insurance proposed amendments to 28 TAC §§5.6403, 5.6405, 5.6408, and 5.6411 and new §§5.6401, 5.6402, 5.6404, 5.6409, 5.6412, and 5.6413, concerning Property and Casualty Insurance, in the July 25, 2008, issue of the *Texas Register* (33 TexReg 5836).

The Department's submission omitted the term "Labor Code" from the Cross Reference to Statute, the last paragraph in the preamble on page 5855. The sentence should read as follows:

"The following statutes are affected by this proposal: Labor Code §§407A.001...."

In §5.6412(a), Operational Review Plan, on page 5858, first column, the word "relating" is misspelled. The subsection should read as follows:

"(a) A group shall annually adopt an operational review plan that provides for sufficient oversight of any person who has entered into a written agreement pursuant to §5.6411(a) or (b) of this division (relating to Contract Provisions). The group may modify the operational review plan at any time in order to meet the group's needs."

TRD-200803990

◆ ◆ ◆  
**Texas Lottery Commission**

**Instant Game Number 1109 "Cherry Doubler"**

**1.0 Name and Style of Game.**

A. The name of Instant Game No. 1109 is "CHERRY DOUBLER". The play style is "slots-straight line".

**1.1 Price of Instant Ticket.**

A. Tickets for Instant Game No. 1109 shall be \$1.00 per ticket.

**1.2 Definitions in Instant Game No. 1109.**

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: APPLE SYMBOL, ORANGE SYMBOL, MELON SYMBOL, BANANA SYMBOL, STAR SYMBOL, LEMON SYMBOL, BELL SYMBOL, HORSESHOE SYMBOL, CLOVER SYMBOL, GOLD BAR SYMBOL, SEVEN SYMBOL, WISHBONE SYMBOL, CROWN SYMBOL, DIAMOND SYMBOL, PINEAPPLE SYMBOL, CHERRY SYMBOL, \$1.00, \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00, \$100 and \$1,000.

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. 1109 - 1.2D

<b>PLAY SYMBOL</b>	<b>CAPTION</b>
APPLE SYMBOL	APL
ORANGE SYMBOL	ORG
MELON SYMBOL	MEL
BANANA SYMBOL	BAN
STAR SYMBOL	STA
LEMON SYMBOL	LEM
BELL SYMBOL	BEL
HORSESHOE SYMBOL	SHO
CLOVER SYMBOL	CLO
GOLD BAR SYMBOL	BAR
SEVEN SYMBOL	SVN
WISHBONE SYMBOL	WBN
CROWN SYMBOL	CRN
DIAMOND SYMBOL	DMD
PINEAPPLE SYMBOL	PNA
CHERRY SYMBOL	DBL
\$1.00	ONE\$
\$2.00	TWO\$
\$4.00	FOUR\$
\$5.00	FIVE\$
\$10.00	TEN\$
\$20.00	TWENTY
\$50.00	FIFTY
\$100	ONE HUND
\$1,000	ONE 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 \$1.00, \$2.00, \$4.00, \$5.00, \$10.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$50.00 or \$100.

H. High-Tier Prize - A prize of \$1,000.

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 (1109), a seven (7) digit pack number, and

a three (3) digit ticket number. Ticket numbers start with 001 and end with 150 within each pack. The format will be: 1109-0000001-001.

K. Pack - A pack of "CHERRY DOUBLER" Instant Game tickets contains 150 tickets, packed in plastic shrink-wrapping and fanfolded in pages of five (5). Tickets 001 to 005 will be on the top page; tickets 006 to 010 on the next page; etc.; and tickets 146 to 150 will be on the last page with backs exposed. Ticket 001 will be folded over so the front of ticket 001 and 010 will be exposed.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "CHERRY DOUBLER" Instant Game No. 1109 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 Proce-

dures, and the requirements set out on the back of each instant ticket. A prize winner in the "CHERRY DOUBLER" Instant Game is determined once the latex on the ticket is scratched off to expose 16 (sixteen) play symbols. If a player reveals three (3) matching symbols within a GAME, the player wins the PRIZE shown for that GAME. If the player reveals a cherry symbol, the player wins DOUBLE the PRIZE shown for that GAME. 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 16 (sixteen) 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 16 (sixteen) 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 16 (sixteen) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.
17. Each of the 16 (sixteen) 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 prize symbols on a ticket.

C. No duplicate non-winning games on a ticket (in any order).

D. Non-winning prize symbols will never be the same as the winning prize symbol(s).

E. The CHERRY (doubler) play symbol will only appear once within a game.

F. The CHERRY (doubler) play symbol will only appear as dictated by the prize structure.

G. There will be many near wins (two matching symbols within a game) on a ticket.

H. The top prize will appear on every ticket unless otherwise restricted by the prize structure.

#### 2.3 Procedure for Claiming Prizes.

A. To claim a "CHERRY DOUBLER" Instant Game prize of \$1.00, \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00 or \$100, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$50.00 or \$100 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "CHERRY DOUBLER" Instant Game prize of \$1,000, 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 appropri-



ate 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 "CHERRY DOUBLER" 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; or
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 "CHERRY DOUBLER" 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 "CHERRY DOUBLER" 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 11,040,000 tickets in the Instant Game No. 1109. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1109 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$1	809,600	13.64
\$2	920,000	12.00
\$4	257,600	42.86
\$5	92,000	120.00
\$10	92,000	120.00
\$20	39,100	282.35
\$50	10,120	1,090.91
\$100	1,840	6,000.00
\$1,000	92	120,000.00

\*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 4.97. 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. 1109 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. 1109, 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-200803785  
 Kimberly L. Kiplin  
 General Counsel  
 Texas Lottery Commission  
 Filed: July 25, 2008



Instant Game Number 1111 "Monster Money"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1111 is "MONSTER MONEY". The play style is "key number match with doubler".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1111 shall be \$2.00 per ticket.

1.2 Definitions in Instant Game No. 1111.

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, PUMPKIN SYMBOL, \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00, \$100, \$1,000 and \$20,000.

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. 1111 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
PUMPKIN SYMBOL	DOUBLE
\$2.00	TWO\$
\$4.00	FOUR\$
\$5.00	FIVE\$
\$10.00	TEN\$
\$20.00	TWENTY
\$50.00	FIFTY
\$100	ONE HUND
\$1,000	ONE THOU
\$20,000	20 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 \$2.00, \$4.00, \$5.00, \$10.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$50.00 or \$100.

H. High-Tier Prize - A prize of \$1,000 or \$20,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1111), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 125 within each pack. The format will be: 1111-0000001-001.

K. Pack - A pack of "MONSTER MONEY" Instant Game tickets contains 125 tickets, packed in plastic shrink-wrapping and fanfolded in pages of two (2). One ticket will be folded over to expose a front and back of one ticket on each pack. Please note the books will be in an A, B, C and D configuration.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "MONSTER MONEY" Instant Game No. 1111 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 "MONSTER MONEY" Instant Game is determined once the latex on the ticket is scratched off to expose 22 (twenty-two) Play Symbols. If a player matches any of YOUR NUMBERS play symbols to either WINNING NUMBER play symbol, the player wins the PRIZE shown for that number. If a player reveals a "PUMPKIN" play symbol, the player wins DOUBLE the PRIZE shown for that symbol. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

#### 2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 22 (twenty-two) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The ticket must be complete and not miscut, and have exactly 22 (twenty-two) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;
14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;
15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
16. Each of the 22 (twenty-two) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
17. Each of the 22 (twenty-two) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the

Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant 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. The "PUMPKIN" (doubler) play symbol will only appear on intended winning tickets and only as dictated by the prize structure.

C. No more than two (2) matching non-winning prize symbols will appear on a ticket.

D. No duplicate WINNING NUMBERS play symbols on a ticket.

E. No duplicate non-winning YOUR NUMBERS play symbols on a ticket.

F. Non-winning prize symbols will never be the same as the winning prize symbol(s).

G. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS play symbol (i.e. 5 and \$5).

H. The top prize symbol will appear on every ticket unless otherwise restricted.

#### 2.3 Procedure for Claiming Prizes.

A. To claim a "MONSTER MONEY" Instant Game prize of \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00 or \$100, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$50.00 or \$100 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "MONSTER MONEY" Instant Game prize of \$1,000 or \$20,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by

the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "MONSTER MONEY" 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 "MONSTER MONEY" 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 "MONSTER MONEY" 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 5,040,000 tickets in the Instant Game No. 1111. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1111 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$2	604,800	8.33
\$4	463,680	10.87
\$5	201,600	25.00
\$10	70,560	71.43
\$20	30,240	166.67
\$50	10,500	480.00
\$100	4,200	1,200.00
\$1,000	31	162,580.65
\$20,000	10	504,000.00

\*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 3.64. 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. 1111 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. 1111, 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-200803786  
 Kimberly L. Kiplin  
 General Counsel  
 Texas Lottery Commission  
 Filed: July 25, 2008



Instant Game Number 1112 "Cash Vault"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1112 is "CASH VAULT". The play style is "key number match with doubler and win all".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1112 shall be \$5.00 per ticket.

1.2 Definitions in Instant Game No. 1112.

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, COIN SYMBOL, MONEY STACK SYMBOL, \$5.00, \$10.00, \$15.00, \$20.00, \$50.00, \$100, \$200, \$2,000 and \$50,000.

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. 1112 - 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	TWFV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
<b>COIN SYMBOL</b>	<b>DBLR</b>
<b>MONEY STACK SYMBOL</b>	<b>WINALL</b>
\$5.00	FIVE\$
\$10.00	TEN\$
\$15.00	FIFTN
\$20.00	TWENTY

\$50.00	FIFTY
\$100	ONE HUND
\$200	TWO HUND
\$2,000	TWO THOU
\$50,000	50 THOU

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is 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 \$25.00, \$50.00, \$100 or \$200.

H. High-Tier Prize - A prize of \$2,000 or \$50,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1112), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 075 within each pack. The format will be: 1112-0000001-001.

K. Pack - A pack of "CASH VAULT" Instant Game tickets contains 075 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The packs will alternate. One will show the front of ticket 001 and back of 075 while the other fold will show the back of ticket 001 and front of 075.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "CASH VAULT" Instant Game No. 1112 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "CASH VAULT" Instant Game is determined once the latex on the ticket is scratched off to expose 45 (forty-five) Play Symbols. If a player matches any of YOUR NUMBERS play symbols to any of the VAULT NUMBERS play symbols, the player wins the PRIZE shown for that number. If the player reveals a "coin" play symbol, the player wins DOUBLE the PRIZE shown for that symbol. If the player reveals a "money stack" play symbol, the player wins ALL TWENTY PRIZES INSTANTLY! No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

- Exactly 45 (forty-five) Play Symbols must appear under the latex overprint on the front portion of the ticket;
- Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
- Each of the Play Symbols must be present in its entirety and be fully legible;
- Each of the Play Symbols must be printed in black ink except for dual image games;
- The ticket shall be intact;
- The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
- The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
- The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
- The ticket must not be counterfeit in whole or in part;
- The ticket must have been issued by the Texas Lottery in an authorized manner;
- The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
- The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
- The ticket must be complete and not miscut, and have exactly 45 (forty-five) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;
- The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;
- The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
- Each of the 45 (forty-five) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
- Each of the 45 (forty-five) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;
- 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
- 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. The "COIN" (doubler) and "MONEY STACK" (win all) play symbols will only appear on intended winning tickets and only as dictated by the prize structure.

C. No four or more matching non-winning prize symbols on a ticket.

D. No duplicate VAULT NUMBERS play symbols on a ticket.

E. No duplicate non-winning YOUR NUMBERS play symbols on a ticket.

F. Non-winning prize symbols will never be the same as the winning prize symbol(s).

G. When the "MONEY STACK" (win all) play symbol appears, there will be no occurrence of any of YOUR NUMBERS play symbols matching any VAULT NUMBER play symbol.

H. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS play symbol (i.e. 5 and \$5).

I. The top prize will appear on every ticket unless otherwise restricted.

#### 2.3 Procedure for Claiming Prizes.

A. To claim a "CASH VAULT" Instant Game prize of \$5.00, \$10.00, \$15.00, \$20.00, \$25.00, \$50.00, \$100 or \$200, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$25.00, \$50.00, \$100 or \$200 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "CASH VAULT" Instant Game prize of \$2,000 or \$50,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS

if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "CASH VAULT" 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 "CASH VAULT" 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 "CASH VAULT" 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 5,040,000 tickets in the Instant Game No. 1112. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1112 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$5	403,200	12.50
\$10	571,200	8.82
\$15	67,200	75.00
\$20	84,000	60.00
\$25	77,406	65.11
\$50	67,200	75.00
\$100	3,360	1,500.00
\$200	2,100	2,400.00
\$2,000	210	24,000.00
\$50,000	5	1,080,000.00

\*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 3.95. 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. 1112 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. 1112, 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-200803908  
 Kimberly L. Kiplin  
 General Counsel  
 Texas Lottery Commission  
 Filed: July 28, 2008



Instant Game Number 1113 "Wild 7's"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1113 is "WILD 7'S". The play style for this game is "row/column/diagonal".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1113 shall be \$1.00 per ticket.

1.2 Definitions in Instant Game No. 1113.

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 and 9.

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. 1113 - 1.2D**

<b>PLAY SYMBOL</b>	<b>CAPTION</b>
1	
2	
3	
4	
5	
6	
7	
8	
9	

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 \$1.00, \$2.00, \$3.00, \$7.00 or \$17.00.

G. Mid-Tier Prize - A prize of \$57.00 or \$177.

H. High-Tier Prize - A prize of \$1,000.

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 (1113), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 150 within each pack. The format will be: 1113-0000001-001.

K. Pack - A pack of "WILD 7'S" Instant Game tickets contains 150 tickets, packed in plastic shrink-wrapping and fanfolded in pages of five (5). Tickets 001 to 005 will be on the top page; tickets 006 to 010 on the next page; etc.; and tickets 146 to 150 will be on the last page with backs exposed. Ticket 001 will be folded over so the front of ticket 001 and 010 will be exposed.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "WILD 7'S" Instant Game No. 1113 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 "WILD 7'S" Instant Game is determined once the latex on the ticket is scratched off to expose 9 (nine) Play Symbols. If a player reveals three (3) 7's play symbols in any one row, column

or diagonal, the player wins prize. 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 9 (nine) 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 9 (nine) 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 9 (nine) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 9 (nine) 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 will not have identical play data, spot for spot.

B. There will be only one occurrence of three "7" play symbols appearing in a row, column or diagonal on winning tickets as dictated by the prize structure.

C. There will not be three or more of any other number on any ticket except for the "7" play symbol.

D. There will be no less than four "7" play symbols on a ticket.

#### 2.3 Procedure for Claiming Prizes.

A. To claim a "WILD 7'S" Instant Game prize of \$1.00, \$2.00, \$3.00, \$7.00, \$17.00, \$57.00 or \$177, 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 \$57.00 or \$177 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 "WILD 7'S" Instant Game prize of \$1,000, the claimant must sign the winning ticket and present it at one of the Texas Lot-

tery'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 "WILD 7'S" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The 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 "WILD 7'S" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "WILD 7'S" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or

within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any 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 10,080,000 tickets in the Instant Game No. 1113. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1113 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$1	907,200	11.11
\$2	1,075,200	9.38
\$3	134,400	75.00
\$7	134,400	75.00
\$17	17,094	589.68
\$57	9,450	1,066.67
\$177	4,200	2,400.00
\$1,000	42	240,000.00

\*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 4.42. 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. 1113 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. 1113, 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-200803787  
 Kimberly L. Kiplin  
 General Counsel  
 Texas Lottery Commission  
 Filed: July 25, 2008



**Texas Department of Public Safety**

Pre-Disaster Mitigation and Repetitive Flood Claims Grant Program for Fiscal Year 2009

The Pre-Disaster Mitigation (PDM) Program provides grant funding for mitigation planning and the implementation of cost effective mitigation projects addressing natural hazards. Eligible applicants are state agencies, local jurisdictions that are participating in the National Flood Insurance Program (NFIP), recognized Indian Tribal governments, state supported colleges/universities, and Councils of Governments. Private non-profit agencies are not themselves eligible but may be able to find a local government entity to apply on their behalf. All eligible applicants applying for projects other than planning grants must have a FEMA-approved Mitigation Action Plan in accordance with the 44 CFR Part 201.6.

The Repetitive Flood Claims (RFC) Program addresses current NFIP insured properties with repetitive losses. Eligible projects could include elevations and acquisitions of these NFIP properties. Eligible applicants would be state level agencies, federally recognized Indian Tribal governments and local governments participating in the NFIP. A Mitigation Action Plan is not required for the applicants of the RFC grant program.

Applying for RFC and PDM is a two-phase process. Complete instructions are available on the Governor's Division of Emergency Management website: <http://www.txdps.state.tx.us/dem/pages/index.htm>.

Phase one is requesting access into the e-grants system. The state deadline for phase one is *August 29, 2008*.

Phase two is using the e-grants system to submit your application to the State.

The deadline for submitting an RFC application is *October 31, 2008*.

The deadline for submitting a PDM application is *November 14, 2008*.

The federal Fiscal Year (FY) 2009 Hazard Mitigation Assistance (HMA) Program Guidance for PDM and RFC has been released announcing the opening of both grants. The complete Unified HMA guidance document for both PDM and RFC is available at: <http://www.fema.gov/library/viewRecord.do?id=3309>, select Resource File and the view/ download/ print option.

TRD-200803953

Thomas A. Davis, Jr.

Director

Texas Department of Public Safety

Filed: July 30, 2008

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**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 July 23, 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 Rapid Acquisition Co., LLC for an Amendment to a State-Issued Certificate of Franchise Authority, Project Number 35918 before the Public Utility Commission of Texas.

The requested amended CFA service area includes the cities of Abernathy, Anton, Hemphill, Idalo, Ladonia, Ore, Spur, Sudan, Earth, Friona, Hart, Knox City, Naples, and Olton, Texas, as well as the towns of Matador and Mertzton.

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 35918.

TRD-200803940

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: July 29, 2008

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

The Public Utility Commission of Texas received an application on July 23, 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 Rapid Acquisition, LLC for an Amendment to a State-Issued Certificate of Franchise Authority, Project Number 35919 before the Public Utility Commission of Texas.

The requested amended CFA service area includes the cities of Comanche, Goliad, Hondo, Natalia, Point, and Rule, 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 35919.

TRD-200803941

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: July 29, 2008

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

The Public Utility Commission of Texas received an application on July 22, 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 Coastal-Link Communications, LLC for an Amendment to a State-Issued Certificate of Franchise Authority, Project Number 35906.

The requested amended CFA service area includes the area within the municipal boundary of Jones Creek and for unincorporated areas of Brazoria County described on the maps submitted with the application as follows: the unincorporated area of Brazoria County, Texas, East of Jones Creek on Highway 36 including Hagerman, Hanley, Exline, and Smith roads indicated as line and hatch mark; the unincorporated area West of Jones Creek along Highway 36 from Bluebonnet to west of 393, indicated by line and hatch mark; the unincorporated area West of Jones Creek on Highway 36, from 293 to approximately one mile west of 2004 as marked by line and hatch mark; the unincorporated area West of Jones Creek, from Highway 36 southward on 2611 to 311 and to 496 west, as indicated by line and hatch mark; the unincorporated area West of Jones Creek, from Highway 36 southward on 2611 to 659 west, as indicated by line and hatch mark; and the unincorporated area West of Jones Creek from Highway 36 south on 2611 to 659 east, as indicated by line and hatch mark.

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 35906.

TRD-200803882

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: July 28, 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 July 22, 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 Wholesale Carrier Services, Inc. for a Service Provider Certificate of Operating Authority, Docket Number 35909 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, 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 August 13, 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 35909.

TRD-200803884  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: July 28, 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 July 23, 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 One Source Networks CLEC, LLC for a Service Provider Certificate of Operating Authority, Docket Number 35914 before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone service, ADSL, ISDN, HDSL, SDSL, VDSL, Optical Services, T1-Private Line, Frame Relay, Fractional T1, long distance and Ethernet services.

Applicant's requested SPCOA geographic area includes the area of Texas currently served by Southwestern Bell Telephone Company d/b/a AT&T 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 August 13, 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 35914.

TRD-200803886  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: July 28, 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 July 23, 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 Big River Telephone Company, LLC for a Service Provider Certificate of Operating Authority, Docket Number 35920 before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone service and long distance 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 August 13, 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 35920.

TRD-200803889  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: July 28, 2008



Notice of Application for Waiver of Denial of Request for NXX Code

Notice is given to the public of the filing with the Public Utility Commission of Texas an application on July 23, 2008, for waiver of denial by the Pooling Administrator (PA) of Southwestern Bell Telephone Company d/b/a AT&T Texas' (AT&T Texas) request for assignment of two growth blocks in the Allen rate center.

Docket Title and Number: Petition of Southwestern Bell Telephone Company d/b/a AT&T Texas for Waiver of Denial of Numbering Resources, Docket Number 35915.

The Application: AT&T Texas submitted an application to the PA for the requested blocks in accordance with the current guidelines. The PA denied the request because AT&T Texas did not meet the months-to-exhaust and utilization criteria established by the Federal Communications Commission.

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 August 13, 2008. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 35915.

TRD-200803887  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: July 28, 2008



## Notice of Application for Waiver of Denial of Request for NXX Code

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) an application on July 23, 2008, for waiver of denial by the Pooling Administrator (PA) of Southwestern Bell Telephone Company d/b/a AT&T Texas' (AT&T Texas) request for assignment of one thousand block of numbers in the Barker rate center.

Docket Title and Number: Petition of Southwestern Bell Telephone Company d/b/a AT&T Texas for Waiver of Denial of Numbering Resources, Docket Number 35916.

The Application: AT&T Texas submitted an application to the PA for the requested blocks in accordance with the current guidelines. The PA denied the request because AT&T Texas did not meet the months-to-exhaust and utilization criteria established by the Federal Communications Commission.

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 August 13, 2008. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 35916.

TRD-200803888

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: July 28, 2008



## Notice of Application to Amend Certificated Service Area Boundaries in Guadalupe County, Texas

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on July 22, 2008, for an amendment to certificated service area boundaries within Guadalupe, Texas.

Docket Style and Number: Application of Guadalupe Valley Electric Cooperative, Inc. to Amend a Certificate of Convenience and Necessity for Service Area Boundaries within Guadalupe County. Docket Number 35908.

The Application: Guadalupe Valley Electric Cooperative, Inc. (GVEC) seeks an amendment to certificated service area boundaries concerning the Pecan Crossing Subdivision and the South Bank Subdivision. The proposed Pecan Crossing Subdivision is currently divided by the existing service territory boundary between GVEC and New Braunfels Utilities (NBU) in such a way that divides individual lots located within the subdivision. The proposed boundary will clearly determine boundary lines that follow property lines and streets in the subdivision. The existing South Bank Subdivision is located in NBU's service territory, however, is currently being served by GVEC. This application seeks to formalize the existing arrangement between NBU and GVEC in which GVEC has been providing service to this portion of the South Bank Subdivision.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas no later than August 15, 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 35908.

TRD-200803883

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: July 28, 2008



## Notice of Application to Amend Certificated Service Area Boundaries in Williamson and Travis Counties, Texas

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on July 22, 2008, for an amendment to certificated service area boundaries within Williamson and Travis Counties, Texas.

Docket Style and Number: Joint Application of Pedernales Electric Cooperative, Inc. and City of Austin, d/b/a Austin Energy to Amend a Certificate of Convenience and Necessity for Service Area Boundaries within Williamson and Travis Counties. Docket Number 35912.

The Application: Pedernales Electric Cooperative, Inc. (PEC) and the City of Austin, d/b/a Austin Energy (AE) seek an amendment to certificated service area boundaries concerning two developments. Waterstone Development has requested that AE release a portion of its electric service territory to PEC for Waterstone's development of Pearson Place in Avery Ranch. In addition, the Austin Diocese has requested that AE release a portion of its service territory to PEC for the expansion of the St. Dominic Savio Catholic High School at 9400 Neenah. AE and PEC are in agreement with these amendments.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas no later than August 15, 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 35912.

TRD-200803885

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: July 28, 2008



## Request for Comments

The Public Utility Commission of Texas (commission) has initiated a project to review its rules relating to the target for non-wind renewable energy resources that is set out in Public Utility Regulatory Act §39.904(a). Project No. 35792, *Rulemaking Relating to Goal for Renewable Energy*, has been established for this proceeding. The commission requests that interested persons file comments in response to the following questions:

1. Are additional measures for the support of non-wind renewable generation necessary and appropriate in order to achieve 500 megawatts of non-wind renewable generation in Texas by 2015?
2. What level of support for non-wind renewable generation would be needed in order to achieve 500 megawatts of non-wind renewable generation in Texas by 2015?
3. Which measures would be most cost-effective in providing inducement for the development of additional non-wind renewable generation?



4. (a) Does the commission have the authority to adopt additional measures for the support of non-wind renewable generation, in order to achieve 500 megawatts of non-wind renewable generation in Texas by 2015?

(b) In particular, does the commission have the authority to adopt a requirement for retail electric providers to retire non-wind Renewable Energy Credits (RECs) that are distinct from the existing RECs?

5. (a) Should the commission adopt measures for the support of specific non-wind renewable generation technologies?

(b) For which technologies should additional support measures be adopted?

(c) What measures should be adopted?

(d) What target levels of development should be established?

(e) What would the cost of such measures be?

Responses may be filed by submitting 16 copies to the commission's Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326 within 31 days of the date of publication of this notice. All responses should reference Project Number 35792.

Questions concerning this notice should be referred to Jess Totten, Competitive Markets Division, at (512) 936-7235. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200803876  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: July 28, 2008

## Texas Racing Commission

### Notice of Horsemen's Organization Registration Deadline

The Executive Director for the Texas Racing Commission has established August 28, 2008 as the deadline for filing a request for recognition as the horsemen's representative organization. The Texas Racing Act, Vernon's Ann. Civ. St. art. 179e, §3.13, authorizes the Commission to recognize an organization to represent members of a segment of the racing industry, including owners, breeders, trainers, kennel operators, or other persons involved in the racing industry.

In 16 TAC §309.299, the Commission has adopted criteria for being recognized as an organization to represent horse owners and trainers. To be eligible for recognition as a horsemen's representative organization, each officer and director of the organization during the two-year term of the recognition must be licensed by the Commission as an owner or trainer. Other recognition criteria include the experience and qualifications of the organization's directors, executive officers, and management personnel, the organization's benevolence programs, and the degree to which the organization's membership represents a fair and equitable cross-section of the horse owners and trainers participating at each of the racetracks in this state.

An organization recognized under 16 TAC §309.299 has a variety of responsibilities, including negotiation with licensed racetracks regarding the racetracks' live racing programs. The organization is subject to audit by the Texas Racing Commission.

To request recognition, an organization must file a written request on a form prescribed by the Executive Director. To obtain a copy of the form or for more information, interested persons should contact Mark

Fenner, General Counsel, Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711-2080, Phone: (512) 833-6699, Fax: (512) 833-6907.

TRD-200803777  
Mark Fenner  
General Counsel  
Texas Racing Commission  
Filed: July 23, 2008

## Texas Residential Construction Commission

### Notice of Application for Designation as a "Texas Star Builder"

The commission adopted rules regarding the procedures for designation as a "Texas Star Builder" at 10 TAC §303.300. The rules were adopted pursuant to §416.011, Property Code (Act effective Sept. 1, 2003), which provides that the commission shall establish rules and procedures through which a builder can be designated as a "Texas Star Builder." The commission rules for application for designation can be found on the commission's website at [www.trcc.state.tx.us](http://www.trcc.state.tx.us).

10 TAC §303.300(i)(2) requires the commission to publish in the *Texas Register* notice of the application of each person seeking to become designated as a "Texas Star Builder" registered under this subchapter. The commission will accept public comment on each application for twenty-one (21) days after the date of publication of the notice. Information provided in response to this notice will be utilized in evaluating the applicants for approval. The Texas Star Builder designation requires that a builder or remodeler demonstrate that its education, experience and commitment to professionalism sets the builder or remodeler apart from its peers and offers some assurance to its customers that its quality of service and construction will be above average.

Pursuant to 10 TAC §303.300(i)(2) the commission hereby notices the application(s) for designation as a "Texas Star Builder" of:

Sterling Oak Builders, Inc., 1 Chapel Court, North Richland Hills, Texas 76180. Sterling Oak Builders, Inc. holds TRCC builder registration #1092. The applicant's registered agent is Gary Schector.

James W. Turner Construction, Ltd., 14215 Mary Jane Lane, Tomball, Texas 77377. James W. Turner Construction, Ltd. holds TRCC builder registration #1525. The applicant's registered agent is James Turner.

Interested persons may send written comments regarding this application to Susan K. Durso, General Counsel, The Texas Residential Construction Commission, P.O. Box 13509, Austin, Texas 78711-3509. Comments regarding this application will be accepted for twenty-one days following the date of publication of this notice in the *Texas Register*. Thereafter, the comments will not be considered as timely filed.

TRD-200803778  
Susan K. Durso  
General Counsel  
Texas Residential Construction Commission  
Filed: July 23, 2008

## Office of the Secretary of State

### Notice of Funding Availability for Voting Access for Individuals with Disabilities Grant Program

Introduction:

The Texas Secretary of State (SOS) announced the availability of federal funds for counties to make polling places accessible and provide

the same opportunity for access and participation to individuals with disabilities in September 2006. The SOS amended that announcement in February 2008 to increase the eligible funding for each county. It also amended the deadline to apply for the funding due to a lapse date for the federal funds. This notice announces increased funding due to an additional federal appropriation and establishes multiple grant periods depending on when the county submitted its budget. All counties have until August 31, 2009 to submit a budget. This announcement supersedes all previous announcements and correspondence.

Authority:

The availability of funds is authorized by Title II, Subtitle D, Section 261 of the Help America Vote Act (HAVA) (42 U.S.C. 15461).

Eligible Applicants:

All Texas counties.

Use of Funds:

*Making Polling Places Accessible*

1. Making pathways more accessible by building or repaving sidewalks.
2. Construction or repair of ramps and threshold ramps.
3. Constructing curb cuts and adding handrails.
4. Establishing accessible parking spaces closer to the accessible entrance.
5. Providing adequate signage showing where accessible parking and entrances are located and indicating that service animals are welcome.
6. Purchasing hardware that will make it easy for persons with limited mobility or grasping ability to open doors.
7. Other projects that improve polling place accessibility deemed reasonable and necessary by the SOS.

*Provide the Same Opportunity for Access and Participation to Individuals with Disabilities*

1. Magnifiers.
2. Signature guides.
3. Accessible voting booths or tables.
4. Seats to accommodate persons who have difficulty standing for long periods of time.
5. Telephones in order to allow the use of all Relay Texas services including speech-to-speech relay.
6. Informational material to be written in large print and in Braille.
7. Other devices that provide the same opportunity for access and participation to individuals with disabilities deemed reasonable and necessary by the SOS.

Funding Restrictions:

Funds used for permanent improvements such as repaving sidewalks and curb cuts may only be applied to county owned property utilized for a polling location used during a federal election.

Available Funding:

*Making Polling Places Accessible*

Using polling location statistics for the 2006 March Primary, the county may apply for funding not to exceed the following amounts:

- a) \$4,500 for counties with 10 polling locations or less;

- b) \$6,500 for counties with 50 polling locations or less; and,
- c) \$8,500 for counties with polling locations of more than 50.

*Provide the Same Opportunity for Access and Participation to Individuals with Disabilities*

Using polling location statistics for the 2006 March Primary, the county may apply for funding not to exceed the following amounts:

- a) \$2,000 for counties with 10 polling locations or less;
- b) \$2,500 for counties with 50 polling locations or less; and,
- c) \$3,000 for counties with polling locations of more than 50.

Funding Period:

Obligations for eligible expenditures must be incurred during the following time periods:

- a) For budgets submitted prior to January 1, 2008 - January 1, 2005 through December 31, 2008. All funds must be drawdown by that time.
- b) For budgets submitted on or after January 1, 2008 - January 1, 2006 through December 31, 2009. All funds must be drawdown by that time.

Funding Requirements:

A copy of the "Americans with Disabilities Act (ADA) Checklist for Polling Places" must be completed and kept on file with the County Clerk or Election Administrator for the county. A copy of the checklist can be found at <http://www.usdoj.gov/crt/ada/votingck.htm>.

All Texas counties must be in compliance with all applicable federal and state laws and regulations, including the terms and conditions set forth in the acceptance of the grant. The terms and conditions can be viewed at <http://www.sos.state.tx.us/elections/hava/funding.shtml> under the bullets labeled Making Polling Places Accessible and Provide the Same Opportunity for Access and Participation to Individuals with Disabilities Terms and Conditions of Grant Funding.

Requesting the Application:

The county judge, as chief executive officer for the county, must submit a budget via the Texas HAVA online grant system (<http://hava.tamu.edu/>) and be approved by the Secretary of State's Office. The county judge will use the same user ID and password that was used for previous HAVA funding requests (e.g., voting system acquisition funding). For inquiries, contact Dan Glotzer or Jennifer Templeton toll-free at 1-800-252-8683 or email [dglotzer@sos.state.tx.us](mailto:dglotzer@sos.state.tx.us) or [jtempleton@sos.state.tx.us](mailto:jtempleton@sos.state.tx.us).

Budget Submission Deadline:

Budgets may be submitted via the Texas HAVA online grant system effective immediately and will be accepted through August 31, 2009.

TRD-200803783

Ann McGeehan

Director of Elections

Office of the Secretary of State

Filed: July 24, 2008



## Texas Department of Transportation

### Notice - Deadline Extended for Public Comments

In the August 1, 2008, issue of the *Texas Register* (33 TexReg 6121), the Texas Department of Transportation proposed amendments and new sections to Chapter 17, Vehicle Titles and Registration, Subchapter B, Motor Vehicle Registration, §17.40, §17.41, and §17.51, concerning specialty license plates.

The deadline for receipt of comments on the proposed amendments and new sections was originally set for August 18, 2008. **This notice is to extend the public comment period to 5:00 p.m. on September 2, 2008.** Additional information may be obtained from Rebecca Davio, Director, Vehicle Titles and Registration Division, 125 East 11th Street, Austin, Texas 78701-2483.

TRD-200803782  
Bob Jackson  
General Counsel  
Texas Department of Transportation  
Filed: July 24, 2008



### Public Hearing - State Highway 121

Public Hearing for Proposed Removal and Transfer to the North Texas Tollway Authority of a Portion of State Highway (SH) 121 in Denton and Collin Counties.

Pursuant to Transportation Code, §228.151 and 43 TAC §27.13, the Texas Department of Transportation (department) will conduct public hearings on Monday, August 18, 2008 at 6:00 p.m., at the Christopher A. Parr Library, 6200 Windhaven Parkway, Plano, Texas 75093 and Tuesday, August 19, 2008, at 6:00 p.m., at The Colony, City Hall Council Chamber, 6800 Main Street, The Colony, Texas 75056, to receive comments from interested persons concerning the proposed removal from the state highway system and transfer to the North Texas Tollway Authority (authority) of a portion of State Highway 121 from the ramp pair on the west side of FM 2281 to the ramp pair on the east side of the Hillcrest Road overpass in Denton and Collin counties, to be utilized by the authority under Transportation Code, Chapter 366 for the design, financing, construction, operation, and maintenance of a turnpike project.

Transportation Code, §228.151 authorizes the department to lease, sell, or transfer in another manner a toll project or system that is part of the state highway system, including a nontolled state highway or a segment of a nontolled state highway converted to a toll project, to a governmental entity that has the authority to operate a tolled highway. A lease, sale, or transfer is subject to a prior public hearing in each county in which the project is located, and is subject to the Texas Transportation Commission (commission) and the Governor approving the transfer of the toll project or system as being in the best interests of the state and the entity receiving the project or system. Transportation Code, §228.153 requires the authority to reimburse the department for any expenditures of the department for the financing, design, development, construction, operation, or maintenance of the highway that have not been reimbursed with the proceeds of bonds issued for the highway, unless the commission finds that the transfer will result in substantial net benefits to the state, the department, and the public that equal or exceed that cost.

Criteria and guidelines for the approval of the transfer have been adopted by rule by the commission in 43 TAC §27.13, and specify that the commission may, after considering public comments received, approve the transfer of a toll project to the authority, if:

- (1) the authority agrees, through a written commitment, to:
  - (A) assume all liability and responsibility for the safe and effective maintenance and operation of the highway on its transfer;
  - (B) assume all liability and responsibility for existing and future environmental permits, issues, and commitments, including obtaining all environmental permits and approvals and for compliance with all federal and state environmental laws, regulations, and policies applicable to the highway and related improvements;

(C) provide for public involvement and to conduct a study of the social and environmental impact of all proposed improvements to the toll project; and

(D) if applicable, comply with the design and construction standards of 43 TAC §27.15 when developing projects on the transferred highway; and

(2) the commission finds that the transfer:

(A) is in the best interests of the state;

(B) is in the best interests of the entity receiving the project; and

(C) will not adversely affect:

(i) the financial viability of the project; or

(ii) regional mobility.

The commission may not approve the transfer unless the governor approves the transfer as being in the best interests of the state and the entity receiving the project.

Metes and bounds description and maps and drawings showing the proposed portion of SH 121 to be transferred and other information concerning the proposed transfer are on file and available for public inspection and copying by contacting Robert Hall, Texas Department of Transportation, 4777 E. Hwy 80, Mesquite, TX 75150-6643, telephone (214) 320-6157.

All interested citizens are invited to attend this public hearing, which will be conducted in accordance with the procedures specified in 43 TAC §1.5. Speakers will be recognized in the order registered. Any interested person may appear and offer comments or testimony, either orally or in writing; however, questioning of those making presentations will be reserved exclusively to the presiding authority as may be necessary to ensure a complete record. While any person with pertinent comments or testimony will be granted an opportunity to present them during the course of the hearing, the presiding authority reserves the right to restrict testimony in terms of time and repetitive comment. Groups, organizations, or associations are encouraged to present their commonly held views, and same or similar comments, through a representative member where possible. Presentations must remain pertinent to the issue being discussed. A person may not assign a portion of his or her time to another speaker. A person who disrupts a public hearing must leave the hearing room if ordered to do so by the presiding officer.

Persons with disabilities who plan to attend the hearing and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or Braille, are requested to contact the Dallas District Public Information Office, Texas Department of Transportation, 4777 E. Hwy 80, Mesquite, TX 75150-6643, telephone (214) 320-6100 at least two work days prior to the hearing so that appropriate arrangements can be made.

Written comments may be submitted following the public hearing to Mark Tomlinson, P.E., Director, Texas Turnpike Authority Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for submitting written comments is 5:00 p.m. on Monday, August 25, 2008.

TRD-200803988  
Bob Jackson  
General Counsel  
Texas Department of Transportation  
Filed: July 30, 2008



## Public Notice of FEIS (Grand Parkway Segment F-2), Harris County

Pursuant to Title 43, Texas Administrative Code, §2.5(e)(8)(B), the Texas Department of Transportation is advising the public of the availability of the Final Environmental Impact Statement (FEIS) for the proposed construction of State Highway 99, SH 249 to IH 45 (the Grand Parkway Segment F-2) northwest of Houston in Harris County, Texas. Comments regarding the FEIS may be submitted via email to:

segmentf2comments@grandpky.com

or to The Grand Parkway Association, Attention: Segment F-2 Comments, 4544 Post Oak Place, Suite 222, Houston, Texas 77027 or the Director of Project Development at the Texas Department of Transportation's Houston District Office, 7600 Washington Avenue, Houston, Texas. Comments are due by 5:00 p.m. on September 17, 2008. The Texas Department of Transportation's (department) mailing address is P.O. Box 1386, Houston, Texas 77251-1386.

The purpose of the proposed action is to provide improved access to the existing and future thoroughfare system, reduce area traffic congestion, improve safety, and improve area-wide mobility. A full range of alternatives were identified and evaluated for Segment F-2 at the corridor level (five corridors), transportation mode level (No Build, Transportation System Management Alternatives, Travel Demand Alternatives, and Modal Alternatives), and at the alignment level. The proposed action consists of the construction of a controlled access tollway from SH 249 to IH 45 in Harris County, a distance ranging from 12.0 to 13.0 miles, depending on the alternative alignment considered. The proposed facility will consist of a four-mainlane controlled access tollway within a 400-foot (right of way) width. A total of seven build alternative alignments, in addition to the No-Build alternative, have been presented in the FEIS. All seven alternative alignments lie between SH 249 and IH 45 in a west-east direction and begin approximately 0.2 miles south of Boudreaux Road. Alternative Alignment A traverses mainly through the center of the study area. This alignment alternative terminates at IH 45, approximately 0.6 miles north of Spring Stuebner Road and is 12.5 miles in length. Alternative Alignment B traverses mainly through the southern portion of the study area. Alternative Alignment B terminates approximately 0.1 miles south of the Hardy Toll Road and IH 45 intersection and is 13.0 miles in length. Alternative Alignment C passes through the north and middle portion of the study area. Alternative Alignment C terminates at the same location as Alternative Alignment A and is 12.2 miles in length. Alternative Alignment D passes through the middle of the study area from Boudreaux Road approximately 0.3 mile northeast of FM 2920 for approximately 7.0 miles before ending at the same location as Alternative Alignment C and is 12.0 miles in length. Alternative Alignment E passes through the northern portion of the study area where it ends at the same location as Alternative Alignment B and is 12.5 miles in length. Alternative Alignment F passes through the northern portion of the study area before ending at the same location as Alternative Alignment C and is 12.1 miles in length.

The preferred corridor and transportation mode and the recommended alternative alignment, as presented in the Draft Environmental Impact Statement (DEIS), were selected after careful consideration and assessment of the potential environmental impacts and evaluation of agency and public comments. After consideration of all agency and public comments received on the Revised Draft Environmental Impact Statement (RDEIS) of 2006 and the original DEIS of 2004, coordination with landowners, as well as updated environmental data, the Grand Parkway Association, in coordination with department and Federal Highway Administration (FHWA), selected a Preferred Alternative Alignment. It was determined after careful review of the RDEIS and DEIS comments that a shift of the Recommended Alterna-

tive Alignment shown in the RDEIS in two locations was necessary to create a Preferred Alternative Alignment. These shifts are as follows:

In Reach 7, near Boudreaux Road, where the Recommended Alternative Alignment passed through a portion of the Spring Terrace subdivision, the alignment was shifted approximately 120 feet to the northeast, thereby avoiding four platted home sites.

In the far eastern end of Reach 7, the Recommended Alignment was modified to a route more closely in line with Alternative Alignment A, with an added dip to the south near the border of Reach 8. This adjustment allowed engineers of the roadway to avoid a relocation of the railroad which had been included in the Recommended Alternative Alignment. Relocating the railroad necessitated additional Right-of-Way impacts and would have added a large expense in time, energy, and money. This modification does not increase impacts to any other resource.

The preferred build alternative that has emerged from the study was proposed on the basis of its ability to best facilitate the projects Need and Purpose while minimizing impacts to the natural, physical, and social environments. The Preferred Build Alternative Alignment is approximately 12.01 miles long. It begins at SH 249 approximately 0.2 miles south of Boudreaux Road, the alignment travels east approximately 1.8 miles, then heads northeast approximately 2.5 miles, running parallel and adjacent to Boudreaux Road. After crossing FM 2920, the Preferred Alternative Alignment travels east 1.2 miles before veering northeast for 0.8 miles and crossing Boudreaux Road and Kuykendahl Road just north of the Spring Terrace subdivision. Continuing northeast, crossing Northcrest Drive, and then turning eastward to a crossing of Gosling Road and on to a joint crossing of Rothwood Drive and the Union Pacific Railroad (UPRR). The alignment turns east-southeast parallel to and north of the UPRR tracks until it turns northeast to connect to IH 45, approximately one mile south of the IH 45/Hardy Toll Road interchange. The Preferred Alternative Alignment for Segment F-2 would require the acquisition of new right of way (630 acres), the adjustment of utility lines, and the filling of aquatic resources including jurisdictional wetlands (58.89 acres). The Preferred Alignment as presented in the FEIS would displace 120 residential properties and nine commercial properties. No archeological sites, historic properties, or endangered species are expected to be affected.

Copies of the FEIS may be viewed at the Grand Parkway Association website, [www.grandpky.com](http://www.grandpky.com); at the offices of the Grand Parkway Association or the Texas Department of Transportation's Houston District (addresses previously mentioned); at the Houston Public Library, Central Branch, 500 McKinney, Houston, Texas; at the Harris County Public Library, Tomball Branch, 30555 Tomball Parkway, Tomball, Texas; at the Harris County Public Library, Northwest Branch, 11355 Regency Green Drive, Cypress, Texas; and at the Harris County Public Library, Barbara Bush Branch, 6817 Cypresswood Drive, Spring, Texas. Copies of the FEIS and other information about the project may be obtained at the Grand Parkway Association office or the department's Houston District Office. For further information, please contact David Gornet, P.E. at (713) 965-0871 or Pat Henry, P.E. at (713) 802-5241.

TRD-200803987

Joanne Wright

Deputy General Counsel

Texas Department of Transportation

Filed: July 30, 2008

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**University of North Texas System**

## Notice of Intent to Extend Consulting Services Contract Related to Government Relations

Pursuant to the provisions of Texas Government Code, Chapter 2254, the University of North Texas (UNT) System intends to extend a contract for consulting services related to federal government relations. The consulting services have been provided by Congressional Solutions, Inc. under a contract beginning May 17, 2005, and ending August 31, 2008.

As required by Chapter 2254 of the Texas Government Code, prior to extending its contract with Congressional Solutions, Inc., UNT System is posting this Notice of Intent to Extend Consulting Services Contract, and hereby extends this invitation to qualified and experienced consultants interested in providing the consulting services described in this notice.

### Scope of Work:

The federal government relations consulting firm will assist UNT System and its member institutions in: developing and executing a government relations strategy to attract support for research facilities, equipment, technology, and programs through federal initiatives pertaining, but not limited to, the United States Congress, federal agencies, and related entities; evaluating research resources, developing concepts and themes for agreed upon research initiatives, developing objectives and strategies in presenting opportunities to utilize the available resources of UNT for existing and new initiatives, formulating strategies and timetables for presentation of research and related initiatives, preparing supporting documentation, coordinating meetings with elected representatives and legislative staff, serving as a liaison to all federal entities, and preparing testimony for presentation; developing legislative strategies; and monitoring and reporting on government programs relevant to research initiatives and other areas of interest to UNT System and its member institutions.

### Specifications:

Any consultant submitting an offer in response to this invitation must provide the following: (1) the consultant's legal name, type of entity (individual, partnership, corporation, etc.), and address; (2) background information regarding the consultant, including the number of years in business and the number of employees; (3) information regarding the qualifications, education, and experience of the team members proposed to conduct the requested services; (4) the monthly fee to be charged for providing the services and any applicable hourly rate for any team member providing services; (5) the earliest date by which the consultant could begin providing the services; (6) a list of five client references, including any complex institutions or systems of higher education for which the consultant has provided similar consulting services; (7) a statement of the consultant's approach to providing the services described in the Scope of Work section of this invitation, any unique benefits the consultant offers UNT System, and any other information the consultant desires UNT System to consider in connection with the consultant's offer; (8) information to assist UNT System in assessing the consultant's demonstrated competence and experience providing consulting services similar to the services requested in this invitation; (9) information to assist UNT System in assessing the consultant's experience performing the requested services for other complex institutions or systems of higher education; (10) information to assist UNT System in assessing whether the consultant will have any conflicts of interest in performing the requested services; (11) information to assist UNT System in assessing the overall cost to UNT System; and (12) information to assist UNT System in assessing the consultant's capability and financial resources to perform the requested services.

### Selection Process:

The consulting services sought herein relate to services previously provided to UNT System by Congressional Solutions, Inc. UNT System intends to extend its contract with Congressional Solutions, Inc. unless a better offer, as determined by UNT System in its sole discretion, is received in response to this invitation.

The successful offer must be submitted in response to this invitation no later than the submittal deadline and will be the offer that is the most advantageous to UNT System in UNT System's sole discretion. Offers will be evaluated by UNT System and member institution personnel. The evaluation of offers and the selection of the successful offer will be based on information provided to UNT System by the consultant in response to the Specifications section of this invitation. Consideration may also be given to any additional information and comments if such information or comments increase the benefits to UNT System. The successful consultant will be required to enter into a contract acceptable to UNT System.

### Finding by Chancellor:

The Chancellor of UNT System finds that the consulting services are necessary because UNT System does not have the specialized experience or the staff resources available in Washington, D.C. to support existing and proposed programs of UNT System and its member institutions. UNT System believes that such expert consulting services will be cost effective by expanding federal investment in research, teaching, and related programs in Texas throughout UNT System's member institutions.

### Submittal Deadline:

To respond to this invitation, consultants must submit the information requested in the Specifications section in a clear and concise written format to: Carrie Stoeckert, Assistant Director of PPS, University of North Texas System, P.O. Box 310499, Denton, TX 76203 (2310 North Interstate 35-E, Denton, TX 76201). Offers must be submitted in an envelope or other appropriate container, and the name and return address of the consultant must be clearly visible. All offers must be received at the above address no later than 4:00 p.m., CST, Monday, August 25, 2008. Submissions received after the submittal deadline will not be considered.

TRD-200803793

Carrie Stoeckert

Assistant Director of Purchasing and Payment Services

University of North Texas System

Filed: July 25, 2008

## The University of Texas System

### Award of Consultant Contract Notification

The University of Texas System ("University"), in accordance with the provisions of *Texas Government Code*, Chapter 2254, entered into a contract for consulting services ("Contract") with Knowledge Reservoir, LLC ("Consultant") as more particularly described in the Invitation for Consultants to Provide Offers of Consulting Services ("Invitation"), published in the *Texas Register* on June 6, 2008 (33 TexReg 4575).

### Project Description:

In accordance with the Invitation and Consultant's response thereto, Consultant shall provide University with the following services as identified in the IFO Scope of Work:

\* Determine the risks and revenue generated from drilling with 100% working interest on University Lands or alternatively in the Permian Basin.

\* Determine the risks and revenue generated from reserving a right to take a set working interest within leases.

\* Determine the historical risks and revenue generated over the last 10 years if a working interest had been taken or reserved on University Lands leases issued over that time period.

\* Evaluate different working business models that would increase revenue with some risk tolerance.

\* Determine staffing requirements for all determined scenarios.

Name and Address of Consultant:

Knowledge Reservoir, LLC.

1800 West Loop South, Suite 1000

Houston, Texas 77027

Attention: Steve Knabe

Total Value of Contract: \$99,800.00

Contract Dates: The Contract was executed by Consultant on July 10, 2008, and by University on July 15, 2008, and dated effective July 15, 2008.

Due Dates for Contract Products: The consulting services will be completed and delivered to University no later than September 30, 2008.

The term of the Contract expires on September 30, 2008.

TRD-200803781

Francie A. Frederick

General Counsel to the Board of Regents

The University of Texas System

Filed: July 23, 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).