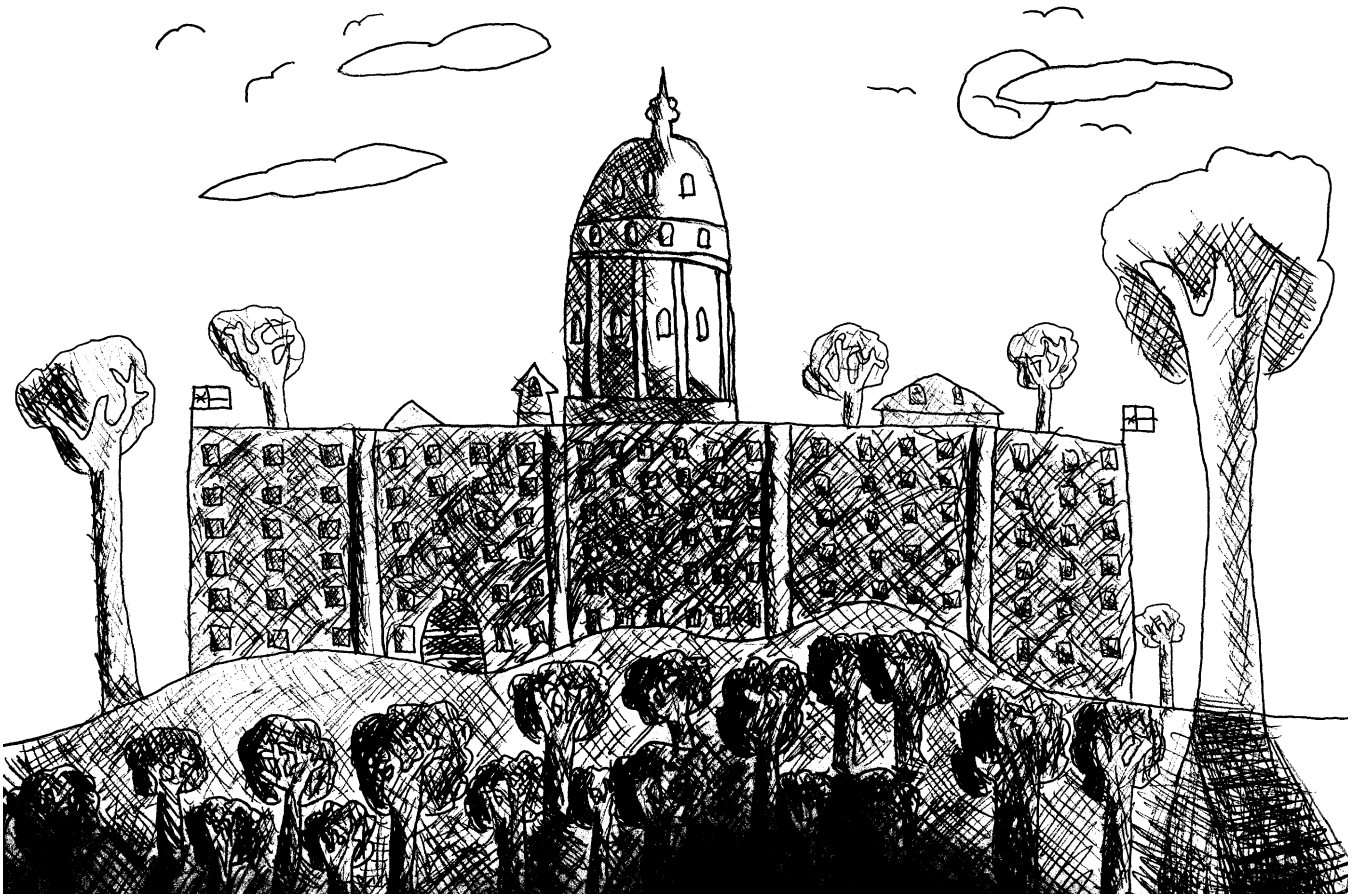

TEXAS REGISTER

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

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Open Meetings

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

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

Members of the public also may view these notices during regular office hours from a computer terminal in the lobby of the James Earl Rudder Building, 1019 Brazos (corner of 11th Street and Brazos) Austin, Texas. To request a copy by telephone, please call 463-5561 in Austin. For out-of-town callers our toll-free number is 800-226-7199. Or request a copy by email: register@sos.state.tx.us

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

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

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

<http://www.oag.state.tx.us/opinopen/opengovt.shtml>

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

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

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

THE ATTORNEY GENERAL

Under provisions set out in the Texas Constitution, the Texas Government Code, Title 4, §402.042, and numerous statutes, the attorney general is authorized to write advisory opinions for state and local officials. These advisory opinions are requested by agencies or officials when they are confronted with unique or unusually difficult legal questions. The attorney general also determines, under authority of the Texas Open Records Act, whether information requested for release from governmental agencies may be held from public disclosure. Requests for opinions, opinions, and open records decisions are summarized for publication in the *Texas Register*. The attorney general responds to many requests for opinions and open records decisions with letter opinions. A letter opinion has the same force and effect as a formal Attorney General Opinion, and represents the opinion of the attorney general unless and until it is modified or overruled by a subsequent letter opinion, a formal Attorney General Opinion, or a decision of a court of record. You may view copies of opinions at <http://www.oag.state.tx.us>. To request copies of opinions, please fax your request to (512) 462-0548 or call (512) 936-1730. To inquire about pending requests for opinions, phone (512) 463-2110.

Opinions

Opinion No. GA-0428

The Honorable Mike Krusee
Chair, Committee on Transportation
Texas House of Representatives
Post Office Box 2910
Austin, Texas 78768-2910

Re: Whether an individual employed as a part-time instructor at a community college may be compensated for simultaneous service as a member of the board of directors of a municipal utility district (RQ-0409-GA)

SUMMARY

An individual employed as a part-time instructor at a community college may be compensated for simultaneous service as a member of the board of directors of a municipal utility district.

Opinion No. GA-0429

The Honorable John Carona
Chair, Committee on Transportation and Homeland Security
Texas State Senate
Post Office Box 12068
Austin, Texas 78711-2068

Re: Whether Wells Independent School District is subject to the policy of the City of Alto's natural gas company regarding payment deadlines and penalty assessments or to the deadlines and late charge set forth in Government Code chapter 2251 (RQ-0411-GA)

SUMMARY

Section 2251.021 of the Government Code, rather than the payment deadlines set by the municipally owned Alto Natural Gas Company, governs the Wells Independent School District's payment of a bill

owed to the municipally owned natural gas company. Similarly, section 2251.025 governs the calculation and payment of interest on an overdue payment owed by the School District to the municipally owned natural gas company.

Opinion No. GA-0430

The Honorable Mark E. Price
San Jacinto County Criminal District Attorney
1 State Highway 150, Room 21
Coldspring, Texas 77331

Re: Authority of a county to remove an abandoned mobile home from county right-of-way (RQ-0412-GA)

SUMMARY

Under the clear terms of the applicable statutory definition of vehicle, which expressly excludes manufactured housing, a manufactured home is not included within the scope of section 545.3051, Transportation Code. Thus a county constable is not authorized by section 545.3051 to remove abandoned manufactured homes from the right-of-way of a county road. A county commissioners court may order the removal of manufactured homes pursuant to its general control over county roads and its duty to keep county roads free from obstructions. Because section 545.3051 is not applicable, all questions of potential liability would be addressed by the Texas Tort Claims Act.

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

TRD-200602749
Stacey Schiff
Deputy Attorney General
Office of the Attorney General
Filed: May 16, 2006



TEXAS ETHICS COMMISSION

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

Advisory Opinion

EAO-470. The Texas Ethics Commission has been asked to consider whether a former assistant general counsel for a state agency may represent a person in a case that was opened while the former assistant general counsel was an employee of the agency.

SUMMARY

The revolving door provision in §572.054(b) of the Government Code does not prohibit a former assistant general counsel for a state agency from representing a person in a case that was opened while the former assistant general counsel was an employee for the agency if as a state employee she did not personally participate in the case and if the case was not within her official responsibility.

The Texas Ethics Commission is authorized by §571.091 of the Government Code to issue advisory opinions in regard to the following

statutes: (1) Chapter 572, Government Code; (2) Chapter 302, Government Code; (3) Chapter 303, Government Code; (4) Chapter 305, Government Code; (5) Chapter 2004, Government Code; (6) Title 15, Election Code; (7) Chapter 159, Local Government Code; (8) Chapter 36, Penal Code; and (9) Chapter 39, Penal Code.

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

TRD-200602751
Natalia Luna Ashley
General Counsel
Texas Ethics Commission
Filed: May 16, 2006



EMERGENCY RULES

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

TITLE 19. EDUCATION

PART 7. STATE BOARD FOR EDUCATOR CERTIFICATION

CHAPTER 230. PROFESSIONAL EDUCATOR PREPARATION AND CERTIFICATION SUBCHAPTER G. CERTIFICATION REQUIREMENT FOR CLASSROOM TEACHERS

19 TAC §§230.191, 230.193 - 230.196, 230.198, 230.199

The State Board for Educator Certification is renewing the effectiveness of the emergency adoption of the amendments to §§230.191, 230.193 - 230.196, 230.198, and 230.199, for a 17-day period. The text of the amended sections was originally published in the February 3, 2006, issue of the *Texas Register* (31 TexReg 619).

Filed with the Office of the Secretary of State on May 15, 2006.

TRD-200602732

Raymond Glynn

Deputy Associate Commissioner, Educator Certification and Standards
State Board for Educator Certification

Original Effective Date: January 19, 2006

Expiration Date: June 4, 2006

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

SUBCHAPTER P. REQUIREMENTS FOR STANDARD CERTIFICATES AND SPECIALIZED ASSIGNMENTS OR PROGRAMS

19 TAC §§230.482 - 230.484

The State Board for Educator Certification is renewing the effectiveness of the emergency adoption of the amendments to §§230.482 - 230.484, for a 17-day period. The text of the amended sections was originally published in the February 3, 2006, issue of the *Texas Register* (31 TexReg 622).

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Raymond Glynn

Deputy Associate Commissioner, Educator Certification and Standards
State Board for Educator Certification

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Expiration Date: June 4, 2006

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

CHAPTER 232. GENERAL CERTIFICATION PROVISIONS

SUBCHAPTER B. CERTIFICATE RENEWAL AND CONTINUING PROFESSIONAL EDUCATION REQUIREMENTS

19 TAC §232.850, §232.851

The State Board for Educator Certification is renewing the effectiveness of the emergency adoption of the amendments to §232.850 and §232.851, for a 17-day period. The text of the amended sections was originally published in the February 3, 2006, issue of the *Texas Register* (31 TexReg 624).

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TRD-200602736

Raymond Glynn

Deputy Associate Commissioner, Educator Certification and Standards
State Board for Educator Certification

Original Effective Date: January 19, 2006

Expiration Date: June 4, 2006

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

CHAPTER 233. CATEGORIES OF CLASSROOM TEACHING CERTIFICATES

19 TAC §§233.3, 233.8, 233.10, 233.12, 233.14, 233.15

The State Board for Educator Certification is renewing the effectiveness of the emergency adoption of the amendments to §§233.3, 233.8, 233.10, and 233.12 and new §233.14 and §233.15, for a 17-day period. The text of the amended and new sections was originally published in the February 3, 2006, issue of the *Texas Register* (31 TexReg 626).

Filed with the Office of the Secretary of State on May 15, 2006.

TRD-200602738

Raymond Glynn

Deputy Associate Commissioner, Educator Certification and Standards
State Board for Educator Certification

Original Effective Date: January 19, 2006

Expiration Date: June 4, 2006

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

19 TAC §233.4

The State Board for Educator Certification is renewing the effectiveness of the emergency adoption of the amendments to §233.4, for a 17-day period. The text of the amended section was originally published in the February 3, 2006, issue of the *Texas Register* (31 TexReg 628).

Filed with the Office of the Secretary of State on May 15, 2006.

TRD-200602740

Raymond Glynn
Deputy Associate Commissioner, Educator Certification and Standards
State Board for Educator Certification
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For further information, please call: (512) 475-1497



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 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 80. MANUFACTURED HOUSING

The Manufactured Housing Division of the Texas Department of Housing and Community Affairs (the "Department") proposes amendments to §§80.11, 80.119, 80.208, 80.240 and 80.260, relating to the regulation of the manufactured housing program.

Section 80.11(28) - The new definition (Verified Claim on the HORTF) defines when a complaint is deemed to be a verified complaint with respect to the payment of claims from the Texas Manufactured Homeowners' Recovery Trust Fund.

Section 80.119(b)(3) - The new paragraph requires a person contracting for the delivery and installation of a used manufactured home to specify a date by which the installation will be provided and conditions under which this date may be extended.

Section 80.208 - The section is amended to revise subsection (a) to address filing tax liens manually and add new subsection (b) to address filing tax liens electronically. Also, subsection (d) is added to provide a method for tax collectors who file for multiple taxing units to file as a central tax collector under a single taxing unit ID number. It is not a requirement for tax collectors that file for multiple taxing units to file as a central tax collector.

Figure: 10 TAC §80.208(b) - Moved the tax lien form to §80.260(a)(14) and revised the certification statements in blocks 2 and 3 to address certifying as a central tax collector.

Section 80.240(a)(13) - Added a layout example for filing tax liens electronically.

Figure: 10 TAC §80.240(a)(13) - Tax lien layout for electronically filed tax liens.

Section 80.260(a)(14) and (15) - Moved the tax lien form from §80.208(b) and added a new form for tax collectors to file as a central tax collector if they file for multiple taxing units.

Figure: 10 TAC §80.260(a)(14) - Moved the tax lien form from §80.208(b) and revised the certification statements in blocks 2 and 3 to address certifying as a central tax collector.

Figure: 10 TAC §80.260(a)(15) - Added a new form for tax collectors to file as a central tax collector if they collect for multiple taxing units.

Timothy K. Irvine, Executive Director of the Manufactured Housing Division of the Texas Department of Housing and Community Affairs, has determined that for the first five-year period that the amendments as proposed are in effect there will be no fiscal implications for state or local government as a result of enforcing or

administering these sections. There will be no effect on small or micro-businesses because of the proposed amendments. There are no anticipated economic costs to persons who are required to comply with the rules as amended.

Mr. Irvine also has determined that for each year of the first five years the amendments as proposed are in effect the public benefit as a result of enforcing the amendments are: to clarify procedures relating to the payment of claims from the Texas Manufactured Homeowners' Recovery Trust Fund; to protect consumers of used manufactured homes by requiring the contracting installer provide a specific date of installation and conditions that may cause the date to be extended; to provide additional instructions for filing tax liens on manufactured homes that increase the Department's ability to successfully locate and record tax liens; and to provide an option for collectors that file for multiple taxing units to file as a central collector under one taxing unit ID number.

The Department will conduct a public hearing to take comments on the proposed rules on Monday, June 26, 2006 at 1:00 p.m. at 221 E. 11th Street, Room 116, Austin, Texas 78701.

Comments may be submitted to Mr. Timothy K. Irvine, Executive Director of the Manufactured Housing Division of the Texas Department of Housing and Community Affairs, P.O. Box 12489, Austin, Texas 78711-2489 or by e-mail at tim.irvine@tdhca.state.tx.us. The deadline for comments is 30 days after publication in the *Texas Register*.

SUBCHAPTER B. DEFINITIONS

10 TAC §80.11

The amendments are proposed under the Texas Manufactured Housing Standards Act, Occupations Code, Chapter 1201, §1201.052, which provides the Department with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department and under Texas Government Code, Chapter 2306, §2306.6014, which authorizes the director to administer and enforce the manufactured housing program through the Manufactured Housing Division.

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

§80.11. Definitions.

Terms used herein that are defined in the Code and the Standards Act have the meanings ascribed to them therein. The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) - (27) (No change.)

(28) Verified Claim on the HORTF--With respect to the payment of claims from the Texas Manufactured Homeowners' Re-

covery Trust Fund, a complaint is deemed to be a verified complaint at such time as:

(A) it is in proper form setting forth in a document sworn to before a notary by an injured consumer, claiming actual damages that would be reimbursable from the Fund;

(B) the amount of actual damages to be reimbursed from the Fund has been determined with certainty; and

(C) the claim has been investigated and found in all respects to be properly payable.

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 May 12, 2006.

TRD-200602652

Timothy K. Irvine

Executive Director, Manufactured Housing Division of TDHCA

Texas Department of Housing and Community Affairs

Earliest possible date of adoption: June 25, 2006

For further information, please call: (512) 475-2206



SUBCHAPTER E. GENERAL REQUIREMENTS

10 TAC §80.119

The amendments are proposed under the Texas Manufactured Housing Standards Act, Occupations Code, Chapter 1201, §1201.052, which provides the Department with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department and under Texas Government Code, Chapter 2306, §2306.6014, which authorizes the director to administer and enforce the manufactured housing program through the Manufactured Housing Division.

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

§80.119. Installation Responsibilities.

(a) (No change.)

(b) For used manufactured homes, the person contracting with the consumer for the installation of the home is the installer and must warrant the proper installation of the home. If the contracting installer subcontracts with an independent licensed installer, then the subcontractor is jointly and severally liable for the portion of the installation that the subcontractor performed. The contracting installer is responsible to furnish the consumer with the installation warranty and site preparation notice. All verification and copies of the installation warranty and site preparation notice must be maintained in the installer's installation file for a period of no fewer than six (6) years from the date of installation.

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

(3) A person contracting with a consumer for the delivery and the installation of any used manufactured home, must specify a date by which installation will be provided and the conditions under which this date may be extended.

(c) - (f) (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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Timothy K. Irvine

Executive Director, Manufactured Housing Division of TDHCA

Texas Department of Housing and Community Affairs

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For further information, please call: (512) 475-2206



SUBCHAPTER G. STATEMENTS OF OWNERSHIP AND LOCATION

10 TAC §80.208

The amendments are proposed under the Texas Manufactured Housing Standards Act, Occupations Code, Chapter 1201, §1201.052, which provides the Department with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department and under Texas Government Code, Chapter 2306, §2306.6014, which authorizes the director to administer and enforce the manufactured housing program through the Manufactured Housing Division.

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

§80.208. Recording Tax Liens on Manufactured Homes.

(a) Manually filed tax [Tax] liens shall be filed with the Department using the form provided in §80.260(a)(14) of this title (relating to Required and Optional Forms) [this section or by an electronic filing providing the same information]. No other form will be accepted for the manual filing of tax liens. The form must be properly completed.

(b) Electronically filed tax liens and tax lien releases shall be filed with the Department using the required file layout as provided in §80.240(a)(13) of this title (relating to Tables and Figures). No other format will be accepted for electronic filing of tax liens.

(c) ~~[(b)]~~ For tax liens recorded after June 18, 2005, but prior to the effective date of these rules, those tax liens relating to tax years prior to 2001 will be disregarded and will not be treated as having been recorded.

[Figure: 10 TAC §80.208(b)]

(d) If a tax collector wishes, it may file as a central tax collector under a single taxing unit ID number, in which case the liens recorded or released under that taxing unit ID number will extend to all liens created for tax obligations to the taxing units for which the filer collects. In order, however, to file as a central collector, the filer must complete and provide to the Department the form set out in §80.260(a)(15) of this title (relating to Required and Optional Forms).

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

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Timothy K. Irvine
Executive Director, Manufactured Housing Division of TDHCA
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: June 25, 2006
For further information, please call: (512) 475-2206



SUBCHAPTER H. TABLES AND FIGURES

10 TAC §80.240

The amendments are proposed under the Texas Manufactured Housing Standards Act, Occupations Code, Chapter 1201, §1201.052, which provides the Department with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department and under Texas Government Code, Chapter 2306, §2306.6014, which authorizes the director to administer and enforce the manufactured housing program through the Manufactured Housing Division.

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

§80.240. *Tables and Figures.*

(a) Tables.

(1) - (12) (No change.)

(13) Tax Lien Layout for Electronically Filed Tax Liens.

Figure: 10 TAC §80.240(a)(13)

(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.

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Timothy K. Irvine

Executive Director, Manufactured Housing Division of TDHCA

Texas Department of Housing and Community Affairs

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For further information, please call: (512) 475-2206



SUBCHAPTER I. FORMS

10 TAC §80.260

The amendments are proposed under the Texas Manufactured Housing Standards Act, Occupations Code, Chapter 1201, §1201.052, which provides the Department with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department and under Texas Government Code, Chapter 2306, §2306.6014, which authorizes the director to administer and enforce the manufactured housing program through the Manufactured Housing Division.

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

§80.260. *Required and Optional Forms.*

(a) Required Forms.

(1) - (13) (No change.)

(14) Tax Lien Record and Release Form.

Figure: 10 TAC §80.260(a)(14)

(15) Notification of filing status as a Central Tax Collector.

Figure: 10 TAC §80.260(a)(15)

(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 May 12, 2006.

TRD-200602656

Timothy K. Irvine

Executive Director, Manufactured Housing Division of TDHCA

Texas Department of Housing and Community Affairs

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For further information, please call: (512) 475-2206



TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

The Public Utility Commission of Texas (commission) proposes amendments to:

Section 26.223, relating to Prohibition of Excessive COA/SP-COA Usage Sensitive Intrastate Switched Access Rates;

Section 26.224, relating to Requirements Applicable to Basic Network Services for Chapter 58 Electing Companies;

Section 26.225, relating to Requirements Applicable to Nonbasic Services for Chapter 58 Electing Companies;

Section 26.401, relating to Texas Universal Service Fund (TUSF);

Section 26.404, relating to Small and Rural Incumbent Local Exchange Company (ILEC) Universal Service Plan;

Section 26.406, relating to Implementation of the Public Utility Regulatory Act §56.025;

Section 26.408, relating to Additional Financial Assistance (AFA); and

Section 26.423, relating to High Cost Universal Service Plan for Uncertificated Areas where an Eligible Telecommunications Provider (ETP) Volunteers to Provide Basic Local Telecommunications Service.

The proposed amendments will make minor, non-policy affecting, changes to Chapter 26 Substantive Rules to bring them into conformance with associated minor changes in the Public Utility Regulatory Act (PURA) brought about by Senate Bill 5, 79th Legislature, Second Called Session. Substantive Rules §26.417 and §26.420 have also been found to require minor modifications to bring them into conformance with associated minor changes in PURA, but these two sections already have pending proposed rule changes (Project Numbers 24522 and 29077). Therefore, additional rulemaking will not proceed on §26.417 and §26.420

until the prior proposed rule changes go into effect. Project Number 32136 is assigned to this proceeding.

Rick Talbot, Policy Analyst, Communications Industry Oversight, and James Tourtelott, Staff Attorney, Telecommunications Legal Section, have determined that for each year of the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Talbot and Mr. Tourtelott have determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing the section will be the administrative efficiency of the Chapter 26 Substantive Rules conforming to PURA. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this section. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Mr. Talbot and Mr. Tourtelott have also determined that for each year of the first five years the proposed section is in effect there should be no effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act (APA), Texas Government Code §2001.022.

The commission staff will conduct a public hearing on this rule-making, if requested pursuant to the Administrative Procedure Act, Texas Government Code §2001.029, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701 on Thursday, July 13, 2006, at 10:00 a.m. The request for a public hearing must be received within 31 days after publication.

Comments on the proposed amendments may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 31 days after publication. Sixteen copies of comments to the proposed amendment are required to be filed pursuant to §22.71(c) of this title. Reply comments may be submitted within 45 days after publication. Comments should be organized in a manner consistent with the organization of the proposed rule(s). The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed section. The commission will consider the costs and benefits in deciding whether to adopt the section. All comments should refer to Project Number 32136.

SUBCHAPTER J. COSTS, RATES AND TARIFFS

16 TAC §§26.223 - 26.225

These amendments are proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2005) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, and, specifically, §§52.155(a) and (c), 56.021, 56.025(a), 56.026(e), 58.051, 58.151, and Chapter 65, which provide the authority for the various rule changes made herein.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 52.155(a) and (c), 56.021, 56.025(a), 56.026(e), 58.051, 58.151, and Chapter 65.

§26.223. *Prohibition of Excessive COA/SPCOA Usage Sensitive Intrastate Switched Access Rates.*

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

(c) Requirements for COA/SPCOA usage sensitive intrastate switched access rates. A telecommunications utility that holds a COA or a SPCOA may not charge a higher aggregate amount, including any rate elements not charged by the holder of the certificate of convenience and necessity (CCN), for originating or terminating usage sensitive intrastate switched access than the prevailing rates charged by the CCN holder or the holder of a COA issued under Chapter 65 in whose territory the call originated or terminated unless:

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

(d) Governance of Switched Access Rates under PURA Chapter 65. Notwithstanding subsection (c) of this section, PURA Chapter 65 governs the switched access rates of a company that holds a COA issued under PURA Chapter 65.

(e) ~~(f)~~ Statewide average composite rates. The commission shall establish weighted statewide average composite usage sensitive intrastate switched access rates within 60 days of the effective date of this section. Weighted statewide average composite usage sensitive intrastate switched access rates will be developed based upon the submission of CCN holders' compliance filings pursuant to subsection (g) ~~(f)~~ of this section.

(1) Methodology. The commission shall employ the following methodology for development of the weighted statewide average composite usage sensitive intrastate switched access rates separately for each originating and for each terminating rate element category in subsection (g) ~~(f)~~(1)(A)-(F):

(A) Each CCN holder's individual rate elements' rates will be multiplied by the total actual minutes of use (MOUs) for that rate element, producing a total revenue for each rate element for each CCN holder.

(B) Revenues for each CCN holder's rate element will be added to create a statewide total revenue for that rate element.

(C) The actual MOUs for each CCN holder's rate element will be added to create a statewide total actual MOUs for that rate element.

(D) The statewide total revenue for that rate element will be divided by the statewide total actual MOUs for that rate element, producing a weighted statewide average composite usage sensitive intrastate switched access rate for that switched access rate element.

(2) Recalculation.

(A) The commission shall re-calculate the weighted statewide average composite usage sensitive intrastate switched access rates biennially based upon the submissions of the CCN holders, as required in subsection (g) ~~(f)~~ of this section. The re-calculated rates will become effective November 1 of that year.

(B) Any certificated telecommunications utility may file a petition requesting that the commission re-calculate the weighted statewide average composite usage sensitive intrastate switched access rates at any time, but no sooner than six months from the effective date of this section or most recent re-calculation. The commission shall initiate re-calculation if it concludes that the petition has provided just cause for re-calculation.

(C) As provided in subsection (g) ~~(f)~~ of this section, the commission may also require compliance submissions by CCN holders for re-calculation of the weighted statewide average composite usage sensitive intrastate switched access rates as appropriate because of significant changes in usage sensitive intrastate switched access rates or in response to the request of affected parties, as specified in subparagraph (B) of this paragraph.

(f) [~~(e)~~] Approval of higher rates.

(1) A COA/SPCOA holder seeking approval of originating and/or terminating usage sensitive intrastate switched access rates that in the aggregate, including any rate elements not charged by the CCN holder, are higher than the aggregate of the originating and/or terminating usage sensitive switched access rate elements charged by the CCN holder in the COA/SPCOA's territory may do so by filing an application with the commission subject to the procedures outlined in Procedural Rule §22.33 of this title (relating to Tariff Filings). The COA/SPCOA's application must provide, at a minimum, the following information:

- (A) Cost justification for each rate element.
- (B) Rationale for implementation of the higher rate for each rate element.

(2) A COA/SPCOA holder's application must address all of the applicable switched access rate elements in subsection (b) of this section.

(3) The commission shall publish notice of the application in the *Texas Register*.

(g) [~~(f)~~] Requirement for CCN holders compliance submissions.

(1) Within 30 days from the effective date of this section, all CCN holders must provide the following intrastate data to the commission as a compliance filing:

- (A) The current tariffed rate for originating and terminating CCL.
- (B) The current tariffed rate for originating and terminating LS.
- (C) The current tariffed rate for originating and terminating TR.
- (D) The current tariffed rate for originating and terminating TS.
- (E) The current average per minute rate for originating and terminating TST.
- (F) The current originating and terminating tariffed rate(s) for any other usage sensitive intrastate switched access rate element(s).

(G) The total actual originating and terminating MOUs for the most recent 12 month period for each rate element in subparagraphs (A) - (F) of this paragraph.

(2) Biennially all CCN holders must provide the following intrastate data to the commission as a compliance filing by June 1 of the year:

- (A) The current tariffed rate for originating and terminating CCL.
- (B) The current tariffed rate for originating and terminating LS.
- (C) The current tariffed rate for originating and terminating TR.
- (D) The current tariffed rate for originating and terminating TS.
- (E) The current average per minute rate for originating and terminating TST.

(F) The current originating and terminating tariffed rate(s) for any other usage sensitive intrastate switched access rate element(s).

(G) The total actual originating and terminating MOUs for the most recent 12 month period for each rate element in subparagraphs (A) - (F) of this paragraph.

(h) [~~(g)~~] Requirements of COA/SPCOA holders compliance submissions.

(1) Within 90 days of the effective date of this section, each COA/SPCOA holder shall either:

- (A) file an application under subsection (f) [~~(e)~~] of this section;
- (B) file compliance tariffs/price lists effective 125 days from the effective date of this section containing originating and terminating usage sensitive intrastate switched access rates that do not exceed the prevailing rates charged by the CCN holder in each territory in which the COA/SPCOA holder operates;
- (C) file compliance tariffs/price sheets with originating and terminating usage sensitive intrastate switched access rates that do not exceed the weighted statewide average composite usage sensitive switched access rates established by the commission effective 125 days from the effective date of this section; or
- (D) file a letter with the commission demonstrating that no rate revisions are necessary in order to comply with this section.

(2) If the commission subsequently recalculates the weighted statewide average composite usage sensitive switched access rates, no later than 30 days after the commission recalculates the weighted statewide average composite usage sensitive switched access rates, COA/SPCOA holders shall either:

- (A) file an application under subsection (f) [~~(e)~~] of this section;
- (B) file compliance tariffs/price lists effective 45 days from the filing date of the compliance tariffs/price lists containing originating and terminating usage sensitive intrastate switched access rates that do not exceed the prevailing rates charged by the CCN holder in each territory in which the COA/SPCOA holder operates;
- (C) file compliance tariffs/price sheets with originating and terminating usage sensitive intrastate switched access rates that do not exceed the recalculated weighted statewide average composite usage sensitive switched access rates established by the commission effective 45 days from the filing date of the compliance tariffs/price sheets; or
- (D) file a letter with the commission demonstrating that no rate revisions are necessary in order to comply with this section.

(3) If a COA/SPCOA holder establishes usage sensitive intrastate switched access rates pursuant to paragraphs (1)(B) or (2)(B) of this subsection and the underlying CCN holder(s) whose rates were the basis for the COA/SPCOA holder's usage sensitive intrastate switched access rates are modified, no later than 30 days after said CCN holder's rates are modified, the COA/SPCOA holder shall either:

- (A) file an application under subsection (f) [~~(e)~~] of this section;
- (B) file compliance tariffs/price lists effective 45 days from the filing date of the compliance tariffs/price lists containing originating and terminating usage sensitive intrastate switched access rates that do not exceed the prevailing rates charged by the CCN holder in each territory in which the COA/SPCOA holder operates;

(C) file compliance tariffs/price sheets with originating and terminating usage sensitive intrastate switched access rates that do not exceed the most recent commission established weighted statewide average composite usage sensitive switched access rates established by the commission effective 45 days from the filing date of the compliance tariffs/price sheets; or

(D) file a letter with the commission demonstrating that no rate revisions are necessary in order to comply with this section.

(i) ~~[(H)]~~ *Texas Register* notice. Notice shall be published in the *Texas Register* at the time of a CCN holder's application with the commission to revise its usage sensitive intrastate switched access rates or when the commission re-calculates the weighted statewide average composite usage sensitive intrastate switched access rates.

§26.224. *Requirements Applicable to Basic Network Services for Chapter 58 Electing Companies.*

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

(c) Basic network services.

(1) Services included in basic network services. Unless reclassified pursuant to PURA §58.024, the following are classified as basic network services pursuant to PURA §58.051(a):

(A) - (J) (No change.)

(K) Residential caller identification services if the customer to whom the service is billed is at least 65 years of age ~~[Residential call waiting service]~~.

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

(6) At the election of the affected incumbent local exchange company, the price for basic network service shall also include the fees and charges for any mandatory extended area service arrangements, mandatory expanded toll-free calling plans, and any other service included in the definition of basic network service.

(7) A nonpermanent expanded toll-free local calling service surcharge established by the commission to recover the costs of mandatory expanded toll-free local calling service:

(A) is considered a part of basic network service;

(B) may not be aggregated under subsection (c)(6) of this section; and

(C) continues to be transitioned in accordance with commission orders and substantive rules.

(d) - (l) (No change.)

§26.225. *Requirements Applicable to Nonbasic Services For Chapter 58 Electing Companies.*

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

(c) Nonbasic services.

(1) Consistent with PURA §58.151 and §58.024, these services are nonbasic services:

(A) - (E) (No change.)

(F) call forwarding, call return, caller identification, call waiting and other custom calling services and call control options, except that residential call waiting is a basic network service until July 1, 2006;

(G) - (S) (No change.)

(2) (No change.)

(d) Substantive requirements. An electing company that seeks to introduce or modify rates, terms or conditions of a nonbasic service tariff shall follow the substantive requirements in this section and the procedural requirements in §26.227 of this title. Additionally, an electing company that seeks to flexibly price a nonbasic service shall follow the requirements in §26.226 of this title.

(1) Pricing standards. The price of a nonbasic service may not be preferential, prejudicial, discriminatory, predatory, or anticompetitive.

(A) Price ceilings. This subparagraph specifies the price ceilings for certain nonbasic services. Except as specified in this subparagraph, nonbasic services have no price ceiling.

(i) - (ii) (No change.)

(iii) An electing company shall provide to a residential customer the first three local directory assistance inquiries in a monthly billing cycle at a maximum price of zero dollars (\$.00) until July 1, 2006.

(iv) (No change.)

(B) (No change.)

(2) (No change.)

(e) (No change.)

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

Filed with the Office of the Secretary of State on May 11, 2006.

TRD-200602644

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

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For further information, please call: (512) 936-7223



SUBCHAPTER P. TEXAS UNIVERSAL SERVICE FUND

16 TAC §§26.401, 26.404, 26.406, 26.408, 26.423

These amendments are proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2005) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, and, specifically, §§52.155(a) and (c), 56.021, 56.025(a), 56.026(e), 58.051, 58.151, and Chapter 65, which provide the authority for the various rule changes made herein.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 52.155(a) and (c), 56.021, 56.025(a), 56.026(e), 58.051, 58.151, and Chapter 65.

§26.401. *Texas Universal Service Fund (TUSF).*

(a) (No change.)

(b) Programs included in the TUSF.

(1) - (12) (No change.)

(13) Section 26.422 of this title (relating to Subsequent Petitions for Service to Uncertificated Areas); ~~and~~

(14) Section 26.423 of this title (relating to High Cost Universal Service Plan for Uncertificated Areas where an Eligible Telecommunications Provider (ETP) Volunteers to Provide Basic Local Telecommunications Service); and[-]

(15) Section 26.424 of this title (relating to Audio Newspaper Program).

§26.404. *Small and Rural Incumbent Local Exchange Company (ILEC) Universal Service Plan.*

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

(e) Small and Rural ILEC Universal Service Plan monthly per-line support. A monthly per-line amount of support for each small or rural ILEC study area shall be determined in a one-time calculation using data from such small or rural ILEC's test year that has been audited by an independent auditor in conformance with generally accepted accounting principles (GAAP).

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

(3) Switched Access Service Rate Reductions. To the extent that the disbursements from the universal service fund under PURA §56.021(1) for small and rural local exchange companies are used to decrease the implicit support in intraLATA toll and switched access rates, the decrease shall be made in a competitively neutral manner. This paragraph expires August 31, 2007.

(f) - (h) (No change.)

§26.406. *Implementation of the Public Utility Regulatory Act §56.025.*

(a) (No change.)

(b) Applicability. An incumbent local exchange company (ILEC) serving fewer than 31,000~~[five million]~~ access lines and each cooperative may seek to recover funds from the Texas Universal Service Fund (TUSF) under this section in the following circumstances:

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

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

§26.408. *Additional Financial Assistance (AFA).*

(a) (No change.)

(b) Application. Any ILEC that has been designated by the commission as an eligible telecommunications provider (ETP) and is not an electing company under the Public Utility Regulatory Act (PURA) Chapter 58, ~~[or]~~ 59 or 65, may request AFA in a PURA §§53.105, 53.151, or 53.306 proceeding.

(c) - (d) (No change.)

§26.423. *High Cost Universal Service Plan for Uncertificated Areas where an Eligible Telecommunications Provider (ETP) Volunteers to Provide Basic Local Telecommunications Service.*

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

(e) Support for uncertificated areas where an ETP volunteers to provide service. The TUSF administrator shall disburse monthly support payments to ETPs qualified to receive support pursuant to this section. The amount of support available to each ETP shall be calculated using the base support amount available as provided under paragraph (1) of this subsection as adjusted by the requirements of paragraph (3)(B) of this subsection.

(1) Determining base support amount available to ETPs.

(A) The monthly per-line support available for uncertificated areas shall be determined by calculating the average of the

per-line support amount approved for all local telephone company exchanges of CCN holders ~~[holder's]~~ and holders of a COA issued under PURA Chapter 65 that are contiguous to the uncertificated area for which reimbursement is requested. The per line support amounts used for this calculation shall include, as appropriate, support amounts approved for only those exchanges directly contiguous to the uncertificated area for which support is being requested. The resulting average support shall apply to a line at a premises in the uncertificated area regardless of the residential or business status of the line.

(B) (No change.)

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

(f) - (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 May 11, 2006.

TRD-200602645

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Earliest possible date of adoption: June 25, 2006

For further information, please call: (512) 936-7223



CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS SUBCHAPTER J. COSTS, RATES AND TARIFFS

16 TAC §26.230

The Public Utility Commission of Texas (commission) proposes new §26.230, relating to requirements applicable to transitioning incumbent local exchange companies' (ILECs') one-day informational notice filings made pursuant to Public Utility Regulatory Act (PURA) Chapter 65, Subchapter D. Project Number 32334 has been assigned to this proceeding.

PURA Chapter 65, Subchapter D, establishes provisions and requirements for ILECs that are transitioning to a fully competitive market. A "transitioning company" is an ILEC for which at least one, but not all, of the company's markets have been deregulated by the commission. Transitioning companies may exercise pricing flexibility and introduce new services one day after providing an informational notice to the commission pursuant to PURA §65.151, §65.152 and §65.153 and, as referenced therein, PURA §58.063 and §58.153.

Ms. Janis Ervin, Senior Policy Specialist, Infrastructure Reliability Division, and Mr. James Tourtelott, Attorney, Legal Division, have determined that for each year of the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Ervin and Mr. Tourtelott have determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing this section will be the clarification of the substantive requirements and procedures

relating to the offering of new services and pricing and packaging flexibility through one-day information notice filings. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this section. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Ms. Ervin and Mr. Tourtelott have also determined that for each year of the first five years the proposed section is in effect there should be no effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act §2001.022.

The commission staff will conduct a public hearing on this rule-making, if requested pursuant to the Texas Government Code §2001.029, or deemed necessary by commission staff, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701 on Wednesday, June 21, 2006 at 10:00 a.m. The request for a public hearing must be received within 30 days after publication.

Comments on the proposed new section (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, PO Box 13326, Austin, Texas 78711-3326, within 30 days after publication. Reply comments may be submitted within 45 days after publication. Parties are also requested to e-mail an electronic copy of comments to janis.ervin@puc.state.tx.us, if possible. The commission invites specific comments regarding any costs associated with, and benefits that will be gained by, implementation of the proposed section. The commission will consider the costs and benefits in deciding whether to adopt the proposed section. All comments should refer to Project Number 32334 and §26.230.

This new section is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2005) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically, PURA §65.152 and §65.153 regarding general requirements and rate requirements for one-day informational notice filings provided by transitioning companies.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 65.152, and 65.153.

§26.230. Requirements Applicable to Chapter 65 One-day Informational Notice Filings.

(a) Application. This section applies to incumbent local exchange companies (ILECs), as defined in the Public Utility Regulatory Act (PURA) §51.002(3), with markets deregulated pursuant to PURA Chapter 65 who choose to offer services through one-day informational notice filings pursuant to PURA §§65.151 - 65.153. A transitioning company, as defined in PURA §65.002(5), which does not choose to offer services through a one-day informational notice filing must either offer services through ten day informational notice filings pursuant to §§26.227-26.229 of this title or through filings pursuant to §§26.207 - 26.211 of this title.

(b) Purpose. The purpose of this section is to establish the requirements for a transitioning ILEC to introduce new services, and/or to exercise pricing flexibility for basic and non-basic retail telecommunications services, and to outline the procedures for processing complaints regarding service offerings introduced by such informational notice filings.

(c) Pricing standards.

(1) In a market that remains regulated, the transitioning ILEC shall price its retail services in accordance with the provisions as set forth in §§26.224 - 26.226 of this title.

(2) In a deregulated market, the transitioning ILEC shall price its retail services as follows:

(A) for all services, other than basic local telecommunications service, at a price higher than the service's long run incremental costs (LRIC); and

(B) for basic local telecommunications service, at any price higher than the lesser of the service's LRIC or the tariffed price on the date the market was deregulated, provided that the company does not increase rates for stand-alone residential local exchange voice service as defined in PURA §65.002(4) before the date that the commission revises monthly per line support under the Texas High Cost Universal Service Plan pursuant to PURA §56.031, regardless of whether the company is an electing company under PURA Chapter 58.

(3) In each deregulated market, a transitioning company shall make available to all residential customers throughout that market the same price, terms, and conditions for all basic and non-basic retail telecommunications services, consistent with any pricing flexibility available to the company on or before August 31, 2005.

(4) In any market, regulated or deregulated, the transitioning ILEC may not:

(A) establish a retail rate, term, or condition that is anticompetitive or unreasonably preferential, prejudicial, or discriminatory;

(B) establish a retail rate for a basic or non-basic service in a deregulated market that is subsidized either directly or indirectly by a basic or non-basic service provided in an exchange that is not deregulated; or

(C) engage in predatory pricing or attempt to engage in predatory pricing.

(5) A rate that meets the pricing requirements of paragraph (2) of this subsection is deemed compliant with paragraph (4)(B) of this subsection.

(d) Procedures related to the filing of one-day informational notices and associated tariffs. The provisions of this subsection apply to ILECs choosing to introduce new services and/or exercise pricing and packaging flexibility through one-day informational notice filings.

(1) Notice requirements. A transitioning ILEC shall provide the informational notice required by this section to the commission, the Office of Public Utility Counsel (OPC), and to any person who holds a certificate of operating authority in the transitioning ILEC's certificated area or areas, or who has an effective interconnection agreement with the transitioning ILEC.

(2) Filing requirements.

(A) Filing of informational notice and confidential information. At the time the informational notice is filed in Central Records, a copy of the informational notice, including confidential information, shall be delivered to OPC. Copies of confidential information shall be filed in Central Records in accordance with §22.71(d) of this title.

(B) Format of filing. An informational notice under this section must include the same elements as set forth in §26.227(c)(2)(D) of this title and the following:

(i) For retail services offered in regulated markets, the transitioning company must demonstrate that the rates, terms, and

conditions comply with the requirements of subsection (c)(1) of this section and affirm that the said rates, terms and conditions comply with requirements in subsection (c)(4) of this section.

(ii) For retail services offered in deregulated markets, the transitioning company must demonstrate that the rates, terms, and conditions comply with the requirements of subsection (c)(2) of this section and affirm that the said rates, terms and conditions comply with requirements in subsection (c)(3) - (4) of this section.

(C) Access to confidential information. Access to confidential information filed with the commission as part of an informational notice filing shall be available to commission staff and OPC, upon execution of a commission approved protective agreement.

(D) Effective date. A transitioning ILEC's service offering shall be effective one-day after the transitioning ILEC files an informational notice with the commission.

(e) Notice of deficiencies and disputes as to sufficiency or appropriateness of one-day informational notice filings.

(1) The commission staff may file a notice of deficiency for incomplete filings or non-compliant filings or a pleading alleging that the service offering is inappropriately filed as a one-day informational notice.

(2) Within five working days after the date of the commission staff's filing, an applicant shall file an explanation of the actions it has taken or intends to take in response to the notice or pleading filed under paragraph (1) of this subsection.

(3) Disputes as to sufficiency or appropriateness of one-day informational notice filings shall be subject to the provisions of §26.227(d) of this title.

(f) Complaints. Complaints filed by an affected person, the Office of Public Utility Counsel or commission staff regarding service offerings introduced by one-day informational notice filings shall be subject to the provisions of §26.227(e) of this title.

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-200602631

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

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For further information, please call: (512) 936-7223



PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 71. WARRANTORS OF VEHICLE PROTECTION PRODUCTS

The Texas Department of Licensing and Regulation ("Department") proposes amendments to existing rules at 16 Texas Administrative Code (TAC), §§71.10, 71.22, 71.70, 71.80, and 71.90, a new rule at 16 TAC, §71.20, and the repeal of rules at 16 TAC, §71.21 and §71.25, regarding the regulation of warrantors of vehicle protection products.

The proposed amendments, new rule, and repeal result from the Department's review of the administrative rules at 16 TAC, Chapter 71. Pursuant to Texas Government Code, §2001.039, the Department reviewed the rules to determine if the rules should be repealed, readopted, or readopted with changes. The Notice of Intent to Review was published in the December 23, 2005, issue of the *Texas Register* and distributed to persons internal and external to the agency. The public comment period closed on January 23, 2006, and the Department received no public comments. The Department's review determined that the reasons for initially adopting the rules continue to exist but that changes to the rules should be proposed through the rulemaking process to clarify statutory and rule requirements and to bring the rules more in line with current law and Department procedure. On February 2, 2006, the Commission of Licensing and Regulation ("Commission") adopted the rule review, readopting the rules in Chapter 71 without changes, but with the intent that rule changes would be proposed based on the Department's review.

The proposal updates rule provisions in light of statutory requirements, makes technical changes and clarifications to the rules, and reorganizes provisions for greater clarity and readability.

In §71.10, the term "nonpublic information" is expanded to "non-public personal information" because the latter is the term that is used in Texas Occupations Code, Chapter 2306. The definition of the term is reorganized to be more readable, and some minor clarifying language is added. Additionally, to enhance the protection of consumer privacy, social security numbers are added to the list of items that are considered nonpublic personal information. Texas Occupations Code, §2306.204(f) states, "The commission shall adopt rules governing how a warrantor shall protect nonpublic personal information provided by a consumer to the warrantor." Pursuant to that statutory provision, the Commission has adopted rules that generally prohibit warrantors from disclosing nonpublic personal information. Because of the confidential nature of an individual's social security number, the Department believes it necessary to add the protection of this type of information to the rules.

New §71.20 incorporates registration and renewal requirements from §§71.21 and 71.25, which are proposed for repeal. The wording of subsection (a) is expanded to make clear that a warrantor must hold a current registration. This added language makes subsection (c) of §71.25, which prohibits a person with an expired registration from performing work requiring registration, unnecessary.

Section 71.22(a) is amended to require that a reimbursement insurance policy used as financial security by a warrantor include the "Vehicle Protection Product Warrantor Texas Endorsement" prescribed by the executive director or equivalent language. The endorsement includes provisions that, under Texas Occupations Code, Chapter 2306, must be stated in the policy. The rule is necessary to ensure that the policy includes the statutorily-required language. The added language of subsection (b) specifies that a resolution of a parent corporation's board of directors constitutes sufficient written proof that the parent corporation has agreed to guarantee the liabilities and obligations of an applicant or registrant.

A new subsection (g) is added to §71.70 to clarify that a registrant must maintain financial security. This provision makes clear that the registrant not only must establish financial security at the time of registration but must maintain financial security throughout its registration. Several technical corrections are also made to the section.

In §71.80 the fee structure for registrants is reorganized by separating the initial registration fee, which is set at the lowest fee level of \$500, from the renewal fees, which are based on the number of warranties under which the warrantor became obligated during the preceding twelve months. The fee for a duplicate or amended registration certificate is lowered to \$25, which is consistent with the amount the Department charges for that service in other programs. The amount should be sufficient to cover the Department's costs in providing the service.

Technical corrections are made to §71.90.

William H. Kuntz, Jr., Executive Director, has determined that for the first five-year period the proposed rules are in effect, there will be no impact to costs and no significant impact to revenues of the State as a result of enforcing or administering the proposed rules. The reduction of the duplicate or amended registration fee may slightly reduce fee revenue to the Department. The Department anticipates no impact to costs or revenues of local government.

Mr. Kuntz also has determined that for each year of the first five-year period the proposed rules are in effect, the public benefit will be greater protection of consumer privacy by generally prohibiting a warrantor from disclosing an individual's social security number. The public and registrants will also benefit from rule requirements that are easier to read and understand.

Mr. Kuntz has determined that there will be no adverse economic effect on small or micro-businesses as a result of the proposed rules. There are no anticipated economic costs to persons who are required to comply with the proposed rules.

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

16 TAC §§71.10, 71.20, 71.22, 71.70, 71.80, 71.90

The amendments and new rule are proposed under Texas Occupations Code, Chapters 51 and 2306. In particular, Texas Occupations Code, §2306.051 authorizes the Commission to adopt rules as necessary to implement Chapter 2306. Texas Occupations Code, §51.203 directs the Commission to adopt rules as necessary to implement each law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51 and 2306. No other statutes, articles, or codes are affected by the proposal.

§71.10. Definitions.

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

(1) Applicant--A person who submits to the department an application to be a warrantor of vehicle protection products.

(2) Financial statements--A balance sheet, income statement, statement of cash flows, and statement of equity reflecting the financial condition of the subject, prepared by an independent certified public accountant in accordance with generally accepted accounting principles.

(3) Net worth--The excess of total assets over total liabilities as reflected in audited financial statements.

(4) Nonpublic personal information--Information regarding an individual that is derived from the offering of vehicle protection products and vehicle protection product warranties, the sale of such products and warranties, and claims made under such warranties. ~~[The term does not include customer names, addresses, and telephone numbers, but does include customer financial and credit information as well as information concerning the price paid for a vehicle protection product or vehicle protection product warranty, the type of vehicle protection product purchased, the terms and conditions of any warranty, the expiration date of any warranty, the facts and circumstances involved in any claim made on a warranty, and the claim history of an individual. The term also includes information prohibited from disclosure by statute.]~~

(A) The term includes:

(i) customer financial and credit information,

(ii) information concerning the price paid for a vehicle protection product or vehicle protection product warranty,

(iii) the type of vehicle protection product purchased,

(iv) the terms and conditions of any warranty,

(v) the expiration date of any warranty,

(vi) the facts and circumstances involved in any claim made on a warranty,

(vii) the claim history of an individual,

(viii) social security numbers, and

(ix) information prohibited from disclosure by state or federal statute.

(B) The term does not include customer names, addresses, and telephone numbers.

(5) Registrant--A person approved by the department to be a warrantor of vehicle protection products.

§71.20. Registration and Renewal Requirements--General.

(a) No person may operate as, or offer to be, a warrantor of vehicle protection products sold or offered in this state without holding a current registration issued by the department, unless the person is exempt under Texas Occupations Code, §2306.005.

(b) Registration is valid for one year from the date issued and must be renewed annually.

(c) The required fee must accompany an application.

(d) Falsification of information on an application is cause for denial, suspension, or revocation of a registration and/or assessment of an administrative penalty.

(e) A complete application for registration renewal must be submitted on an approved department form with all required fees and proof of financial security as required by §71.22. The application for registration renewal must be filed by the expiration date, or the registration will expire.

(f) Non-receipt of a registration renewal notice from the department does not exempt a person from any requirement of this chapter.

§71.22. Registration Requirements--Financial Security Requirements.

(a) Each applicant and registrant may comply with the financial security requirement under Texas Occupations Code, Chapter 2306

by submitting to the department the information required by one of the following four paragraphs [subsections]:

(1) proof of a reimbursement insurance policy described in Texas Occupations Code, Chapter 2306; the reimbursement insurance policy must include the "Vehicle Protection Product Warrantor Texas Endorsement" prescribed by the executive director or equivalent language;

(2) an audit report and audited financial statements for its most recent fiscal year which demonstrate that either the applicant or the registrant, or the parent corporation of the applicant or registrant, if there is one, had a net worth of at least \$50 million as of the end of its most recent fiscal year;

(3) the audit report of an independent certified public accountant stating the auditor's unqualified opinion concerning the financial statements of the applicant or registrant as of the end of its most recent fiscal year, together with a certification from the same accountant who performed the audit that the applicant or registrant had a net worth in excess of \$50 million as of the end of the period audited; or

(4) the audit report of an independent certified public accountant stating the auditor's unqualified opinion concerning the financial statements of the parent corporation of the applicant or registrant as of the end of the parent corporation's most recent fiscal year, together with a certification from the same accountant who performed the audit of the parent corporation that it had a net worth in excess of \$50 million as of the end of the period audited.

(b) If the applicant or registrant relies upon the net worth of its parent corporation to satisfy the financial security requirements of Texas Occupations Code, Chapter 2306, then the applicant or registrant must furnish sufficient written proof, such as a resolution of the parent corporation's board of directors, that the parent corporation has agreed to guarantee the liabilities and obligations of the applicant or registrant relating to vehicle protection products sold or offered for sale by the applicant or registrant in this state.

(c) Notwithstanding the other provisions of this section, an applicant or registrant shall promptly provide all financial statements and information to the executive director or his designate that are requested in writing by the executive director or his designate.

§71.70. Responsibilities of Registrant.

(a) A registrant must provide the following written notification to all consumers of its vehicle protection product and warranties: "Regulated by the Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, [H-]800-803-9202, 512-463-6599." The notification shall be provided on all warranty contracts.

(b) A registrant shall notify the department in writing within thirty (30) days of any change in the information set forth in the registrant's application.

(c) A registrant shall allow the department to audit, examine, and copy any and all records maintained by the registrant pursuant to Texas Occupations Code, Chapter 2306 or relating to vehicle protection products sold or offered for sale in this state.

(d) A registrant shall provide a copy of the vehicle protection product warranty to the consumer within 10 days from the date of purchase.

(e) A registrant shall not disclose nonpublic personal information obtained in connection with the sale in this state of a vehicle protection product warranty or claims made under such a warranty, except to an entity acting on behalf of the registrant to perform the functions required to implement the vehicle protection product warranty who agrees not to disclose the nonpublic personal information.

(f) An entity acting on behalf of the registrant under subsection (e) shall not disclose nonpublic personal information unless it is necessary to fulfill the terms and conditions of the consumer's warranty.

(g) A registrant shall maintain financial security as required by §71.22.

§71.80. Fees.

(a) All fees are non-refundable.

(b) The original registration fee for a warrantor of vehicle protection products shall be \$500.

(c) The [~~original and~~] renewal registration fees shall be

(1) \$500 for registrants who became obligated as warrantors of 0 to 999 vehicle protection product warranties during the twelve (12) months preceding the date of the application;

(2) \$1,000 for registrants who became obligated as warrantors of 1,000 to 1,999 vehicle protection product warranties during the twelve (12) months preceding the date of the application; and

(3) \$1,500 for registrants who became obligated as warrantors of 2,000 or more vehicle protection product warranties during the twelve (12) months preceding the date of the application.

(d) [~~(e)~~] A \$25 [~~\$50~~] fee shall be charged for duplicate or amended registration certificates.

(e) [~~(d)~~] Late renewal fees for registrations issued under this chapter are provided under §60.83 of this title (relating to Late Renewal Fees).

§71.90. Administrative Penalties and Sanctions.

If a person violates any provision of Texas Occupations Code, Chapter 2306, any provision of 16 Texas Administrative Code, Chapter 71, or any provision of an order of the executive director [~~Executive Director~~] or commission [~~Commission~~], proceedings may be instituted to impose administrative penalties, administrative sanctions, or both administrative penalties and sanctions in accordance with the provisions of Texas Occupations Code, Chapter 2306 and[;] Texas Occupations Code, Chapter 51.[; and 16 Texas Administrative Code, Chapter 60 of this title (relating to the Texas Commission of Licensing and Regulation.)]

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 May 12, 2006.

TRD-200602662

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Earliest possible date of adoption: June 25, 2006

For further information, please call: (512) 463-6208



16 TAC §71.21, §71.25

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Licensing and Regulation or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under Texas Occupations Code, Chapters 51 and 2306. In particular, Texas Occupations Code,

§2306.051 authorizes the Commission to adopt rules as necessary to implement Chapter 2306. Texas Occupations Code, §51.203 directs the Commission to adopt rules as necessary to implement each law establishing a program regulated by the Department. The Department interprets these provisions as authorizing the repeal.

The statutory provisions affected by the proposed repeal are those set forth in Texas Occupations Code, Chapters 51 and 2306. No other statutes, articles, or codes are affected by the proposed repeal.

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 May 12, 2006.

TRD-200602663

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Earliest possible date of adoption: June 25, 2006

For further information, please call: (512) 463-6208



TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 1. AGENCY ADMINISTRATION

SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §1.16

The Texas Higher Education Coordinating Board proposes new §1.16, concerning Contracts for Materials and Services. Specifically, this new section requires that the Board approve all contractors for the purchase of materials or services through a vendor other than a state or local governmental entity if the cost for those materials or services is expected to exceed \$750,000.00. The Agency Operations Committee shall approve all such contracts if the cost is greater than \$100,000.00 but less than \$750,000.00 and the Commissioner shall approve all such contracts if the cost is less than \$100,000.00. The Commissioner is required to report to the Agency Operations Committee, describing all such contracts.

Jan Greenberg, General Counsel, has determined that for each year of the first five years the section is in effect, there will not be any fiscal implications to state or local government as a result of enforcing or administering the section.

Ms. Greenberg has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section is that the public is notified of the limitations on the authority to contract on behalf of the Board. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Jan Greenberg, General Counsel, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or by e-mail to jan.green-

berg@thehb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The new section is proposed under the Texas Education Code, §61.067, which provides the Board with the authority to contract and Texas Education Code, §61.027, which provides the Board with the authority to adopt rules.

The new section affects Texas Education Code, §61.967.

§1.16. Contracts for Materials and Services.

(a) The Board shall approve all contracts for the purchase of materials or services through a vendor other than a state or local governmental entity if the cost for those materials or services is expected to exceed \$750,000.00.

(b) The Agency Operations Committee shall approve all contracts for the purchase of materials or services through a vendor other than a state or local governmental entity if the cost for those materials or services is greater than \$100,000.00 but less than or equal to \$750,000.00.

(c) The Commissioner shall approve all contracts for the purchase of materials or services through a vendor other than a state or local governmental entity if the contract amount is less than or equal to \$100,000.00.

(d) The Commissioner shall provide a report to the Agency Operations Committee, at least quarterly, describing all contracts for the purchase of materials or services through a vendor other than a state or local governmental entity.

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 May 15, 2006.

TRD-200602693

Jan Greenberg

General Counsel

Texas Higher Education Coordinating Board

Proposed date of adoption: July 20, 2006

For further information, please call: (512) 427-6114



CHAPTER 4. RULES APPLYING TO ALL PUBLIC INSTITUTIONS OF HIGHER EDUCATION IN TEXAS

SUBCHAPTER B. TRANSFER OF CREDIT, CORE CURRICULUM AND FIELD OF STUDY CURRICULA

19 TAC §4.28

The Texas Higher Education Coordinating Board proposes amendments to §4.28(d), (j) and (k), concerning core curriculum implementation. Specifically, the amendment to subsection (d) would provide clarification to institutions of higher education regarding the institutional core curriculum a student must follow. The new subsections (j) and (k) would provide clarification to institutions of higher education regarding the specific prohibition of institutional representatives allowing exemptions or waivers for any core curriculum course or component area requirements. It would also establish a limited procedure for Board staff to approve certain accommodations to the core curriculum require-

ments at a specific institution on a case-by-case basis. Several institutions have indicated that there is confusion about how to determine whether a student is a "degree-seeking" student. The proposed amendment to subsection (d) clarifies an existing rule and provides guidance to institutions as they develop policies about identifying enrolled students as "degree-seeking." The addition of subsections (j) and (k) will insure consistency and quality in the implementation of core curricula at the diverse institutions of higher education in Texas. Since 1997, institutional decisions regarding substitutions and/or waivers of core curriculum requirements have been discouraged as a matter of policy. These clarifications and the establishment of a procedure for requesting an accommodation to an institution's core curriculum should reflect consistency and fairness while protecting the integrity of the exemplary educational outcomes for each component area of the core curriculum. The matter of waivers or exemptions to the core curriculum is not specifically addressed in the statutory requirement concerning the statewide transfer of undergraduate core curriculum, but the matter is frequently brought to Board staff by institutional representatives requesting clarification and guidance.

Dr. Carol Raney has determined that for each year of the first five years the amendments are in effect, there will not be any fiscal implications to state or local government as a result of enforcing or administering the amended section.

Dr. Raney has also determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of administering the section would be the increased ease of transfer of lower-division academic course credit and the subsequent facilitation of the Closing the Gaps Success goal through more efficient transfer practices. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the amendments as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Dr. Catherine Parsonneault ((512) 427-6168 FAX; or e-mail to Catherine.Parsonneault@thehb.state.tx.us). Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendments are proposed under the Texas Education Code, §61.827, which provides the Coordinating Board with the authority to adopt rules to implement the subchapter regarding core curriculum and other transfer curricula.

The amendments affect Texas Education Code, §61.822.

§4.28. Core Curriculum.

(a) General. In accordance with Texas Education Code, §§61.821-831, each general academic institution, community college, and health-related institution shall design and implement a core curriculum, including specific courses composing the curriculum, of no less than 42 lower-division semester credit hours. Health-related institutions should encourage their students to complete their core curriculum requirement at a general academic institution or community college.

(b) Component Areas. Each institution's core curriculum must be designed to satisfy the exemplary educational objectives specified for the component areas of the "Core Curriculum: Assumptions and Defining Characteristics" adopted by the Board; all lower-division courses included in the core curriculum must be consistent with the "Texas Common Course Numbering System," and must be consistent with the framework identified in Charts I and II of this subsection. Chart I specifies the minimum number of semester credit hours

required in each of five major component areas that a core curriculum must include (with sub-areas noted in parentheses). Chart II specifies options available to institutions for the remaining 6-12 semester credit hours.

Figure: 19 TAC §4.28(b) (No change.)

(c) Transfer of Credit--Completed Core Curriculum. If a student successfully completes the 42 semester credit hour core curriculum at a Texas public institution of higher education, that block of courses may be transferred to any other Texas public institution of higher education and must be substituted for the receiving institution's core curriculum. A student shall receive academic credit for each of the courses transferred and may not be required to take additional core curriculum courses at the receiving institution unless the Board has approved a larger core curriculum at that institution.

(d) Concurrent Enrollment.

(1) A student concurrently enrolled at more than one institution of higher education shall follow the core curriculum requirements in effect for the institution at which the student is classified as a degree-seeking student.

(2) A student who is concurrently enrolled at more than one institution of higher education may be classified as a degree-seeking student at only one institution.

(3) If a student maintains continuous enrollment from a spring semester to the subsequent fall semester at an institution at which the student has declared to be seeking a degree, the student remains a degree-seeking student at that institution regardless of the student's enrollment during the intervening summer session(s) at another institution.

(e) Transfer of Credit--Core Curriculum Not Completed. Except as specified in subsection (f) of this section, a student who transfers from one institution of higher education to another without completing the core curriculum of the sending institution shall receive academic credit within the core curriculum of the receiving institution for each of the courses that the student has successfully completed in the core curriculum of the sending institution. Following receipt of credit for these courses, the student may be required to satisfy the remaining course requirements in the core curriculum of the receiving institution.

(f) Satisfaction of Component Areas. Each student must meet the minimum number of semester credit hours in each component area; however, an institution receiving a student in transfer is not required to accept component core course semester credit hours beyond the maximum specified in a core component area.

(g) Exemplary Educational Objectives From More Than One Component Area. An institution may include within its core curriculum a course or courses that combine exemplary educational objectives from two or more component areas of the exemplary educational objectives defined in this section.

(h) Transcripts. Each institution must note core courses on student transcripts as recommended by the Texas Association of Collegiate Registrars and Admissions Officers (TACRAO).

(i) Notice. Each institution must publish and make readily available to students its core curriculum requirements stated in terms consistent with the "Texas Common Course Numbering System."

(j) Substitutions and Waivers. No institution or institutional representative may approve course substitutions or waivers of core curriculum requirements.

(k) Accommodations.

(1) The Commissioner or the Commissioner's designated staff representative may, on a case-by-case basis, approve an accommodation of a specific core curriculum component area requirement for a student with a medically-documented learning disability, including but not limited to dyslexia, dysgraphia, or Asperger's Syndrome.

(2) Accommodation shall not include a waiver or exemption of any core curriculum requirement.

(3) In requesting an accommodation under this subsection, an institution may request approval of core curriculum applicability for a course the institution offers but that is not approved as a part of that institution's core curriculum, if the institution demonstrates that the course has been approved to fulfill the same specific core curriculum component area requirement at five or more other Texas public colleges or universities. The Texas Common Course Numbering System course number may be used as evidence of the suitability of the course under this subsection.

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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Jan Greenberg

General Counsel

Texas Higher Education Coordinating Board

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For further information, please call: (512) 427-6114



CHAPTER 7. PRIVATE AND OUT-OF-STATE PUBLIC POSTSECONDARY EDUCATIONAL INSTITUTIONS OPERATING IN TEXAS SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §§7.6, 7.7, 7.9

The Texas Higher Education Coordinating Board proposes amendments to §§7.6, 7.7, and 7.9, concerning clarifying the rules and removing some incorrect references in the rules. Specifically, amendments to: §7.6(f)(2) (related to Duty to Report) adds language to clarify that the information reported will be evaluated by the Board in order to confirm that the institution continues to meet the standards of the Board; §7.7(2) (related to Qualifications of Institutional Officers) is modified to replace minimum standards for qualifications of a chief academic officer which are too rigid and which do not accurately reflect good practice in higher education with qualifications that are sufficiently flexible and more accurately convey the expectations of the higher education community; and §7.9(a) (related to Operation of Branch Campuses, Extension Centers, or Other Off-Campus Units by Exempt Institutions) is modified by removing paragraphs which created unintended consequences. These paragraphs contained redundant information, incorrect references to other sections of the rules, and unintended changes to the process of approving off-campus operations in Texas from out-of-state institutions.

Dr. Carol Raney, Acting Assistant Commissioner for Academic Affairs and Research, has determined that for each year of the first five years the amendments are in effect, there will not be

any fiscal implications to state or local government as a result of enforcing or administering the amended sections.

Dr. Raney has also determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of administering the amended sections will be a greater compliance with quality standards of the Board by institutions offering degrees to Texas citizens. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the amendments as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Carol Raney, Acting Assistant Commissioner for Academic Affairs and Research, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or carol.raney@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendments are proposed under the Texas Education Code, §61.311, which provides the Board with the authority to adopt rules relating to Subchapter G on Regulation of Private Postsecondary Educational Institutions.

The amendments affect Texas Education Code, §§61.301 - 61.319.

§7.6. Certificate of Authority--Eligibility, Applications, Renewals, and Amendments.

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

(f) Duty to Report.

(1) (No change.)

(2) Any change in principal location, ownership, governance, administrative personnel, faculty, or facilities at the institution, or any other changes relevant to the Board's standards for certification, shall be reported to the Board within ten days of the change by the chief administrative officer of the institution in order for the Board to determine if such changes adversely affect the conditions under which the certificate was granted.

(g) (No change.)

§7.7. Standards for Certificates of Authority.

The decision to grant a certificate of authority to an institution will be based on its demonstrated compliance with the following twenty-one standards. Particular attention will be paid to the institution's commitment to education, responsiveness to recommendations and suggestions for improvement, and, in the case of a renewal of a certificate of authority, record of improvement and progress following initial approval which would ensure accreditation within the time limits specified in §7.6(c)(3) of this title (relating to Certificate of Authority). The twenty-one standards represent generally accepted administrative and academic practices and principles of accredited institutions of higher education in Texas. Such practices and principles are generally set forth by regional and specialized accrediting bodies and the academic and professional societies which have established standards for their members' programs, such as the National Association of College and University Business Officers and the American Association of College Registrars and Admissions Officers.

(1) (No change.)

(2) Qualifications of Institutional Officers.

(A) The character, education, and experience in higher education of governing board members, administrators, supervisors,

counselors, agents, and other institutional officers shall be such as may reasonably ensure that the institution can maintain the standards of the Board and progress to accreditation within the time limits set by the Board [students will receive education consistent with the objectives of the course or program of study].

(B) The [In particular, the] chief academic officer shall hold an earned doctorate awarded by an institution accredited by an agency recognized by the Board or from a foreign institution demonstrated to be equivalent to an accredited institution, and shall demonstrate sound aptitude for and experience with curriculum development and assessment; accreditation standards and processes as well as all relevant state regulations; leadership and development of faculty, including the promotion of scholarship, research, and service; and the promotion of student success [be qualified by level and area of academic preparation, as well as through appropriate experience, to direct the academic affairs of the institution. In general, this requires at least five years of administrative experience at an institution of higher education accredited by a recognized accreditor or a master's degree with major in higher education administration awarded by an institution accredited by a recognized accreditor].

(C) In the case of a renewal of a certificate of authority, the institutional officers also shall demonstrate a record of effective leadership in administering the institution.

(3) - (21) (No change.)

§7.9. *Operation of Branch Campuses, Extension Centers, or Other Off-Campus Units by Exempt Institutions.*

(a) Off-Campus Operations.

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

(5) Formal Review and Evaluation.

(A) [(5)] Accreditor's on-site review and evaluation [survey]. The applicant institution shall inform its recognized accreditor of the institution's temporary authorization [initial approval] from the Board to begin operations, as provided in paragraph (4) of this subsection, so that the accreditor may conduct a site visit at the branch campus or extension center to verify compliance with that accreditor's criteria for branch campuses.

(i) [(A)] The institution shall invite the Southern Association of Colleges and Schools (SACS) to participate in the on-site review and evaluation [survey], to provide representatives to examine the institution, and to supply comments on the branch's ability to meet the standards set forth herein. The institution must inform SACS of the impending visit by its accreditor at least six weeks prior to the visit, to facilitate coordination between the two accreditors.

(ii) [(B)] The institution shall submit to the Board the report of the recognized accreditor's review and evaluation [accreditor's] and SACS' comments [to the Board].

(iii) [(C)] After examining the report [reports] of the recognized accreditor and SACS comments, the Commissioner may issue continuing approval, place conditions on continuing approval, or revoke the Board's temporary authorization [approval] of the branch campus or extension center.

(iv) [(D)] Final approval by the accreditor must be made within two years of the initial approval by the Commissioner, or the Board's temporary authorization [initial approval] will lapse.

(v) [(E)] If the accreditor denies approval, the Board's temporary authorization [approval] shall immediately expire.

(B) [(6)] Board's on-site review and evaluation [site-visit]. If the accreditor does not conduct an on-site review and eval-

uation [survey] of the branch campus or extension center, the Board will conduct an on-site review and evaluation [survey] to determine whether the branch complies with the Board's standards of operations.

(i) [(A)] The Board will invite SACS to provide representation, to accompany the visiting team, and to supply comments.

(ii) [(B)] The institution shall be assessed the fee for an on-site survey to a branch campus or extension center, as provided in §7.5(c) of this title (relating to Administrative Procedures Related to Certification of Nonexempt Institutions).

(iii) The institution shall be sent the report of the Board's review and evaluation and shall have 30 days to submit a written response to the report.

(iv) After examining the report of review and evaluation and the institution's written response, the Commissioner may issue continuing approval, place conditions on continuing approval, or revoke the Board's temporary approval of the branch campus or extension center.

[(C) The Board's review of the branch campus or extension center's application for Board approval shall follow the procedure described in §7.5(d)(2) - (4) of this title (relating to Administrative Procedures Related to Certification of Nonexempt Institutions); concerning the Board's review of applications for certificates of authority.]

[(D) The Board shall consider the reports and recommendations of the Commissioner, SACS, and the certification advisory council, and shall make a final determination regarding approval or denial of the branch campus or extension center at a regularly scheduled Board meeting.]

(6) [(7)] The Board requires reviews, including site visits, of the branch campus or extension center according to the schedule used for accreditation of the main campus by the recognized accreditor. The review will be conducted in the same manner as described in paragraph (5) [(4)] of this subsection. The Commissioner may deny continuing approval of any branch campus or extension site which fails to maintain the conditions and standards on which approval was based.

(7) [(8)] In the event of any adverse determination made under the authority of this section by [the Board or] the Commissioner, the institution shall receive notice of the determination, and shall be given the reasons for the denial in writing.

(8) [(9)] If a determination under this section is adverse to an institution, it shall become final and binding unless, within 45 days of receipt of the adverse determination, the institution invokes the administrative remedies contained in Chapter 1, subchapter B of this title (relating to Hearings and Appeals).

(9) Any change in location, ownership, governance, administrative personnel, faculty, or facilities at the of the branch campus or extension center, or any other changes relevant to the Board's standards for off-campus operations at exempt institutions, shall be reported to the Board within ten days of the change by the chief administrative officer of the institution in order for the Board to determine if such changes adversely affect the conditions under which approval to operate a branch campus, extension center, or other off-campus unit was granted.

(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.

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Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
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CHAPTER 13. FINANCIAL PLANNING SUBCHAPTER H. REPORTING OF TUITION AND FEES

19 TAC §13.142

The Texas Higher Education Coordinating Board proposes amendments to §13.142, concerning Reporting of Tuition and Fees. Specifically, proposed changes to §13.142(14) clarify that community colleges (by statute) can not charge designated tuition.

Susan Brown, Assistant Commissioner for Planning and Accountability, has determined that for each year of the first five years the amendments are in effect, there will not be any fiscal implications to state or local government as a result of enforcing or administering the amended section.

Ms. Brown has also determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of administering the amended section will be consistent use of terms regarding higher education tuition and fees. There is no effect on small businesses. There is no anticipated economic costs to persons who are required to comply with the amendments as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Lois Hollis, Assistant Commissioner for Student Services, P.O. Box 12788, Austin, Texas 78711; lois.hollis@thehb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendments are proposed under the Texas Education Code, §54.0015.

The amendments affect Texas Education Code, §54.0513.

§13.142. Definitions.

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

(1) - (13) (No change.)

(14) Tuition--Statutory, designated, and/or board-authorized tuition.

(A) (No change.)

(B) Designated tuition--A tuition charge authorized under Texas Education Code, §54.0513, that institutions other than public community colleges [~~an institution~~] may impose on any graduate or undergraduate, resident or nonresident student, in an amount that the governing board of the institution considers necessary for the effective operation of the institution.

(C) (No change.)

(15) (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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CHAPTER 21. STUDENT SERVICES SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §21.7

The Texas Higher Education Coordinating Board proposes new §21.7, concerning General Provisions. Specifically, Senate Bill 1528, 79th Legislature, mandated the Texas Higher Education Coordinating Board to adopt by rule definitions related to tuition and fees for students under Chapter 54 of the Texas Education Code to ensure consistency in the application of state laws and policies. The new section incorporates the tuition and fee definitions found in Coordinating Board rules, Chapter 13, Financial Planning, Subchapter H, Reporting of Tuition and Fees.

Lois Hollis, Assistant Commissioner for Student Services, has determined that for each year of the first five years the section is in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the section.

Ms. Hollis has also determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of administering the section will be improved consistency in the use and meaning of terms used in state financial assistance programs as well as in the data reported by institutions regarding their charges. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Lois Hollis, P.O. Box 12788, Austin, Texas 78711, (512) 427-6465, Lois.Hollis@thehb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The new section is proposed under the Texas Education Code, §56.055, which provides the Coordinating Board with the authority to adopt any rules necessary to administer Texas Education Code, §§56.051 - 56.055 and §54.0071.

The new section affects the Texas Education Code, §§56.051 - 56.055 and §54.0071.

§21.7. Tuition and Fee Definitions.

The definitions found in Chapter 13, Subchapter H of this title (relating to Reporting of Tuition and Fees), are to be applied to all tuition and fee exemption and waiver programs provided under Texas Education Code, Chapter 54.

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 B. DETERMINING RESIDENCE STATUS

19 TAC §§21.21 - 21.27

(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 Higher Education Coordinating Board or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Higher Education Coordinating Board proposes the repeal of §§21.21 - 21.27, concerning Determining Residence Status. Specifically, these sections are proposed for repeal and are superseded by §§21.727 - 21.735.

Ms. Lois Hollis, Assistant Commissioner for Student Services, has determined that for each year of the first five years the repeals are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Ms. Lois Hollis has also determined that for each year of the first five years the repeals are in effect there will be more uniformity in the determination of residency among institutions, causing less confusion for students and parents. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment

Comments on the proposal may be submitted to Lois Hollis, P.O. Box 12788, Austin, Texas 78711, (512) 427-6465, Lois.Hollis@thehb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The repeals are proposed under the Texas Education Code, §54.075, which provides the Coordinating Board with the authority to adopt rules to carry out the purposes of Texas Education Code, §§54.0501 - 54.075.

The repeals affect Texas Education Code, §§54.0501 - 54.075.

§21.21. *Authority, Scope, and Purpose.*

§21.22. *Definitions.*

§21.23. *Basic Rules.*

§21.24. *Residency during the Transition from Dependent to Independent Students.*

§21.25. *Procedures.*

§21.26. *Exceptions.*

§21.27. *Transition from Waiver Recipient to Resident.*

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

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SUBCHAPTER C. HINSON-HAZLEWOOD COLLEGE STUDENT LOAN PROGRAM

19 TAC §21.55, §21.63

The Texas Higher Education Coordinating Board proposes amendments to §21.55 and §21.63, concerning the Hinson-Hazlewood College Student Loan Program. Specifically, the amendment to §21.55 (Eligibility of Students) aligns program rules with the Texas Education Code, §52.32 and §52.33, and §144(b) of the federal Internal Revenue Code for municipal bonds. It will ensure that the Board's low interest non-guaranteed loans are not offered to students before federal aid is offered. The amendments to §21.63 (Deceased or Disabled Borrowers) authorize the discharge of judgment debt owed by deceased or disabled borrowers, as well as judgment debt owed by deceased or disabled cosigners. Additionally, in cases where there is a judgment against the borrower and the borrower is deceased or disabled, the amendments would allow the Commissioner to determine if the release of the liability of the cosigner is in the best interest of the loan program and, if so, allow the Commissioner to authorize a release of the cosigner's liability.

Lois Hollis, Assistant Commissioner for Student Services, has determined that for each year of the first five years the amendments are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the amended sections.

Ms. Hollis has also determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of administering the amended sections will be improved access to affordable financial aid for the students of Texas and for persons seeking educator certification. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the amendments as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Lois Hollis, P.O. Box 12788, Austin, Texas 78711, (512) 427-6465, Lois.Hollis@thehb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendments are proposed under Texas Education Code, §52.01, which provides the Coordinating Board with the authority to adopt any rules necessary to administer Texas Education Code, §52.01 and §§52.31 - 52.40.

The amendments affects Texas Education Code, §52.01 and §§52.31 - 52.40.

§21.55. *Eligibility of Students.*

(a) (No change.)

(b) When certifying a non-guaranteed loan, the institution shall certify that the amount of the loan does not exceed the difference between the cost of attendance and other forms of student assistance

for which the student is eligible, with the exception of Federal Plus loans, whether or not the student actually receives such assistance.

(c) [(b)] If the institution to which the student has been accepted for enrollment was not an eligible institution, as defined in §21.54 of this title (relating to Eligibility of Institutions) on May 1, 1985, the student shall provide evidence that the student is unable to obtain a guaranteed student loan from a commercial lender.

§21.63. *Deceased or Disabled Borrowers and Cosigners.*

(a) Upon final verification of the death or determination of permanent and total disability of a borrower, all loans through the Program shall be discharged unless there is a judgment against the borrower and the Commissioner determines that a release of the borrower's liability is not in the best interest of the Program. [All loans through the Program are discharged in the event of death or in the event of permanent and total disability of the borrower.]

(b) Verification of death and determination of permanent and total disability of a borrower or cosigner through the FSL, FSLs, and CAL programs shall be made in accordance with the governing provisions of the FSL program.

(c) Verification of death or determination of permanent and total disability of a borrower or cosigner through the HEAL and HELP programs shall be made in accordance with the governing provisions of the HEAL program.

(d) The final verification of death and determination of permanent and total disability of a borrower or cosigner shall be made by the appropriate official for each loan program as follows:

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

(e) (No change.)

(f) Upon final verification of the death or determination of permanent and total disability of a cosigner, the Commissioner shall determine if the release of the liability of the cosigner is in the best interest of the loan program and, if so, shall authorize a release of the cosigner's liability, whether or not there is a judgment against the cosigner.

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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Jan Greenberg

General Counsel

Texas Higher Education Coordinating Board

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SUBCHAPTER E. TEXAS B-ON-TIME LOAN PROGRAM

19 TAC §§21.122, 21.124, 21.126

The Texas Higher Education Coordinating Board proposes amendments to §§21.122, 21.124, and 21.126 concerning the Texas B-On-Time (BOT) Loan Program. Specifically, the amendments to §21.122 (Definitions) and §21.124 (Initial Eligibility for Loans) change the name of the required high school curriculum to correspond with the new title assigned by the Texas Education Agency. The amendments to §21.126 (Disbursement to Students) align program rules with the Texas

Education Code, §52.32 and §52.33, and §144(b) of the federal Internal Revenue Code for municipal bonds. They will ensure that the zero-interest B-On-Time loans are not offered to students before federal aid is offered.

Ms. Lois Hollis, Assistant Commissioner for Student Services, has determined that for each year of the first five years the amendment is in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Ms. Hollis has also determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of administering the sections will be improved access to financial aid for the students of Texas. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Lois Hollis, P.O. Box 12788, Austin, Texas 78711, (512) 427-6465, Lois.Hollis@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendments are proposed under the Texas Education Code, §56.453, which provides the Coordinating Board with the authority to adopt rules for the administration of Texas Education Code, §§56.451 - 56.465.

The amendment affects Texas Education Code, §§56.451 - 56.465.

§21.122. *Definitions.*

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

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

(4) Recommended or distinguished achievement high school program-Advanced High School Program--the high school curriculum recommended under §28.025 (a) of the Texas Education Code

(5) (No change.)

§21.124. *Initial Eligibility for Loans.*

(a) The Commissioner may authorize Texas B-On-Time Loans to students at any eligible institution which certifies that the student:

(1) (No change.)

(2) meets one of the following academic requirements:

(A) graduated not earlier than the 2002 - 2003 school year under the Recommended or distinguished achievement high school program-Advanced High School Program from a public or accredited private high school in Texas;

(B) - (C) (No change.)

(3) - (5) (No change.)

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

§21.126. *Disbursement to Students.*

(a) No disbursement shall be made to any student until:

(1) the institution has certified that the amount of the loan does not exceed the difference between the cost of attendance and other forms of student assistance for which the student is eligible, with the exception of Federal Plus loans, whether or not the student actually receives such assistance;

(2) [(1)] the student has submitted an application containing the names of two personal references who live at different addresses, who are gainfully employed, and who are expected to know the student's whereabouts at all times throughout the life of the loan;

(3) [(2)] the student certifies that he or she has read and understands the rights and responsibilities of a borrower of a Texas B-On-Time Loan;

(4) [(3)] the student has executed a promissory note payable to the program for the full amount of any loan plus other authorized fees; and

(5) [(4)] the Board has received the original of such executed promissory note.

(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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Jan Greenberg

General Counsel

Texas Higher Education Coordinating Board

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SUBCHAPTER J. THE PHYSICIAN EDUCATION LOAN REPAYMENT PROGRAM

19 TAC §§21.251, 21.257, 21.261 - 21.263

The Texas Higher Education Coordinating Board proposes amendments to §§21.251, 21.257, and 21.261 - 21.263, concerning the Physician Education Loan Repayment Program. Specifically, the proposed amendments update legislatively mandated changes to names of state agencies.

Lois Hollis, Assistant Commissioner for Student Services, has determined that for each year of the first five years the amendments are in effect, there will not be any fiscal implications to state or local government as a result of enforcing or administering the amended sections.

Ms. Hollis has also determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of the changes will be that the rules will clearly provide information on eligibility requirements for the program. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the amendments as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Lois Hollis, P.O. Box 12788, Austin, Texas 78711, (512) 427-6465, Lois.Hollis@thehb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendments are proposed under the Texas Education Code, §§61.531 - 61.540, which provides the Coordinating Board with the authority to establish procedures to administer this program and Texas Education Code, §61.027, which provides the Coordinating Board with the authority to adopt rules to effectuate the provisions of Texas Education Code, Chapter 61.

The amendments affect Texas Education Code, §§61.531 - 61.540.

§21.251. *Authority and Purpose.*

(a) (No change.)

(b) Purpose. The purpose of the Physician Education Loan Repayment Program is to encourage qualified physicians to practice medicine in designated areas of the state or for specified state agencies. The purpose of the state-funded portion of the program is to encourage qualified physicians to practice medicine in a medically underserved area that is economically depressed or rural or for the Texas Department of State Health Services (DSHS) [~~Texas Department of Health~~], the Texas Department of Aging and Disability Services (DADS) [~~Texas Department of Mental Health and Mental Retardation~~], the Texas Department of Criminal Justice, the Texas Youth Commission, or a Community Health Center. The purpose of the State Loan Repayment Program Matching Federal Loan repayments is to encourage qualified physicians to practice in Health Professional Shortage Areas. The purpose of the family practice faculty portion of the program is to encourage employment as full-time faculty in an approved Texas Family Practice Residency training program.

§21.257. *State Recommended Health Professional Shortage Area.*

A State Recommended Health Professional Shortage Area shall be any area of the state recommended by the Texas Department of State Health Services (DSHS) [~~Department of Health~~] to the Division of Shortage Designation, Bureau of Primary Health Care, of the U.S. Department of Health and Human Services, or its successors, as having a shortage of health professionals.

(1) (No change.)

(2) A State Recommended Health Professional Shortage Area may be removed from the list of eligible areas in the state-funded portion of the program only after a recommendation to that effect by the DSHS [~~Texas Department of Health~~] to the Division of Shortage Designation.

§21.261. *State-Funded Portion for Post-Residency Practice.*

(a) An eligible physician is one who:

(1) has a current unrestricted license, or, in the case of a faculty member, a current unrestricted or institutional license to practice medicine in Texas from the Texas Medical Board [~~State Board of Medical Examiners~~];

(2) except in the case of general practitioners, has satisfactorily completed a postgraduate program approved by the Texas Medical Board [~~State Board of Medical Examiners~~] and accredited by the Accreditation Council on Graduate Medical Education or the American Osteopathic Association or has earned and maintained certification from an American Specialty Board that is a member of the American Board of Medical Specialties or the Bureau of Osteopathic Specialists in one of the following specialties: family practice, osteopathic general practice, obstetrics/gynecology, general internal medicine, general pediatrics, emergency medicine, general surgery, and psychiatry;

(3) (No change.)

(4) has completed at least one year of medical practice in:

(A) (No change.)

(B) the Texas Department of State Health Services, the Texas Department on Aging and Disability Services [~~Texas Department of Health~~], the Texas Department of Mental Health and Mental Retardation [~~Department of Health~~], the Texas Department of Criminal Justice, or the Texas Youth Commission; or

(C) (No change.)

(b) (No change.)

§21.262. Eligibility for State Loan Repayment Program (SLRP) Matching Federal Loan Repayments.

SLRP loan repayments are matched with an equivalent amount awarded under the provisions of §21.261 of this title (relating to State-Funded Portion for Post-Residency Practice). A physician eligible for matching loan repayments is one who:

(1) (No change.)

(2) has accepted Medicare and Medicaid assignment as full payment for medical services rendered to Medicaid and Medicare patients during the twelve month service period, as verified by Texas Health and Human Services Commission [~~Texas Department of Human Services~~];

(3) - (4) (No change.)

§21.263. Eligibility for Family Practice Faculty Participation.

(a) (No change.)

(b) An eligible faculty member is one who practices at an approved Texas Family Practice Residency Training Program, has an unrestricted, temporary or institutional license to practice medicine in Texas from the Texas Medical Board [~~Texas State Board of Medical Examiners~~], and has completed training in an approved Texas Family Practice Residency Training Program on or after July 1, 1994.

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 May 15, 2006.

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Jan Greenberg

General Counsel

Texas Higher Education Coordinating Board

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For further information, please call: (512) 427-6114



SUBCHAPTER K. THE GOOD NEIGHBOR SCHOLARSHIP PROGRAM

19 TAC §21.282

The Texas Higher Education Coordinating Board proposes an amendment to §21.282, concerning The Good Neighbor Scholarship Program. Specifically, Texas Education Code §54.207 authorizes the awarding of tuition waivers to certain citizens of other nations of the Western Hemisphere. One of the eligibility requirements is that the person be a "native-born citizen" of the nation he represents. This amendment will clarify that the term "native-born citizen" includes both a citizen of the country who was physically born in the country and one born abroad if at least one of the parents was a citizen of the country and not permanently residing in a foreign country.

Lois Hollis, Assistant Commissioner for Student Services, has determined that for each year of the first five years the amendment is in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the amended section.

Ms. Hollis also determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of administering the amended section will be a better understanding of the students who are eligible to compete for awards through the program. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the amendment as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Lois Hollis, P.O. Box 12788, Austin, Texas 78711, (512) 427-6465, Lois.Hollis@thehb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendment is proposed under the Texas Education Code, §54.207, which provides the Coordinating Board with the authority to adopt rules necessary to implement the Good Neighbor Scholarship Program.

The amendment affects the Texas Education Code, §54.207.

§21.282. Definitions.

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

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

(4) Native-born citizen of an eligible country--A person who is a citizen of an eligible country and who was born in that country or who was born abroad, if at least one of his or her parents was a citizen of the eligible country and not permanently residing in a foreign country.

(5) - (6) (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 May 15, 2006.

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Jan Greenberg

General Counsel

Texas Higher Education Coordinating Board

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SUBCHAPTER X. DETERMINATION OF RESIDENT STATUS AND WAIVER PROGRAMS FOR CERTAIN NONRESIDENT PERSONS

19 TAC §§21.728, 21.731, 21.732

The Texas Higher Education Coordinating Board proposes amendments to §§21.728, 21.731, and 21.732 concerning Determination of Resident Status and Waiver Programs for Certain Nonresident Persons. Specifically, the amendments to §21.728(3) enable institutions to base residency decisions for 2006 - 2007 on core questions that were promulgated by the Board prior to the passage of rules adopted in November, 2005, and based on Senate Bill 1528, 79th Legislature, Regular Session. Thousands of students apply for admission each year by using the Texas Common Application (TCA), which was developed and in place for the 2006 - 2007 academic year before the passage of SB1528. The printing of new TCAs and updating

of the electronic application are under way, but without this change in rule institutions would have to require students who had completed the previous core questions and been admitted for fall 2006 to go back and complete a second set of questions. In addition, we do not believe that any of the changes to statute through SB1528 would cause a student who had previously been classified as a resident to lose that eligibility. The issue regarding the timing of the Texas Common Application will exist any time the core is updated and we recommend that this flexibility be added to the residency process. The amendment to §21.728(6) clarifies that international students who have applied for Permanent Resident status are only eligible to establish a domicile in Texas if their applications are being processed and any notice of action that is issued does not indicate the person's application has been rejected. The addition of §21.728(9) is to define "financial need" as referenced in §21.735(5)(C). The addition of this definition required a renumbering of previously numbered §§21.728(9) - (25). The amendment to §21.731 is intended to lessen the reporting burden of students and institutions when the institution has documentation from the student that indicates he or she qualifies as a resident based on having lived in Texas for the 36 months leading up to graduation from high school or the receipt of a GED. There is no need for the student to also complete the core questions, but it is necessary for the institution to have the student sign a shortened form, indicating certain facts that confirm his or her claim to residency. The amendment to §21.732 clarifies that persons who transfer between institutions but are continuously enrolled in public institutions of higher education in Texas will continue to be eligible to base their residency on the classification they received at their previous institution. This provision, by statute, is not limited to students enrolled in 2006.

Ms. Lois Hollis, Assistant Commissioner for Student Services, has determined that for each year of the first five years the section is in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Ms. Hollis has also determined that for each year of the first five years the amendments are in effect there will be more uniformity in the determination of residency among institutions, causing less confusion for students and parents. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment

Comments on the proposal may be submitted to Lois Hollis, P.O. Box 12788, Austin, Texas 78711, (512) 427-6465, Lois.Hollis@theeb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

These amendments are proposed under the Texas Education Code, §54.075, which provides the Coordinating Board with the authority to adopt rules to carry out the purposes of Texas Education Code, §§54.0501 - 54.075.

These amendments affect Texas Education Code, §§54.0501 - 54.075.

§21.728. Definitions.

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

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

(3) Core Residency Questions--the questions promulgated by the Board [and set forth in Revised Chart II, which is incorporated

~~into this subchapter for all purposes,] to be completed by a person and used by an institution to determine if the person is a Texas resident. For enrollments prior to the 2007 - 2008 academic year, institutions may use the core questions developed and distributed by the Board in 1999 or later, including the core questions included in the Texas Common Application, or the core questions set forth in Revised Chart II, which is incorporated into this subchapter. The core questions to be used for enrollments on or after the 2007 - 2008 academic year shall be the core questions in the Texas Common Application or in Revised Chart II.~~

(4) - (5) (No change.)

(6) Eligible for Permanent Resident Status--a person who has filed an I-485 application for permanent residency and has been issued a fee/filing receipt or notice of action by USCIS showing that his or her I-485 has been reviewed and has not been rejected.

(7) - (8) (No change.)

(9) Financial need--The cost of attendance at a institution of higher education less the resources the family has available for paying for college.

(10) [~~(9)~~] Gainful employment--activities intended to provide an income to a person or allow a person to avoid the expense of paying another person to perform the tasks (as in child care or the maintenance of a home). A person who is self-employed, employed as a homemaker, or who is living off his/her earnings may be considered gainfully employed for purposes of establishing residency, as may a person whose primary support is public assistance.

(11) [~~(10)~~] General Academic Teaching Institution--The University of Texas at Austin; The University of Texas at El Paso; The University of Texas of the Permian Basin; The University of Texas at Dallas; The University of Texas at San Antonio; Texas A&M University, Main University; The University of Texas at Arlington; Tarleton State University; Prairie View A&M University; Texas Maritime Academy (now Texas A&M University--Galveston); Texas Tech University; University of North Texas; Lamar University; Lamar State College--Orange; Lamar State College--Port Arthur; Texas A&M University--Kingsville; Texas A&M University--Corpus Christi; Texas Woman's University; Texas Southern University; Midwestern State University; University of Houston; University of Texas--Pan American; The University of Texas at Brownsville; Texas A&M University--Commerce; Sam Houston State University; Texas State University--San Marcos; West Texas A&M University; Stephen F. Austin State University; Sul Ross State University; Angelo State University; and The University of Texas at Tyler, and as defined in Texas Education Code, §61.003(3).

(12) [~~(11)~~] Institution or institution of higher education--any public technical institute, public junior college, public senior college or university, medical or dental unit, or other agency of higher education as defined in Texas Education Code, §61.003(8).

(13) [~~(12)~~] Legal guardian--a person who is appointed guardian under the Texas Probate Code, Chapter 693, or a temporary or successor guardian.

(14) [~~(13)~~] Maintain a residence--to physically reside in a location. The maintenance of a residence is not interrupted by a temporary absence from the state, as provided in §21.730(e) of this title (relating to Determination of Resident Status).

(15) [~~(14)~~] Managing conservator--a parent, a competent adult, an authorized agency, or a licensed child-placing agency appointed by court order issued under the Texas Family Code, Title 5.

(16) [~~(15)~~] Nonresident tuition--the amount of tuition paid by a person who does not qualify as a Texas resident under this

subchapter unless such person qualifies for a waiver program under §21.735 of this title, (relating to Waivers that Permit Nonresidents to Pay Resident Tuition).

(17) [(46)] Parent--a natural or adoptive parent, managing or possessory conservator, or legal guardian of a person. The term does not include a step-parent.

(18) [(47)] Possessory conservator--a natural or adoptive parent appointed by court order issued under the Texas Family Code, Title 5.

(19) [(48)] Private high school--a private or parochial school accredited by an accrediting agency that is recognized and accepted by the Texas Private School Accreditation Commission. The term does not include a home school.

(20) [(49)] Public technical institute or college--the Lamar Institute of Technology or any campus of the Texas State Technical College System.

(21) [(20)] Regular semester--a fall or spring semester, typically consisting of 16 weeks.

(22) [(21)] Residence--a person's home or other dwelling place.

(23) [(22)] Residence Determination Official--the primary individual at each institution who is responsible for the accurate application of state statutes and rules to individual student cases.

(24) [(23)] Resident tuition--the amount of tuition paid by a person who qualifies as a Texas resident under this subchapter.

(25) [(24)] Temporary absence--absence from the State of Texas with the intention to return, generally for a period of less than five years.

(26) [(25)] United States Citizenship and Immigration Services (USCIS)--the bureau of the U.S. Department of Homeland Security that is responsible for the administration of immigration and naturalization adjudication functions and establishing immigration services policies and priorities.

§21.731. *Information Required to Initially Establish Resident Status.*

(a) To initially establish resident status under §21.730 of this title, (relating to Determination of Resident Status),

(1) a person who qualifies for residency under §21.730(a) shall provide the institution with:

(A) a completed set of Core Residency Questions; or

(B) a copy of supporting documentation along with a statement of the dates and length of time the person has resided in this state, as relevant to establish resident status under this subchapter and a statement by the person that the person's presence in this state for that period was for the purpose of establishing and maintaining a domicile in Texas. [as set forth in Revised Chart II, which is incorporated into this subchapter for all purposes.]

Figure: 19 TAC §21.731(a)(1)(B)

(2) a person who qualifies for residency under §21.730(b) or (c) shall provide the institution with a completed set of Core Residency Questions.

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

§21.732. *Continuing Resident Status.*

(a) Except as provided under subsection (c) of this section, a person who was enrolled in an institution for any part of the previous [2006] state fiscal year and who was classified as a resident of this state

under Subchapter B, Chapter 54, Texas Education Code, in the last academic period of that year for which the person was enrolled is considered to be a resident of this state for purposes of this subchapter, as of the beginning of the following fall semester[; 2006]. If an institution acquires documentation that a person is a continuing student who was classified as a resident at the previous institution, no additional documentation is required. The person is not required to complete a new set of Core Questions.

(b) - (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 May 15, 2006.

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Jan Greenberg

General Counsel

Texas Higher Education Coordinating Board

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For further information, please call: (512) 427-6114

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**SUBCHAPTER CC. EARLY HIGH SCHOOL
GRADUATION SCHOLARSHIP PROGRAM**

19 TAC §§21.951 - 21.954, 21.956, 21.957, 21.959

The Texas Higher Education Coordinating Board proposes amendments to §§21.951, 21.952, 21.953, 21.954, 21.956, 21.957 and 21.959 concerning the Early High School Graduation Scholarship Program. Specifically, the amendment to 21.951 reflects the fact that Chapter 21, Subchapter B of Board rules (relating to Determining Residence Status), which reflects residency statutes in effect prior to fall 2006 will be repealed and replaced as of July 2006 by Chapter 21, Subchapter X, (Relating to Determination of Resident Status and Waiver Programs for Certain Nonresident Persons) adopted by the Board in October 2005. The amendments to §§21.952 and 21.957 are corrections of punctuation or grammatical errors. The amendments to §§21.953(a) and (b) are being made to bring current rules into agreement with provisions of Texas Education Code §56.203, as amended by Senate Bill 1227 of the 79th Legislature, Regular Session. Current statutes reflect the statutory elimination of two old program requirements--a written statement of parental permission to graduate early and no previous awards through the Tuition Credit Program of 1993 - 1994. They also reflect the elimination of references to interim provisions for 2003 - 2005 which are no longer relevant to program operations. The amendments to §21.953(c) add clarity to eligibility of students who graduated on September 1, 2005, and the statutory requirement that recipients have completed high school only by attending public high schools in Texas. They also indicate that when students fail to complete the Recommended High School Curriculum for reasons beyond their control, the school district must provide a written explanation of the extenuating circumstances if it wants the student to be given consideration for an award. They also correct a previous indication that students could receive awards if they graduated in not more than 46 months, when the limit in statute is not more than 45 months. The amendments to §21.954(a) indicate the Board will make the application available through its web site. Amendments to §21.954(b) clarify that the applications, when

submitted to the Board, must be signed and certified by the principal. In addition, they clarify the eligibility of students who graduated on September 1, 2005, and reflect the elimination of references to interim provisions for 2003 - 2005 which are no longer relevant to program operations. The addition of §21.954(c) indicates that if an award is made based on incorrect information from the school district, the district will be held responsible for making reimbursements to the program. Changes to renumbered §21.954(d) indicate applications should not be submitted to the Board more than 30 days prior to a student's graduation from high school. This change is made in order to improve the accuracy of the applications submitted to the Board. Changes to renumbered §21.954(d) also eliminate references to interim program provisions that are no longer relevant. The amendment to renumbered §21.954(g) reflects that in order for a student to receive an eligibility letter for an institution other than the one indicated on the original application, he or she must notify the Board of the change. The amendments to §21.956(a)(1) and renumbered (3) are made primarily to eliminate references to interim provisions and restrictions that are no longer relevant to program operations and clarify the statutory provision that students who graduated prior to 9/1/2005 may use their awards only for paying tuition (not fees). Amendments to §21.956(a)(1)(C) is repealed but re-worded with clearer language in the new (a)(2). Renumbered §21.956(a)(4) is reworded to add clarity regarding the use of Early High School Graduation Scholarships by students who graduated prior to 9/1/2005 to take unfunded continuing education courses. The amendments to §21.956(b) clarify the status of students who graduate on September 1, 2005, and clarify that the awards for students who graduate on or after 9/1/2005 may be used for paying for tuition and mandatory fees. Section 21.956(b)(1)(D) is renumbered to reflect the fact that it applies to all levels of awards listed in §21.956(b)(1) and renumbered §21.956(b)(3) is reworded to add clarity regarding the use of Early High School Graduation Scholarships by students who graduate on or after 2/1/2005 to take unfunded continuing education courses. The amendments to §21.959 reflect the elimination of references to interim provisions for 2003 - 2005 which are no longer relevant to program operations and to add active duty military service as a basis of granting a hardship extension of a student's period of eligibility.

Ms. Lois Hollis, Assistant Commissioner for Student Services, has determined that for each year of the first five years the amendments are in effect there are no fiscal implications for these amendments because the program is funded through the Foundation Program. The program is funded through the savings generated from students graduating early. The savings per student more than offset the costs of awarding the scholarships. There will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Ms. Hollis has also determined that for each year of the first five years the amendments are in effect, the public benefit would be that rules are no longer cluttered with provisions that have lapsed and language is simplified to make the rules easier to understand. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Lois Hollis, P.O. Box 12788, Austin, Texas 78711, (512) 427-6465, Lois.Hollis@theeb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendments are proposed under the Texas Education Code, §56.209, which states that the Coordinating Board is authorized to adopt rules to administer Texas Education Code, Chapter 56, Subchapter K, relating to the Early High School Graduation Scholarship Program.

The amendments affect the Texas Education Code, §§56.202 - 56.209.

§21.951. 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) Resident of Texas--A resident of the State of Texas as determined in accordance with Chapter 21, Subchapter X [B], of this title (relating to Determining Residence Status). Nonresident students who are eligible to pay resident tuition rates are not residents of Texas.

§21.952. Institutions.

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

(c) Responsibilities.

(1) (No change.)

(2) Disbursements to Students.

(A) (No change.)

(B) Procedures in Case of Illegal Disbursements. If the Commissioner has reason for concern that an ~~and~~ institution has disbursed funds for unauthorized purposes, the Board will notify the Program Officer and financial aid director and offer an opportunity for a hearing pursuant to the procedures outlined in Chapter 1 of this title (relating to Agency Administration). Thereafter, if the Board determines that funds have been improperly disbursed, the institution shall become primarily responsible for restoring the funds to the Board. No further disbursements of scholarships shall be permitted to students at that institution until the funds have been repaid.

(3) - (4) (No change.)

§21.953. Eligible Students.

(a) To receive an award through the Early High School Graduation Scholarship Program, a student who graduated from high school before ~~[from high school before September 1, 2003 or who graduated between September 1, 2003, and] September 1, 2005~~ ; ~~under conditions listed in subsection (b) of this section~~ must:

(1) be a resident of Texas; and

(2) have completed the requirements for a high school diploma in not more than ~~[graduate from a Texas public high school within] thirty-six consecutive months [of his/her original enrollment,] having completed all years of high school in Texas.~~ ;

~~[(3) have written approval to graduate early from a parent or person standing in parental relation to the student; and]~~

~~[(4) not be a recipient of \$1000 through the Tuition Credit Program in operation in 1993 and 1994.]~~

~~[(b) A student who graduated between September 1, 2003, and September 1, 2005, without completing the Recommended or Advanced High School Program, may receive an award through the Early High School Graduation Scholarship as it existed on August 31, 2003, if the student's high school counselor provides the Board a certified statement that the student was on track as of August 31, 2003, to graduate in accordance with Early High School Graduation~~

Scholarship program requirements in place at that time; and the student graduated meeting requirements listed in subsection (a) this section.]

(b) [(e)] To receive an award through the Early High School Graduation Scholarship Program, a student [other than those described in subsection (b) of this section] who graduated from high school on or after September 1, 2005, [2003] must:

(1) (No change.)

(2) have attended high school exclusively in one or more public high schools in this state [only in Texas];

(3) have successfully completed the Recommended or Advanced High School Program established under Texas Education Code, §28.025, unless the principal or other authorized representative of the student's high school provides a written explanation along with [indicates on] the student's transcript and exemption program application that the courses in the Recommended or Advanced High School Program which the student did not complete were unavailable to the student at the appropriate time in his or her high school career because of:

(A) shortage of qualified teachers [course scheduling];

(B) - (C) (No change.)

(4) have graduated:

(A) in not more than 41 consecutive months[; in which case the student must provide written approval of a parent or person standing in parental relation to the student]; or

(B) in not more than 45 [46] consecutive months, if the student graduated with at least 30 hours of college credit.

(c) [(5)] A student's eligibility to receive a tuition credit under the Early High School Graduation Scholarship Program begins with the first regular semester or term following the student's graduation, exclusive of summer sessions that immediately follow the student's graduation. A student's eligibility to receive a tuition credit under the program ends six years after it begins, unless the student seeks and is granted an extension under §21.960 of this title (relating to Hardship Extensions).

§21.954. *The Application and Awarding Process.*

(a) Application forms and instructions developed by the Board will be distributed primarily through school district offices throughout the state. The Board will also provide them to financial aid offices of approved institutions, and students will be able to request the forms directly from the Board and/or download them from the Collegefor-Texans web site.

(b) The application has three parts. The completed forms must be certified [It must be completed and signed] by the high school [counselor or] principal on behalf of the student applicant.

(1) Parts I and III are to be completed for all applicants who graduated prior to September 1, 2005 [2003; and students who graduated between September 1, 2003, and September 1, 2005, in accordance with §21.953 (b) of this title (relating to Eligible Students)].

(2) Parts I, II, and III are to be completed for all applicants who graduated on or after September 1, 2005 [2003].

(c) If a student is incorrectly certified by a school district as eligible for an exemption, the school district is responsible for reimbursing the program for any funds that might be issued to the student through the program.

(d) [(e)] High school counselors [or principals] are to send the completed and signed applications certified by the principal to the Board for processing. Applications should not be sent to the Board

more than 30 days prior to a student's graduation date. [If the application is for a student who qualifies for an award in accordance with §21.953(b) of these rules, the application must be accompanied by a certified statement from the high school counselor, on high school letterhead, confirming the student was on track on August 31, 2003, to graduate under the provisions of the Early High School Graduation Scholarship Program as it existed at that time.]

(e) [(d)] Applications will be processed by the Board as they are submitted by the high schools.

(f) [(e)] As soon as possible after processing applications, the Board will notify the relevant institutions, students and school districts of the students' eligibility for awards.

(g) [(f)] Institutions must confirm that the student is a resident of Texas before they can grant a scholarship through the program outlined in this subchapter.

(h) [(g)] If the student chooses to attend an institution other than the one indicated in the application, he or she must [should] advise the Board of the change and the Board will send the new institution a letter of eligibility and an award may be made at that institution after the student's residency is confirmed.

§21.956. *Award Amounts and Processing Cycle.*

(a) Amounts for students graduating prior to September 1, 2005, [2003 or between September 1, 2003 and September 1, 2005, in accordance with conditions outlined in §21.953(b) of this title (relating to Eligible Students).]

(1) The aggregate amount of state [tuition] credit that shall be awarded to a student through this program may not exceed \$1,000 to be applied only toward tuition. [the least of:]

[(A) \$1,000; or]

[(B) the sum of \$1,000 minus the amount the student received through the Tuition Credit Program; or]

[(C) for students attending eligible private or independent institutions of higher education, the amount of institutional tuition gift assistance that the institution agrees to offer during the same enrollment period to match the state award.]

(2) A student who is attending a private or independent institution may not receive a greater state tuition credit in any enrollment period than the amount of institutional aid that is provided by the institution and credited in the same manner, during that enrollment period.

(3) [(2)] If a state [tuition and fee] credit awarded through the Early High School Graduation Scholarship Program is more than the amount of the student's first semester's tuition [plus, if applicable, mandatory fees], the balance of the student's award may be used in subsequent semesters.

(4) [(3)] State credits may not be used for continuing education classes that do not receive formula funding. [A disbursement in any given term or semester may be applied only to reduce the student's tuition for any courses taken, except that students enrolled in continuing education courses for which the institution does not receive state funding may not use their tuition credit for such courses.]

(b) For students whose graduation date is on or after September 1, 2005 [2003; other than those graduating under the conditions outlined in §21.953(b) of this title]:

(1) the aggregate amount of state [tuition] credit that may be awarded to a student through this program is:

(A) \$2,000 to apply toward tuition and mandatory fees if the student completed the Recommended or Advanced High School

Program and graduated from high school in 36 consecutive months or less and an additional \$1,000 if the person graduated with at least 15 hours of college credit; or

(B) \$500 to apply toward tuition and mandatory fees if the student completed the Recommended or Advanced High School Program and graduated from high school in more than 36 consecutive months but not more than 41 consecutive months and an additional \$1,000 if the person graduated with at least 30 hours of college credit; or

(C) \$1,000 to apply toward tuition and mandatory fees if the student completed the Recommended or Advanced High School Program and graduated from high school in more than 41 consecutive months but not more than 45 [46] consecutive months with at least 30 hours of college credit.

(2) [(4)] A student who is attending a private or independent institution may not receive a greater state tuition credit in any enrollment period than the amount of institutional aid that is provided by the institution and credited in the same manner, during that enrollment period.

(3) [(2)] State credits may not be used for continuing education classes that do not receive formula funding. [The tuition credit award may be applied to reduce the student's tuition and mandatory fees for any courses taken, except that students enrolled in continuing education courses for which the institution does not receive state funding may not use their tuition credit for such courses.]

(c) (No change.)

§21.957. *Reimbursements.*

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

(c) Disbursements by the Board. The Board will process institutional Requests for Reimbursement at least once a month and will subsequently have appropriate amounts transferred to institutions by the State Comptroller's office. Such funds are to be used by the institution [institutions] either to reimburse itself (if it exempted the students from the payment of the relevant charges) or to reimburse students for the relevant charges they paid to the institution.

(d) Transfers from the Foundation Program. At least once a year the Board will request a transfer of funds from the Foundation School Fund [foundation school fund] for use in reimbursing institutions or students for their Early High School Graduation Scholarship program awards.

§21.959. *Hardship Provisions.*

An otherwise eligible student as defined under §21.953(a) and (b) of this subchapter [who graduated from high school on or after September 1, 2003, other than those who graduated in accordance with the requirements outlined in §21.953(b),] and who is unable to use his or her scholarship within the allotted six years, may petition the Board for an extension. Such extensions[; ~~not to exceed one year,~~] may be granted on the basis of hardships or other good causes, including but not limited to:

- (1) a severe illness or other debilitating condition; [or]
- (2) responsibility for the care of a sick, injured, or or person; or[-]
- (3) active duty or other service in the United States armed forces.

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 May 15, 2006.

TRD-200602703

Jan Greenberg

General Counsel

Texas Higher Education Coordinating Board

Proposed date of adoption: July 20, 2006

For further information, please call: (512) 427-6114



SUBCHAPTER MM. DOCTORAL INCENTIVE LOAN REPAYMENT PROGRAM

19 TAC §21.2083, §21.2084

The Texas Higher Education Coordinating Board proposes amendments to §21.2083 and §21.2084, concerning the Doctoral Incentive Loan Repayment Program. Specifically, the amendment to §21.2083 would amend the definition of "low income school" to include high schools whose percentage of economically disadvantaged students is greater than or equal to the statewide average for the same year. The amendments to §21.2084 would allow applicants to be considered eligible for participation if, in addition to meeting all other program requirements, they attended (or resided in an area near) a high school that was among the lowest 50 percent of Texas high schools with regard to sending students to college.

Lois Hollis, Assistant Commissioner for Student Services, has determined that for each year of the first five years the amendments are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the amended sections.

Ms. Hollis has also determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of administering the amended sections will be to encourage greater participation in the program. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the amendments as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Lois Hollis, P.O. Box 12788, Austin, Texas 78711, (512) 427-6465, Lois.Hollis@theccb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendments are proposed under the Texas Education Code, §56.091, which authorizes the Coordinating Board to establish and administer the Doctoral Incentive Loan Repayment Program and adopt rules as necessary.

The amendments affect the Texas Education Code, §§56.091 - 56.095.

§21.2083. *Definitions.*

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

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

(7) Low Income School--a high school in which the percentage of [that has at least 10 percent more] economically disadvantaged students is greater than or equal to the statewide average for the same year, according to data published by the Texas Education Agency.

(8) - (10) (No change.)

§21.2084. *Eligibility for Encumbered Funds*

(a) To become initially eligible to participate in this program, so that the Board encumbers available funds for the applicant, pending completion of his or her service requirements, an applicant:

- (1) (No change.)
- (2) must demonstrate:

(A) that he or she graduated from a Texas high school that at the time of his or her graduation was:

(i) among the lowest 50 [ten] percent among Texas high schools, with regard to sending students to public institutions of higher education; or

(ii) a low-income school; or

(B) that at the time of graduation from high school, he or she resided in an area of Texas where the high school closest to his or her residence was:

(i) among the lowest 50 [ten] percent among high schools, with regard to sending students to public institutions of higher education; or

(ii) a low-income school;

- (3) - (5) (No change.)

(b) (No change.)

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

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Jan Greenberg

General Counsel

Texas Higher Education Coordinating Board

Proposed date of adoption: July 20, 2006

For further information, please call: (512) 427-6114



CHAPTER 22. GRANT AND SCHOLARSHIP PROGRAMS

SUBCHAPTER B. PROVISIONS FOR THE TUITION EQUALIZATION GRANT PROGRAM

19 TAC §22.27

The Texas Higher Education Coordinating Board proposes an amendment to §22.27 concerning the Tuition Equalization Grant Program. Specifically, Senate Bill 1227, 79th Legislature, authorized the awarding of grants equal to 150 percent of the basic grant amount to students otherwise eligible for the Tuition Equalization Grant and who have exceptional financial need. This amendment will clarify that this provision applies to all students, new and continuing, who are awarded Tuition Equalization Grants on or after September 1, 2005.

Lois Hollis, Assistant Commissioner for Student Services, has determined that for each year of the first five years the amendment is in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the amended section.

Ms. Hollis has also determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of administering the amended section will be improved ability on the part of the Tuition Equalization Grant program to meet the financial needs of exceptionally needy students. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the amendment as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Lois Hollis, P.O. Box 12788, Austin, Texas 78711, (512) 427-6465, Lois.Hollis@thehb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendment is proposed under the Texas Education Code, §61.229, which provides the Coordinating Board with the authority to adopt rules necessary to implement the Tuition Equalization Grant Program.

The amendment affects the Texas Education Code, §§61.221 - 61.230.

§22.27. *Award Amounts and Uses.*

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

(c) Program maximum.

(1) (No change.)

(2) An undergraduate awarded a [his or her initial] TEG grant on or after September 1, 2005, and who has exceptional financial need may receive a grant in an amount not to exceed 150 percent of the program maximum.

(d) - (f) (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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Jan Greenberg

General Counsel

Texas Higher Education Coordinating Board

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For further information, please call: (512) 427-6114



TITLE 22. EXAMINING BOARDS

PART 5. STATE BOARD OF DENTAL EXAMINERS

CHAPTER 101. DENTAL LICENSURE

22 TAC §101.7

The Texas State Board of Dental Examiners (Board) proposes an amendment to §101.7(b)(2)(D), concerning reinstatement of a retired Texas dental license to active status. The amendment is proposed to clarify the number of hours of continuing education required for license holders who have not actively practiced for at least two years immediately preceding the request for reinstatement of a retired license.

Dr. Jim Zukowski, 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.

Dr. Zukowski has also determined that for each year of the first five years the section is in effect the administration and enforcement of the proposed section is expected to benefit the public by clarifying the continuing educational requirements needed by retired dentists to regain active licensure.

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 Dr. Jim Zukowski, 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.

§101.7. *Retired License Status.*

(a) (No change.)

(b) Reinstatement. The board may reinstate a retired Texas dental license to active status, provided the license holder submits an application for reinstatement on a form prescribed by the board, pays the appropriate fees due at the time application is made, and meets the requirements of this subsection.

(1) (No change.)

(2) A license holder who has not actively practiced for at least two years immediately preceding the request for reinstatement of a retired license shall provide:

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

(D) proof of completion of twenty-four [twelve] hours of continuing education, pursuant to Chapter 104 of this title, completed within the twelve months immediately preceding the date of application, of which a minimum of twelve hours must be clinical (hands-on).

(3) - (5) (No change.)

(c) (No change.)

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

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TRD-200602577

Jim Zukowski, Ed.D.

Executive Director

State Board of Dental Examiners

Earliest possible date of adoption: June 25, 2006

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



CHAPTER 110. ENTERAL CONSCIOUS SEDATION

22 TAC §110.2

The Texas State Board of Dental Examiners (Board) proposes an amendment to §110.2(f)(2)(A), concerning minimum continuing education requirements for dentists administering enteral conscious sedation in the dental office. The amendment is proposed to require a dentist to take a minimum of six hours of continuing education in enteral conscious sedation every three years in order to maintain an enteral conscious sedation permit.

Dr. Jim Zukowski, 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.

Dr. Zukowski has also determined that for each year of the first five years the section is in effect the administration and enforcement of the proposed section is expected to benefit the public by ensuring minimum continuing education requirements for dentists that hold an enteral conscious sedation permit.

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 Dr. Jim Zukowski, 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.

§110.2. *Permit.*

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

(f) Educational/Professional Requirements:

(1) (No change.)

(2) The following shall apply to the administration of enteral conscious sedation in the dental office:

(A) the operating dentist must complete at least six hours of [every three years] appropriate Continuing Education in enteral conscious sedation every three years.

(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 May 9, 2006.

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Jim Zukowski, Ed.D.

Executive Director

State Board of Dental Examiners

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



CHAPTER 113. REQUIREMENTS FOR DENTAL OFFICES

22 TAC §113.1, §113.2

The Texas State Board of Dental Examiners (Board) proposes new Chapter 113, §113.1 and §113.2, regarding Requirements for Dental Offices. The proposed new Chapter 113 will replace the obsolete language found in current Chapter 113 regarding x-ray laboratory requirements. Specifically, new Chapter 113 will clarify minimum requirements for the operation of dental x-ray laboratories to ensure minimum requirements for safety and efficacy are met, will address newer technology regarding non-lead protective aprons, and will address situations where a thyroid collar may prevent the taking of appropriate radiographs. The Board is proposing the repeal of current Chapter 113 simultaneously with this proposed new Chapter 113.

Dr. Jim Zukowski, Executive Director of the Texas State Board of Dental Examiners, has determined that for each year of the first five-year period that the new sections are in effect, there will be no fiscal implications for local or state government as a result of enforcing or administering the new sections.

Dr. Zukowski has also determined that for each year of the first five years the new sections are in effect the administration and enforcement of the proposed new sections is expected to benefit the public by ensuring that appropriate minimum requirements regarding the operation of dental x-ray laboratories are in place, and that changes in current technology regarding protective aprons is addressed.

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 new sections.

Comments on the proposal may be submitted to Dr. Jim Zukowski, 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 the new sections are published in the *Texas Register*.

The new sections are 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 new sections affect Title 3, Subtitle D of the Occupations Code and Title 22, Texas Administrative Code, Chapters 101 - 125.

§113.1. Definitions.

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

(1) X-ray equipment--An x-ray system, subsystem, or component thereof including portable, hand-carried or stationary x-ray machines or devices.

(2) X-ray laboratory--A facility, space or area in which x-ray equipment is used to create a radiograph.

§113.2. X-ray Laboratories.

(a) All dental licensees, including dentists, dental hygienists or other dental auxiliaries shall comply with Title 25 Texas Administrative Code §289.232 (Radiation Control Regulations for Dental Radiation Machines) as promulgated by the Texas Department of State Health Services Radiation Control Program or its successor.

(b) All dental x-ray laboratories operating in this state must be under the general supervision of a Texas licensed dentist.

(c) All dental patients must be protected by a lead apron with the thyroid collar while directly exposed to x-rays with the exception of those radiographs where it is necessary to image areas concealed or obstructed by a thyroid collar. A non-lead apron may be used instead of a lead apron if the non-lead apron provides protection from x-rays that is equivalent to that of a lead apron.

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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Jim Zukowski, Ed.D.

Executive Director

State Board of Dental Examiners

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



22 TAC §113.2

(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 State Board of Dental Examiners or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas State Board of Dental Examiners (Board) proposes the repeal of Chapter 113, §113.2, regarding Requirements for Dental Offices. The proposed repeal will remove obsolete language regarding x-ray laboratory requirements. Specifically, the repeal of Chapter 113 will allow for the proposal and consideration of new language to address newer technology that includes non-lead protective aprons and situations where a thyroid collar may prevent the taking of appropriate radiographs. The Board is proposing a new Chapter 113 simultaneously with the proposed repeal of this Chapter 113.

Dr. Jim Zukowski, Executive Director of the Texas State Board of Dental Examiners, has determined that for each year of the first five-year period that the repeal is in effect, there will be no fiscal implications for local or state government as a result of the repeal.

Dr. Zukowski has also determined that for each year of the first five years the repeal is in effect the public benefit will be ensuring

that obsolete language can be replaced with new language that adequately addresses changes in technology.

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 Dr. Jim Zukowski, 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 the repeal is published in the *Texas Register*.

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

§113.2. *X-ray Laboratories.*

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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Jim Zukowski, Ed.D.

Executive Director

State Board of Dental Examiners

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



CHAPTER 114. EXTENSION OF DUTIES OF AUXILIARY PERSONNEL--DENTAL ASSISTANTS

22 TAC §§114.2, 114.10, 114.11

The Texas State Board of Dental Examiners (Board) proposes amendments to §§114.2, 114.10, and 114.11, concerning the registration and training of dental assistants. The amendment is proposed to clarify the status and transition between current and succeeding programs of dental assistant registration. The proposed amendments to these sections cover dental assistant registration, radiologic procedures and dental assistant training exemptions.

Proposed §114.2 clarifies that the authorization for dental assistants to position and expose radiographs (x-rays) under the former §115.10 (recodified as §114.10) prior to September 1, 2004, will expire in its entirety on September 1, 2006.

Proposed §114.10 clarifies that the former §115.10 will be superseded by proposed §114.2 and §114.20 on September 1, 2006.

Proposed §114.11 clarifies that dental assistants may position and expose, or otherwise make dental x-rays during the course of an on-the-job training period that may last up to one year.

Dr. Jim Zukowski, Executive Director of the Texas State Board of Dental Examiners, has determined that for each year of the

first five-year period that the sections are in effect, there will be no fiscal implications for local or state government as a result of enforcing or administering these sections.

Dr. Zukowski has also determined that for each year of the first five years the sections are in effect the administration and enforcement of these proposed sections is expected to benefit the public by clarifying the status and transition of current and succeeding programs of dental assistant registration.

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 these sections.

Comments on the proposal may be submitted to Dr. Jim Zukowski, 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 these amended sections are published in the *Texas Register*.

The amendments are 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 amendments affect Title 3, Subtitle D of the Occupations Code and Title 22, Texas Administrative Code, Chapters 101 - 125.

§114.2. *Registration of Dental Assistants.*

(a) Beginning on September 1, 2004, a dental assistant may not position or expose dental x-rays unless the dental assistant holds either a certificate of registration issued by the State Board of Dental Examiners under this section, or was issued a certification [except that any dental assistant certified] under former §[Rule] 115.10 (now recodified as § [Rule] 114.10) prior to September 1, 2004. This section shall expire in its entirety on [shall not be required to register for certification under Rule 114.2 until September 1, 2006; and shall continue to be governed by Rule 114.10 until] September 1, 2006.

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

(d) Subsequent to the initial registration period, a registered dental assistant's annual renewal will occur on the first day of the month that follows the last month of the dental assistant initial registration period.

(1) (No change.)

(2) A dental assistant registered under this section who wishes to renew his or her registration must:

(A) (No change.)

(B) Submit proof that the applicant has successfully completed a current course in basic life support; and,

(C) Provide proof of completion of at least six (6) hours of continuing education in the previous registration year.

(i) The continuing education curriculum must cover dental assistant duties. [standards of care, infection control, and the applicable requirements of the Dental Practices Act and Board Rules.]

(ii) The continuing education requirement may be met through self-study, interactive computer courses, or lecture courses as offered or endorsed by continuing education providers listed in §104.2 of this title. [Dental assistants shall select and participate

in continuing education courses offered by or endorsed by continuing education providers listed in 22 TAC §104.2.]

~~[(iii) No more than three hours of the required continuing education coursework may be in self-study.]~~

(3) (No change.)

(e) - (g) (No change.)

§114.10. *Radiologic Procedures.*

(a) Pursuant to S.B. 263, 78th Regular Session, former § [Rule]115.10, relating to the issuance of a certificate of registration has been superseded by § [Rule] 114.2, relating to Registration of Dental Assistants, and §114.20. Accordingly:

(1) Beginning September 1, 2004, a dental assistant may not position or expose dental x-rays unless the dental assistant holds a certificate of registration issued pursuant to § [Rule]114.2;

(2) Notwithstanding the requirement of subsection (a)(1) of this section, any dental assistant certified under this section (formerly codified as § [Rule]115.10) prior to September 1, 2004 shall not be required to register for certification under § [Rule]114.2 until September 1, 2006, and shall continue to be governed by this § [Rule]114.10, until September 1, 2006; and,

(3) (No change.)

(b) - (i) (No change.)

§114.11. *Exemption.*

(a) (No change.)

(b) A dental assistant performing radiological procedures under this section in the course of on-the-job training may only do so for a period of one year ~~[180 days]~~.

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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Jim Zukowski, Ed.D.

Executive Director

State Board of Dental Examiners

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



**CHAPTER 115 EXTENSION OF DUTIES OF
AUXILIARY PERSONNEL--DENTAL HYGIENE
22 TAC §115.1**

The Texas State Board of Dental Examiners (Board) proposes an amendment to §115.1(2), concerning the definition of "Irreversible" and the prohibition on the intra oral use of any laser for any purpose by a dental hygienist. The amendment is proposed to remove from the definition of "Irreversible" the broad prohibition on the intra oral use of any type of laser for any purpose by dental hygienists. The change would allow dental hygienists to use laser based devices for non-therapeutic purposes such as the gathering of readings or other information for supervising dentists to use for diagnostic purposes. The amendment does not authorize the use of lasers by dental hygienists for therapeutic purposes or any purpose that is otherwise prohibited by law.

Dr. Jim Zukowski, 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.

Dr. Zukowski has also determined that for each year of the first five years the section is in effect the administration and enforcement of the proposed section is expected to benefit the public by enhancing the ability of dental hygienists to support dentists in providing patient care.

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 Dr. Jim Zukowski, 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.

§115.1. *Definitions.*

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

(1) (No change.)

(2) Irreversible--an act that is "irreversible" is not capable of being reversed or corrected. ~~[This term includes, but is not limited to, the result of intra-oral use of any laser for any purpose including all or part of a whitening process.]~~

(3) - (6) (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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Jim Zukowski, Ed.D.

Executive Director

State Board of Dental Examiners

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



22 TAC §115.3

The Texas State Board of Dental Examiners (Board) proposes an amendment to §115.3, concerning the institutional employment of dental hygienists. The amendment is proposed to clarify the duties that may be performed by a dental hygienist in an institutional setting. The amendment also clarifies the process for approval of a location for the performance of dental hygiene

duties when the proposed location is not specifically authorized by the Dental Practice Act.

Dr. Jim Zukowski, 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.

Dr. Zukowski has also determined that for each year of the first five years the section is in effect the administration and enforcement of the proposed section is expected to benefit the public by clarifying the duties that may be performed by dental hygienists in an institutional setting.

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 Dr. Jim Zukowski, 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.

§115.3. *Institutional Employment.*

(a) (No change.)

(b) A licensed hygienist may perform ~~[those]~~ duties as permitted by board rule in a long-term health care facility licensed by the State of Texas. ~~All [; provided all such]~~ duties performed by the licensed hygienist must be on ~~[the]~~ patients of record ~~[records and]~~ under the supervision and responsibility of a dentist, except as provided by §115.5 of this chapter (relating to Dental Hygienists Practicing in Long-Term Care Facilities and School-Based Health Centers).

(c) Locations for the performance of a dental procedure other than those named in the Dental Practice Act must be approved by the SBDE by rule or written authorization ~~[board]~~ as a proper location prior to commencing a dental ~~[such]~~ procedure at ~~[in]~~ the location.

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 May 9, 2006.

TRD-200602587

Jim Zukowski, Ed.D.

Executive Director

State Board of Dental Examiners

Earliest possible date of adoption: June 25, 2006

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



CHAPTER 116. DENTAL LABORATORIES
22 TAC §116.5

The Texas State Board of Dental Examiners (Board) proposes an amendment to §116.5, relating to dental laboratory requirements for certified dental technicians. The amendment is proposed to require dental laboratories to maintain employment records necessary to validate compliance with the minimum requirements of §116.5 for two years.

Dr. Jim Zukowski, 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.

Dr. Zukowski has also determined that for each year of the first five years the section is in effect the administration and enforcement of the proposed section is expected to benefit the public by ensuring that the minimum employment requirements for certified dental technicians working at dental laboratories can be verified through maintained employment records.

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 Dr. Jim Zukowski, 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.

§116.5. *Certified Dental Technician Required.*

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

(e) The owner of the dental laboratory shall maintain employment records validating compliance with this section for a period of not less than two years.

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 May 15, 2006.

TRD-200602679

Jim Zukowski, Ed.D.

Executive Director

State Board of Dental Examiners

Earliest possible date of adoption: June 25, 2006

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



PART 36. COUNCIL ON SEX
OFFENDER TREATMENT

CHAPTER 810. COUNCIL ON SEX OFFENDER
TREATMENT

The Council on Sex Offender Treatment (Council) proposes the repeal of §§810.1 - 810.5, 810.7 - 810.9, 810.31 - 810.34, 810.61 - 810.67, 810.91, 810.92, 810.122, 810.151 - 810.153, 810.182, 810.183, 810.211, 810.241, 810.242, 810.271, and 810.272; and new §§810.1 - 810.5, 810.8, 810.9, 810.31 - 810.34, 810.61 - 810.68, 810.91, 810.92, 810.122, 810.151 - 810.153, 810.182, 810.183, 810.211, 810.241, 810.242, 810.271, and 810.272, concerning the licensing of sex offender treatment providers and the civil commitment of sexually violent predators.

BACKGROUND AND PURPOSE

The new sections are due to the statutory changes made during the 79th Texas Legislative Session, 2005, by the passage of House Bill (HB) 2036, codified in Occupations Code, Chapter 110. House Bill 2036 creates a protected practice of sex offender treatment providers which mandates that all such providers be licensed by the Council on Sex Offender Treatment. The legislation requires that the Council by rule set licensure requirements and standards for those individuals who provide sex offender treatment in this state. House Bill 2036 also provides the Council with additional enforcement tools, as well as, directs the Council to conduct a pilot program involving dynamic risk assessment and to report its findings to the Governor.

SECTION BY SECTION SUMMARY

New §§810.1 - 810.5, 810.8, 810.9, 810.31 - 810.34, 810.61 - 810.68, 810.91, 810.92, 810.122, 810.151 - 810.153, 810.182, 810.183, 810.211, 810.241, 810.242, 810.271, and 810.272 provides clarification to the rules and statutory changes. New §810.1 provides for clarification of the original purpose and mission of the Council. New §810.2 adds new definitions and clarifies other definitions. New §810.3 adds one new licensing tier and deletes duplicate information. New §810.4 provides clarification to continuing education hours and adds ethics hours for renewals. New §810.5 provides a licensing fee in accordance with the tiered structure. New §810.8 provides the criteria the council will use in revoking, denial, or non-renewal of a license and evaluating criminal convictions for licensing purposes. New §810.9 provides clarification regarding complaints, disciplinary actions, and administrative hearings and the timeframe in processing a complaint.

New §810.31 provides that the Council shall obtain a criminal history record as part of the application process. New §810.32 relates to records held by the Council and changes the term "registrant" to "licensee". New §810.33 provides for the destruction of adjudication information by the Council and changes the term "registrant" to "licensee". New §810.34 clarifies the frequency of a performing a criminal background checks.

New §810.61 provides clarification to the state standards. New §810.62 provides clarification of the professional obligations required by licensees. New §810.63 provides clarification of the professional and legal obligations required by licensee in the assessment of a sex offender or juvenile with sexual behavior problems. New 810.64 provides clarification of the professional and legal obligations required by licensees in the assessment and treatment of adult sex offenders. New §810.65 provides clarification of the professional and legal obligations required by licensee in the assessment of juveniles with sexual behavior problems. New §810.66 provides clarification of the professional and legal obligations required by licensee regarding female sex offenders. New §810.67 provides clarification of the professional and legal obligations required by licensee regarding the assessment

and treatment of developmentally delayed clients. New §810.68 shall subscribe and adhere to various tenets as they relate to pertinent issues to be addressed in treatment.

New §810.91 provides licensees with general guidance regarding their ethical obligations. New §810.92 provides enforcement of the ethical obligations of all licensees.

New §810.122 provides for various definitional changes involving the civil commitment program.

New §810.151 provides the Council with authority to employ program specialists to assist in the civil commitment program.

New §810.152 provides that a program specialist and/or case manager may be a recipient of information from the council relating to a sexually violent predator (SVP). New §810.153 provides clarification regarding services provided to the SVP.

New §810.182 provides that a program specialist and/or case manager may perform duties relating to the outpatient treatment and supervision program. New §810.183 relates to the services provided by treatment providers and changes the term evaluations to assessments.

New §810.211 provides that a program specialist and/or case manager shall provide a report regarding the SVP's compliance.

New §810.241 and §810.242 provides for the program specialist and/or case manager to authorize release and provide written notice to the SVP.

New §810.271 clarifies that the council shall provide all relevant information to the program specialist and/or case manager. New §810.272 provides that duties and responsibilities of the Council under the Civil Commitment Act are suspended upon a person's confinement or commitment to a community center, mental health facility, or state school, by governmental action.

FISCAL NOTE

Allison Taylor, Executive Director, Council on Sex Offender Treatment, has determined that for each calendar year of the first-five years the sections will be in effect, there will be fiscal implications to the state as a result of enforcing or administering the sections proposed. The effect on state government will be an increase in revenue to the state of \$26,100 the first calendar year as a result of collecting initial licensure fees set at \$300. It is estimated that the small licensee population will increase by approximately 25% (approximately 87 license holders). There will be an increase in revenue of \$17,400 during the third and fifth calendar year as the 87 additional license holders will renew licensure set at \$200 every two years. This increase in revenue is an estimate as there is no statistical data on the number of persons providing sex offender treatment in Texas who are not currently listed on the Council's registry.

Implementation of the proposed sections may result in fiscal implementations for local and state governments. There may be fiscal implications for local and state governmental entities who currently utilize persons who are not previously registered. Those persons must now meet licensure requirements authorized through HB 2036 unless the specified entity exempts its provider from a specific licensing requirement. It is not possible to estimate how many providers employed through local or state governmental entities are affected or if the entity will choose to pay the licensing costs for the person. An affected person must meet the current licensure requirements (including possible additional education), pay a \$300 initial licensure fee, meet

continuing education requirements, and pay a \$200 biennial renewal fee.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Taylor has also determined that there may be an effect on small businesses or micro-businesses that are required to comply with the sections as proposed. This was determined by interpretation of the rules that small businesses and micro-businesses may be required to alter their business practices in order to comply with the sections. There is no anticipated negative impact on local employment. There are anticipated economic costs to individuals who are required to comply with the sections as proposed. The initial application cost to an individual is \$300 for the biennium plus an additional \$39 charge for the Department of Public Safety criminal history check and thereafter a \$200 biennial licensing renewal cost.

PUBLIC BENEFIT

In addition, Ms. Taylor has also determined that for each year of the first five years the sections are in effect, the public will benefit from the adoption of the sections. The public benefit anticipated as a result of enforcing or administering the sections is to ensure and enhance public safety.

PUBLIC COMMENT

Comments on the proposal may be submitted to Lupe Ruedas, Council on Sex Offender Treatment, 1100 West 49th Street, Austin, Texas 78756, fax (512) 834-4511, or email to Lupe.Ruedas@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

PUBLIC HEARING

A public hearing to receive comments on the proposal will be scheduled after publication of the proposed rules in the *Texas Register*. For additional information, please contact Lupe Ruedas at (512) 834-4530.

SUBCHAPTER A. SEX OFFENDER TREATMENT PROVIDER REGISTRY

22 TAC §§810.1 - 810.5, 810.7 - 810.9

(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 Council on Sex Offender Treatment or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

STATUTORY AUTHORITY

The proposed repeals are authorized by Occupations Code, §110.158, which requires the council to adopt rules consistent with this chapter and §110.159, which requires the council to charge fees for issuing or renewing a license.

The proposed repeals affect Occupations Code, Chapter 110.

- §810.1. *Introduction.*
- §810.2. *Definitions.*
- §810.3. *Registry Criteria.*
- §810.4. *Registry Renewal.*
- §810.5. *Fees.*
- §810.7. *Documentation of Experience and Training.*
- §810.8. *Revocation, Denial or Non-Renewal of Registration.*
- §810.9. *Complaints, Disciplinary Actions, Administrative Hearings and Judicial Review.*

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 May 15, 2006.

TRD-200602708

Walter J. Meyer, M.D.

Chair

Council on Sex Offender Treatment

Earliest possible date of adoption: June 25, 2006

For further information, please call: (512) 458-7111 x6972



SUBCHAPTER B. CRIMINAL BACKGROUND CHECK

22 TAC §§810.31 - 810.34

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Council on Sex Offender Treatment or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

STATUTORY AUTHORITY

The proposed repeals are authorized by Occupations Code, §110.158 which requires the council to adopt rules consistent with this chapter and §110.159 which requires the council to charge fees for issuing or renewing a license.

The proposed repeals affect Occupations Code, Chapter 110.

§810.31. *Access to Criminal History Records.*

§810.32. *Records.*

§810.33. *Destruction of Criminal History Records.*

§810.34. *Frequency of Criminal Background Check.*

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-200602710

Walter J. Meyer, M.D.

Chair

Council on Sex Offender Treatment

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SUBCHAPTER C. STANDARDS OF PRACTICE

22 TAC §§810.61 - 810.67

(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 Council on Sex Offender Treatment or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

STATUTORY AUTHORITY

The proposed repeals are authorized by Occupations Code, §110.158 which requires the council to adopt rules consistent with this chapter and §110.159 which requires the council to charge fees for issuing or renewing a license.

The proposed repeals affect Occupations Code, Chapter 110.

- §810.61. *Introduction to Standards of Practice.*
- §810.62. *Council Assertions.*
- §810.63. *Assessment/Evaluation Concerns.*
- §810.64. *Juveniles with Sexual Behavior Problems.*
- §810.65. *Adult Female Sex Offenders.*
- §810.66. *Developmentally Delayed Clients.*
- §810.67. *Pertinent Issues to Be Addressed in Treatment (Adults and Juveniles).*

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-200602712
 Walter J. Meyer, M.D.
 Chair
 Council on Sex Offender Treatment
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SUBCHAPTER D. CODE OF PROFESSIONAL ETHICS

22 TAC §810.91, §810.92

(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 Council on Sex Offender Treatment or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

STATUTORY AUTHORITY

The proposed repeals are authorized by Occupations Code, §110.158, which requires the council to adopt rules consistent with this chapter and §110.159, which requires the council to charge fees for issuing or renewing a license.

The proposed repeals affect Occupations Code, Chapter 110.

- §810.91. *General.*
- §810.92. *Code of Ethics.*

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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 Walter J. Meyer, M.D.
 Chair
 Council on Sex Offender Treatment
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 For further information, please call: (512) 458-7111 x6972



SUBCHAPTER E. GENERAL PROVISIONS

22 TAC §810.122

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of

the Council on Sex Offender Treatment or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

STATUTORY AUTHORITY

The proposed repeal is authorized by Occupations Code, §110.158, which requires the council to adopt rules consistent with this chapter and §110.159, which requires the council to charge fees for issuing or renewing a license.

The proposed repeal affects Occupations Code, Chapter 110.

- §810.122. *Definitions.*

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-200602716
 Walter J. Meyer, M.D.
 Chair
 Council on Sex Offender Treatment
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SUBCHAPTER F. CIVIL COMMITMENT

22 TAC §§810.151 - 810.153

(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 Council on Sex Offender Treatment or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

STATUTORY AUTHORITY

The proposed repeals are authorized by Occupations Code, §110.158, which requires the council to adopt rules consistent with this chapter and §110.159, which requires the council to charge fees for issuing or renewing a license.

The proposed repeals affect Occupations Code, Chapter 110.

- §810.151. *Administration of the Act.*
- §810.152. *Civil Commitment of Sexually Violent Predators.*
- §810.153. *Outpatient Treatment and Supervision Program.*

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

Filed with the Office of the Secretary of State on May 15, 2006.
 TRD-200602718
 Walter J. Meyer, M.D.
 Chair
 Council on Sex Offender Treatment
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 For further information, please call: (512) 458-7111 x6972



SUBCHAPTER G. CIVIL COMMITMENT CASE MANAGER AND TREATMENT PROVIDER DUTIES AND RESPONSIBILITIES

22 TAC §§810.182, §810.183

(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 Council on Sex Offender Treatment or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

STATUTORY AUTHORITY

The proposed repeals are authorized by Occupations Code, §110.158, which requires the council to adopt rules consistent with this chapter and §110.159, which requires the council to charge fees for issuing or renewing a license.

The proposed repeals affect Occupations Code, Chapter 110.

§810.182. *Civil Commitment Case Manager.*

§810.183. *Civil Commitment Treatment Provider.*

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 May 15, 2006.

TRD-200602720

Walter J. Meyer, M.D.

Chair

Council on Sex Offender Treatment

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For further information, please call: (512) 458-7111 x6972



SUBCHAPTER H. CIVIL COMMITMENT REVIEW

22 TAC §810.211

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Council on Sex Offender Treatment or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

STATUTORY AUTHORITY

The proposed repeal is authorized by Occupations Code, §110.158, which requires the council to adopt rules consistent with this chapter and §110.159, which requires the council to charge fees for issuing or renewing a license.

The proposed repeal affects Occupations Code, Chapter 110.

§810.211. *Biennial 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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Walter J. Meyer, M.D.

Chair

Council on Sex Offender Treatment

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For further information, please call: (512) 458-7111 x6972



SUBCHAPTER I. PETITION FOR RELEASE

22 TAC §810.241, §810.242

(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 Council on Sex Offender Treatment or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

STATUTORY AUTHORITY

The proposed repeals are authorized by Occupations Code, §110.158, which requires the council to adopt rules consistent with this chapter and §110.159, which requires the council to charge fees for issuing or renewing a license.

The proposed repeals affect Occupations Code, Chapter 110.

§810.241. *Authorized Petition for Release.*

§810.242. *Unauthorized Petition for Release.*

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 May 15, 2006.

TRD-200602724

Walter J. Meyer, M.D.

Chair

Council on Sex Offender Treatment

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For further information, please call: (512) 458-7111 x6972



SUBCHAPTER J. MISCELLANEOUS PROVISIONS

22 TAC §810.271, §810.272

(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 Council on Sex Offender Treatment or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

STATUTORY AUTHORITY

The proposed repeals are authorized by Occupations Code, §110.158, which requires the council to adopt rules consistent with this chapter and §110.159, which requires the council to charge fees for issuing or renewing a license.

The proposed repeals affect Occupations Code, Chapter 110.

§810.271. *Release and Exchange of Information.*

§810.272. *Effect of Certain Subsequent Convictions, Judgments, or Verdicts on the Order of Commitment.*

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 May 15, 2006.

TRD-200602726

Walter J. Meyer, M.D.

Chair

Council on Sex Offender Treatment

Earliest possible date of adoption: June 25, 2006

For further information, please call: (512) 458-7111 x6972

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SUBCHAPTER A. LICENSED SEX OFFENDER TREATMENT PROVIDERS

22 TAC §§810.1 - 810.5, 810.8, 810.9

STATUTORY AUTHORITY

The proposed new sections are authorized by Occupations Code, §110.158, which requires the council to adopt rules consistent with this chapter and §110.159, which requires the council to charge fees for issuing or renewing a license.

The proposed new sections affect Occupations Code, Chapter 110.

§810.1. Introduction.

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

(b) Construction. These sections cover definitions, licensing criteria for application, fees, continuing education, complaints, general procedures, standards of practice, and policies of the Council on Sex Offender Treatment.

(c) History. The Council on Sex Offender Treatment (council) was created by the 68th Legislature (Senate Bill 84) in 1983 under the name of the Interagency Council on Sex Offender Treatment and its' Act is codified in Occupations Code, Chapter 110. The council was designed to coordinate effective assessment and treatment strategies to reduce recidivism of sex offenders and to enhance public safety.

§810.2. Definitions.

(a) General Definitions.

(1) ATSA--The Association for the Treatment of Sexual Abusers.

(2) Act--Texas Occupations Code, Chapter 110, relating to the Council on Sex Offender Treatment.

(3) Biennium--Every 2 years.

(4) Case Management--The coordination and implementation of activities directed toward supervising, treating, and managing the adult sex offender or juvenile with sexual behavioral problems.

(5) Client(s)--Used interchangeably with adult sex offenders and juveniles with sexual behavior problems.

(6) Council--The Council on Sex Offender Treatment.

(7) Custodian--The adult who is responsible for an adult or child.

(8) Fiscal Year--September 1 through August 31.

(9) Guardian--The person who, under court order, is the guardian of the person of the adult or the child, or the public or private agency with whom the adult or juvenile has been placed by a court.

(10) HIPAA--Health Insurance Portability and Accountability Act, Title 45, Code of Federal Regulations (CFR), Parts 160 and 164.

(11) Juvenile Court--A court designated under the Family Code, Title 3, Juvenile Justice Code, §51.04, to exercise jurisdiction over the proceedings.

(12) Licensee--A treatment provider licensed by the council and who is recognized based on training and experience to provide

assessment and treatment to adult sex offenders and/or juveniles with sexual behavioral problems who have been convicted, adjudicated, deferred, or referred by a State agency or court.

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

(14) Reportable Conviction or Adjudication--A conviction or adjudication, regardless of the pendency of an appeal.

(15) TSBSWE--The Texas State Board of Social Work Examiners.

(b) Treatment Definitions.

(1) Ability to Give Consent--as stated in §1.07, Texas Penal Code, "assent in fact whether expressed or not", and as recognized under Family Code, §§2.102, 2.103.

(2) Accountability--Accurate attributions of responsibility, without distortion, minimization, or denial.

(3) Adaptive Behavior--The effectiveness with which a person meets the standards of personal independence and social responsibility reasonably expected of the person's age, sex, and cultural group (Health and Safety Code, Chapter 614).

(4) Aversive Conditioning for Deviant Arousal--Behavioral techniques that involve pairing deviant sexual arousal with a noxious stimulus in order to modify deviant sexual arousal.

(5) Clarification--The process designed for the primary benefit of the victim, by which the adult sex offender or juvenile with sexual behavior problems clarifies that the responsibility for the assault/abuse resides with the adult offender or juvenile and addresses the harm done to the victim and the family.

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

(7) Containment Model--The communication, cooperation, coordination, and exchange of information between, district attorneys, judges, community supervision officers, parole officers, case managers, child protective service workers, mental health case workers, law enforcement, polygraph examiners, survivor's therapist, victim advocates, treatment providers, school officials (if applicable), family members (if applicable), and other support persons to enhance community protection.

(8) Denial--The refusal to acknowledge in whole or in part sexually deviant arousal, sexually deviant intent, and/or sexually deviant behavior.

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

(10) Deviant Sexual Behavior--A sexual act that meets one or more of the following criteria:

(A) is with a person under the legal age of consent for sexual contact;

(B) is with a person who is unable to give consent;

(C) is forced, causes physical harm, is coerced, uses intimidation or deceit, or is paid for;

(D) is harmful or degrading; or

(E) is with an animal or fowl.

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

(12) Dynamic Risk Factors--Risk factors that can change over time and are important targets for treatment and supervision.

(13) Empathy--The ability to identify and understand another person's feelings, situation, or ideas.

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

(15) Inappropriate Sexual Behavior--Any sexual behavior outside the norm for the age and development for that individual.

(16) Juvenile with Sexual Behavior Problems--A person who:

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

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

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

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

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

(20) Offense Specific Sex Offender Treatment--Treatment modalities that have been proven to be effective based on empirical research and accepted in the field of sex offender treatment. Offense specific treatment means a long-term comprehensive set of planned treatment experiences and interventions that modify sexually deviant thoughts, fantasies, and behaviors and that utilize specific strategies to promote change and to reduce the chance of re-offending. The primary treatment modality is cognitive behavioral group treatment.

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

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

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

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

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

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

(23) Polygraph Examiner--A person with a current license approved by the Texas Polygraph Examiners Board and who meets minimum criteria to be listed by the Joint Polygraph Committee on Offender Testing (JPCOT) for polygraphing adult sex offenders and juveniles with sexual behavior problems.

(24) Secondary Victims--Relatives or other persons closely involved with the primary victim and client who are severely impacted emotionally or physically by the trauma suffered by the victim.

(25) Sex Offender--A person who:

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

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

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

(26) Static Risk Factors--Risk factors that are unlikely to change over time.

(27) Sub-Average General Intellectual Functioning--The measured intelligence on standardized psychometric instruments of two or more standard deviations below the age-group mean for the tests used (Health and Safety Code, §591.003).

(28) Successful Completion of Treatment--Includes but is not limited to admitting and accepting responsibility for all crimes, demonstrating the ability to control deviant sexual arousal, understanding sexual offense cycle, increase in pro-social behaviors, increase in appropriate support systems, improved social competency, compliance with supervision, compliance with court conditions, increased understanding of victimization, no deception indicated on exit polygraphs, completing and passing the sex history polygraph, approved safety plans, approved relapse prevention plan, successful completion of adjunct treatments (for example: anger management, substance abuse, etc.), and the demonstrated integration and practical application of the skills presented in treatment. Each of these issues regarding successful completion of treatment shall be addressed unless

precluded by §810.64 of this title (relating to Juveniles with Sexual Behavior Problems), §810.66 of this title (relating to Developmentally Delayed Clients), or unless a state agency is exempt from a specific licensing requirement related to assessment tools (i.e. polygraphs, penile plethysmographs, or visual reaction time). The Licensed Sex Offender Treatment Provider after collaborating with appropriate criminal/juvenile justice personnel determines the successful completion of treatment.

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

§810.3. License Required.

A person shall not provide sex offender treatment or act as a sex offender treatment provider unless the person is licensed by the council. A person may not claim to be a sex offender treatment provider or use the title or an abbreviation that implies the person is a sex offender treatment provider unless the person is licensed under this chapter. The council shall maintain a list of licensees who meet the council's licensure criteria to assess and treat adult sex offenders and/or juveniles with sexual behavior problems. The council shall recognize the experience and training of treatment providers in the following licensure categories: "Licensed Sex Offender Treatment Provider", "Affiliate Sex Offender Treatment Provider", or "Provisional Sex Offender Treatment Provider".

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

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

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

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

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

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

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

(i) not have been convicted and/or adjudicated of any felony, or of any misdemeanor involving a sex offense or sexu-

ally motivated offense, nor have received deferred adjudication for a sex offense, and/or required to register as a sex offender under Texas Code of Criminal Procedure, Chapter 62;

(ii) not have had licensure revoked or canceled by any professional licensing body;

(iii) submit to a criminal history background check. An applicant shall be required to submit a complete set of fingerprints on the card provided by the Council with the application documents, or other information necessary to conduct a criminal history background check to be submitted to the Texas Department of Public Safety or to another law enforcement agency. Fingerprints shall be taken by a peace officer or a person authorized by the council and shall be placed on a form prescribed by the Texas Department of Public Safety; and

(iv) not have violated the Act or any rule adopted by the council;

(E) submit an application fee as defined in §810.5 of this title (relating to Fees);

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(J) After completing the required documented clinical and continuing education hours, the ASOTP will be upgraded to a LSOTP.

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

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

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

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

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

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

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

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

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

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

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

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

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

(J) After completing the required documented clinical and continuing education hours, the PSOTP will be upgraded to the LSOTP or ASOTP license based on the number of completed hours.

(4) Licensing Out-of-State Applicants. The council may waive any prerequisite to licensing for an application after receiving the applicant's credentials and determining that the applicant holds a valid sex offender treatment license from another state that has license requirements substantially equivalent to those of this state.

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

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

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

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

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

(6) Supervision. All ASOTPs and PSOTPs providing sex offender assessment and treatment shall be supervised unless exempt under subparagraph(B)(ii) of this paragraph. Supervision will include the following:

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

renewal period unless exempt under subparagraph(B)(ii) of this paragraph.

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

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

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

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

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

(C) An ASOTP and PSOTP shall receive face-to-face supervision at least 1 hour per 20 hours of assessment and treatment with a minimum of 2 hours per month during any time period in which the supervisee provides sex offender treatment unless exempt under subparagraph (B)(ii) of this paragraph. Exceptions to supervision requirements shall be approved on a case-by-case basis by the council.

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

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

(A) The Council shall prepare and provide to each licensee a certificate and initial and renewal cards, which contains the licensee's name and certificate number.

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

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

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

(8) Application processing. The council shall comply with the following procedures in processing applications for a license.

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

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

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

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

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

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

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

(9) Refund processing. The council shall comply with the following procedures in processing refunds of fees paid to the council. In the event an application is not processed in the times stated in paragraph (8)(A) - (B) of this section.

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

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

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

§810.4. License Renewal.

In order to maintain eligibility for the licensure as a sex offender treatment provider, the mental health or medical license of each renewal shall be current and active. All renewal applicants shall comply with the following:

(1) Number of continuing education (CE) hours. All renewal applicants shall acquire by the end of the 2-year cycle, a minimum of 24 hours of documented continuing education. Six hours shall be in ethics and 18 shall be in sex offender assessment and treatment of which 6 hours may be in sexual assault victim-related training, beginning September, 2006.

(2) All renewal applicants shall submit renewal forms provided by the council and renewal fees defined in §810.5 of this title (relating to Fees).

(3) All licenses expire September 30, no matter the date of initial license.

(4) All renewal applications shall be postmarked by September 30 or a late fee shall be assessed.

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

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

(7) Licensees shall request pre-approval from the council for all online courses and courses taken at an institution of higher learning.

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

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

(10) Continuing education extension.

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

(B) The request for an extension of the CE period shall be made in writing and shall be postmarked prior to September 30.

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

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

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

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

(11) Completion of continuing education within the extension period. A license shall be renewed upon completion of the required CE within the given extension period, submission of the license form, and payment of the applicable late renewal fee.

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

§810.5. Fees.

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

(1) All new LSOTPs, ASOTPs, and PSOTPs applicants shall submit a non-refundable \$300 fee for a biennial application. Additional fees will be charged for Federal Bureau of Investigations and Texas Department of Public Safety criminal background checks. Fees shall be determined by those agencies conducting the investigation.

(2) All applicants shall comply with the following requirements:

(A) return the completed, signed application form provided by the council;

(B) submit the license fee in the form of a check or money order or if renewing online by credit card; and

(C) submit within 90 calendar days of written notification from the Council any documentation required.

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

(1) All renewals shall include a nominal electronic renewal fee if applicable, as established by the contracting agency. Renewal fees are subject to the provisions in the Occupations Code, §110.307.

(2) To renew, a LSOTP, ASOTP, or PSOTP shall include a non-refundable \$200 fee for a biennial renewal. All applicants shall comply with the following requirements.

(A) A person who is otherwise eligible to renew a license may renew an unexpired license by paying the required license fee to the council on or before the expiration date of the license.

(B) If a license has been expired for 90 days or less, the late renewal fee is equal to one and one-half times the required renewal fee.

(C) If a license has been expired for longer than 90 days, but less than one year, the reinstatement fee is equal to two times the required renewal fee.

(D) If a license has been expired for 1 year or longer, the individual may obtain a new license by submitting and complying with the requirements and procedures for obtaining an original license.

(c) Effective January 1, 2004, for all new applications and renewal applications, the council is required to collect subscription and convenience fees, in amounts determined by the Texas Online Authority, to recover costs associated with application and renewal application processing through the Texas Online.

(d) Effective January 1, 2004, for all new applications and renewal applications, the council is authorized to collect fees to fund the Office of Patient Protection, Health Professions Council, as mandated by law.

(e) Specialty Fees. Applicants that meet the specialized competency criteria involving the treatment of juveniles with sexual behavior problems, females, and/or developmentally delayed populations shall submit a non-refundable \$40 specialty fee for each biennial period.

(f) Supervisor Fees. Licensees that meet the LSOTP supervisor criteria and who seek to be designated as an approved LSOTP supervisor shall submit a non-refundable \$40 credentialing fee for each biennial period.

(g) Duplicate Certificates. Licensees who request duplicate certificates shall be charged a non-refundable \$10 fee per certificate.

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

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

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

(2) been determined by the council to have engaged in deceit or fraud in connection with the delivery of services, supervision, or documentation of licensure requirements;

(3) violated the Act or any rule adopted by the council;

(4) been prohibited from renewal by the Education Code, §57.491 (relating to Loan Default Ground for Non-renewal of Professional or Occupational License); or

(5) been prohibited from renewal by a court order or attorney general's order issued pursuant to the Family Code, Chapter 232 (relating to Suspension of License for Failure to Pay Child Support or to Observe a Child Custody Order).

(b) The council may take action against a licensee or deny an application or renewal in accordance with Occupations Code, Chapter 53, if the licensee has felony or misdemeanor convictions that directly relate to the duties and responsibilities of a sex offender treatment provider.

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

(a) Reporting a complaint. A person shall report an alleged violation of the Act or this chapter by a licensee or non-licensee by notifying the executive director. The initial notification shall be in writing and sent by fax, U.S. Postal Service, or email to the council's office.

(b) Review of complaint.

(1) The executive director shall review the complaint for violations of the Act or any rule adopted by the council.

(2) If it is determined that a violation of the Act or these sections may have occurred, the executive director or executive director's designee shall:

(A) notify the complainant in writing of receipt of the complaint;

(B) notify the licensee in writing that a complaint has been filed and provide a copy of the complaint; and

(C) provide a copy of the complaint to the licensee's mental health or medical licensing agency.

(c) Responsibilities of licensee.

(1) A licensee shall cooperate with the council by furnishing all required documents or information and by responding to a request for information or a subpoena issued by the council or its authorized representative.

(2) A licensee shall comply with any order issued by the council relating to the licensee. A licensee shall not interfere with a council investigation by the willful misrepresentation of facts to the council or its authorized representative or by the use of threats or harassment against any person.

(3) The licensee shall be notified of the allegations in writing by the executive director or designee and shall be required to provide a response to the allegations within 20 calendar days of that notice.

(4) Failure to respond to the allegation within the 20 day period is evidence of licensee's failure to cooperate with the investigation and may subject the licensee to disciplinary action.

(d) Actions by the council. The council is authorized to revoke, suspend, or deny a license, or to deny a renewal of a license, place on probation a person whose license has been suspended, or reprimand a licensee for a violation of the Act, or a rule of the council.

(e) Probated Suspension. If the suspension is probated, the council is authorized by Occupations Code, §110.352, to impose certain requirements and limitations on a person.

(f) Disciplinary action on the mental health or medical license. If a licensee's mental health or medical license is revoked or suspended, the council may propose to revoke a license issued under this chapter.

(g) Complaint information. The council shall retain all complaints filed with the council for 7 years from the date of closure. The information shall include:

(1) the date the complaint is received;

(2) the name of the complainant;

(3) the subject matter of the complaint;

(4) a record of all witnesses contacted in relation to the complaint;

(5) a summary of the results of the review, investigation of the complaint, and any action taken; and

(6) for a complaint for which the Council took no action, an explanation of the reason the complaint was closed without action.

(h) Formal hearing.

(1) The formal hearing shall be conducted according to the provisions of the Texas Government Code, Chapter 2001, Administrative Procedure Act and held in Travis County, Texas, unless otherwise determined by the Administrative Law Judge (ALJ) or upon agreement of the parties.

(2) Prior to institution of formal proceedings to revoke or suspend a license, the executive director shall give written notice to the licensee by certified mail, return receipt requested, of the facts or conduct alleged to warrant revocation or suspension, and the person shall be given the opportunity, as described in the notice, to show compliance with all requirements of the Act and this chapter.

(3) To initiate formal hearing procedures, the executive director shall give the licensee written notice of the opportunity for hearing. The notice shall state the basis for the proposed action. Within 20 calendar days after receipt of the notice, the licensee shall give written notice to the executive director that the licensee waives the hearing and either surrenders the license, or accepts the proposed sanction, or requests an informal settlement conference and/or a formal hearing. Receipt of the notice is deemed to occur on the seventh calendar day after the notice is mailed to the licensee's last reported address as reflected in the council's records unless another date of receipt is reflected on a U.S. Postal Service return receipt.

(A) If the licensee fails to request a hearing within the proscribed period, the licensee is deemed to have waived the hearing and a default order may be entered by the council.

(B) If the licensee requests an informal settlement conference and/or a formal hearing, within 20 calendar days after receiving the notice of opportunity for hearing, the executive director shall initiate an informal settlement conference and/or formal hearing procedures in accordance with this section.

(i) Final action.

(1) If the council suspends a license, the suspension remains in effect for the period of suspension ordered or until the executive director or the council determines that the reasons for suspension no longer exist. The licensee whose license has been suspended is responsible for securing and providing to the executive director such evidence that the reasons for the suspension no longer exist. The executive director or the council shall investigate prior to making a determination.

(2) During the time of suspension, the former licensee shall return all license certificate(s) and renewal card(s) to the council.

(3) If a suspension overlaps a renewal period, the former licensee shall comply with the normal renewal procedures in these sections. The council shall not renew the certificate until the executive director or the council determines that the reasons for suspension have been removed.

(4) A person whose application is denied or whose license certificate is revoked is ineligible to apply for licensure under this Act for 1 year from the date of the denial or revocation.

(5) Upon revocation or non-renewal, the former licensee shall return all certificate(s) and renewal card(s) issued to the licensee by the council. The certificate(s) and renewal card(s) shall be returned to the council by certified mail, hand-delivered, or by a delivery service, within 30 days of request.

(j) Appeal of a decision. A person may appeal a final decision of the council by filing a petition for judicial review in the manner provided by the Texas Government Code, §2001.176.

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 May 15, 2006.

TRD-200602709

Walter J. Meyer, M.D.

Chair

Council on Sex Offender Treatment

Earliest possible date of adoption: June 25, 2006

For further information, please call: (512) 458-7111 x6972



SUBCHAPTER B. CRIMINAL BACKGROUND CHECK

22 TAC §§810.31 - 810.34

STATUTORY AUTHORITY

The proposed new sections are authorized by Occupations Code, §110.158 which requires the council to adopt rules consistent with this chapter and §110.159 which requires the council to charge fees for issuing or renewing a license.

The proposed new sections affect Occupations Code, Chapter 110.

§810.31. Access to Criminal History Records.

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

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

§810.32. Records.

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

§810.33. Destruction of Criminal History Records.

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

§810.34. Frequency of Criminal Background Check.

The council shall conduct a criminal background check on each new applicant, randomly at the time of renewal, and as deemed necessary.

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 May 15, 2006.

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Chair

Council on Sex Offender Treatment

Earliest possible date of adoption: June 25, 2006

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SUBCHAPTER C. STANDARDS OF PRACTICE

22 TAC §§810.61 - 810.68

STATUTORY AUTHORITY

The proposed new sections are authorized by Occupations Code, §110.158 which requires the council to adopt rules consistent with this chapter and §110.159 which requires the council to charge fees for issuing or renewing a license.

The proposed new sections affect Occupations Code, Chapter 110.

§810.61. Introduction to the State Standards of Practice.

These state standards were developed by the council to delineate appropriate assessment and treatment procedures and policies in Texas, and as well as adopted by reference from the Association for the Treatment of Sexual Abusers (ATSA) publication entitled, Practice Standards and Guidelines, Revised 2005, and Professional Code of Ethics, 2001. These standards delineate professional licensing expectations

for the assessment and treatment of adult sex offenders and juveniles with sexual behavior problems.

§810.62. State Standards of Practice.

(a) Interventions shall be designed to assist the individual to effectively manage thoughts, feelings, attitudes, and behaviors associated with their risk to reoffend. Structured, cognitive behavioral skills-oriented treatment programs shall target specific criminogenic needs to reduce re-offense rates.

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

(1) be committed to community protection and safety and licensees shall be aware of any professional and legal obligations regarding a duty to protect or warn;

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

(3) act in the best interests of society, the victim, and the client;

(4) utilize the containment model; and

(5) hold voluntary or mandated clients to the same standards of practice and compliance.

§810.63. General Assessment Standards (Adults and Juveniles).

(a) The assessment shall focus on both the risks and needs of the client, and identifying factors from social and sexual history, which may contribute to sexual deviance. Assessments shall provide the basis for the development of comprehensive treatment plans and shall provide recommendations regarding the intensity of intervention, specific treatment protocol needed, amenability to treatment, as well as the identified risk the adult sex offender and the juvenile with sexual behavior problems present to the community.

(b) The following standards were developed and adopted by reference from the Association for the Treatment of Sexual Abusers publication entitled, Practice Standards and Guidelines, Revised 2005 and Professional Code of Ethics, 2001. In preparing assessments of adult sex offenders and juveniles with sexual behavior problems, licensees shall:

(1) be fair and impartial, providing objective and accurate data;

(2) respond only to referral questions that fall within the licensee's expertise and present level of knowledge;

(3) be respectful of the client's right to be informed of the reasons for the assessment, the interpretation of data, the basis for recommendations, and conclusions;

(4) have knowledge of the client's legal status;

(5) understand the limitations of a client's self-report and make all possible efforts to verify the information provided by the client;

(6) use assessment procedures and techniques sufficient to respond to the presenting issues and provide appropriate substantiation for the resulting conclusions and recommendations;

(7) acknowledge if an assessment consisted of only a clinical review without client contact and shall clarify the impact that limited information has on the reliability and validity of the resulting report;

(8) provide clients in writing informed consent, statement of disclosures, releases and/or exceptions to confidentiality, and em-

ploy verbal explanations for clients who do not meet the reading or comprehension level required;

(9) thoroughly review written documentation and collateral interviews. The review involves collecting information from all available and relevant sources, including but not limited to:

(A) criminal investigation records;

(B) child protective services investigations;

(C) previous assessments and treatment progress reports;

(D) mental health records and assessments;

(E) medical records;

(F) Texas Department of Criminal Justice and Texas Youth Commission reports (if applicable);

(G) probation reports;

(H) information regarding details of the offense as obtained by law enforcement; and

(I) the official victim statement(s).

(10) diligently interpret assessments conducted without collateral information;

(11) ensure written assessments document and acknowledge the procedures employed, summaries, conclusions, recommendations, and all collateral reports and interviews;

(12) new interviews or repeated interviews of survivors should not be required during the client's assessment and should only be used when there is no discernible risk of harm or discomfort to the survivor; and

(13) when the assessment of a client and a survivor are concurrent, the licensee shall be vigilant to remain objective in the administration of procedures and the interpretation of the information obtained through the interview or other means.

(c) Licensees shall subscribe and adhere to the following tenets regarding the client assessment.

(1) The comprehensive assessment of the client's sexually deviant behavior is specific to the continuing assessment of the client.

(2) If a client does not meet the reading or comprehension level required by an assessment instrument, arrangements for using a standardized approved auditory (taped or read) version of the test instrument shall be made to the extent such versions are available.

(3) The clinical interview shall incorporate sufficient discussion necessary to augment, clarify, and explore the information obtained from the review of collateral materials and contacts and other components of the assessment (for example: testing results).

(4) Licensees shall make every effort to obtain the official offense report to compare the degree of similarity or disparity between the client and the victim's statements.

(5) The client's explanations for false allegations shall be documented.

(6) Assessment of treatment needs shall identify strengths and weaknesses in the individual's psycho-sexual functioning for the purpose of directing treatment efforts to the appropriate areas.

(7) Community safety and the degree to which a client is capable and willing to manage risk shall be considered when generating recommendations.

(8) If a significant amount of time has lapsed between the time of the assessment and when the client is accepted into a treatment program, an assessment update shall be required.

(9) An assessment update shall collect current data upon which the original treatment plan can either be confirmed or amended.

(10) A licensee shall never recommend an inadequate treatment program or level of risk management because existing resources limit or preclude adequate or appropriate services.

§810.64. Assessment and Treatment Standards for Adult Sex Offenders.

(a) Assessments shall provide a comprehensive treatment plan and recommendations regarding the intensity of intervention, specific treatment protocol needed, amenability to treatment, and the identified community risk.

(b) A comprehensive assessment as cited in subsection (a) - (c) shall be completed within 45 days of a client's being accepted into treatment program. The assessment of adult sex offenders shall include:

- (1) mental status examination;
- (2) clinical interview;
- (3) personality assessment;
- (4) intellectual assessment;
- (5) sexual assessment; and
- (6) recommendations for case management, treatment planning, and further assessments.

(c) Efforts shall be made to acquire the following information gathered in the assessment process:

- (1) intellectual and cognitive functioning;
- (2) mental status and psychiatric history;
- (3) medical history of head injuries, physical abnormalities, enuresis, encopresis, current use of medication, allergies, accidents, operations, and major medical illnesses;
- (4) self-destructive behaviors, self-mutilation, and suicide attempts;
- (5) psychopathology and personality characteristics;
- (6) family history and marital/relationship history;
- (7) history of physical, emotional and/or sexual victimization;
- (8) education and occupation history;
- (9) criminal history;
- (10) history of violence and aggression including use of weapons;
- (11) history of truancy, fire-setting, and abuse of animals;
- (12) interpersonal relationships, both past and current;
- (13) cognitive distortions;
- (14) social competence;
- (15) impulse control;
- (16) substance abuse;
- (17) official report regarding the instant sexual offense;
- (18) denial, minimization and inability to accept responsibility;

(19) sexual history including sexual development, adolescent sexuality and experimentation, dating history, intimate sexual contacts, gender identity issues, adult sexual practices, masturbatory practices, sexual dysfunction, fantasy content, and sexual functioning; and

(20) sexually deviant behavior, including description of offense behaviors, number of victims, gender and age of victims, frequency and duration of abusive sexual contact, victim selection, access, and grooming behaviors, use of threats, coercion or bribes to maintain victim silence, degree of force used before, during and/or after offense, and deviant arousal patterns.

(d) Treatment Standards for Adult Sex Offenders. Licensees shall adhere to the following standards when providing treatment to an adult sex offender:

(1) cognitive-behavioral approaches shall be utilized in sex offender treatment groups.

(2) community-based treatment groups for non-developmentally delayed adults shall not exceed 90 minutes nor be less than sixty (60) minutes in length with no more than 12 clients per group.

(3) individual therapy, self-help groups, drug intervention, or other therapies shall be used only as adjuncts to more comprehensive sex offender treatment;

(4) a written initial individualized treatment plan shall identify the issues, intervention strategies, and goals of treatment and shall be prepared for each client within 60 days of the referral. Treatment plans shall be reassessed at least annually;

(5) progress, or lack of progress, refusal or failure to attend or participate in treatment, failing to abide by the client's treatment plans and/or contracts, or any disclosures regarding violations of supervision, shall be clearly documented in treatment records. Licensees shall provide and communicate this information to the appropriate supervising officer in the justice system and/or to the court order;

(6) progress in treatment shall be based on specific, measurable objectives, observable changes, and the demonstrated ability to apply changes in relevant situations and comply with supervision requirements. These changes shall be demonstrated by an increased understanding by the client of his/her own deviant behavior, understanding of current and sexual offense cycle, increase in pro-social behaviors, compliance with supervision, increase in support systems, and victim empathy;

(7) monthly treatment progress reports shall be distributed to the supervision officer, referring agency, and/or court. Discharge reports shall be issued according to the referring agency policy or pursuant to the court order;

(8) when a client has made the changes required in offense-specific treatment, there should be a gradual and commensurate decline of interventions;

(9) a licensee may refuse to treat a client because essential ancillary resources do not exist to provide the necessary levels of intervention or safeguards;

(10) the licensee shall have an ethical obligation to refer the client to a more comprehensive treatment program and/or to the judicial system when the licensee determines that a client is not making the necessary progress in treatment to reduce the client's risk to the community;

(11) a licensee may decide to decline further involvement with a client who refuses to address any critical aspect of treatment;

(12) a licensee shall immediately notify the appropriate authority when a client refuses or fails to comply with court-ordered treatment or Texas Department of Criminal Justice Board ordered treatment;

(13) some degree of denial shall not preclude a client from entering treatment, although the degree of denial shall be a factor in identifying the most appropriate form and location of treatment;

(14) modifications in treatment and in expectations for treatment outcomes may be required in instances of persistent denial;

(15) a licensee shall not rely exclusively on self report by the client to assess progress or compliance with treatment requirements and/or conditions of probation or parole. Licensees shall rely on multiple sources of information, which should include information from collateral contacts, physiological methods, and other research-based sexual interest assessments;

(16) physiological methods or measures of sexual interest assessment shall not replace other forms of monitoring but may improve accuracy when combined with active surveillance, collateral verifications, and self-report. Penile plethysmograph (PPG) assessments in Texas shall be conducted under the direction of a licensed practitioner defined in Chapter 1, Health and Safety Code, §1.005. Licensees should refer the client for a polygraph exam as soon as possible if the client is suspected of engaging in suppression behaviors on the PPG.

(17) polygraph examinations shall only be conducted by licensed examiners that meet and adhere to the "Recommended Guidelines for the Clinical Polygraph Examinations of Sex Offenders" as developed by the Joint Polygraph Committee on Offender Testing (JP-COT). It is primarily the licensee's responsibility for preparing the client for any polygraph. Sexual history polygraphs shall include all aspects of a client's sexual behaviors and a victim's list. Licensees shall obtain the official offense report prior to conducting the instant offense polygraph (Occupations Code, Chapter 109, §109.054). The licensee shall ensure the polygraph examiner has the official offense report in order to conduct the polygraph examination;

(18) informed, voluntary consent shall be obtained prior to engaging clients in aversive conditioning;

(19) licensees shall communicate and exchange information with the Department of Family Protective Services-Child Protective Services and Child Care Licensing regarding the safety of a child or children in the primary residence in which a sex offender resides. Licensees shall advocate for the removal of the offender or the child(ren) if the licensee believes the child or children are in danger;

(20) the safety of the children takes precedence and the highest priority shall be given to the rights, well-being, and safety of children when making decisions about contact between the client and children. If the client has a history of deviant sexual arousal and/or deviant sexual interest to or reported fantasies of sexual contact with children, client should be restricted from having access to children. Supervised visits may be considered if:

(A) it is determined that sufficient safeguards exist to protect the child(ren);

(B) the sex offender has demonstrated control over his or her deviant arousal;

(C) it does not impede the sex offender's progress in treatment; and

(D) court mandated or Texas Department of Criminal Justice Board ordered conditions do not prohibit such contact.

(21) treatment referrals should be offered to the non-offending partners and children in cases where a parent or legal guardian has been removed;

(22) family support and participation in the treatment of the adult sex offender should be included when applicable and appropriate. Sexual assault survivors or vulnerable children shall be excluded until such time as joint therapy is determined to be appropriate;

(23) the licensee shall make every effort to collaborate with the survivor's therapist in making decisions regarding communication, visits and reunification. Contact shall be arranged in a manner that places child/victim safety first. The licensee shall ensure that custodial parents or legal guardians of the children have been consulted prior to authorizing contact and that the contact is in accordance with Court or Texas Department of Criminal Justice Board directives; and

(24) if reunification is deemed appropriate by the survivor's therapist, the process shall be closely supervised. There shall be provisions for monitoring behavior and reporting rule violations. A survivor's comfort and safety shall be assessed on a continuing basis.

§810.65. Assessment and Treatment Standards for Juveniles with Sexual Behavior Problems.

(a) Licensees shall subscribe and adhere to the following tenets regarding juveniles with sexual behavior problems:

(1) licensees shall recognize that some children before age 10 begin displaying sexually inappropriate behavior with others and children may duplicate sexual behavior they have witnessed on the part of older siblings and/or adults;

(2) licensees shall recognize that the onset of sexual behavioral problems in juveniles can be linked to numerous issues related to their experiences, exposure, and/or developmental deficits and that juveniles are distinct from their adult counterparts; and

(3) licensees shall recognize that sexual arousal patterns of juveniles appear more changeable than those of adult sex offenders and relate less directly to their patterns of offending behavior.

(b) Assessment Standards for Juveniles with Sexual Behavior Problems.

(1) Licensees shall adhere to §810.63 of this title (relating to General Assessments Standards (Adults and Juveniles)).

(2) The assessment shall focus on strengths, risks, and deficits of the juvenile with sexual behavior problems, and shall identify factors from social and sexual history which may contribute to sexual deviance. Assessments shall provide a comprehensive treatment plan and recommendations regarding the intensity of intervention, specific treatment protocol needed, and amenability to treatment, as well as the identified risk the juvenile with sexual behavioral problems presents to the community. A comprehensive evaluation and assessment of juveniles with sexual behavior problems shall be a continuing process.

(3) The assessment shall be age appropriate.

(4) The assessment shall be sensitive to any cultural, language, ethnic, developmental, sexual orientation, gender, medical, and/or educational issues that may arise during the assessment.

(5) The assessment shall be developmentally appropriate which includes social, cognitive, and educational levels.

(6) A comprehensive assessment as cited in subsections (b) - (h) of this section shall be completed within 45 days of a client's being accepted into treatment program.

(7) A reasonable effort should be made to secure the following information gathered in the assessment process:

- (A) intellectual and cognitive functioning;
- (B) mental status psychiatric history/hospitalization;
- (C) medical history and an examination by a medical professional to determine sexual development;
- (D) self-destructive behaviors including self-mutilation and suicide attempts;
- (E) description of the family origin, family history, and relationship history including exposure to domestic violence;
- (F) criminal history;
- (G) sex offender registration status;
- (H) history of violence and aggression;
- (I) history of school truancy, fire-setting, abuse of animals, and running away;
- (J) cognitive distortions;
- (K) impulse control;
- (L) history of physical, emotional and/or sexual victimization;
- (M) social and educational competence;
- (N) sexual education/knowledge information;
- (O) substance use or abuse;
- (P) official reports regarding instant sexual;
- (Q) sexual history including sexual development, sexuality and experimentation, gender identity issues, masturbatory practices, and fantasy content; and

(R) sexually deviant behavior-including a description of the offense behaviors, number of victims, gender and age of victims, frequency and duration of sexual contact, victim selection, access, grooming behaviors, use of threats, coercion or bribes to maintain victim silence, degree of force used before, during and/or after the sexual behavior, and deviant arousal patterns.

(8) If phallometric assessment or aversive treatment techniques are utilized with persons 17 years of age or younger, consent for such assessment and treatment shall be obtained from the juvenile with sexual behavior problems and written consent for such assessment and treatment shall be obtained from the juvenile's parents or legal guardians. The procedures should be reviewed and approved by multi-disciplinary professionals or institutional advisory group. Stimuli shall be specific for use with adolescents.

(9) Individuals that are pre-pubescent or under the age of 13 shall not undergo phallometric assessment or aversive treatment except in rare cases, which shall be reviewed and approved by multi-disciplinary professionals or institutional advisory group.

(10) Written consent shall be obtained for assessment and information exchange from the appropriate parent or legal guardian. Assent from the individual being evaluated shall be obtained whenever possible.

(c) Collateral Information. The treatment provider shall review written documentation and collateral interviews. The review involves collecting information from all available and relevant sources concerning the juvenile and the victim(s), including:

- (1) parent(s), guardian(s), or custodian(s);
- (2) sibling(s);
- (3) victim(s) statement(s);
- (4) school records;
- (5) child protective services;
- (6) previous treatment providers;
- (7) mental health professionals;
- (8) law enforcement; and
- (9) the following information should be provided from the supervision officer:
 - (A) court order or judgment;
 - (B) victim(s) information;
 - (C) juvenile risk assessment;
 - (D) data collection form; and
 - (E) official offense report.

(d) Assessment Areas. Treatment providers shall address the following primary areas in the assessment of the juvenile:

- (1) intellectual and neurological functioning;
- (2) personality (for example: Millon Adolescent Clinical Inventory (MACI), Minnesota Multiphasic Personality Inventory for Adolescents-MMPI-A);
- (3) behavioral;
- (4) sexual deviance; and
- (5) co-morbidity.

(e) Risk Assessments. The ultimate determination of risk shall be a combination of the clinical interview and the assessment instruments as current juvenile risk assessments have not been validated.

(1) Risk assessment results should not be used for longer than 6 months due to the fluidity of juveniles.

(2) Risk Assessments specific to juveniles are available in the public domain. Some risk assessment tools utilized with juveniles are as follows:

- (A) Estimate of Risk of Adolescent Sexual Offense Recidivism-ERASOR;
- (B) Juvenile Sex Offender Assessment Protocol-JSOAP or JSOAP II;
- (C) Child and Adolescent Needs and Strengths Sexual Development;
- (D) Juvenile Risk Assessment Instrument and Data Collection Form;
- (E) Juvenile Risk Assessment Tool -J-RAT; and
- (F) Protective Risk Factor Scale.

(f) Substance Abuse Assessment. Licensees shall use a valid and reliable assessment tool to screen for substance abuse (for example: Substance Abuse Subtle Screening Inventory-SASSI).

(g) Polygraphs (if applicable). The licensee is primarily responsible for preparing the juvenile for any polygraph. If polygraphs are utilized, the licensees shall:

(1) shall obtain the official offense report prior to conducting the instant offense polygraph (Occupations Code, Chapter 109, §109.054);

(2) include all aspects of a client's sexual behaviors and a victim's list for the sexual history polygraph;

(3) ensure that the polygraph is administered on a voluntary basis and with informed consent unless court ordered (Family Code, §54.0405 Juvenile Probation); and

(4) ensure that the polygraph examiner is listed on the JPCOT roster; and

(5) recognize the JPCOT polygraph examiner is the authority in determining if a polygraph examination is appropriate for a juvenile.

(h) Assessment Recommendations. The following issues shall be addressed:

(1) the juvenile's strengths, risks, deficits, and the degree to which a juvenile is capable and willing to manage risk; and

(2) co-morbidity, placement, education/vocational needs, parent or guardian and family issues, substance abuse issues, and supervision.

(i) Treatment Standards for Juvenile with Sexual Behavior Problems.

(1) Treatment shall incorporate both cognitive/ behavioral and relapse prevention approaches to reduce recidivism. A multifaceted program shall include the following:

(A) group and individual cognitive behavioral treatment;

(B) sexual offense cycle/relapse prevention;

(C) family therapy;

(D) victim empathy;

(E) adjunct therapy (if applicable) substance abuse treatment, anger and stress management, conflict resolution, sex education, social competence/life skills, clarifying, values, trauma resolution, problem solving, impulse control, and interpersonal communication;

(F) psychopharmacological approaches (if appropriate);

(G) polygraphs (if appropriate; Family Code, §54.0405 Juvenile Probation); and

(H) visual reaction time or plethysmographs (if appropriate).

(2) the treatment program for juveniles shall include a comprehensive assessment as cited in subsections (b) - (i) of this section, progressive levels of treatment, relapse prevention, and for youth in detention or residential treatment, transition into the community, and aftercare;

(3) treating juveniles shall be based on a multidisciplinary approach and containment model that includes but is not limited to the juvenile, treatment provider, supervision officer, and if applicable the following: the family, guardian, custodian, school officials, law enforcement, child protective services and the victim's therapist;

(4) licensees shall focus on the juvenile's existing strengths and positive support system to promote pro-social behaviors and facilitate change;

(5) treatment referrals should be offered to the non-offending parents, guardians, or custodians and siblings where a juvenile has been removed;

(6) licensees shall utilize alternative interventions for juveniles with intellectual and cognitive impairments;

(7) licensees shall recognize that juveniles who display sexually abusive behavior are heterogeneous; juveniles are children first with developmental needs, but also have special needs and present special risks related to their abusive behaviors;

(8) risk management strategies shall address the needs underlying the juvenile's behavior; and include, but are not limited to safety plans, high risk plans, arousal modification (if appropriate), polygraphs (if appropriate), and sex education;

(9) the primary goals of treatment shall be to assist juveniles in gaining control over their sexual behavior problems and increasing their pro-social interactions, preventing further victimization, halting development of additional psychosexual problems, and developing age-appropriate relationships;

(10) community-based treatment groups for non-developmentally delayed juveniles with sexual behavior problems shall not exceed ninety (90) minutes nor be less than 60 minutes in length with no more than 12 clients per group.

(11) If community-based treatment groups are utilized for developmentally delayed juveniles, groups shall not exceed 60 minutes nor be less than 30 minutes in length with no more than 8 clients per group.

(12) Individual therapy, self-help groups, drug intervention, or other therapies shall be used only as adjuncts to more comprehensive sex offender treatment.

(13) a written initial individualized treatment plan shall identify the issues, intervention strategies, and goals of treatment and shall be prepared for each client within 60 days of the referral. Treatment plans shall be reassessed at least annually;

(14) progress, or lack of progress, refusal or failure to attend or participate in treatment, failing to abide by the client's treatment plans and/or contracts, or any disclosures regarding violations of supervision shall be clearly documented in treatment records. This information shall be provided and communicated to the appropriate supervising officer in the justice system;

(15) monthly treatment progress reports shall be distributed to the supervision officer, referring agency, and/or the court. Discharge reports shall be issued according to the referring agency policy or pursuant to the court order;

(16) when a juvenile has made the changes required in offense-specific treatment, there should be a gradual and commensurate decline of interventions;

(17) some degree of denial shall not preclude a client from entering treatment, although the degree of denial shall be a factor in identifying the most appropriate form and location of treatment;

(18) modifications in treatment and in expectations for treatment outcomes may be required in instances of persistent denial;

(19) clients who remain in significant denial and/or are extremely resistant to treatment after the finite period of extension determined by the treatment provider and supervision team should be reassessed for appropriate placement in alternative treatment and/or interventions

(20) licensees shall communicate and exchange information with the Department of Family Protective Services-Child Protective Services and Child Care Licensing regarding the safety of a child or children in the primary residence in which a juvenile resides. Licensees shall advocate for the removal of the juvenile or the child(ren) if the licensee believes the child or children are in danger;

(21) the safety of children/victims takes precedence and the highest priority shall be given to the rights, well-being, and safety of children when making decisions about contact between the juvenile and children. If the juvenile has a history of sexual arousal or reported fantasies of sexual contact with children of a particular age/gender group, supervised visits may be considered if:

(A) court mandated conditions do not prohibit such contact;

(B) it is determined that sufficient safeguards exist including but not limited to safety plans approved by the treatment provider and supervision officer;

(C) the juvenile has demonstrated control over deviant arousal; and

(D) it does not impede the juvenile's progress in treatment.

(22) the licensee shall make every effort to collaborate with the survivor's therapist in making decisions regarding communication, visits and reunification. Contact shall be arranged in a manner that ensures the child/victim safety first;

(23) if reunification is deemed appropriate with the survivor's therapist, the process shall be closely supervised. There shall be provisions for monitoring behavior and reporting rule violations. A survivor's comfort and safety shall be assessed on a continuing basis; and

(24) a holistic approach shall be used in treating juveniles with sexual behavior problems.

(j) Juvenile Laws. Licensees shall be familiar with the juvenile justice system and confidentiality laws concerning juveniles with sexual behavior problems. The legal citations include but are not limited to:

(1) Occupations Code, Chapter 503.

(2) Health Insurance Portability and Accountability Act.

(3) Texas Family Code, Title 3, Chapter 51 et seq.

(4) Texas Family Code, §153.076, Duty to Provide Information.

(5) Code of Criminal Procedure, Chapter 62, Sex Offender Registration.

§810.66. Standards for Adult Female Sex Offenders.

Licensees shall subscribe and adhere to the following tenets regarding female sex offenders:

(1) The treatment of female sex offenders shall balance treatment issues with offender accountability to the victims and the community at large.

(2) Licensees shall recognize the female sex offenders may experience deviant sexual arousal that can lead to sexual abuse and that female sex offenders may experience sexual pleasure from the offending behavior.

(3) Females sex offenders shall be assessed for deviant sexual interest and arousal using appropriate and validated physiological and psychological measures.

(4) Licensees shall communicate and exchange information with the Department of Family Protective Services-Child Protective Services and Child Care Licensing regarding the safety of a child or children in the primary residence in which a sex offender resides. Licensees shall advocate for the removal of the offender or the child(ren) if the licensee believes the child or children are in danger;

(5) In assessing and evaluating female sex offenders, licensees shall refer to the appropriate rules in §§810.62, 810.63, 810.64, and 810.68 of this title (relating to Standards of Practice).

§810.67. Assessment and Treatment Standards for Developmentally Delayed Clients.

(a) These standards delineate research-based practices for developmentally delayed clients. Licensees shall subscribe and adhere to the following tenets for developmentally delayed clients:

(1) managing the risk, behavioral interventions, and the imposition of appropriate external controls shall be a priority for clients with disabilities;

(2) licensees should guard against justifying sexually deviant behavior by indicating that the age equivalence score for any client has any relation to his or her victim typology; and

(3) developmentally delayed clients shall be given the opportunity to exercise their right to make a voluntary and informed decision to participate in treatment. A client shall be fully informed of the nature of the treatment, the benefits and the available options. Written consent to proceed with treatment shall be obtained by an interdisciplinary review and parent's or legal guardian's.

(b) Assessment Standards for the Developmentally Delayed Client.

(1) Licensees shall adhere to the provisions of §810.63 of this title.

(2) a comprehensive assessment as cited in this section shall be completed within 45 days of a client's being accepted into treatment program;

(3) the assessment shall be age appropriate;

(4) the assessment shall be sensitive to any cultural, language, ethnic, developmental, sexual orientation, gender, medical, and/or educational issues that may arise during the assessment;

(5) The assessment shall determine the client's level of functioning, appropriate treatment interventions, and facilitate the development of an individualized treatment plan and shall include:

(A) current level of functioning:

(i) cognitive and behavior functioning;

(ii) level of planning the crime of conviction (Structured Interview, Collateral Information);

(iii) expressive and receptive language skills (for example: Peabody Picture and Vocabulary Test Revised (PPVT-R);

(iv) social judgment, adaptive skills, and moral reasoning;

(v) sexual knowledge;

(vi) adaptive behavior (for example: Vineland Adaptive Behavioral Scale, Adaptive Behavioral Scale of the American Association for Mental Retardation);

(vii) criminal history;

(viii) attention deficit;

(ix) ability to function in groups;

(x) support systems (Current Department of Aging and disabilities and/or Department of State Health Services-Behavioral and Community Mental Health agency involvement, family involvement, social involvement);

(xi) environmental or contextual factors that contribute to or maintain the behavior; and

(xii) history of physical, emotional and/or sexual victimization.

(B) official instance sexual offense report/offense description;

(i) age and relation to the victim(s);

(ii) details of the offense;

(iii) past criminal behavior and/or sexually inappropriate behavior;

(iv) sexual history and deviant sexual interest; and

(v) the extent of denial and cognitive distortions.

(C) pertinent history:

(i) developmental history;

(ii) family, marital, relationship, and personal background;

(D) medical, psychological and/or psychiatric/hospitalization history;

(i) educational history;

(ii) occupational history;

(iii) substance use or abuse;

(iv) self-destructive behaviors, self-mutilation, and suicide attempts; and

(v) history of truancy, fire-setting, abuse of animals, and running away.

(6) If a plethysmograph is conducted with this population, caution shall be used regarding interpretation and validity. Licensees shall utilize a stimulus package appropriate to the client's developmental level.

(7) If visual reaction time measures are utilized, the measures shall only be used with clients who have an IQ score sufficiently high to achieve valid and reliable test results.

(8) If polygraphs are utilized, prior to conducting polygraph examinations a licensee shall collaborate with the JPCOT polygraph examiner and the supervision officer to assess the client's ability to understand the concepts of truthfulness, deception, or lying and the capacity to anticipate negative consequences based on deceptive responses. Licensees shall:

(A) shall obtain the official offense report prior to conducting the instant offense polygraph (Occupations Code, Chapter 109, §109.054);

(B) include all aspects of a client's sexual behaviors and a victim's list for sexual history polygraphs; and

(C) ensure that the polygraph is administered on a voluntary basis and with informed consent unless court ordered.

(c) Treatment Standards for the Developmentally Delayed Client.

(1) treatment components for developmentally delayed clients should be based on those used in treating non-developmentally delayed clients but tailored to address the learning limitations and special issues compounding these clients;

(2) treatment programs shall address the barriers encountered by the client (for example: lack of appropriate sexual behavior at an early age, high probability of past sexual victimization, social isolation, poor community acceptance of healthy sexual relationships, and difficulty in learning complex social rules and norms relating to dating, and intimacy);

(3) cognitive behavioral therapeutic approaches shall be paired with the cognitive strengths and weaknesses of the client;

(4) treatment should include concrete skill building related to social interaction, social skills, sexual behavior, and sex education;

(5) clients with disabilities shall be offered treatment that is appropriate to their developmental capacity, their level of comprehension, and the ability to integrate treatment components;

(6) progress in treatment and ability shall be determined by the client integration the components of treatment;

(7) group treatment shall be based on the client's level of functioning in a group setting;

(8) licensees shall use more individually oriented behavioral interventions coupled with external containment strategies for clients whose level of functioning is determined to be inappropriate for group treatment;

(9) licensees should be provided a reasonable alternative toward identifying risk situations or behaviors and appropriate interventions for clients unable to conceptualize the components of treatment;

(10) if community-based treatment groups are utilized for developmentally delayed clients, groups shall not exceed 60 minutes nor be less than 30 minutes in length with no more than 8 clients per group;

(11) treating developmentally delayed clients shall be based on a multidisciplinary approach and containment model that includes, but is not limited, to the client, treatment provider, supervision officer, and if applicable the following: the family, guardian, custodian, school officials, law enforcement, child protective services, and the victim's therapist;

(12) a written initial individualized treatment plan shall identify the issues, intervention strategies, and goals of treatment and shall be prepared for each client within 60 days of the referral. Treatment plans shall be reassessed at least annually;

(13) progress, or lack of progress, refusal or failure to attend or participate in treatment, failing to abide by the client's treatment plans and/or contracts, or any disclosures regarding violations of supervision shall be clearly documented in treatment records. This information shall be provided and communicated to the appropriate supervising officer in the justice system;

(14) monthly treatment progress reports shall be distributed to the supervision officer, referring agency, and/or court. Discharge reports shall be issued according to the referring agency policy or pursuant to the court order;

(15) when a client has made the changes required in offense-specific treatment, there should be a gradual and commensurate decline of interventions;

(16) some degree of denial shall not preclude a client from entering treatment, although the degree of denial shall be a factor in identifying the most appropriate form and location of treatment;

(17) clients who remain in significant denial and/or are extremely resistant to treatment after the finite period of extension determined by the treatment provider and supervision team should be reassessed for appropriate placement in alternative treatment and/or interventions;

(18) modifications in treatment and in expectations for treatment outcomes may be required in instances of persistent denial;

(19) when treating developmentally delayed clients who have committed a sexual offense, a licensee shall recognize their vulnerabilities and their risk of victimization by non-delayed clients;

(20) licensees shall communicate and exchange information with the Department of Family Protective Services-Child Protective Services and Child Care Licensing regarding the safety of a child or children in the primary residence in which a sex offender resides. Licensees shall advocate for the removal of the offender or the child(ren) if the licensee believes the child or children are in danger;

(21) the safety of the children takes precedence and the highest priority shall be given to the rights, well-being, and safety of children when making decisions about contact between the client and children. If the client has a history of deviant sexual arousal and/or deviant sexual interest to or reported fantasies of sexual contact with children, client should be restricted from having access to children. Supervised visits may be considered if:

(A) it is determined that sufficient safeguards exist to protect the child(ren);

(B) the sex offender has demonstrated control over his or her deviant arousal;

(C) it does not impede the sex offender's progress in treatment; and

(D) court mandated or Texas Department of Criminal Justice Board ordered conditions do not prohibit such contact;

(22) the licensee shall make every effort to collaborate with the survivor's therapist in making decisions regarding communication, visits and reunification. Contact shall be arranged in a manner that ensures the child/victim safety first; and

(23) if reunification is deemed appropriate with the survivor's therapist, the process shall be closely supervised. There shall be provisions for monitoring behavior and reporting rule violations. A survivor's comfort and safety shall be assessed on a continuing basis.

§810.68. Issues to Be Addressed in Treatment (Adults and Juveniles).

Licensees shall subscribe and adhere to the following tenets as they relate to and are applicable to each client:

(1) Arousal Control. Control of deviant arousal, fantasies, and urges should be a priority in treating adult sex offenders and juveniles with sexual behavior problems. Arousal control may require periodic "follow up" sessions for the duration of a client's life. Effective arousal control shall include methods to control spontaneous deviant fantasies and to minimize contact with objects or persons within the deviant fantasies. Arousal control should proceed from the most effective methods for reducing arousal to less effective methods.

(2) Cognitive Behavioral Treatment. Cognitive behavioral treatment shall identify, assess, and modify cognitions that promote sexual deviance. Cognitive distortions shall be addressed and include the thoughts and attitudes that allow offenders to justify, rationalize, and minimize the impact of their deviant behavior.

(3) Sexual Offense. Cycle/Relapse Prevention. Treatment shall address the cycle of behaviors, emotions, and cognitions which are identifiable and which precede deviant sexual behavior in a predictable manner. Autobiographies, sexual history polygraphs, offense reports, interviews and cognitive-behavioral chains shall be used to identify antecedents to offending. Treatment shall include a formal multi-level relapse prevention plan.

(4) Victim Empathy. Treatment shall focus on highlighting the consequences of victimization and sensitize the offender to the harm he or she has committed. Treatment providers should utilize analogous experiences when treating juveniles and should recognize that cognitive development impacts the ability to empathize.

(5) Biomedical Approaches. Psychopharmacological agents should only be utilized in select cases. Use of these agents shall never be the only method of treatment. Physical or chemical castration shall be utilized only as an adjunct to treatment and not in lieu of treatment.

(6) Increasing Social Competence. Treatment should include, but not be limited, to improving interpersonal communication skills, problem solving, assertiveness, and developing and sustaining reciprocal pro-social friendships and social support networks. Treatment shall assist the clients' ability to deal effectively with social situations and develop meaningful relationships with others.

(7) Chaperones. Licensees shall assist in the selection and education of the potential chaperones for contacts between the adult client and children. Potential chaperones shall only be adults who accept and understand the client's present sexual offense, past sexual offending, and the potential for sexual re-offense. Licensees shall ensure potential chaperones are educated regarding the client's sexual history, treatment and supervision conditions, antecedents to sexual offending, safety plans, relapse prevention, and reporting procedures. Licensees shall review a detailed safety plan with the child's non-offending parent or legal guardian that describes the appropriate levels of supervision for contact, privacy, discipline practice, sexual education, appropriate dress, hygiene, bedtime routines, conditions and limits that may apply, and how contact will be terminated if it is no longer appropriate for the child.

(8) Improving Primary Relationships. Treatment providers should involve the current partners or family members in treatment to assist the client in developing a functional lifestyle and maintain reciprocal relationships with an appropriate partner. Treatment providers should involve family members in treatment and address with juveniles sex education deficits, appropriate dating skills, and relationship skills.

(9) Co-morbid Diagnosis. Treatment provider should make appropriate referral when there are sufficient signs and symptoms to merit additional diagnosis criteria. The most common are substance abuse and affective disorders. The co-morbid diagnosis shall be treated with the appropriate therapies concomitantly with the treatment for sex offending behavior except in the case of schizophrenia where the anti-psychotic therapy would take precedence.

(10) Couples/Family Therapy. Individual, couple, family, and sibling therapy, non-offending spouse groups, and/or parents or legal guardians of victims' groups shall prepare the partner and family for the issues and methods involved in sex offender treatment. A prede-

terminated integration sequence shall be followed which addresses role and boundary issues if the client is to reside with survivors or children. This shall include close supervision and a multitude of safeguards for the protection of children.

(11) Support Systems. Social support networks should assist the adult sex offender and juvenile in avoiding and coping with antecedents to sexual deviance and address the issues related to risk. The support system shall include individuals from the adult sex offender and juvenile's daily life (for example: family, extended family, guardian, custodian, friends, co-workers, and church members).

(12) Adjunct Therapies. Adjunct therapy includes but is not limited to substance abuse, anger management, stress management, social skills, sex education, or self-help groups, and shall only be used as adjuncts to a comprehensive treatment program in reducing the client's risk to re-offend. Other licensed mental health professionals may conduct adjunct therapies.

(13) After-Care Treatment. After-care treatment shall involve periodic "follow up" sessions to reinforce and assess maintenance of positive gains made during treatment. After-care Treatment can be facilitated by involving the treatment group, supervision personnel, support system, the use of polygraphs, and phallometric assessment.

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

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SUBCHAPTER D. CODE OF PROFESSIONAL ETHICS

22 TAC §810.91, §810.92

STATUTORY AUTHORITY

The proposed new sections are authorized by Occupations Code, §110.158, which requires the council to adopt rules consistent with this chapter and §110.159, which requires the council to charge fees for issuing or renewing a license.

The proposed new sections affect Occupations Code, Chapter 110.

§810.91. General.

Licensees shall constitute a professional discipline which shall have a membership committed to establishing and maintaining the highest level of professional standards related to the assessment and treatment of adult sex offenders and juveniles with sexual behavior problems. In order to maintain the highest standard of service and consumer protection, licensees shall be committed to the following principles designed to earn the greatest level of public confidence.

§810.92. Code of Ethics.

(a) Professional Conduct. Licensees shall:

(1) not discriminate against clients or withhold professional services to anyone, regardless of age, race, national origin,

religion, sex, disability, political affiliation, social or economic status, sexual orientation, or any proscribed by law. A licensee shall not allow personal feelings related to a client's alleged or actual crimes or behavior to interfere with professional judgment and objectivity;

(2) make a proper referral when a licensee cannot offer services to a client. Each licensee shall facilitate follow-up services for clients who transition from one program or one jurisdiction to another which includes a written summary of the assessment of risk, offending pattern, level of participation, relevant problems and treatment needs, client strengths and deficits, support group, and recommendations;

(3) perform their professional duties with the highest level of integrity and appropriate confidentiality within the scope of their statutory responsibilities;

(4) not hesitate to seek assistance from other professional disciplines when circumstances dictate;

(5) shall report unethical, incompetent, or dishonorable practices to the council;

(6) refrain from using his or her professional relationship, to further personal, religious, political, or economic interests, other than customary professional fees;

(7) have an obligation to engage in continuing education and professional growth;

(8) refrain from diagnosing, treating, or making recommendations outside the scope of the licensee's competence;

(9) be knowledgeable of legal statutes and scientific data relevant to the assessment and treatment of clients; and

(10) display or provide in writing the address and telephone number of the council in all sites where sex offender treatment services are provided for the purpose of directing complaints to the council.

(b) Client Relationships. Licensees shall:

(1) treat all clients with dignity and respect and shall not exaggerate the efficacy of treatment services that cannot be supported by empirical literature;

(2) recognize the importance pertaining to financial matters with clientele. Arrangements for payments should be settled at the beginning of an assessment or a therapeutic relationship;

(3) not engage in dual relationships with clients. Examples of dual relationships include, but are not limited to, the following: treatment of family members, close friends, employees, supervisors, supervisees, personal contacts outside the scope of treatment, and relationships outside of treatment such as business or social;

(4) not engage in sexual harassment and/or a sexual or intimate relationship with any client who is receiving or has received professional services, regardless of whether payment for the services was involved. Licensees shall not engage in sexual intimacy with a client's or former client's family members;

(5) not withdraw services to clients in a abrupt manner unless the licensee, a private facility, or agency loses jurisdiction and/or the authority to render services. Each licensee shall give consideration to all factors in the situation in order to minimize possible adverse effects on the client;

(6) notify the appropriate supervising agency or court if the licensee anticipates the termination or disruption of services to a client and provide for transfer, referral, or continuation of service in keeping with the client's needs, preferences, and supervision requirements;

(7) terminate a professional counseling relationship when it is reasonably clear that the client is not benefiting from treatment unless the agency is mandated to render services. When treatment is still indicated, the licensee shall take reasonable steps to facilitate the transfer to an appropriate referral source. All clients on supervision shall be referred back to the criminal justice department or to the juvenile justice system;

(8) serve clients of a colleague during a temporary absence or emergency with the same consideration of that afforded any client;

(9) not engage in any action in their professional role, which violates or diminishes the legal and civil rights of clients or victims who may be affected by their actions;

(10) not give or accept a gift from a client or a relative of a client, enter into a barter for services, or borrow or lend money or items of value to clients or relatives of clients or accept payment in the form of services rendered by a client; and

(11) not knowingly offer or provide counseling, treatment, or other professional interventions to an individual concurrently receiving sex offender treatment from another licensed sex offender treatment provider except with that provider's knowledge and approval. If a licensee learns of such concurrent counseling, treatment, or other professional interventions, the licensee shall take immediate and reasonable action to inform the other mental health service provider.

(c) Confidentiality. Licensees shall:

(1) maintain and store records on each client to ensure safety and confidentiality in accordance with the highest professional and legal standards including but not limited to HIPAA, the Texas Health and Safety Code, Chapter 611, and laws pertaining to victims rights;

(2) be responsible for informing clients of the exceptions to confidentiality. Clients shall be informed of any circumstances which may prompt an exception to the agreed upon confidentiality;

(3) understand that clients have the right to refuse to participate in or attend treatment and licensees shall inform the client of the potential consequences of such a decision;

(4) clearly communicate to the client any conflicts of interest or dual relationships which affect the licensee's current relationship with a client;

(5) obtain written permission and informed consent from the client before any data may be divulged to third parties;

(6) respond to an inquiry for information with a written release by the client with only data germane to the purpose of the inquiry. Every effort shall be made to avoid an undue invasion of privacy for the client;

(7) not communicate information to persons outside the containment model without the written consent of the client unless there exists a clear and immediate danger to a person from the client; and

(8) be knowledgeable of all statutes which govern the conduct of licensee's professional practice and the duty to report suspected abuse or neglect to law enforcement (for example: Family Code, §261.101 et. seq.)

(d) Assessments. Licensees shall:

(1) not provide an assessment or re-assessment for purpose of determining if an individual is guilty or innocent of a specific sexual crime. Psychological profiles shall not be used to prove or disprove an individual's propensity to act in a sexually deviant manner or an indi-

vidual's guilt or innocence. Physiological methods or sexual arousal and preference assessments shall not be used to prove an individual's guilt or innocence of a specific sex crime;

(2) recognize, and when providing expert testimony, acknowledge that there is no known psychological or physiological test, profile, assessment procedure, or combination of such tools that prove or disprove whether the client has committed a specific sexual crime;

(3) make every effort possible to promote the client's non-offending behavior and act in the best interest of the client, as long as others are not placed in an identifiable risk.

(4) guard against the misuse of assessment data and respect a client's right to know the results, the interpretations made, and the basis for the conclusions and recommendations drawn from such assessments;

(5) respect the right of a client to have a complete explanation, in language which the client is able to understand, the nature and purpose of the methodologies, and any foreseeable effects of the assessment unless the client agrees to an exception in advance;

(6) obtain voluntary informed written consent from a client prior to conducting a physiological assessment or engaging in treatment;

(7) be informed of the client's rights, including the client's right to confidentiality;

(8) not determine a person's degree of sexual dangerousness, suitability for treatment, or other forensic referral question based solely by one assessment instrument. Assessment data shall be properly integrated within a comprehensive assessment, the components of which are determined by a person who has specific training and expertise in making such assessments;

(9) indicate any reservations in reporting assessment results that may exist regarding validity or reliability because of the circumstances of the assessment or the absence of comparative norms for the person being tested. Each licensee shall make an attempt to ensure that assessment results and interpretations are not misunderstood or misused by others. Proper qualifications shall be made with regard to prediction and to the generalized ability of data issued in order to not mislead the consumer of the report;

(10) understand it is ethical to address an issue regarding the probability of a client committing certain criminal acts within a certain period of time; it is unethical for a licensee to state that an individual is not at risk to reoffend sexually;

(11) If a licensee decides that it is appropriate to offer a prediction of criminal behavior on the basis of a comprehensive assessment in a given case, the licensee shall specify clearly:

(A) the acts being predicted and supportive research;

(B) the estimated probability that these acts will occur during a given period of time; and

(C) the facts and data on which these empirical predictions are based.

(12) be educated and familiar with the assessment or treatment procedures and data used by another licensee before providing any public comment or testimony pertaining to the validity, reliability, or accuracy of such information;

(13) safeguard sexual arousal assessment testing and treatment materials. Each licensee shall recognize the sensitivity of this material and use it only for the purpose for which it is intended in a controlled phallometric assessment. Licensees shall not release assess-

ment or treatment materials to persons not involved in the management or containment of the client who lack proper training and credentials, or who would misinterpret or improperly use such stimulus materials; and

(14) have specific training in the administration and evaluation of any assessment tool that is utilized. Licensees shall not release assessment raw data to any person not qualified to interpret the data. Licensees shall not release assessment results to the client if the licensee believes the information would harm the client;

(e) Professional Relationships.

(1) Each licensee shall act with proper regard for the needs, special competencies, and perspectives of colleagues who assess and treat sex offenders and other mental health professionals.

(2) Each licensee is encouraged to affiliate with professional groups, organizations, or agencies working in the field of sex offender assessment and treatment.

(f) Research and Publications.

(1) Licensees shall be obligated to protect the safety of the licensee's research subjects. Provisions of the human subjects experimental policy shall prevail as specified by the current United States Department of Health and Human Services guidelines.

(2) Licensees shall evaluate the ethical implications of possible research and ensure that ethical practices are enforced in conducting such research.

(3) The practice of informed consent prevails. A research participant shall have the freedom to decline to participate in or withdraw from a research project at any time without any prejudicial consequences.

(4) The research subject shall be protected from physical and mental discomfort, harm, and danger that may result from research procedures.

(5) Publication credit shall be assigned to those who have contributed to a publication in proportion to their contribution, and in accordance with customary publication practices.

(g) Public Information and Advertising. All professional presentations to the public shall be governed by the following standards on public information and advertising. Licensees shall:

(1) have a responsibility to the public to engage in appropriate informational activities and to avoid misrepresentation or misleading statements. Advertisements and public communications shall be formulated to convey accurate information. Self-praising and testimonials shall be avoided;

(2) not establish licensee-client relationships as the result of pressure, deception, or exploitation of the vulnerability of clients;

(3) not make any representations that the licensee is a partner or associate of any agency or firm if the licensee is, in fact, not acting in that capacity (for example: a person engaged in private practice who is also employed at a state hospital should clearly communicate to a prospective client in private practice that he is not acting on behalf of a state hospital);

(4) be truthful in the representation of the licensee's professional background, training, and status. Each licensee shall indicate any limitations in his or her practice;

(5) not represent their affiliation with any organization or agency in a manner, which falsely implies sponsorship or certification by that organization; and

(6) not knowingly make a representation about the licensee's ability, background, or experience, or about that of a partner or associate, or about a fee or any other aspect of a proposed professional engagement that is false, fraudulent, misleading, or deceptive. A false, fraudulent, misleading, or deceptive statement or claim is defined as a statement or claim which:

(A) contains a material misrepresentation of fact;

(B) omits any material or statement of fact which is necessary to make the statement, in light of all circumstances, not misleading; or

(C) is intended or likely to create an unjustified expectation concerning the licensee, or treatment services.

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. CIVIL COMMITMENT GENERAL PROVISIONS

22 TAC §810.122

STATUTORY AUTHORITY

The proposed new section is authorized by Occupations Code, §110.158, which requires the council to adopt rules consistent with this chapter and §110.159, which requires the council to charge fees for issuing or renewing a license.

The proposed new section affects Occupations Code, Chapter 110.

§810.122. *Definitions.*

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

(1) Act--Health and Safety Code, Chapter 841, Civil Commitment of Sexually Violent Predators.

(2) Behavioral abnormality--A congenital or acquired condition that, by affecting a person's emotional or volitional capacity, predisposes the person to commit a sexually violent offense to the extent that the person becomes a menace to the health and safety of another person.

(3) Biennial examination expert--A person or persons employed by or under contract with the council to conduct a biennial examination to assess any change in the behavioral abnormality for a person committed under the Act, §841.081.

(4) Child safety zone--An area as defined in Code of Criminal Procedure, Art. 42.12, §13B; Health and Safety Code, §841.134; and Texas Government Code §508.187.

(5) Civil Commitment--The civil commitment of a person adjudged to be a sexually violent predator and committed to the outpatient sexual violent predator treatment program (OSVPTP).

(6) Civil Commitment Case Manager--A person employed by or under contract with the council to perform duties related to the supervision, coordination and monitoring of the person committed to the outpatient sexually violent predator treatment program.

(7) Civil Commitment Treatment Provider--A licensed sex offender treatment provider under contract with the council to conduct assessments, provide intensive treatment, conduct treatment planning, and to assist the Civil Commitment Case Manager in supervising the sexually violent predator.

(8) Council--The Council on Sex Offender Treatment.

(9) Global Positioning Satellite (GPS) Tracking--Technology that incorporates global positioning satellite tracking and electronic radio frequency.

(10) Interagency Case Management Team--All professionals involved in the assessment, treatment, supervision, monitoring, residential housing of the client, or other approved professionals. The case manager shall act as the chairperson of the team.

(11) Multidisciplinary Team (MDT)--Members of the Council on Sex Offender Treatment (two), Texas Department of Criminal Justice (one), Texas Department of Criminal Justice-Victim Service Division (one), Texas Department Public Safety (one), and Texas Department of State Health Services-Community Mental Health Division (two). The team assesses whether a person is a repeat sexually violent offender and whether the person is likely to commit a sexually violent offense after release or discharge; gives notice of its findings to the Texas Department of Criminal Justice or to the Department of State Health Services-Community Mental Health Division; and recommends to either agency that the person be assessed for a behavioral abnormality.

(12) Penile Plethysmograph--A diagnostic method to assess sexual arousal by measuring the blood flow (tumescence) to the penis during the presentation of sexual stimuli in a controlled setting. The plethysmograph provides the identification of clients' arousal in response to sexual stimuli (audio/visual).

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

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

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

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

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

(14) Polygraph Examiner--A person with a current license approved by the Texas Polygraph Examiner's Board and who meets minimum criteria to be listed by the Joint Polygraph Committee on Offender Testing (JPCOT) for polygraphing adult sex offenders and juveniles with sexual behavior problems.

(15) Predatory Act--An act that is committed for the purpose of victimization and that is directed toward:

(A) a stranger;

(B) a person of casual acquaintance with whom no substantial relationship exists; or

(C) a person with whom a relationship has been established or promoted for the purpose of victimization.

(16) Repeat Sexual Offender--A person is a repeat sexually violent offender for the purposes of this chapter if the person is convicted of more than one sexually violent offense and a sentence is imposed for at least one of the offenses or if:

(A) the person:

(i) is convicted of a sexually violent offense, regardless of whether the sentence for the offense was ever imposed or whether the sentence was probated and the person was subsequently discharged from community supervision;

(ii) enters a plea of guilty or nolo contendere to a sexually violent offense in return for a grant of deferred adjudication;

(iii) is adjudged not guilty by reason of insanity for a sexually violent offense; or

(iv) is adjudicated by a juvenile court as having engaged in delinquent conduct constituting a sexually violent offense and is committed to the Texas Youth Commission under Family Code, §54.04(d)(3) or (m); and

(B) after the date on which under Health and Safety Code, §841.003(b) Subdivision (1), the person is convicted, receives a grant of deferred adjudication, is adjudged not guilty by reason of insanity, or is adjudicated by a juvenile court as having engaged in delinquent conduct, the person commits a sexually violent offense for which the person:

(i) is convicted, but only if the sentence for the offense is imposed; or

(ii) is adjudged not guilty by reason of insanity.

(17) Residential Facility--A community residential facility, or halfway house, located in the State of Texas, and under contract with the council.

(18) Sexually Violent Offense--

(A) an offense under the Penal Code, §§21.11(a)(1), 22.011, or 22.021;

(B) an offense under the Penal Code, §30.04(a)(4), if the defendant committed the offense with the intent to violate or abuse the victim sexually;

(C) an offense under the Penal Code, §30.02, if the offense is punishable under subsection (d) of that section and the defendant committed the offense with the intent to commit an offense listed in subparagraphs (A) or (B) of this paragraph;

(D) an offense under Penal Code, §19.02 or §19.03, that, during the guilt or innocence phase or the punishment phase for the offense, during the adjudication or disposition of delinquent conduct constituting the offense, or subsequently during the civil commitment proceeding under Subchapter D, is determined beyond a reasonable doubt to have been based on sexually motivated conduct;

(E) an attempt, conspiracy, or solicitation, as defined by the Penal Code, Chapter 15, to commit an offense listed in subparagraphs (A), (B), (C), or (D) of this paragraph;

(F) an offense under prior state law that contains elements substantially similar to the elements of an offense listed in subparagraphs (A), (B), (C), (D), (E) of this paragraph; or

(G) an offense under the law of another state, federal law, or the Uniform Code of Military Justice that contains elements

substantially similar to the elements of an offense listed in subparagraphs (A), (B), (C), (D), or (E) of this paragraph.

(19) Sexually Violent Predator (SVP)--A person is a sexually violent predator for the purpose of this chapter if the person: is a repeat sexually violent offender; and suffers from a behavioral abnormality that makes the person likely to engage in a predatory act of sexual violence; is convicted of more than one sexually violent offense and a sentence is imposed for at least one of the offenses.

(20) Supervision, Treatment, and GPS Requirements--The requirements whereby a person agrees to participate and comply with the conditions of the Outpatient Sexually Violent Predator Treatment Program (OSVPTP).

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. CIVIL COMMITMENT

22 TAC §§810.151 - 810.153

STATUTORY AUTHORITY

The proposed new sections are authorized by Occupations Code, §110.158, which requires the council to adopt rules consistent with this chapter and §110.159, which requires the council to charge fees for issuing or renewing a license.

The proposed new sections affect Occupations Code, Chapter 110.

§810.151. Administration of the Act.

The Council on Sex Offender Treatment (council) is responsible for providing the appropriate and necessary treatment and supervision of a SVP. Pursuant to the Act, the council shall develop and implement policies and procedures involving standards of treatment and supervision that enhance public safety and hold the SVP to the highest level of accountability. The council shall hire program specialists and/or contract for the services of case managers, treatment providers, commitment review experts, global positioning tracking providers, biennial examination experts, transportation providers, and residential housing providers. The council by rule shall administer this chapter. Rules adopted by the council under this section shall be consistent with the purposes of this chapter. The council by rule shall develop standards of care and case management for persons committed under this chapter. The council shall appoint two members of the council and two alternates, to serve as a member of the Multidisciplinary Team (team) as defined in the Act, Health and Safety Code, §841.022. The council member(s) or designee(s) who serve on the team shall keep the council informed of the actions taken by the team by providing the council's Executive Director with periodic reports as required.

§810.152. Civil Commitment of Sexually Violent Predators.

In the event that a judge or jury determines that a person is a SVP, the SVP shall be committed by the judge to the Outpatient Sexually Violent Predator Treatment Program (OSVPTP) in accordance with a treatment

and supervision plan approved by the council. Upon making a determination that a person is a SVP, the committing judge shall provide the council and the SVP with a copy of the civil commitment requirements. The OSVPTP shall begin on the SVP's release from a secure correctional facility or discharge from a state hospital and shall continue until the SVP's behavioral abnormality has changed to the extent that the person is no longer likely to engage in a predatory act of sexual violence. A case manager who has been approved by the council shall coordinate the OSVPTP. The council shall provide the program specialist and/or case manager with all available documentation relating to the client including but not limited to a copy of the civil commitment requirements imposed upon the SVP by the committing judge.

§810.153. Outpatient Treatment and Supervision Program.

The council shall develop and implement the OSVPTP, which utilizes cognitive behavioral sex offender treatment and intensive supervision to attain the goal of no more victims. The OSVPTP containment model is composed of treatment orientation, assessments, and evaluations, global positioning tracking services, polygraph examinations, medication, transportation, penile plethysmograph, supervision, treatment, residential housing (if appropriate), and auditing services.

(1) Housing. The council shall provide for any necessary supervised or residential housing, including but not limited to, existing Texas community residential facilities, or halfway houses currently under contract with the council or at another location or facility approved by the Council. The supervised housing shall be approved by the council and shall be in locations around the State where the Department of Public Safety (DPS) maintains sufficient personnel who are properly trained in utilizing all forms of tracking services.

(2) Orientation. A SVP civilly committed by a judge, shall receive an orientation session from the assigned treatment provider involving the OSVPTP. The council shall establish policies and procedures for informing the SVP of his/her rights, obligations, and responsibilities under the OSVPTP. The SVP shall sign all forms, releases and consent documents approved by the council, including but not limited to, the Treatment, Supervision, and GPS requirements which relate to said OSVPTP, and the SVP shall agree to strictly adhere to the terms and conditions of said requirements and other documents as required by the Court. A SVP, who signs the requirements and adheres to its terms and conditions, is allowed to begin the OSVPTP. If the SVP fails to sign the documents, the SVP is not permitted to begin the OSVPTP and will be subject to all legal sanctions available under the Act.

(3) Assessment. The initial stage of the OSVPTP shall begin with a formal assessment of the SVP. The initial assessment shall consist of the following two components:

(A) the licensee shall review and validate the formal risk assessment; and

(B) the licensee shall conduct an assessment for the purpose of identifying individual needs, which shall be addressed during the OSVPTP. The individual needs as identified by the licensee shall be included in the SVP's individual treatment plan.

(4) Global Positioning Tracking Services. The council shall enter into an Interagency Agreement with the DPS, to provide the technology and expertise to track sexually violent predators during their commitment to the OSVPTP in all Texas counties except Tarrant/Dallas and Harris counties. The focus of intensive tracking services is to ensure public safety, the highest level of client accountability, compliance with adhering to a daily activity schedule, and to the requirements of the OSVPTP. Such services shall include but not be limited to monitoring global positioning tracking, electronic monitoring, and surveillance. All SVPs shall begin an intensive monitoring system once a judge civilly commits the person and is released from

a security facility. The SVP shall be required to submit to intensive global positioning tracking until the SVP's behavioral abnormality has changed to the extent that the person is no longer likely to engage in a predatory act of sexual violence.

(5) Polygraph Services. The treatment plan shall consist of clinical polygraph exams specific to sex offenders, including the instant sexual offense, sexual history, maintenance and monitoring exams. The council shall only approve treatment plans which utilize a licensed polygraph examiner who adheres to the Joint Polygraph Committee guidelines for polygraphing sex offenders.

(6) Medication. Medication may include anti-psychotic, anti-depressant, anti-anxiety, anti-obsessional, anti-androgenic, and/or equivalent chemotherapy.

(7) Penile Plethysmograph (PPG). The SVP is mandated by the order of commitment to submit to plethysmograph testing. The plethysmograph shall be used to identify the clients who manifest excessive deviant arousal in response to stimuli depicting sexual abuse, discernment of lack of arousal to stimuli of consenting sex, minimization of distortions evident in self-report level of arousal, evaluation of treatment efficacy, and enhancement of certain forms of behavioral treatment. Licensees should refer a SVP for a polygraph exam as soon as possible if the client is suspected of engaging in suppression behaviors on the PPG.

(8) Supervision. The council shall establish employment policies and procedures for the hiring of full-time program specialists for Tarrant/Dallas and Harris counties, and for contracted case managers for other Texas counties who shall be responsible for the coordination of the treatment and supervision of a SVP, as well as, monitoring compliance with the treatment and supervision requirements for that person. The program specialist and case manager shall be required to:

(A) conduct face to face contact with the SVP at the office, residence, and/or field visits to monitor the SVP;

(B) serve as a liaison to the licensed sex offender treatment provider, global positioning tracking services; polygraph examiner, District Attorneys, residential staff, parole officer, employer, and all other professionals involved in the SVP's life;

(C) shall report any violation to the council within 24 hours;

(D) shall ensure the residential plan is congruent with the child safety zone laws;

(E) shall ensure the SVP registers with the Texas Department of Public Safety every 30 days;

(F) shall make referrals for alcohol and drug testing;

(G) adjust the SVP's supervision according to a risk assessment;

(H) shall make timely recommendations to the judge on whether to allow the SVP to change residence or to leave the state and on any other appropriate matters shall inform the SVP annually of their right to file for unauthorized release;

(I) shall submit the biennial report to the Judge;

(J) shall coordinate transportation services for the SVP;

and

(K) shall abide by the Case Manager Code of Ethics.

(9) Sex Offender Treatment. The council shall approve and contract for the provision of treatment which is based on a cognitive behavioral model with the focus of the treatment being holistic. The OS-

VPTP shall include, but not be limited to, sex offender specific group and individual therapy; social skills training, medication, and if deemed warranted by the treatment provider, substance abuse counseling or traditional mental health treatment. The treatment plan shall be composed of standard tasks, which all SVPs shall complete prior to moving to the next stage. In addition, individual goals shall be established based upon assessment data. A treatment plan shall include the monitoring of the SVP with a polygraph and penile plethysmograph. The council shall establish guidelines and policies and procedures for the hiring of contracted treatment providers who will be responsible for developing and implementing an individual treatment plan approved by the council. All treatment plans and guidelines for standards of care are subject to the approval of the council prior to implementation.

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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Walter J. Meyer, M.D.

Chair

Council on Sex Offender Treatment

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For further information, please call: (512) 458-7111 x6972



SUBCHAPTER G. CIVIL COMMITMENT PROGRAM SPECIALIST AND/OR CASE MANAGER AND TREATMENT PROVIDER DUTIES AND RESPONSIBILITIES

22 TAC §810.182, §810.183

STATUTORY AUTHORITY

The proposed new sections are authorized by Occupations Code, §110.158, which requires the council to adopt rules consistent with this chapter and §110.159, which requires the council to charge fees for issuing or renewing a license.

The proposed new sections affect Occupations Code, Chapter 110.

§810.182. Civil Commitment Program Specialist and/or Case Manager.

The council shall approve and contract or employ for the services of a person to perform duties related to outpatient treatment and supervision of a person civilly committed to the Outpatient Sexually Violent Predator Treatment Program (OSVPTP). The council shall establish employment policies and procedures, which set forth duties and responsibilities, minimum qualifications, knowledge, skills, and abilities required of a person serving in such capacity. The program specialist and/or case manager shall report directly to the council through its Executive Director or designee; provide supervision to the SVP; ensure community safety by monitoring the SVP; communicate with law enforcement, treatment providers, prosecutors, and the judge having jurisdiction over the person's commitment; coordinate outpatient treatment for the SVP; periodically review assessments to determine the success of outpatient treatment and supervision; train residential housing staff; provide periodic reports to the council through its Executive Director or designee; and make recommendations to the judge having jurisdiction over the SVP's commitment as to whether or not to allow

the SVP to change residence, or any other appropriate matters relating to the SVP's civil commitment.

§810.183. Civil Commitment Treatment Provider.

The council shall approve and contract for the services of a person or persons to perform duties related to the outpatient treatment of a person civilly committed to the OSVPTP, and shall establish assessment and treatment guidelines for the Civil Commitment Treatment Providers to adhere to. The council shall establish employment policies and procedures which set forth duties and responsibilities, minimum qualifications, knowledge, skills, and abilities required of a person or persons serving in such capacity. A treatment provider shall report directly to the council through its Executive Director or designee regarding the treatment and supervision of a person committed to the OSVPTP; shall conduct assessments; provide treatment and conduct treatment planning; provide the case manager with data that will assist in the supervision of the SVP; follow assessment and treatment guidelines and policies as established by the council; conduct assessments and on-going risk assessments; recommend increases or decreases in supervision and privileges for the SVP based upon assessments and observations; conduct group and individual counseling; conduct treatment planning and submit incident reports to the program specialist and/or case manager; liaison with the case manager and other professionals providing services to the SVP; document all services provided to the SVP; and provide status reports to the program specialist and/or case manager regarding the SVP's compliance with the treatment and supervision requirements of the OSVPTP.

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. CIVIL COMMITMENT REVIEW

22 TAC §810.211

STATUTORY AUTHORITY

The proposed new section is authorized by Occupations Code, §110.158, which requires the council to adopt rules consistent with this chapter and §110.159, which requires the council to charge fees for issuing or renewing a license.

The proposed new section affects Occupations Code, Chapter 110.

§810.211. Biennial Examination.

(a) The SVP who is civilly committed under the Act, §841.081, shall receive a biennial examination conducted by an expert. The council shall approve and contract for the services of an expert who will conduct a biennial examination of the SVP. The expert shall not be the same expert who conducted the initial examination of the SVP for civil commitment purposes. The expert shall produce a written report within 90 days from the date of referral or earlier if required by the court, which shall include the following:

- (1) SVP's name, identification number, and date of examination;
- (2) SVP's version and official version of the instant offense;
- (3) SVP's level of denial of the instant offense and denial of deviant arousal or intent;
- (4) history of assessment utilized, method and description of testing, and analysis of test data;
- (5) a background summary of the SVP's history including sexual history, social history, birth/development, family marital, education, employment, substance abuse, anger, suicide, psychiatric, and current psychiatric symptoms;
- (6) current mental status based on clinical observation and diagnosis of mental illness as per the current Diagnostic and Statistical Manual;
- (7) a treatment or supervision history and a description of the SVP's history in an outpatient program;
- (8) a determination if the SVP's behavioral abnormality has changed to the extent that the person is no longer likely to engage in a predatory act of sexual violence;
- (9) the examiner's recommendation regarding the SVP's need for civil commitment; and
- (10) expert's signature and title.

(b) The report shall also include a consideration of whether to modify a requirement imposed on the SVP under the Act, and/or whether to release the SVP from all of the requirements imposed on the SVP under the Act. The program specialist and/or case manager shall provide a report of the SVP's compliance or non-compliance with treatment and supervision to the judge having jurisdiction over the SVP's commitment, and to the council through its Executive Director or designee.

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 I. PETITION FOR RELEASE

22 TAC §810.241, §810.242

STATUTORY AUTHORITY

The proposed new sections are authorized by Occupations Code, §110.158, which requires the council to adopt rules consistent with this chapter and §110.159, which requires the council to charge fees for issuing or renewing a license.

The proposed new sections affect Occupations Code, Chapter 110.

§810.241. Authorized Petition for Release.

In the event that the program specialist and/or case manager and council determine that the SVP's behavioral abnormality has changed to the extent that the SVP is no longer likely to engage in a predatory act of sexual violence, the program specialist and/or case manager and the council shall authorize the SVP to petition the court for release. Prior to authorizing the person to petition the court for release, the program specialist and/or case manager shall notify the council through its Executive Director or designee.

§810.242. Unauthorized Petition for Release.

Upon a SVP's commitment to the OSVPTP and on an annual basis thereafter, the program specialist and/or case manager shall provide the SVP with written notice of the SVP's right to file a petition for release which has not been authorized by the case manager. The program specialist and/or case manager shall provide a copy of the written notice to the council through its Executive Director or designee.

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 J. MISCELLANEOUS PROVISIONS

22 TAC §810.271, §810.272

STATUTORY AUTHORITY

The proposed new sections are authorized by Occupations Code, §110.158, which requires the council to adopt rules consistent with this chapter and §110.159, which requires the council to charge fees for issuing or renewing a license.

The proposed new sections affect Occupations Code, Chapter 110.

§810.271. Release and Exchange of Information.

In order to protect the public and to facilitate a determination of whether a person is a sexually violent predator (SVP), the council shall release information relating to the SVP to those entities responsible for making determinations under the Act. The council shall provide the program specialist and/or case manager with relevant information relating to the SVP in order to ensure public safety, and to enable the provision of supervision and treatment to the SVP. Information relating to the supervision, treatment, criminal history, or physical or mental health of the SVP may be released as deemed appropriate by the council. The SVP's consent is not required for the release or exchange of information under the Act.

(1) To protect the public and to enable an assessment or determination relating to whether a person is a sexually violent predator, any entity that possesses relevant information relating to the person shall release the information to an entity charged with making an assessment or determination under this chapter.

(2) To protect the public and to enable the provision of supervision and treatment to a person who is a sexually violent predator,

any entity that possesses relevant information relating to the person shall release the information to the program specialist and/or case manager.

(3) On the written request of any attorney for another state or for a political subdivision in another state, the Texas Department of Criminal Justice, the council, a service provider contracting with one of those agencies, the multidisciplinary team, and the attorney representing the state shall release to the attorney any available information relating to a person that is sought in connection with an attempt to civilly commit the person as a sexually violent predator in another state.

(4) To protect the public and to enable an assessment or determination relating to whether a person is a sexually violent predator or to enable the provision of supervision and treatment to a person who is a sexually violent predator, the Texas Department of Criminal Justice, the council, a service provider contracting with one of those agencies, the multidisciplinary team, and the attorney representing the state may exchange any available information relating to the person.

(5) Information subject to release or exchange under this section includes information relating to the supervision, treatment, criminal history, or physical or mental health of the person, as appropriate, regardless of whether the information is otherwise confidential and regardless of when the information was created or collected. The person's consent is not required for release or exchange of information under this section.

§810.272. Effect of Subsequent Commitment or Confinement on the Order of Commitment.

(a) The duties imposed by this chapter are suspended for the duration of any confinement of a SVP, or any commitment of a SVP to a community center, mental health facility, or state school, by governmental action.

(b) In this subsection:

(1) "Community center" is a center established under Health and Safety Code, Chapter 534, Subchapter A.

(2) "Mental health facility" is described in the Health and Safety Code, §571.003.

(3) "State school" is described in the Health and Safety Code, §531.002.

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 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 5. PROPERTY AND CASUALTY INSURANCE

SUBCHAPTER M. FILING REQUIREMENTS

The Texas Department of Insurance proposes amendments to §§5.9310, 5.9332, 5.9340, 5.9341, and 5.9357, concerning form, rate, underwriting guideline, and reduced filing requirements for certain property and casualty insurers. The proposal is necessary to conform filings made by certain property and casualty insurers pursuant to Insurance Code Articles 5.13-2, 5.55, and 5.55A to legislative amendments that were enacted by the 79th Legislature, Regular Session, in SB 99, HB 7, and HB 2437, and by the 78th Legislature, Regular Session, in SB 14. SB 99 added Chapter 706 to the Insurance Code which authorizes property and casualty insurers to offer insurance coverage for a loss suffered by a policyholder who is a victim of identity theft or attempted identity theft and also amended Insurance Code Article 5.13-2 to add identity theft insurance coverage as a line of insurance subject to Article 5.13-2. The proposed amendment to §5.9310(b)(7) is necessary to add identity theft insurance as a commercial and a personal line of insurance in accordance with Chapter 706, each of which is subject to the filing requirements of §5.9310. Section 5.9310 specifies the form and content of the filing transmittal form that is to be used with form, rate, rule, underwriting guideline, and credit scoring model filings. The proposed amendment to §5.9332(e)(1)(N) clarifies that profit and contingency provisions should be included in the actuarial supporting information that is submitted with a rate filing made in accordance with the Insurance Code Article 5.55 (Workers' Compensation Rates) or Article 21.50 (Mortgage Guaranty Insurance). This amendment is necessary because an amendment enacted in SB 14 to the Insurance Code Article 5.13-2 §4 (Rate Standards) removes consideration of contingencies in an insurer's setting of rates under Article 5.13-2, but Insurance Code Articles 5.55 §2(b)(4) and 21.50 §1A(g)(1) were not amended to remove "contingencies" from factors to be considered by insurers in setting rates under these two statutes. Therefore, insurers regulated under these two statutes must continue to submit supporting information on a reasonable margin for profit and contingencies with rate filings. The proposed amendment to §5.9332(e)(1) that adds subparagraph (O) is necessary for consistency with a provision enacted in HB 7, which requires rates filed in accordance with Article 5.55 to consider the effect on premiums of individual risk variations based on loss or expense considerations. Proposed amendments to §5.9340 and §5.9341 regarding underwriting guideline filing requirements for workers' compensation insurance are necessary to apply the underwriting guideline filing requirements in those sections to workers' compensation insurers. Under HB 7, which added Article 5.55A to the Insurance Code, insurers of workers' compensation insurance are required to file their underwriting guidelines with the Department; prior to this enactment, workers' compensation insurers were only required to provide underwriting guidelines to the Department upon request pursuant to the Insurance Code §38.003. The proposed amendment to §5.9340 is necessary to amend the purpose of Division 7, which regulates underwriting guideline filing requirements, to include workers' compensation insurance. The proposed amendment to §5.9341 is necessary to provide that the definitions set forth in Insurance Code Article 5.55A apply to insurers filing underwriting guidelines for workers' compensation insurance. The proposed amendments to §5.9357 are necessary to conform §5.9357 to Article 5.13-2 §13(h) which was enacted in HB 2437 to provide for reduced filing requirements for certain insurers writing personal automobile insurance. Accordingly, a proposed amendment to §5.9357(a) is necessary to clarify that the reduced filing requirements of this subsection apply to county mutual insurers that meet certain criteria, and a new sub-

section (b) is proposed to provide reduced filing requirements for all insurers writing personal automobile insurance that meet the criteria described in Insurance Code Article 5.13-2 §13(h). The remaining subsections are proposed to be re-lettered as subsections (c) and (d) to properly incorporate new §5.9357(b) and to conform the application of re-lettered §5.9357(d) to the insurers who qualify for reduced filing requirements specified in subsection (a), (b), and (c) of §5.9357.

C.H. Mah, Senior Associate Commissioner, Property and Casualty Program, has determined that for each year of the first five years the proposed amendments will be in effect, there will be no fiscal impact to state and local governments as a result of the enforcement or administration of the amendments. There will be no measurable effect on local employment or the local economy as a result of the proposal.

Mr. Mah has further determined that for each year of the first five years the proposed amendments are in effect, there are several public benefits anticipated as a result of the proposed amendments. The proposed amendment to §5.9310 adds identity theft insurance as a commercial and a personal line of insurance. There are no costs required for insurers as a result of this amendment because the sale of this product is voluntary, and thus individual insurers will determine whether they want to incur any necessary expenses to market this product. Additionally, any costs to insurers who voluntarily opt to market this product are the result of the legislative enactment of SB 99 by the 79th Legislature, Regular Session, and therefore, any costs to comply result directly from the enactment of SB 99. The anticipated public benefit from the proposed amendment to §5.9332(e)(1)(N) is uniform and unambiguous rate filing instructions as a result of the clarification that profit and contingency provisions should be included in the actuarial supporting information that is submitted with a rate filing made in accordance with the Insurance Code Article 5.55 (Workers' Compensation Rates) or Article 21.50 (Mortgage Guaranty Insurance). Also, the amendment to §5.9332(e)(1)(N) provides conformity of the rule with the SB 14 amendment enacted by the 78th Legislature, Regular Session, that deletes "contingency provisions" in Article 5.13-2 §4(b)(7) from the factors to be considered by insurers in setting rates under Article 5.13-2 and therefore, from supporting information that insurers must submit with rate filings under Article 5.13-2. There is no additional cost to insurers required to comply with this amendment because the amendment is consistent with current statutory provisions with which insurers must already comply. The anticipated public benefit from the proposed amendment to §5.9332(e)(1) that adds subparagraph (O), which requires rates filed in accordance with Article 5.55 to include the effect on rates and premiums of individual risk variations based on loss or expense considerations, is that insurers need to determine if their rates and premiums meet the statutory rate and premium standards and likewise allows the Department to verify that they do meet the statutory standards. There is no additional cost to insurers required to comply with this amendment because the amendment is the result of the legislative enactment of HB 7 by the 79th Legislature, Regular Session, and any costs to comply result directly from the enactment of HB 7. The public benefit anticipated as a result of the proposed amendments to §5.9340 and §5.9341, which apply the underwriting guideline filing requirements in those sections to workers' compensation insurers, will be the ability of the Department to conduct a more efficient and thorough review of those guidelines thus promoting stronger and more competitive insurance markets. There is no additional cost to insurers required to comply with this amend-

ment because the amendment is the result of the legislative enactment of HB 7 by the 79th Legislature, Regular Session, and any costs to comply result directly from the enactment of HB 7. The anticipated public benefit resulting from the proposed amendment to §5.9357(a) will be the availability of reduced filing requirements to additional insurers writing personal automobile insurance that meet the criteria in the Insurance Code Article 5.13-2 §13(h). This may promote an increase in the number of insurers that offer personal automobile insurance to consumers, which will result in consumers having a wider range of coverage and cost options. There are no additional costs to insurers that comply with this amendment because the amendment is the result of the legislative enactment of HB 2437 by the 79th Legislature, Regular Session, and any costs to insurers to comply result directly from the enactment of HB 2437. Because there are no additional costs to insurers as a result of the proposed amendments, there is no differential impact between small, large, and micro-businesses to comply with the proposed amendments and therefore, it is neither legal nor feasible nor necessary to waive the requirements of the proposed amendments for small or micro-businesses.

To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on June 26, 2006 to Gene C. Jarmon, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comment must be simultaneously submitted to Philip Presley, Mail Code 105-5F, 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 by 5:00 p.m. on June 26, 2006.

DIVISION 4. FILINGS MADE EASY--FILING TRANSMITTAL FORM AND REQUIREMENTS FOR PROPERTY AND CASUALTY FORM, RATE, RULE, UNDERWRITING GUIDELINE, AND CREDIT SCORING MODEL FILINGS

28 TAC §5.9310

The amendments are proposed under Insurance Code Articles 5.13-2, 5.55, 5.55A, 5.98, and 21.50, Chapter 706, and §38.003, and §36.001. Article 5.13-2 governs rates and forms for certain property and casualty insurance lines and the respective filing requirements in this state. Article 5.13-2 §4(b)(7) was amended by the 78th Legislature, Regular Session, in SB 14 to delete "contingency provisions" from the factors to be considered by insurers in setting rates under Article 5.13-2 and therefore, from supporting information that insurers must submit with rate filings under Article 5.13-2. Article 5.13-2 §13 was amended by HB 2437, 79th Legislature, Regular Session, to provide for reduced filing requirements for personal automobile insurers that meet the statutorily specified criteria. Article 5.55 governs workers' compensation rates, and §2(b)(4) of Article 5.55 provides that an insurer in setting rates must consider a reasonable margin for profit and contingencies. Article 5.98 authorizes the Commissioner to adopt reasonable rules that are appropriate to accomplish the purposes of Chapter 5. Article 21.50 governs mortgage guaranty insurance rates, and §1A(g)(1) of Article 21.50 requires insurers to file, with any rate filing, adequate supporting data, including information on a reasonable margin for profit and contingencies. HB 7, 79th Legislature, Regular Session,

amended various provisions of the workers' compensation regulatory statutes, including adding subdivision (2-a) to Article 5.55 to define "premium" to mean the amount charged for a workers' compensation insurance policy, including any endorsements, after the application of individual risk variations based on loss or expense considerations. HB 7 also added Article 5.55A to the Insurance Code to require that workers' compensation insurers file their underwriting guidelines with the Department. In accordance with Article 5.55A §3, Article 5.55A may be enforced in the manner provided by Section 38.003(g). Chapter 706 was enacted and Article 5.13-2 §2 was amended in SB 99 by the 79th Legislature, Regular Session, to add specific regulations for identity theft as a commercial insurance product and as a personal insurance product. Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

The following statutes are affected by this proposal: Insurance Code Articles 5.13-2, 5.55, 5.55A, 21.50, §38.003, and Chapter 706.

§5.9310. Property and Casualty Filing Transmittal Form.

(a) (No change.)

(b) Definitions. Words and terms not defined in this division may be defined in the Insurance Code Article 5.13-2 and Subchapter D of Chapter 5 and shall have the same meaning when used in this division. The following words and terms when used in this division shall have the following meanings unless the context indicates otherwise:

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

(7) Line of insurance--For purposes of this section, each of the following is a line of insurance:

(A) - (S) (No change.)

(T) identity theft (commercial);

(U) identity theft (personal);

(V) [~~(F)~~] inland marine (commercial);

(W) [~~(U)~~] inland marine (personal);

(X) [~~(V)~~] involuntary unemployment;

(Y) [~~(W)~~] miscellaneous casualty;

(Z) [~~(X)~~] miscellaneous liability;

(AA) [~~(Y)~~] mortgage guaranty;

(BB) [~~(Z)~~] multi-peril;

(CC) [~~(AA)~~] personal liability;

(DD) [~~(BB)~~] professional liability;

(EE) [~~(CC)~~] property-commercial;

(FF) [~~(DD)~~] property-residential (dwelling);

(GG) [~~(EE)~~] property-residential (homeowners);

(HH) [~~(FF)~~] rain;

(II) [~~(GG)~~] surety bonds (other than criminal court appearance bonds);

(JJ) [~~(HH)~~] umbrella-commercial;

(KK) [~~(II)~~] umbrella-personal; and

(LL) [~~(JJ)~~] workers' compensation.

(c) - (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.

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Gene Jarmon

General Counsel and Chief Clerk

Texas Department of Insurance

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For further information, please call: (512) 463-6327



**DIVISION 6. FILINGS MADE EASY--RATE AND RATE MANUAL FILING REQUIREMENTS
28 TAC §5.9332**

The amendments are proposed under Insurance Code Articles 5.13-2, 5.55, 5.55A, 5.98, and 21.50, Chapter 706, and §38.003, and §36.001. Article 5.13-2 governs rates and forms for certain property and casualty insurance lines and the respective filing requirements in this state. Article 5.13-2 §4(b)(7) was amended by the 78th Legislature, Regular Session, in SB 14 to delete "contingency provisions" from the factors to be considered by insurers in setting rates under Article 5.13-2 and therefore, from supporting information that insurers must submit with rate filings under Article 5.13-2. Article 5.13-2 §13 was amended by HB 2437, 79th Legislature, Regular Session, to provide for reduced filing requirements for personal automobile insurers that meet the statutorily specified criteria. Article 5.55 governs workers' compensation rates, and §2(b)(4) of Article 5.55 provides that an insurer in setting rates must consider a reasonable margin for profit and contingencies. Article 5.98 authorizes the Commissioner to adopt reasonable rules that are appropriate to accomplish the purposes of Chapter 5. Article 21.50 governs mortgage guaranty insurance rates, and §1A(g)(1) of Article 21.50 requires insurers to file, with any rate filing, adequate supporting data, including information on a reasonable margin for profit and contingencies. HB 7, 79th Legislature, Regular Session, amended various provisions of the workers' compensation regulatory statutes, including adding subdivision (2-a) to Article 5.55 to define "premium" to mean the amount charged for a workers' compensation insurance policy, including any endorsements, after the application of individual risk variations based on loss or expense considerations. HB 7 also added Article 5.55A to the Insurance Code to require that workers' compensation insurers file their underwriting guidelines with the Department. In accordance with Article 5.55A §3, Article 5.55A may be enforced in the manner provided by Section 38.003(g). Chapter 706 was enacted and Article 5.13-2 §2 was amended in SB 99 by the 79th Legislature, Regular Session, to add specific regulations for identity theft as a commercial insurance product and as a personal insurance product. Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

The following statutes are affected by this proposal: Insurance Code Articles 5.13-2, 5.55, 5.55A, 21.50, §38.003, and Chapter 706

§5.9332. *Filing Requirements.*

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

(e) Except as provided in Division 9 of this subchapter (relating to Filings Made Easy--Reduced Filing Requirements for Certain Insurers), insurers must provide supporting information as necessary for the department to establish that a filing produces rates which are adequate, not excessive or unfairly discriminatory for the risks to which they apply. Categories of supporting information are listed in paragraphs (1) - (7) of this subsection, but are not necessarily required for every rate filing. Insurers must only provide sufficient materials to justify specific rates or changes being proposed. To the extent the information originally submitted in a rate filing is insufficient, the department may request additional information as deemed necessary by the department or commissioner.

(1) Actuarial support. Actuarial support generally includes rate indications and support, including the data and methodologies utilized by the insurer to derive such indications. Supporting information that is submitted with a filing should include each of the following to the extent applicable:

(A) - (L) (No change.)

(M) expense and profit provisions; ~~and~~

(N) for rates filed in accordance with Articles 5.55 or 21.50, profit and contingency provisions; and [-]

(O) for rates filed in accordance with Article 5.55, the effect on premiums of individual risk variations based on loss or expense considerations.

(2) - (7) (No change.)

(f) - (g) (No change.)

(h) Filings under this division may be combined with filings made in accordance with Division 5 of this subchapter (relating to Filings Made Easy--Requirements for Property and Casualty Policy Form, Endorsement, and Manual Rule Filings). These combined filings may utilize a single transmittal form. Filings under this division may not be combined with filings made in accordance with Division 7 or 8 of this subchapter (relating to Filings Made Easy--Underwriting Guideline Filing Requirements for Personal Automobile, ~~and~~ Residential Property, and Workers' Compensation Insurance and Filings Made Easy--Credit Scoring Models Filing Requirements for Personal Insurance) due to distinct and separate statutes governing underwriting guidelines and credit scoring models.

(i) (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 May 15, 2006.

TRD-200602729

Gene Jarmon

General Counsel and Chief Clerk

Texas Department of Insurance

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For further information, please call: (512) 463-6327



DIVISION 7. FILINGS MADE EASY--UNDERWRITING GUIDELINE FILING REQUIREMENTS FOR PERSONAL

**AUTOMOBILE, RESIDENTIAL PROPERTY,
AND WORKERS' COMPENSATION
INSURANCE**

28 TAC §5.9340, §5.9341

The amendments are proposed under Insurance Code Articles 5.13-2, 5.55, 5.55A, 5.98, and 21.50, Chapter 706, and §38.003, and §36.001. Article 5.13-2 governs rates and forms for certain property and casualty insurance lines and the respective filing requirements in this state. Article 5.13-2 §4(b)(7) was amended by the 78th Legislature, Regular Session, in SB 14 to delete "contingency provisions" from the factors to be considered by insurers in setting rates under Article 5.13-2 and therefore, from supporting information that insurers must submit with rate filings under Article 5.13-2. Article 5.13-2 §13 was amended by HB 2437, 79th Legislature, Regular Session, to provide for reduced filing requirements for personal automobile insurers that meet the statutorily specified criteria. Article 5.55 governs workers' compensation rates, and §2(b)(4) of Article 5.55 provides that an insurer in setting rates must consider a reasonable margin for profit and contingencies. Article 5.98 authorizes the Commissioner to adopt reasonable rules that are appropriate to accomplish the purposes of Chapter 5. Article 21.50 governs mortgage guaranty insurance rates, and §1A(g)(1) of Article 21.50 requires insurers to file, with any rate filing, adequate supporting data, including information on a reasonable margin for profit and contingencies. HB 7, 79th Legislature, Regular Session, amended various provisions of the workers' compensation regulatory statutes, including adding subdivision (2-a) to Article 5.55 to define "premium" to mean the amount charged for a workers' compensation insurance policy, including any endorsements, after the application of individual risk variations based on loss or expense considerations. HB 7 also added Article 5.55A to the Insurance Code to require that workers' compensation insurers file their underwriting guidelines with the Department. In accordance with Article 5.55A §3, Article 5.55A may be enforced in the manner provided by Section 38.003(g). Chapter 706 was enacted and Article 5.13-2 §2 was amended in SB 99 by the 79th Legislature, Regular Session, to add specific regulations for identity theft as a commercial insurance product and as a personal insurance product. Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

The following statutes are affected by this proposal: Insurance Code Articles 5.13-2, 5.55, 5.55A, 21.50, §38.003, and Chapter 706

§5.9340. Purpose.

The purpose of this division is to specify underwriting guideline filing requirements under Insurance Code §38.002 and Article 5.55A for those insurers writing personal automobile insurance, ~~residential property insurance, or workers' compensation insurance~~ in this state.

§5.9341. Definitions.

The definitions set forth in Insurance Code §38.002 apply to insurers filing underwriting guidelines for personal automobile or residential property insurance. The definitions set forth in Insurance Code Article 5.55A apply to insurers filing underwriting guidelines for workers' compensation insurance ~~[this division]~~.

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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Gene Jarmon

General Counsel and Chief Clerk

Texas Department of Insurance

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For further information, please call: (512) 463-6327



**DIVISION 9. FILINGS MADE EASY--
REDUCED FILING REQUIREMENTS FOR
CERTAIN INSURERS**

28 TAC §5.9357

The amendments are proposed under Insurance Code Articles 5.13-2, 5.55, 5.55A, 5.98, and 21.50, Chapter 706, and §38.003, and §36.001. Article 5.13-2 governs rates and forms for certain property and casualty insurance lines and the respective filing requirements in this state. Article 5.13-2 §4(b)(7) was amended by the 78th Legislature, Regular Session, in SB 14 to delete "contingency provisions" from the factors to be considered by insurers in setting rates under Article 5.13-2 and therefore, from supporting information that insurers must submit with rate filings under Article 5.13-2. Article 5.13-2 §13 was amended by HB 2437, 79th Legislature, Regular Session, to provide for reduced filing requirements for personal automobile insurers that meet the statutorily specified criteria. Article 5.55 governs workers' compensation rates, and §2(b)(4) of Article 5.55 provides that an insurer in setting rates must consider a reasonable margin for profit and contingencies. Article 5.98 authorizes the Commissioner to adopt reasonable rules that are appropriate to accomplish the purposes of Chapter 5. Article 21.50 governs mortgage guaranty insurance rates, and §1A(g)(1) of Article 21.50 requires insurers to file, with any rate filing, adequate supporting data, including information on a reasonable margin for profit and contingencies. HB 7, 79th Legislature, Regular Session, amended various provisions of the workers' compensation regulatory statutes, including adding subdivision (2-a) to Article 5.55 to define "premium" to mean the amount charged for a workers' compensation insurance policy, including any endorsements, after the application of individual risk variations based on loss or expense considerations. HB 7 also added Article 5.55A to the Insurance Code to require that workers' compensation insurers file their underwriting guidelines with the Department. In accordance with Article 5.55A §3, Article 5.55A may be enforced in the manner provided by Section 38.003(g). Chapter 706 was enacted and Article 5.13-2 §2 was amended in SB 99 by the 79th Legislature, Regular Session, to add specific regulations for identity theft as a commercial insurance product and as a personal insurance product. Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

The following statutes are affected by this proposal: Insurance Code Articles 5.13-2, 5.55, 5.55A, 21.50, §38.003, and Chapter 706

§5.9357. Filing Requirements.

(a) County mutual insurers writing non-standard ~~[Non-standard]~~ personal automobile insurance. County mutual insurers ~~[Insurers]~~ required to file under the provisions of Insurance Code Article 5.13-2 may make rate filings for personal automobile according to the

requirements described in this subsection if they issue policies only at non-standard rates as defined under Article 5.13-2, §13(f) and if the insurer and the insurer's affiliated companies or group have a market share of less than 3.5 percent.

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

(b) Insurers writing personal automobile insurance. An Insurer that writes personal automobile Insurance and that meets the criteria in the Insurance Code Article 5.13-2 §13(h), is subject to the filing requirements specified in subsection (a) of this section if:

(1) the insurer, along with the insurer's affiliated companies or group, issues personal automobile liability insurance policies only below 101 percent of the minimum limits required by the Transportation Code Chapter 601; and

(2) the insurer, along with the insurer's affiliated companies or group, has a market share of less than 3.5 percent of the personal automobile insurance market in this state.

(c) [(b)] Underserved residential property. In accordance with Article 5.13-2C, §3(b) insurers otherwise exempt from the rate filing requirements of Insurance Code Article 5.13-2, shall make rate filings in accordance with this subsection. Insurers who qualify to file under this subsection shall file as required in §5.9332(a) - (b) of this subchapter (relating to Filings Made Easy--Rate and Rate Manual Filing Requirements) and must:

(1) include a Certification of Article 5.13-2C Exemption Compliance (EC-1) as specified in §5.3702 of this chapter (relating to Designation of Underserved Areas for Residential Property Insurance for Purposes of the Texas Insurance Code Article 5.13-2C).

(2) submit rate change information when applicable as described in §5.9332(e)(5) of this subchapter.

(d) [(e)] Additional provisions. The following provisions apply to any rate or rate manual filing made pursuant to subsection (a), [øf] (b), or (c) of this section:

(1) The reduced filing requirements provided under this division do not affect the requirements to file supporting data under §5.9941 and §5.9960 of this chapter (relating to Differences in Rates Charged Due Solely to Difference in Credit Scores and Exception to Territory Rating Requirements under Insurance Code Article 5.171). Insurers making a rate or rate manual filing under this division may include supporting data required under §5.9941 and §5.9960 of this chapter [tithe] with the filing made under this division.

(2) Any filings that do not fully comply with all of the filing requirements described in this division may be considered incomplete and may be returned to the filer for completion with a notice stating that the filing is not complete and shall identify the additional information that is required for completion of the filing.

(3) The department may request additional information related to a rate filing, including actuarial or other reasonable support of rates, as deemed necessary by the department or commissioner. The insurer shall respond by the date specified in the request.

(4) Filings under this division may be combined with filings made in accordance with Division 5 of this subchapter (relating to Filings Made Easy--Requirements for Property and Casualty Policy Form, Endorsement, and Manual Rule Filings). These combined filings may utilize a single transmittal form. Filings under this division may not be combined with filings made in accordance with Division 7 or 8 of this subchapter (relating to Filings Made Easy--Underwriting Guideline Filing Requirements for Personal Automobile, [and] Residential Property, and Workers' Compensation Insurance and Filings

Made Easy--Credit Scoring Models Filing Requirements for Personal Insurance) due to distinct and separate statutes governing underwriting guidelines and credit scoring models.

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 May 15, 2006.

TRD-200602731

Gene Jarmon

General Counsel and Chief Clerk

Texas Department of Insurance

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For further information, please call: (512) 463-6327

◆ ◆ ◆
TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 3. TEXAS YOUTH COMMISSION

CHAPTER 81. INTERACTION WITH THE PUBLIC

37 TAC §81.1

The Texas Youth Commission (the commission) proposes an amendment to §81.1, concerning Public Information Requests. The amended section requires that requests for public information be submitted in writing.

The proposed rule also establishes that the commission will not consider public information requests submitted by fax or e-mail as received until the request is submitted to the agency's designated fax number or email address for such requests. This amendment will not affect public information requests delivered via regular mail or in-person, which are considered 'received' upon receipt by any staff.

Robin McKeever, Assistant Deputy Executive Director for Financial Support, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Neil Nichols, General Counsel, has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be efficient use of agency resources. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this rule.

Comments on the proposal may be submitted within 30 days of the publication of this notice to DeAnna Lloyd, Chief of Policy Administration, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765, or email to deanna.lloyd@tyc.state.tx.us.

The amendment is proposed under the Texas Government Code, §552.

The proposed rule affects the Human Resources Code, §61.034.

§81.1. *Public Information Request*

(a) Purpose. The purpose of this rule is to provide information, consistent with the Public Information Act, Texas Government Code Chapter 552, regarding requests for public information from the Texas Youth Commission (TYC)[agency].

(b) Pursuant to Texas Government Code §552.201, the executive director is the officer for public information. The executive director may designate an open records coordinator to respond to requests for public information. Each department head is an agent of the executive director for purposes of complying with the Public Information Act. [If not excepted, all information collected, assembled, or maintained in connection with the transaction of official business is public information and shall be available to the public during normal business hours. Forms in which the media containing public information exists include book, paper, letter, document, printout, photograph, film, tape, microfiche, microfilm, Photostat, sound recording, map, and drawing and a voice, data, or video representation held in computer memory.]

(c) The TYC shall:

(1) make public information available for inspection and copying;

(2) carefully protect public information from deterioration, alteration, mutilation, loss, or unlawful removal; and

(3) repair, renovate, or re-bind public information as necessary to maintain it properly.

(d) Each TYC facility shall post a sign in the administrative offices of the facility, in the form prescribed by the Texas Building and Procurement Commission. The sign shall contain the basic rights of a requestor of public information, the responsibilities of TYC, and the procedures for inspecting or obtaining a copy of public information.

(e) ~~[(e)]~~ All requests must [should] be in writing and should include the name, address and telephone number of the requestor ~~[requester]~~. Requests submitted by fax or email are not considered received until submitted to the fax number or email address designated by TYC on its Internet website [will be accepted by fax and email].

(f) All requests for youth records or information shall be processed according to §99.9 of this title.

(g) ~~[(d)]~~ Except as described in subsection (i) of this section, information that is open for inspection shall "promptly" be made available to the requestor. "Promptly" means as soon as possible under the circumstances, within a reasonable time, without delay. If a response to a request cannot be made within ten (10) business days from receipt of the request, the open records coordinator shall notify the requestor in writing of the date on which the records will be made available. A governmental body is not entitled to automatically withhold for ten (10) business days information not excepted from public disclosure. [TYC staff shall respond immediately without delay to a request.]

(h) ~~[(e)]~~ If TYC ~~[the legal services department]~~ determines that the request will require an opinion by the Attorney General as to the releasability of the requested information, the request to the Attorney General shall [must] be made within ten business days of the receipt of the request for information, with written notice provided to the requestor. Otherwise, the information is open for inspection.

(i) ~~[(f)]~~ Information requested by a member of the legislature or a member of a legislative body will be provided at no charge. If the requested information is confidential it shall remain so in the hands of the requestor~~[requester]~~. The requestor must [requester shall] complete an affidavit regarding confidentiality of the information [TYC Affidavit: Confidentiality Agreement Relating to Release of Public Information form, LS-032 regarding confidentiality].

(j) ~~[(g)]~~ Costs for production of requested documents are based on guidelines established by the Texas Building and Procurement Commission. See §81.75 of this title ~~[(relating to Copying Costs)]~~.

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 May 10, 2006.

TRD-200602604

Dwight Harris

Executive Director

Texas Youth Commission

Earliest possible date of adoption: June 25, 2006

For further information, please call: (512) 424-6301



CHAPTER 87. TREATMENT SUBCHAPTER B. SPECIAL NEEDS OFFENDER PROGRAMS

37 TAC §87.75

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

The Texas Youth Commission (the commission) proposes the repeal of §87.75, concerning Mentally Retarded Offender Program. The repeal of the section will allow for a new rule to be published in its place. The new rule is proposed in this issue of the *Texas Register*.

Robin McKeever, Assistant Deputy Executive Director for Financial Support, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Neil Nichols, General Counsel, has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the availability of a new rule concerning program services for offenders with mental retardation. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this rule.

Comments on the proposal may be submitted within 30 days of the publication of this notice to DeAnna Lloyd, Chief of Policy Administration, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765, or email to deanna.lloyd@tyc.state.tx.us.

The repeal is proposed under the Human Resources Code, §61.034, which provides the commission with the authority to make rules appropriate to the proper accomplishment of its functions.

The proposed rule affects the Human Resources Code, §61.034.

§87.75. *Mentally Retarded Offender Program.*

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

Filed with the Office of the Secretary of State on May 10, 2006.

TRD-200602607

Dwight Harris

Executive Director

Texas Youth Commission

Earliest possible date of adoption: June 25, 2006

For further information, please call: (512) 424-6301



37 TAC §87.75

The Texas Youth Commission (the commission) proposes new §87.75, concerning Program Services for Offenders with Mental Retardation. The new section will set forth the commission's policy regarding specialized program services for youth identified as having a "Priority 1" need for mental retardation services. The current rule addressing these services is proposed for repeal in this issue of the *Texas Register*. Primarily, this rule revision will effect an operational change wherein the Corsicana Residential Treatment Center (CRTC) is no longer required to operate a dedicated program dormitory, with a predetermined number of beds, for offenders with mental retardation. The program will operate instead as a plan of service which can be applied anywhere on campus.

Robin McKeever, Assistant Deputy Executive Director for Financial Support, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Neil Nichols, General Counsel, has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be more efficient use of agency resources. Specifically, CRTC will no longer need to maintain a pre-determined population number in the program for offenders with mental retardation. Rather, CRTC will be able to place Priority 1 youth in the most appropriate location on campus according to their size, age, gender and abilities. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this rule.

Comments on the proposal may be submitted within 30 days of the publication of this notice to DeAnna Lloyd, Chief of Policy Administration, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765, or email to deanna.lloyd@tyc.state.tx.us.

The new section is proposed under the Human Resources Code, §61.075, which provides the commission with the authority to order a child's confinement under conditions it believes best designed for the child's welfare and the interests of the public.

The proposed rule affects the Human Resources Code, §61.034.

§87.75. Program Services for Offenders with Mental Retardation.

(a) Purpose. The Corsicana Residential Treatment Center (CRTC) provides specialized program services for youth identified with a Priority 1 need for mental retardation services. The rule will establish admission criteria and procedures, and release, transition or transfer options for youth with mental retardation.

(b) Explanation of Terms Used. Priority 1: Specialized Mental Retardation Services--specialized mental retardation services are required for youth who, based upon the results of an appropriate psycho-

logical assessment, are diagnosed with moderate to severe mental retardation and corresponding deficits in adaptive functioning, according to the guidelines published in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association.

(c) Admissions Criteria. Youth from a secure residential program will be admitted to the CRTC if a Priority 1 need for mental retardation services has been established.

(d) Program Requirements. The CRTC will adapt the agency's Resocialization program to enable the progress of youth diagnosed with mental retardation. These adaptations will be documented monthly in the youth's Individual Case Plan (ICP).

(e) Release, Transfer and Transition Options.

(1) Youth in the CRTC who meet criteria for transition, release or transfer according to §§85.45, 85.55, 85.59, 85.61, 85.65, or 85.69 of this title may be transitioned to a less restrictive setting or paroled to the community or transferred to Texas Department of Criminal Justice (TDCJ).

(2) Youth may be transitioned from the CRTC to an alternative placement if their functional ability improves to a level at which they can continue to progress with identified program adaptations in a general population setting.

(3) Youth who do not progress in the agency's Resocialization program for reasons other than mental retardation may be transferred to another facility through the centralized placement unit (as an administrative transfer) for appropriate placement. For administrative transfer procedures, see §85.45 of this title.

(4) Youth in the CRTC who have completed the initial minimum length of stay and are determined to be unable to progress in the agency's Resocialization Program due mental retardation in accordance with §87.79 of this title shall be discharged.

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 May 10, 2006.

TRD-200602606

Dwight Harris

Executive Director

Texas Youth Commission

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For further information, please call: (512) 424-6301



CHAPTER 91. PROGRAM SERVICES

SUBCHAPTER A. BASIC SERVICES

37 TAC §91.7

The Texas Youth Commission (the commission) proposes an amendment to §91.7, concerning Youth Personal Property. The amendment to the section adds a reference to §87.4, concerning Resocialization Earned Privilege System, which was adopted in the January 6, 2006, issue of the *Texas Register* (31 TexReg 173). The amendment also removes rules relating to youth possessions which is now covered under §87.4.

Robin McKeever, Assistant Deputy Executive Director for Financial Support, has determined that for the first five-year period the section are in effect there will be no fiscal implications for state

or local government as a result of enforcing or administering the section.

Neil Nichols, General Counsel, has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the ease of access to information and elimination of duplicative agency policy. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this rule.

Comments on the proposal may be submitted within 30 days of the publication of this notice to DeAnna Lloyd, Chief of Policy Administration, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765, or email to deanna.lloyd@tyc.state.tx.us.

The amendment is proposed under the Human Resources Code, §61.034, which provides the commission with the authority to make rules appropriate to the proper accomplishment of its functions.

The proposed rule affects the Human Resources Code, §61.034.

§91.7. Youth Personal Property.

(a) Purpose. The purpose of this policy is to establish limits on the personal property a youth may possess while assigned to a residential facility. The restriction and prohibition of personal property is necessary in order to maintain facility order and provide a safe, sanitary and constructive environment conducive to the youth's rehabilitation. This rule also defines items that are considered contraband in a residential setting.

(b) Applicability.

(1) Contraband items other than contraband money will be disposed of in accordance with §97.11 of this title [~~(relating to Control of Unauthorized Items Seized)~~].

(2) Contraband money as defined in subsection (c)(7) [~~(d)(7)~~] of this section will be disposed of in accordance with §95.11 of this title [~~(relating to Disciplinary Consequences)~~].

~~{(c) General Requirements.}~~

~~{(1) The Texas Youth Commission (TYC) assessment center shall prohibit youth possessing personal property except for medically necessary items. All personal property except for medically necessary items, will be inventoried, receipted and returned to the person transporting the youth to the facility to be returned to the youth's home. The county transporter is responsible for ensuring that all personal items are returned to the youth's home.}~~

~~{(2) Other residential programs may prohibit youth from possessing personal property except for medically necessary items, personal letters, and photographs that are otherwise acceptable. Programs may allow youth to possess limited personal property consistent with the program's privilege system and/or interaction in the community in accordance with §93.1 of this title (relating to Basic Youth Rights).}~~

(c) [~~(d)~~] ~~[Prohibited Items/]~~ Contraband. The [Possession (care, custody or control) of the] following items are [prohibited and will be] considered contraband. Possession (care, custody, or control) of such items within a Texas Youth Commission (TYC)-operated [within a TYC operated] or contract residential facility is prohibited.

(1) Any item which is a crime to possess under municipal ordinances or state or federal law, including solvent inhalants, drugs, and alcohol.

(2) Unauthorized possession of prescription drugs or over the counter medication. For example: medication not prescribed to the youth, or in excess of the amount prescribed to the youth, or without the consent or knowledge of staff, or at an unauthorized time, etc.

(3) Narcotics paraphernalia.

(4) Items that can be used, made, or adapted to use as weapons against self or others. Because jewelry represents a risk to facility safety (e.g., items may be used as weapons or may injure staff/youth during a restraint), youth are not allowed to possess any jewelry.

(5) Pictures or drawings that depict exploitive or sexually explicit male or female nudity or partial nudity or sexual acts, including magazines or periodicals, which routinely publish such pictures. No forms of nudity will be allowed to be posted.

(6) Any items with slogans, mottos or emblems which are obscene, advocate illegal or immoral conduct, hold individuals or groups up to ridicule, advocate violence, or reinforce delinquent subcultural values, or in any way disrupt programs or activities, including but not limited to posters, pictures, magazines, periodicals, or clothing.

(7) Money in excess of the amount or not in a form permitted by facility rules.

(8) Gambling paraphernalia (dice, playing cards, etc.).

(9) Devices which have been fashioned to produce tattoos.

(10) Any item not listed on the youth's Personal Property and Clothing Inventory form[; ~~CCF-510~~] (other than personal letters or photographs).

(d) General Requirements.

(1) The TYC assessment center shall prohibit youth possessing personal property except for medically necessary items. All personal property except for medically necessary items will be inventoried, receipted and returned to the person transporting the youth to the facility to be returned to the youth's home. The county transporter is responsible for ensuring that all personal items are returned to the youth's home.

(2) Other residential programs may prohibit youth from possessing personal property except for medically necessary items, personal letters, and photographs that are otherwise acceptable. Programs may allow youth to possess limited personal property consistent with the program's privilege system and/or interaction in the community in accordance with §93.1 of this title.

(3) [(e)] Due to space limitations, youth may be restricted to possessions that will fit in their designated storage space in a neat and orderly manner. This includes letters, pictures, books and magazines.

(4) [(4)] The amount of space a youth has to store personal belongings will be left up to the facility, dependent on local issues such as the configuration of the dorm.

(5) [(2)] No youth will be denied the right to possess what the agency allows based on inadequate storage space; however, local administration may limit the number or amount of these items based on space limitations.

(6) [(f)] Youth with a documented history of self-injury may have restricted access to certain possessions otherwise authorized under this policy that might be used to cause themselves harm. These restrictions will be made on an individual basis and documented in the youth's Individual Case Plan (ICP).

(7) [(g)] A program is neither liable for nor will replace lost, stolen or damaged personal items of youth unless loss or damage can be shown to have resulted from staff negligence.

(8) [(h)] An inventory of any personal property or clothing a youth is allowed to possess will be established and maintained. Any item not listed on this inventory will be considered contraband and disposed of according to §97.11 of this title.

(9) [(i)] Any personal property or clothing a youth is allowed to possess will move with the youth to each assigned placement.

(10) [(j)] Youth may not give, take, borrow, steal, barter, or trade possessions with other youth.

(11) [(k)] A youth who escapes shall be considered to have abandoned his property. The administrator will notify the youth and his or her parents, head of household, or managing conservator of the inventory of property and that the property will be disposed of in 30 days unless shipping COD is authorized. If authorization is given, all property is shipped COD by the least expensive means available. If after 30 days in storage the property has not been demanded, then the property is disposed of. Should a youth subsequently return from an escape, reasonable efforts will be made to return any property remaining at the facility. However, a youth shall not be entitled to compensation for any loss or damage caused by disposition or shipping of property in accordance with this procedure.

(12) [(l)] Parents and youth will be notified in writing of the rules relating to personal possessions.

[(m) TYC Operated Institutions. With the exception of the TYC assessment center, youth in TYC operated institutions will be allowed or denied the following possessions in accordance with the standards outlined in this policy.]

[(1) Clothes and Shoes.]

(13) Youth in TYC-operated Institutions:

(A) [Dress code requirements will be based upon the youth's progress in the agency's established treatment program in order to easily identify a youth's phase; and in order to enhance the youth's incentive to participate in such program. Facilities] will be provided [provide all youth] with standardized clothing and shoes. See §91.5 of this title for dress code requirements;[-]

[(B) Youth on phases III and IV will be provided with clothing that reflect their success in the Resocialization program. Each facility will develop a local policy specifying dress code requirements. At a minimum, youth on phase III and IV will be provided with blue jeans or khaki pants that fit properly, and youth on phase IV will be provided with collared shirts. Facilities where youth wear military attire are exempt from this requirement.]

[(C) Youth of all phases will be provided with standard shoes. Phase III and IV youth will be allowed to possess one pair of their own tennis shoes. Shoes must be black, white, or black and white. Shoes may be purchased with money from the youth's student trust fund, either through a commissary or through store runs. The family may provide shoes to the youth only if they are shipped directly from the store, in an effort to prevent contraband from entering the facility. Shoes will not be provided by the family at visitation.]

(B) [(D)] may be allowed to possess additional appropriate clothing to wear to off-campus privileges such as community jobs or school; [Facilities may allow youth to possess additional appropriate clothing to wear to off-campus privileges such as community jobs or school. Personal clothing for these purposes will be either provided by the facility or purchased with money from the youth's trust

fund. The family may provide this clothing to the youth only if they are shipped directly from the store, in an effort to prevent contraband from entering the facility.]

[(E) If a youth loses a phase, the youth may be allowed to keep personal clothing/shoes in his/her possession. However, the youth will not be allowed to wear the clothing/shoes until he/she has achieved the required phase again.]

(C) [(F)] [Youth of any phase] will be allowed to possess personal shoes if they are medically necessary; however, the facility may choose to provide this to the youth in lieu of the family;[-]

[(2) Jewelry. Because jewelry represents a risk to facility safety (e.g. items may be used as a weapon or may injure staff/student during a restraint); youth are not allowed to possess any jewelry.]

[(3) Watches. To provide an incentive to participate and progress in the agency's Resocialization program, phase III and IV youth will be provided a personal inexpensive watch, preferably provided by the Volunteer Council or purchased by the facility using money from the Student Benefit Fund.]

[(4) Foods.]

[(A) As food on the dorm has demonstrated to be a risk to sanitary living conditions; youth are not allowed to have personal food items in their possession.]

[(B) Facilities will provide vending machines or a commissary in the visitation area accessible to visitors to purchase food and drinks for youth and families to consume during visitation only.]

[(C) There will not be a limit to the amount of money brought into the facility by the family for use in the commissary or vending machines.]

[(D) Family members may not bring food to visitation, and youth will not be allowed to take food away from visitation, nor will they be allowed to receive food through the mail.]

[(5) Hygiene Products and Makeup.]

(D) [(A)] will be provided appropriate and adequate hygiene products; [Facilities will provide appropriate and adequate hygiene products to all youth.]

[(B) To provide an incentive to participate and progress in the agency's Resocialization program, phase IV youth will be allowed to possess the following individually-purchased personal hygiene products: Bar soap, shampoo, toothpaste and toothbrush, deodorant, lotion, and/or hair products.]

[(C) Females will be allowed to possess and wear makeup based upon the youth's progress in the agency resocialization program in an effort to:]

[(i) encourage youth to maintain a pro-social appearance and increased self-respect;]

[(ii) provide TYC an opportunity to teach girls personal grooming skills such as how to apply makeup appropriately to avoid an anti-social or deviant appearance; and]

[(iii) provide an incentive for youth to progress through the agency's rehabilitation program.]

[(D) Phase II female youth will also be allowed to possess and wear facility-provided lip-gloss, and personal pressed powder.]

[(E) Phase III female youth will be allowed to possess and wear facility-provided lip-gloss, as well as personal pressed powder.]

der, blush, mascara (non-waterproof brown or black only), and facial moisturizer (tinted or non-tinted).]

~~[(F) Phase IV female youth will be allowed to possess and wear facility-provided lip gloss, as well as personal pressed powder, blush, mascara (non-waterproof brown or black only), facial moisturizer (tinted or non-tinted), lipstick, and base (in a compact, stick form, or plastic container only).]~~

~~[(E) ~~[(G)] Tweezers~~ will be provided tweezers (girls only) ~~[to girls at all phases]~~ to groom their eyebrows/facial hair. However, the female youth will have only controlled access, and shared tweezers will be sterilized between uses. If tweezers are being inappropriately used, access to tweezers will be prohibited. ~~[Any youth may be prohibited access to tweezers if there is concern that the youth will use the tweezers inappropriately.]~~ This restriction will be documented on the youth's ICP; and[-]~~

~~[(F) may possess personal magazines, books or other publications; however, the policy on contraband will limit the content. The youth will be limited in the number or the amount of publications based on storage space limitations, and based on what the local fire marshal will allow (e.g., three books, four publications, etc).~~

(14) Youth in TYC-operated institutions are restricted from the following:

~~[(6) Restrictions on the Use of Makeup:]~~

~~(A) For sanitary reasons, makeup may not be shared among youth.~~

~~[(B) Girls may lose the privilege of wearing makeup while on restriction for category I or II rule violations.]~~

~~(B) ~~[(C)]~~ Girls on the Corsicana Stabilization Unit may not wear makeup.~~

~~(C) ~~[(D)]~~ Boys will not be allowed access to makeup for safety issues (violating the social norms would leave the boys vulnerable to ridicule and/or harassment).~~

~~(D) ~~[(E)]~~ Youth will not be allowed to possess any talcum powder, aerosol products, or products in glass containers or cans. The following types of makeup will be prohibited: Lip liner pencils, eyeliner (liquid or pencil), eye shadow (cream, powder or pencil), eyebrow pencil, eyelash curler, loose powder, waterproof cosmetics, and nail polish. Institution administrators may place local restrictions on certain types or brands of hygiene products based on safety concerns, e.g. alcohol content, toxicity, etc.~~

~~(E) Youth may not possess any item that is not expressly allowed in TYC policy.~~

~~[(7) Youth of any phase will be allowed to possess additional hygiene products deemed medically necessary. Facial cleanser will be supplied to youth as needed/as appropriate to remove cosmetics and/or control acne.]~~

~~[(8) Makeup and other hygiene products may be controlled by staff and issued only at times the youth are in need of them.]~~

(15) Youth in TYC-operated institutions may obtain the following items:

~~[(9) Obtaining Clothing, Shoes, Makeup and Hygiene Products:]~~

~~(A) Personal clothing for off-campus privileges, shoes, makeup and other hygiene products may be purchased by the youth through a local commissary or purchased by the facility on the youth's~~

behalf, using money from the youth's student trust fund. See §87.4 of this title.

~~(B) Youth will be allowed to receive phase-appropriate shoes or clothing through the mail, only if it is shipped directly from the store. These items will be searched for contraband by staff in the presence of the youth and placed on the youth's inventory the day they are received.~~

~~(C) If a facility chooses to purchase these items on the youth's behalf, a local procedure shall be outlined to include a standard approval procedure and proper accounting procedures. Staff shall not take money directly from youth for this purpose.~~

~~[(D) No more than one of a particular hygiene product will be kept by the youth at any one time.]~~

~~[(10) Youth may possess personal magazines, books or other publications; however, the policy on contraband will limit the content. The youth will be limited in the number or the amount of publications based on storage space limitations, and based on what the local fire marshal will allow (e.g. three books, four publications, etc).]~~

~~[(11) In order to encourage and assist youth in concentrating on learning and practicing their Resocialization skills and goals, youth will not be allowed to possess radios, stereos, cassette tapes, computer diskettes, compact discs, cell phones, batteries, walkmans, television sets, or other electronic equipment with the following exception outlined below:]~~

~~[(A) As an incentive to participate and progress in the agency's Resocialization program, Phase III and IV youth will possess their own (or have access to) battery-operated personal radios and/or tape players (e.g. Walkmans). The radios and/or tape players/tapes will preferably be provided by the volunteer council or purchased with money from the Student Benefit Fund. The youth may not receive electronics or music through the mail or through visitation.]~~

~~[(B) Youth will only be allowed to use the radios or tape players during designated free time.]~~

~~[(C) TYC will provide batteries.]~~

~~[(D) In facilities that can access radio stations in the dorm, the youth will be provided only radios. In facilities that cannot access radio stations inside the dorm, the youth will be provided with tape players and tapes.]~~

~~[(E) CD's and CD players will not be allowed.]~~

~~[(12) Youth may not possess any item that is not expressly allowed in TYC policy.]~~

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

Filed with the Office of the Secretary of State on May 10, 2006.

TRD-200602608

Dwight Harris

Executive Director

Texas Youth Commission

Earliest possible date of adoption: June 25, 2006

For further information, please call: (512) 424-6301



CHAPTER 95. YOUTH DISCIPLINE

SUBCHAPTER A. DISCIPLINARY PRACTICES

37 TAC §95.17

The Texas Youth Commission (the commission) proposes an amendment to §95.17, concerning Behavior Management Program. The amendment to the section will add assault of a staff/volunteer by offensive contact to the list of rule violations which, when committed by a youth, will result in placement in a Behavior Management Program.

Robin McKeever, Assistant Deputy Executive Director for Financial Support, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Neil Nichols, General Counsel, has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be providing for the safety of staff and volunteers, and holding youth accountable for high-risk rule violations. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this rule.

Comments on the proposal may be submitted within 30 days of the publication of this notice to DeAnna Lloyd, Chief of Policy Administration, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765, or email to deanna.lloyd@tyc.state.tx.us.

The amendment is proposed under the Human Resources Code, §61.075, which provides the commission with the authority to order a child's confinement under conditions it believes best designed for the child's welfare and the interests of the public.

The proposed rule affects the Human Resources Code, §61.034. §95.17. *Behavior Management Program.*

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

(e) Program Eligibility. A youth who knowingly engages in, aids, or abets someone else to engage in one or more of the following high risk behaviors is eligible for placement in a BMP:

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

(3) threatening imminent bodily injury as defined in §95.3 of this title;

(4) assault on staff/volunteer (Offensive Contact) as defined in §95.3 of this title;

(5) [~~(3)~~] escape or attempted escape as defined in §95.3 of this title;

(6) [~~(4)~~] fleeing apprehension which results in a significant disruption of campus operations;

(7) [~~(5)~~] riotous conduct as defined in §95.3 of this title;

(8) [~~(6)~~] sexual assault, aggravated sexual assault, or inappropriate sexual contact other than just kissing;

(9) [(7)] possessing any item defined as a weapon in the Penal Code or threatening others with use of an object which could be used as a weapon;

[(8)] threatening imminent bodily injury as defined in §95.3 of this title;

(10) [~~(9)~~] chunking bodily fluids as defined in §95.3 of this title;

(11) [~~(10)~~] possession or use of an unauthorized substance or intoxicant;

(12) [(11)] self-harm or threatening self-harm, which has been clinically assessed by a mental health professional as not motivated by mental illness pursuant to assessment procedures as set forth in §91.88 of this title (relating to Suicide Alert for Secure Programs);

(13) [(12)] chronic disruptive behavior, as demonstrated by:

(A) five (5) or more admissions or extensions to the security program in a 30-day period, or ten (10) or more admissions or extensions to the security program in a three (3)-month period; and

(B) release within the previous six (6) months from a PIP or BMP; or

(14) [(13)] behavior which is found in a due process hearing to be eligible for placement in the AMP pursuant to §95.21 of this title and the youth is subsequently denied admission to AMP.

(f) - (h) (No change.)

(i) Progress Through Program Stages. The program consists of five (5) stages. Movement through each stage is based on successful completion of performance objectives.

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

(5) Stage 5. Stage 5 shall not exceed 30 consecutive days in duration. Youth are released from the security unit immediately upon completion of Stage 4 and begin participating in a Primary Intervention Program (PIP) on an assigned general population dorm. Youth may earn phases in all areas of Resocialization while on this stage.

(A) (No change.)

(B) Stage 5 Completion Criteria.

(i) Completion of 30 consecutive days with no Category I rule violations and no security referrals, no more than one (1) Category II rule violation in any seven-day review period, [~~no security referrals in any seven-day review period~~] and compliance with short term IBMP objectives; or

(ii) (No change.)

(j) - (n) (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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Dwight Harris

Executive Director

Texas Youth Commission

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For further information, please call: (512) 424-6301



CHAPTER 99. GENERAL PROVISIONS SUBCHAPTER A. YOUTH RECORDS

37 TAC §99.19

(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 Youth Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Youth Commission (the commission) proposes the repeal of §99.19, concerning Youth Records Disposition. The repeal of the section will allow for a new rule to be published in its place. The new rule is proposed in this issue of the *Texas Register*.

Robin McKeever, Assistant Deputy Executive Director for Financial Support, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Neil Nichols, General Counsel, has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the availability of a new rule concerning retention of youth records. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this rule.

Comments on the proposal may be submitted within 30 days of the publication of this notice to DeAnna Lloyd, Chief of Policy Administration, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765, or email to deanna.lloyd@tyc.state.tx.us.

The repeal is proposed under the Human Resources Code, §61.034, which provides the commission with the authority to make rules appropriate to the proper accomplishment of its functions.

The proposed rule affects the Human Resources Code, §61.034.
§99.19. Youth Records Disposition.

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 May 10, 2006.

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Dwight Harris

Executive Director

Texas Youth Commission

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For further information, please call: (512) 424-6301



37 TAC §99.19

The Texas Youth Commission (the commission) proposes new §99.19, concerning Youth Records Disposition. The new section will set forth the commission's policy regarding retention periods and locations for youth records. The current agency rule addressing records retention is proposed for repeal in this issue of the *Texas Register*. The new rule changes the retention period for most youth records from 25 years to 20 years. Additionally, the new rule specifies that certain youth education records will be retained permanently, and certain security records will be destroyed upon the youth's discharge from the commission's custody.

Robin McKeever, Assistant Deputy Executive Director for Financial Support, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Neil Nichols, General Counsel, has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the efficient use of agency resources. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this rule.

Comments on the proposal may be submitted within 30 days of the publication of this notice to DeAnna Lloyd, Chief of Policy Administration, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765, or email to deanna.lloyd@tyc.state.tx.us.

The new section is proposed under the Human Resources Code, §61.073, which requires the commission to keep written records of all examinations and conclusions based on them and of all orders concerning the disposition or treatment of each child subject to its control.

The proposed rule affects the Human Resources Code, §61.034.

§99.19. Youth Records Disposition.

(a) Purpose. The Texas Youth Commission (TYC) has an established schedule for retention of official youth records and other youth information following discharge from TYC custody.

(b) Explanation of Terms Used.

(1) Official Record--means the masterfile maintained for each TYC youth, which consists of the casework subfile, education subfile, security subfile, and medical subfile. See §99.11 of this title for an explanation of youth masterfiles.

(2) Other Youth Information/Records--means any other information maintained on an individual youth (whether in hard copy or electronic format) that is not designated as part of the masterfile.

(c) Retention Schedule.

(1) Official records shall have the following retention periods and storage locations:

(A) the casework subfile shall be retained in the Central Office Youth Records Repository for 20 years following discharge;

(B) the education subfile shall be retained at the last TYC-operated school attended by the youth for seven years following the end of the state fiscal year in which the youth was transferred out of the TYC-operated school. At the end of the retention period, permanent records shall be removed from the education subfile and permanently retained in the Central Office Youth Records Repository;

(C) the security subfile shall be destroyed upon the youth's discharge from TYC; and

(D) the medical subfile shall be retained in the Central Office Youth Records Repository:

(i) for 20 years following discharge, if in paper format, or

(ii) permanently, if in electronic format.

(2) Other youth information/records shall be retained at the facility where the records were generated for the retention period estab-

lished in the TYC records retention schedule for the applicable record series.

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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Dwight Harris

Executive Director

Texas Youth Commission

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 10. GUARDIANSHIP SERVICES

The Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), new Chapter 10, governing Guardianship Services, consisting of the following: new Subchapter A, consisting of §10.101 and §10.103, concerning general provisions of the DADS Guardianship Program; new Subchapter B, consisting of §§10.201, 10.203, and 10.205, concerning eligibility and assessment of individuals for guardianship services; new Subchapter C, consisting of §§10.301, 10.303, 10.305, 10.307, 10.309, 10.311, 10.313, 10.315, 10.317, 10.319, 10.321, 10.323, 10.325, 10.327, 10.329, and 10.331, concerning requirements for contractors that provide guardianship services to DADS wards; new Subchapter D, consisting of §§10.401, 10.403, and 10.405, concerning records management; and new Subchapter E, consisting of §§10.501, 10.503, 10.505, 10.507, and 10.509, concerning contract monitoring and compliance.

Background and Purpose

The purpose of the new sections is to govern the assessment of an individual for guardianship services and the contracting requirements for the DADS Guardianship Program. Senate Bill (SB) 6, 79th Texas Legislature, Regular Session, 2005, transferred responsibility for guardianship services and contracting for those services from the Department of Family and Protective Services (DFPS) to DADS and required that the HHSC executive commissioner adopt rules to govern the administration of DADS' assessment of the conditions and circumstances of an elderly or disabled person referred to DADS to determine whether guardianship is appropriate for that person.

SB 6 added §§161.101 - 161.113 to the Texas Human Resources Code, authorizing DADS to accept referrals for guardianship services for individuals from DFPS who have been found to be in a state of abuse, neglect or exploitation; to assess the individuals for capacity; to apply for guardianship if guardianship is determined to be appropriate; and to serve as guardians of the individual for as long as guardianship services are required. Under Texas Human Resources Code, §161.103, DADS is authorized to contract with a political subdivision of the state, a guardianship program (as defined by the Texas Probate Code, Section

601), a private agency, or another state agency, if appropriate, to provide guardianship services to its wards. The rules in new Chapter 10 implement these new provisions and provide requirements for entities that contract with DADS to provide guardianship services for DADS wards.

Section-by-Section Summary

Proposed new Subchapter A provides an overview of the DADS Guardianship Program. Proposed new §10.101 describes the purpose of the DADS Guardianship Program and outlines how referrals are made and what criteria DADS uses to determine whether guardianship is appropriate for the individual who is referred. The new section also states that the DADS Guardianship Program complies with the requirements of Texas Probate Code, Chapter XIII, in performing its duty as guardian of an individual. Proposed new §10.103 provides definitions for words and terms used in the chapter.

Proposed new Subchapter B provides the eligibility criteria for individuals to receive guardianship services through DADS, and the procedure for assessing individuals for guardianship services. Proposed new §10.201 provides the criteria for determining whether an individual referred to DADS for guardianship services by DFPS is eligible for guardianship services, as well as the factors DADS will consider in determining whether it may otherwise agree to serve as permanent guardian. Proposed new §10.203 governs the assessment of an individual, by which DADS considers the conditions and circumstances of the individual to determine whether guardianship or a less restrictive alternative to guardianship is appropriate and available. Proposed new §10.205 requires an annual review of a ward placed in guardianship to determine whether guardianship is still appropriate for the ward.

Proposed new Subchapter C contains the requirements for entities that contract with DADS to serve as guardian of the person or guardian of the estate or both for individuals who become wards of DADS. Proposed new §10.301 provides an introduction to the contracting process and states that a contractor must comply with the contractor requirements in the chapter. Proposed new §10.303 states that a contractor must also comply with applicable provisions of 40 TAC Chapter 69, governing administration of contracts with DADS. Proposed new §10.305 contains the eligibility requirements for an agency to become a contractor for guardianship services with DADS. Proposed new §10.307 governs a contractor's obligation to accept all referrals from DADS. Proposed new §10.309 lists the topics for which a contractor must have written policies and procedures. Proposed new §10.311 contains the qualifications and training requirements for a contractor's employees, particularly case managers who provide services to DADS wards under the terms of the contract. Proposed new §10.313 contains the qualifications and training requirements for volunteers who perform guardianship services for a contractor. Proposed new §10.315 requires a contractor to ensure that each of its employees and volunteers who has contact with a ward or with the estate or benefits of a ward must not have been convicted of certain criminal offenses. Proposed new §10.317 requires a contractor to develop a quality assurance plan that describes the contractor's system of self-monitoring. Proposed new §10.319 requires a contractor to establish policies and procedures that govern its accounting system, prohibits a contractor from collecting certain payments, and governs policies related to reimbursements from DADS for guardianship services. Proposed new §10.321 governs the responsibilities of case managers providing guardianship services

for DADS wards. Proposed new §10.323 governs the process by which a contractor must report an allegation of abuse, neglect, or exploitation of a DADS ward and the steps a contractor must take if the alleged perpetrator is an employee of the contractor. Proposed new §10.325 requires a contractor to comply with the local rules of a court with probate jurisdiction in the contractor's service area as long as the local rules do not conflict with the provisions of the Texas Probate Code. Proposed new §10.327 and §10.329 state the responsibilities of a contractor that is appointed guardian of the person and guardian of the estate, respectively. Proposed new §10.331 governs the service plan a contractor must develop and update annually for each ward for whom it is appointed as guardian of the person.

Proposed new Subchapter D contains the requirements a contractor must follow to manage its case records on DADS wards. Proposed new §10.401 governs the confidentiality provisions of a contractor's case records and the release of information from its case records. Proposed new §10.403 governs the contractor's responsibility to keep financial and contract-related records, to document each interaction with a ward, and to maintain certain information in each case record. Proposed new §10.405 requires a contractor to maintain its records according to 40 TAC Chapter 69.

Proposed new Subchapter E contains the provisions for DADS' reviews of a contractor for compliance with the contract and with program rules and requirements, for DADS' investigation of complaints against the contractor, and for sanctions DADS may impose against a contractor. Proposed new §10.501 describes the procedure for a monitoring review and the responsibilities of a contractor during the review. Proposed new §10.503 describes the procedure for a complaint investigation and the responsibilities of a contractor during the investigation. Proposed new §10.505 governs a fiscal monitoring review of documentation that supports a contractor's billings. Proposed new §10.507 governs the sanctions DADS may impose if a contractor fails to follow the terms of the contract or fails to comply with program rules, policies, and procedures. Proposed new §10.509 states that a contractor may request an administrative review of the DADS' review team's methodology and describes the steps a contractor must take to request an administrative review.

Fiscal Note

Gordon Taylor, DADS Chief Financial Officer, has determined that, for the first five years the proposed new sections are in effect, enforcing or administering the new sections does not have foreseeable implications relating to costs or revenues of state or local governments.

Small Business and Micro-business Impact Analysis

DADS has determined that there is no adverse economic effect on small businesses or micro-businesses or on businesses of any size as a result of enforcing or administering the new sections, because the proposed new sections impose no new requirements that would have an adverse economic effect on contractors. The proposed new sections reflect the provisions that a contractor is currently required to follow as part of its contract with DADS to provide guardianship services.

Public Benefit and Costs

Jacquelyn McDonald, DADS Assistant Commissioner for Access and Intake, has determined that, for each year of the first five years the new sections are in effect, the public benefit expected as a result of enforcing the new sections is that DADS

will be in compliance with the provisions of SB 6 that require that rules be adopted for the assessment of individuals referred to DADS for guardianship, and that the requirements for contractors providing guardianship services will be established in rule.

Ms. McDonald anticipates that there will not be an economic cost to persons who are required to comply with the new sections. The new sections will not affect a local economy.

Takings Impact Assessment

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

Public Comment

Questions about the content of this proposal may be directed to Dennis Bach at (512) 438-2895 in DADS Guardianship Section. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-024, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §10.101, §10.103

Statutory Authority

The new sections are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Human Resources Code, §§161.101 - 161.113, which authorizes DADS to serve as guardian of the person or estate, or both, for an incapacitated individual and, if appropriate, to contract with another entity to provide guardianship services if appropriate.

The new sections implement Texas Government Code, §531.0055; and Texas Human Resources Code, §§161.021 and 161.101 - 161.113.

§10.101. Introduction.

(a) The purpose of the DADS Guardianship Program is to accept referrals for individuals from DFPS as defined in Texas Human Resources Code, §48.209; assess the individuals for capacity; apply for guardianship if determined appropriate; and serve as guardians of the individuals for as long as guardianship services are required. An individual referred by DFPS must have been found to be in a state of abuse, neglect, or exploitation.

(b) DFPS makes a referral directly to the DADS Guardianship Program, or, if requested by the court with probate jurisdiction for the county in which an individual being referred resides, DFPS may also make a referral to the court in addition to the referral to the DADS Guardianship Program.

(c) The DADS Guardianship Program files an application to be appointed as guardian or otherwise agrees to be appointed as guardian if the DADS Guardianship Program determines that:

(1) DFPS found the individual to be in a state of abuse, neglect, or exploitation or the individual is a minor in the conservatorship of DFPS;

(2) there is no less restrictive alternative to guardianship;

(3) there is no other willing, able, and suitable person or program to serve as guardian;

(4) the individual is eligible for the DADS Guardianship Program; and

(5) the court finds the individual is an incapacitated person as defined in Texas Probate Code, §601(14)(B) and makes all other findings required by Texas Probate Code, §684.

(d) As provided by Texas Human Resources Code, §161.101(d), a court may not appoint DADS as permanent guardian unless DADS files an application with a court with probate jurisdiction or otherwise agrees to be appointed as permanent guardian.

(e) The DADS Guardianship Program complies with the requirements of Texas Probate Code, Chapter XIII in performing its responsibilities as guardian of its wards.

§10.103. Definitions.

(a) A term used in this chapter that is defined in Texas Probate Code, §601 has the same meaning as defined in that section of the code.

(b) In addition, the following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

(1) Agency--A state or local government or private not-for-profit organization that operates a guardianship program as defined by Texas Probate Code, §601.

(2) Assessment--The process of establishing whether DADS guardianship is appropriate for an individual referred by DFPS. The assessment includes a determination of whether the individual appears to meet the definition of an incapacitated person as defined by Texas Probate Code, §601(14)(B), whether there is a less restrictive alternative to guardianship, and whether the individual meets the eligibility criteria for the DADS Guardianship Program.

(3) Certificate of Medical Examination (CME)--A statement by a qualified physician attesting to whether, in the physician's medical opinion, an individual has capacity that complies with Texas Probate Code, §687(a).

(4) Contractor--An agency that operates a guardianship program as defined by Texas Probate Code, §601 with which DADS has a contract to provide guardianship services for a fee.

(5) DADS--The Department of Aging and Disability Services.

(6) DADS Guardianship Program--The program operated by DADS that provides guardianship and related services to persons with diminished capacity.

(7) Determination of mental retardation (DMR)--An examination or endorsement of a prior examination that complies with Chapter 5, Subchapter D of this title (relating to Diagnostic Eligibility for Services and Supports--Mental Retardation Priority Population and Related Conditions) and with Texas Probate Code, §687(c).

(8) DFPS--The Department of Family and Protective Services.

(9) Diminished capacity--Some loss of an individual's ability due to a physical or mental condition to provide food, clothing, or shelter for the individual, to care for the individual's own physi-

cal health, or to manage the individual's own financial affairs. An individual referred to the DADS Guardianship Program has diminished capacity, but may or may not meet the legal definition of an incapacitated person.

(10) Guardianship Certification Board--The board established under Texas Government Code, Chapter 111.

(11) Person-directed planning--A process that empowers an individual and the legally authorized representative (LAR) on the individual's behalf to direct the development of a service plan for a ward that meets the individual's personal outcomes. The service plan must identify existing supports and services necessary to achieve the individual's outcomes, identify natural supports available to the individual and negotiate needed service system supports, occur with the support of a group of people chosen by the individual and the guardian as LAR on the individual's behalf, and accommodate the individual's style of interaction and preferences regarding time and setting.

(12) Quality assurance plan--A written plan that describes a contractor's system of self-monitoring to ensure consistency and quality of care provided to a ward and ensure compliance with the Texas Probate Code, other requirements imposed by the courts, and other program policies, rules, and standards.

(13) Reporter--A person who makes a referral to DFPS staff about a situation of alleged abuse, neglect, or exploitation of an elderly person or adult with a disability.

(14) Service plan--A plan of care for a ward that ensures appropriate habilitation and rehabilitation services, including therapy, counseling, education, and training to the extent permitted by the ward's estate.

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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Department of Aging and Disability Services

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For further information, please call: (512) 438-3734



SUBCHAPTER B. ELIGIBILITY AND ASSESSMENT OF INDIVIDUALS FOR GUARDIANSHIP SERVICES

40 TAC §§10.201, 10.203, 10.205

Statutory Authority

The new sections are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Human Resources Code, §§161.101 - 161.113, which authorizes DADS to serve as

guardian of the person or estate, or both, for an incapacitated individual and, if appropriate, to contract with another entity to provide guardianship services if appropriate.

The new sections implement Texas Government Code, §531.0055; and Texas Human Resources Code, §§161.021 and 161.101 - 161.113.

§10.201. Eligibility for Services.

(a) To determine eligibility for services, the DADS Guardianship Program conducts an assessment of an individual referred to it by DFPS under Texas Human Resources Code, 48.209. The assessment may include identifying and arranging for services that do not require guardianship. An individual must meet the requirements of subsections (b) - (f) of this section, or DADS must agree to serve as guardian under subsection (g) of this section, for the individual to be eligible for the DADS Guardianship Program.

(b) DADS' authority under Texas Human Resources Code, §161.071 to be appointed by the court to serve as permanent guardian of the person or permanent guardian of the estate is limited to an individual referred to the DADS Guardianship Program by DFPS under Texas Human Resources Code, §48.209 or an individual for whom DADS otherwise agrees to serve as permanent guardian under Texas Human Resources Code, §161.101(d).

(c) An individual referred for guardianship required after the individual is no longer a minor by the Child Protective Services Division (CPS) of DFPS must be a minor in a conservatorship of DFPS and be at least 16 years of age, and CPS must have reason to believe that the individual will be substantially unable to provide for the individual's own food, clothing, or shelter, to care for the individual's own physical health, or to manage the individual's own financial affairs when the individual becomes an adult. The guardianship of an individual meeting the criteria in this subsection may not take effect before the individual's 18th birthday.

(d) An individual referred by the Adult Protective Services Division (APS) of DFPS must be age 65 or older, or age 18 to 65 and disabled. APS must also have reason to believe the individual is an incapacitated person, as defined by Texas Probate Code, §601(14)(B) and must have been determined to be in a state of abuse, neglect, or exploitation.

(e) In order for DADS to serve as guardian, an individual must have private assets available to meet the expenses of day-to-day living, or be eligible for government benefits (for example, Medicaid, Social Security, or veterans benefits) that are sufficient to provide such support. The DADS Guardianship Program is not liable for, and cannot provide, financial support for services provided to wards, including the cost of long-term care or burial expenses.

(f) DADS must determine that becoming guardian of an individual referred by APS will provide an effective remedy for the abuse, neglect, or exploitation validated by APS. DADS must determine that becoming a guardian of an individual referred by CPS will enable DADS to effectively serve the needs of that ward.

(g) In its sole discretion, DADS may otherwise agree to serve as permanent guardian of an individual under Texas Human Resources Code, §161.101(d). In deciding whether to serve as permanent guardian, DADS considers the following additional factors:

(1) the risk of serious and imminent harm to the individual or the individual's estate if a guardian is not appointed;

(2) the likelihood that guardianship will provide an effective remedy for the risk of serious harm to the individual and that DADS' appointment will effectively serve the needs of the individual;

(3) the availability to the individual in the local community of less restrictive alternatives and other persons or agencies to serve as guardian;

(4) the history of investigations conducted by APS of the individual as an alleged victim of abuse, neglect, or exploitation and the likelihood of future investigations by APS; and

(5) the availability of private assets or government benefits to pay for the needs of the ward.

§10.203. Assessment.

(a) An assessment begins with the referral of an individual from either the Child Protective Services Division or the Adult Protective Services Division of DFPS.

(b) The DADS Guardianship Program considers the conditions and circumstances of the elderly or disabled individual, as documented by DFPS and through DADS' own review process, to determine whether a less restrictive alternative to guardianship is appropriate and available. If an appropriate, less restrictive alternative is identified and available, the DADS Guardianship Program either arranges for this alternative or provides a recommendation to DFPS to pursue the alternative.

(c) If a less restrictive alternative is not appropriate and available, the DADS Guardianship Program conducts an assessment to determine if the individual appears to lack capacity. If the DADS Guardianship Program's assessment is that the individual appears to lack capacity, the DADS Guardianship Program arranges for a qualified physician to examine the individual and provide a Certificate of Medical Examination (CME). If the basis of the alleged incapacity is mental retardation, the DADS Guardianship Program arranges for a determination of mental retardation (DMR).

(d) If the CME states that the individual is incapacitated and guardianship is appropriate, or the DMR states that the individual is a person with mental retardation that is the basis of incapacity and guardianship is appropriate, the DADS Guardianship Program attempts to identify a person or a guardianship program who is willing, able, and suitable to serve as guardian and requests that the person or guardianship program file an application for guardianship. If no such person or program can be identified, the DADS Guardianship Program files an application with the court that has probate jurisdiction in the county in which the individual resides. Only a court with probate jurisdiction may make the legal finding that an individual is an incapacitated person.

(e) If there is a contractor that serves the county in which the incapacitated individual resides, if the contractor is under the number of wards it is authorized to serve through the contract, and if the individual qualifies for the contractor's guardianship program, the DADS Guardianship Program directs the contractor to file an application for guardianship. If there are no openings in the contract, the contractor is offered an opportunity to apply for guardianship and provide services through other sources of funds.

(f) At the completion of the assessment, the DADS Guardianship Program notifies DFPS of the outcome of the assessment.

(g) If DFPS makes a referral to a probate court or the court appoints DADS as guardian through a court-initiated guardianship proceeding under Texas Probate Code, §683, or both, the DADS Guardianship Program conducts an abbreviated assessment to determine if the individual is eligible for the DADS Guardianship Program. If the individual is not eligible for the DADS Guardianship Program, the DADS Guardianship Program files appropriate pleadings to rescind or reverse the appointment that state the reasons that DADS may not be appointed guardian.

§10.205. Annual Review of a Ward's Status.

(a) At least annually after the DADS Guardianship Program's appointment as guardian for a ward, the DADS Guardianship Program evaluates the ward's status to determine if:

(1) the ward is still an incapacitated person and continues to need a guardian;

(2) an alternate person or guardianship program is willing, able, and suitable to serve as successor guardian; or

(3) a less restrictive alternative to guardianship is now available and the ward can be restored to capacity.

(b) If the DADS Guardianship Program determines that the ward is still an incapacitated person and an alternate guardian can be identified, the DADS Guardianship Program notifies the appropriate court with probate jurisdiction and files an application to resign and have a successor guardian appointed.

(c) If the DADS Guardianship Program determines that the ward is no longer an incapacitated person and no longer needs a guardian, the DADS Guardianship Program files an application with the court to have the ward restored to capacity. If a less restrictive alternative is appropriate and available, the DADS Guardianship Program refers the restored individual for the appropriate services.

(d) At any time, if the DADS Guardianship Program becomes aware of another guardianship program or private professional guardian who is willing, able, and suitable to serve as a ward's successor guardian, and there is no family member or friend of the ward or other interested person who is willing, able, and suitable to serve as guardian, the DADS Guardianship Program notifies the appropriate court with probate jurisdiction of the other guardianship program or private professional guardian's willingness and ability to serve. DADS then files an application to resign and have a successor guardian appointed.

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 C. CONTRACTOR REQUIREMENTS

40 TAC §§10.301, 10.303, 10.305, 10.307, 10.309, 10.311, 10.313, 10.315, 10.317, 10.319, 10.321, 10.323, 10.325, 10.327, 10.329, 10.331

Statutory Authority

The new sections are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council

shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Human Resources Code, §§161.101 - 161.113, which authorizes DADS to serve as guardian of the person or estate, or both, for an incapacitated individual and, if appropriate, to contract with another entity to provide guardianship services if appropriate.

The new sections implement Texas Government Code, §531.0055; and Texas Human Resources Code, §§161.021 and 161.101 - 161.113.

§10.301. Introduction.

(a) Texas Human Resources Code, §161.103 gives DADS the authority to contract with a political subdivision of the state, a guardianship program as defined by Texas Probate Code, §601, a private agency, or another state agency for the provision of guardianship services.

(b) To the extent funds are appropriated by the legislature or made available by DADS, the DADS Guardianship Program contracts with one or more guardianship programs (contractors) to file an application with the probate courts and to serve as guardian of the person or guardian of the estate or both. The contractor must be able and willing to serve as guardian at a cost equal to or less than the cost of providing comparable guardianship services by the DADS Guardianship Program.

(c) To be eligible for guardianship services through a contractor, an individual must be eligible to be a ward of the DADS Guardianship Program. An individual who is not referred to DADS directly by DFPS or indirectly through a DFPS referral to the probate court may not be served through its contract with DADS.

(d) Funding from DADS guardianship contracts is intended to offset the contractor's cost of providing guardianship services. A contractor must not use DADS funds for a ward's daily living expenses.

(e) A contractor must comply with the requirements in this subchapter and in Subchapters D-E of this chapter (relating to Records Management, and Contract Monitoring and Compliance). If its contract with the DADS Guardianship Program is terminated or is not renewed, a contractor may continue providing services through an alternate source of funds or apply to the courts to resign as guardian and have a successor guardian appointed.

§10.303. Compliance with DADS Contracting Rules.

A contractor is expected to be familiar with and must comply with applicable provisions of Chapter 69 of this title (relating to Contract Administration). In the event of minor conflicts in wording or interpretation between the general contracting rules in Chapter 69 of this title and the rules in this chapter, the rules in this chapter have precedence.

§10.305. Eligibility To Be a Guardianship Contractor.

(a) To be eligible to apply for a guardianship contract with DADS, an agency must meet the definition of a guardianship program in Texas Probate Code, §601.

(b) An agency must agree to comply with the minimum standards for guardianship services established by the Guardianship Certification Board under Texas Government Code, §111.041.

(c) An agency must agree to comply with the certification requirements of the Guardianship Certification Board as authorized in Texas Government Code, §111.042 for all individuals, other than volunteers, who will provide guardianship services to a ward of the program on behalf of the program.

(d) An agency must agree to terminate an employee who commits an action that results in the agency being removed as guardian by the courts. If the agency fails to take action against an employee or has demonstrated a pattern of activity resulting in removal as guardian by the courts within the previous five years, the agency may become ineligible to contract with the DADS Guardianship Program.

(e) If an agency is held in contempt, fined, surcharged, removed as guardian, or found not suitable to serve as guardian by the courts, the DADS Guardianship Program may consider these actions in determining present and future eligibility and the agency may become ineligible to contract with the DADS Guardianship Program.

§10.307. Acceptance of Referrals from DADS.

(a) An agency, in its application for a contract with DADS, must identify the population groups for whom it provides services, in terms of age, mobility, or other factors. The application must also specify the geographic areas within which it provides services.

(b) A contractor must accept all referrals from DADS and apply for guardianship, provided that the contractor is under the maximum service authorization level provided for in the contract.

(c) If a contractor believes that DADS has assigned an individual for guardianship who does not fit the guardianship program's eligibility criteria, the contractor may request that the DADS regional guardianship supervisor reconsider the referral. The DADS regional guardianship supervisor may, at the supervisor's discretion, withdraw the referral to the contractor and serve the individual directly.

§10.309. Policies and Procedures Required of Contractors.

A contractor must have written policies and procedures that:

(1) identify the management structure of the agency and clearly reveal the decision-making authority and chain of command;

(2) establish qualifications for employees and volunteers that indicate type of position, education required, and any licensure requirements;

(3) describe hiring practices and ensure compliance with applicable state and federal laws;

(4) describe what orientation will be provided to employees and volunteers, including what additional training will be provided if volunteers are used;

(5) ensure that allegations of abuse, neglect, and exploitation are reported to DFPS as mandated by state law;

(6) describe actions to be taken if a ward has a crisis and needs emergency help;

(7) describe the minimum standards for guardianship adopted by rule by the Office of Court Administration when serving as a guardian;

(8) include ethical standards for guardianship and estate matters;

(9) include procedures for compliance with court orders and other local practices based upon the court system in the geographic area;

(10) include a system for receiving complaints, recording the complaints, and taking action; and

(11) include procedures for communication with DADS to include:

(A) notification of a court hearing involving a DADS ward;

(B) notification of a ward's death;

(C) notification of a court order closing a guardianship;

(D) notification of an unusual occurrence, such as a pregnancy or a serious illness; and

(E) monthly reports to be sent to DADS.

§10.311. Qualifications and Training Requirements for Contractor Employees.

(a) A contractor must:

(1) provide an adequate number of qualified employees to meet the needs of wards that DADS refers to the contractor;

(2) until September 1, 2007, employ case managers who have at least one of the following qualifications:

(A) a bachelor's degree from an accredited college or university and a minimum of one year of full-time experience in direct social service work;

(B) 60 credit hours from an accredited college or university and certification by the National Guardianship Association; or

(C) certification by the Guardianship Certification Board, as authorized in Texas Government Code, §111.042;

(3) on and after September 1, 2007, employ case managers who are certified by the Guardianship Board, as authorized in Texas Government Code, §111.042;

(4) provide an orientation program that explains:

(A) the responsibilities associated with each new employee's position;

(B) the responsibilities of the guardianship program to the ward;

(C) the relationship of the ward to the guardianship program and to DADS;

(D) an overview of the Texas Probate Code and the program's responsibilities per the code;

(E) an overview of any rules or regulations that affect the guardianship program;

(F) an overview of aging and disability; medical issues, including medical treatment and medication; and end-of-life decisions; and

(G) the principles of person-directed planning;

(5) maintain a copy of the information presented at the orientation for each employee and have signed documentation of attendance at the orientation; and

(6) provide ongoing training based upon the needs of the ward as described in subsections (b) and (c) of this section and any changes in rules or state law.

(b) Ongoing training as required in subsection (a)(6) of this section must be documented and each participant must sign that the participant attended the training. At a minimum, training must include:

(1) recognizing and reporting abuse, neglect, and exploitation to the appropriate investigating agency;

(2) cultural sensitivity and ethics;

(3) financial management, including budgeting, record keeping, and bill paying;

(4) case management, including service planning, service delivery, and an overview of guardianship;

(5) housing and placement alternatives;

(6) community resources; and

(7) recognition of the social needs of wards, such as recognition of birthdays, holidays, and the need for contact with family and friends.

(c) In addition to the orientation and training specified in subsection (a)(4) and (b) of this section, a contractor must provide training to case managers in the following areas:

(1) aging and disability, including mental illness, mental retardation, related conditions, physical disabilities, and other diagnoses that affect the population being served;

(2) legal issues, including civil commitment of persons with mental retardation and mental illness, courtroom testimony, protocol, etiquette in the courtroom and other venues, and local court policies and procedures; and

(3) estate management, including money management alternatives, record keeping, and completion of documents that will be filed with the court.

§10.313. Qualifications and Training Requirements for Volunteers of Contractors.

A contractor that uses volunteers to perform guardianship duties must:

(1) assign an employee to supervise each volunteer;

(2) provide and document training based upon what the volunteer will be doing;

(3) ensure that the volunteer is supervised and does not take responsibility for a DADS ward until documentation and observation indicate the volunteer is qualified to work with the ward;

(4) have all work completed by a volunteer reviewed by an employee and any documentation countersigned by the volunteer's supervisor;

(5) document monthly supervision sessions with the volunteer;

(6) ensure that the volunteer protects the health and safety of the ward; and

(7) provide additional training on skills needed to perform job duties at least annually.

§10.315. Criminal Background Checks.

(a) A contractor must ensure that each employee and volunteer of the contractor who has contact with a ward or with the estate or benefits of a ward:

(1) has not been convicted of any crimes outlined in Texas Probate Code, §678, Presumption Concerning Best Interest;

(2) is not a person meeting the specifications in Texas Probate Code, §681, Persons Disqualified to Serve as Guardians;

(3) does not have charges pending from, has not admitted guilt for, or has not been found guilty of the offenses under the Texas Penal Code in subsection (b) of this section or any like offense under the law of another state or federal law, even if probation was granted, if deferred adjudication was granted on a plea of guilty, or if deferred adjudication was granted on a plea of no contest and no record exists, but the contractor has independent knowledge of these facts; and

(4) does not have an interest that is adverse to a ward of the DADS Guardianship Program or any of its contractors under Texas Probate Code, §642, including:

(A) being an actual or potential creditor or debtor of the ward;

(B) being an opposing party to a ward in a lawsuit;

(C) being the guarantor of a ward's promissory note;

(D) having a duty to account to a ward other than the normal duty to account arising from guardianships under its contract; or

(E) having any other financial or other interest adverse to a ward.

(b) To ensure compliance with subsection (a) of this section, the contractor must obtain a criminal background check of a prospective employee or volunteer who will have access to a ward or to the estate or benefits of a ward referred by the DADS Guardianship Program. A criminal background check must be conducted in conjunction with employment by the contractor and repeated annually by the anniversary date of hire.

(1) The following offenses under the Texas Penal Code permanently bar an individual from employment with a contractor:

(A) sexual offenses under Chapter 21;

(B) §22.011, Sexual Assault;

(C) §22.02, Aggravated Assault;

(D) §22.021, Aggravated Sexual Assault;

(E) §22.04, Injury to a Child, Elderly Individual, or Disabled Individual;

(F) §22.041, Abandoning or Endangering a Child;

(G) §22.05, Deadly Conduct;

(H) §22.07, Terroristic Threat;

(I) §22.08, Aiding Suicide;

(J) §22.09, Tampering with Consumer Product;

(K) offenses against the family under Title 6;

(L) criminal homicide under Chapter 19;

(M) kidnapping and unlawful restraint under Chapter 20, and trafficking of persons under Chapter 20A;

(N) §28.02, Arson;

(O) robbery under Chapter 29;

(P) burglary and criminal trespass under Chapter 30;

(Q) theft under Chapter 31; and

(R) fraud under Chapter 32.

(2) All other offenses under the Texas Penal Code or the Texas Health and Safety Code, Chapter 481 (Texas Controlled Substances Act) are a bar to employment with a contractor but may be waived as described in subsection (c) of this section.

(c) If an employee or volunteer has successfully fulfilled all requirements and conditions imposed by the court for an offense described in subsection (b)(2) of this section and if there are extenuating circumstances that would justify the individual's employment with the contractor, the contractor may make a written request to the director of the DADS Guardianship Program for a waiver of subsection (b)(2) of

this section. The director will not waive the requirement for any of-fense described in subsection (b)(1) of this section.

§10.317. Quality Assurance Plan.

(a) A contractor must develop a quality assurance plan that describes the contractor's system of self-monitoring to ensure:

(1) consistency and quality of care provided to wards of the guardianship program; and

(2) compliance with:

(A) the Texas Probate Code;

(B) other requirements imposed by the courts; and

(C) other program policies, rules, and standards.

(b) A contractor must make its quality assurance plan available to DADS' contract monitoring staff.

(c) A contractor must review its quality assurance plan annually and update it as necessary.

§10.319. Fiscal Management.

(a) A contractor must establish policies and procedures that describe:

(1) an accounting system to ensure that payment is made by DADS to the contractor only if services provided have been rendered;

(2) a tracking system that includes receipts and a description of the goods or services provided for all fiscal matters for wards served by the guardianship program;

(3) a system to refund monies to DADS or to a ward if needed;

(4) compliance with state and federal laws and regulations regarding sound accounting practices for the contractor; and

(5) internal and external audits to be performed on a regular basis.

(b) A contractor must accept payment from DADS as payment in full for services rendered. The contractor must not duplicate billing or receipt of other funds.

(c) A contractor must not seek or accept reimbursement from a DADS ward to whom it provides purchased services.

(d) A contractor must not collect:

(1) payment from a ward;

(2) a percentage of the Social Security or Supplemental Security Income check specified in the Omnibus Reconciliation Act of 1990; or

(3) payment authorized by the court in accordance with Texas Probate Code, §665.

(e) A contractor must not use DADS funds or DADS reimbursed staff time to provide guardianship or other services to an individual who has not been referred by DADS.

(f) A contractor must provide all legal support necessary for the guardianship services contracted by DADS, including contested applications for guardianship.

(g) A contractor must provide DADS staff access to the results of audits performed on DADS wards.

§10.321. Roles and Responsibilities of Case Managers.

(a) A contractor must ensure that its case managers meet the qualifications as specified in §10.311(a)(2) - (3) of this chapter (related

to Qualifications and Training Requirements for Contractor Employees).

(b) Upon receipt of a referral from DADS, a case manager monitors the filing of legal documents, accountings, reports, notifications, and taxes as required by state law.

(c) A case manager performs the following duties in accordance with the other duties and responsibilities outlined in the order granting guardianship:

(1) locates, secures, and manages a ward's estate;

(2) ensures that a ward has access to adequate care, protection, and services based upon identified needs and the service plan;

(3) makes decisions on medical issues such as major surgery, life-threatening illness, treatment options, and, if guardian of the estate, makes decisions regarding the ward's estate other than routine expenditures for maintenance and education;

(4) monitors to ensure inventory, appraisal, list of claims, and annual accountings have been completed;

(5) completes annual reports of the guardian of the person;

(6) hires professionals, including accountants, providers, repair persons, or realtors, with the funds of a ward's estate to perform services for the ward;

(7) resolves issues or problems that impact a ward;

(8) as much as possible, considers a ward's wishes and choices when decisions are being made about the ward;

(9) maintains documentation of face-to-face visits;

(10) informs the appropriate DADS and contractor staff concerning major issues involving a ward and documents all actions in the ward's record; and

(11) ensures that cases that are closed or transferred, or in which the guardianship is transferred to another case manager, have documentation that is complete and up to date.

§10.323. Reporting of Abuse, Neglect, or Exploitation.

(a) A contractor must report an allegation of abuse, neglect, or exploitation of a ward to DFPS within 24 hours of discovery of the alleged abuse, neglect, or exploitation.

(b) If the investigating authority is an entity other than DFPS, a contractor must report an allegation of abuse, neglect, or exploitation of a ward within 24 hours of discovery of the alleged abuse, neglect, or exploitation.

(c) A contractor must report an allegation of abuse, neglect, or exploitation of a ward to the DADS guardianship supervisor in the contractor's designated DADS region within 24 hours or by the next working day, whichever is later. The contractor must notify the DADS guardianship supervisor of the specific suspected abuse, neglect, or exploitation when it is reported to the investigating authority. The contractor must also report what actions have been taken to ensure the health and safety of the ward.

(d) If the alleged perpetrator is a contractor's employee, the contractor must remove the employee from working with any DADS wards until all allegations have been investigated. If an allegation of abuse, neglect, or exploitation is found to be valid, the contractor must take appropriate action. If the perpetrator has the right to appeal and if the appeal process determines the employee was not the perpetrator, the agency must document the findings and reorient the employee before working again with DADS wards.

§10.325. Compliance with Probate Court Local Rules in Service Area.

A contractor must comply with all requirements of Texas Probate Code, Chapter XIII. In addition, if a court with probate jurisdiction within a contractor's service area has specific local rules in addition to the requirements of the Texas Probate Code, the contractor must comply with those rules to the best of its ability, to the extent that the court's local rules do not conflict with provisions of the Texas Probate Code.

§10.327. Responsibilities of the Guardian of the Person.

(a) A contractor, rather than the contractor's employee or volunteer, is appointed by the court as guardian. A contractor must assign a primary case manager to each ward served under its contract with DADS. To ensure the ability to respond in a timely fashion in the event of an emergency, a contractor must assign back-up staff for when the primary case manager is unavailable.

(b) If a contractor is appointed guardian of the person, the contractor must manage the ward's person according to the order appointing guardian of the person. This responsibility may include:

- (1) having physical possession of the ward;
- (2) caring for, supervising, and protecting the ward;
- (3) providing food, clothing, and shelter to the extent permitted by the ward's estate or government benefits;
- (4) consenting to medical, surgical, and psychiatric care, except for in-patient psychiatric commitment;
- (5) developing an annual service plan that ensures appropriate habilitation and rehabilitation services, including therapy, counseling, education, and training to the extent permitted by the ward's estate;
- (6) encouraging the ward to participate in the development of the service plan to the extent that the ward is capable;
- (7) building an adequate support system for the ward, including family, friends, and other appropriate collaterals;
- (8) ensuring monthly status contacts with the ward as described;
- (9) consulting with service providers periodically;
- (10) documenting case actions in files maintained for each ward; and
- (11) complying with all of the requirements of Texas Probate Code, Chapter XIII, regarding guardianship of the person.

(c) A contractor arranges care and services for the ward based on the identified needs of the ward and that enhance the ward's quality of life. The contractor ensures that the ward has access to basic care and services, including:

- (1) a safe, clean environment;
- (2) assistance in performing basic life functions;
- (3) regular, nutritious meals;
- (4) any needed medical, psychiatric, habilitative, or other services; and
- (5) adequate supervision.

(d) The contractor must have a face-to-face contact at least once a month with each ward served through the contract with DADS. To the extent possible, the primary case manager makes the monthly contacts. If the ward's place of residence prevents face-to-face contact

(for example, incarceration in a correctional facility), the contractor may substitute a phone contact with the ward or a person knowledgeable of the ward's current condition (for example a jailer, an attorney, a judge, a probation or parole officer, or a medical doctor). The case manager must document the monthly contacts in the ward's file.

§10.329. Responsibilities of Guardian of the Estate.

(a) If a contractor is appointed as permanent guardian of the estate, the contractor must manage the ward's finances and assets according to the order appointing guardian of the estate. This responsibility may include:

- (1) locating and taking possession of the ward's assets;
- (2) securing the ward's property;
- (3) preparing the initial inventory, appraisal, and list of claims;
- (4) paying the ward's bills;
- (5) investing any money not needed for the care and maintenance of the ward;
- (6) ensuring that the ward is receiving all the income and benefits to which the ward is entitled;
- (7) selling the ward's property if it is in the ward's best interests;
- (8) filing annual accountings to courts and to government agencies administering benefits;
- (9) filing tax returns; and
- (10) complying with all requirements of Texas Probate Code, Chapter XIII, regarding guardianship of the estate.

(b) If a contractor is appointed as temporary guardian of the estate, the contractor performs the duties specified by the court order appointing the contractor as temporary guardian of the estate.

(c) A contractor, its agents, employees or volunteers or their immediate family members or friends must not directly or indirectly purchase property of the ward. A contractor, its agents, employees or volunteers or their immediate family or friends may not purchase the ward's property through another person to circumvent the requirements of this subsection. A bona fide purchase for value from a person not associated with the buyer in any manner that originally purchased the property from the ward without the knowledge, request, or agreement of buyer is not a violation of this subsection.

§10.331. Service Plans for Wards.

(a) A contractor must develop and update at least annually a service plan for each ward for which it is appointed as guardian of the person. The service plan establishes a structured and systematic approach for delivery of services to a ward that maximizes quality of care, quality of life, and overall functioning of the ward.

(b) A contractor must develop the initial service plan within three months after taking and filing the oath of guardianship and must update the service plan annually by the due date of the annual report required by the court.

(c) A contractor may develop its own format for the service plan or may use a format provided by DADS. The service plan must include at least the following information:

- (1) a brief description of the current status of the ward;
- (2) a description of the needs of the ward in each of the following areas:

- (A) living arrangements and basic care;
 - (B) medical/dental/vision/mental health/mental retardation services;
 - (C) family/social/recreational needs;
 - (D) financial and legal services; and
 - (E) diet and clothing preferences;
- (3) the plan or strategy for meeting the needs of the ward in the areas listed in paragraph (2) of this subsection; and
- (4) actions taken to date to accomplish the plan.

(d) A service plan must be developed using the principles of person-directed planning and be developed in a culturally competent manner, to meet the ward's needs within the ward's cultural context. Resources such as family systems, natural helping networks, formal institutions within the ward's community, churches, and social organizations are used to resolve the ward's problems whenever possible and appropriate.

(e) A contractor must ensure that services are provided by persons who can adequately communicate with the ward. The contractor may facilitate communication by using a translator or by other means if the contractor's employees do not speak the ward's language. A non-English speaking ward and the ward's family who attempt to communicate in English may require accommodation. Whenever possible, the contractor must offer the ward the option of communicating in the ward's preferred language, even if the ward can communicate adequately in English.

(f) Whenever possible the ward's diet and clothing must reflect cultural preferences.

(g) The service plan for the religious needs of the ward must reflect any lifelong pattern of religious affiliation. Funeral planning for the ward must reflect the cultural and religious values of the ward and the ward's family whenever possible.

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
 General Counsel
 Department of Aging and Disability Services
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SUBCHAPTER D. RECORDS MANAGEMENT

40 TAC §§10.401, 10.403, 10.405

Statutory Authority

The new sections are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules

governing the delivery of services to persons who are served or regulated by DADS; and Texas Human Resources Code, §§161.101 - 161.113, which authorizes DADS to serve as guardian of the person or estate, or both, for an incapacitated individual and, if appropriate, to contract with another entity to provide guardianship services if appropriate.

The new sections implement Texas Government Code, §531.0055; and Texas Human Resources Code, §§161.021 and 161.101 - 161.113.

§10.401. Confidentiality of Records.

(a) A contractor must not disclose information from the case record on a ward served under the contract with the DADS Guardianship Program in a manner that identifies the ward unless the disclosure is necessary to carry out the duties of the contractor, as described in subsection (b) of this section. Texas Human Resources Code, §161.111 makes information about a DADS guardianship case confidential, and this extends to the case record of DADS wards served through contracts with DADS. All records, reports, or working papers related to the case are confidential and are exempt from public disclosure under the Texas Open Records Act (Chapter 552, Government Code). DFPS' Adult Protective Services Division records are also confidential under Texas Human Resources Code, §48.101.

(b) Examples of situations that might require pertinent case information to be disclosed include:

- (1) arranging for the provision of services;
- (2) facilitating involuntary mental health or mental retardation commitment;
- (3) cooperating with law enforcement during the criminal investigation of abuse, neglect, or exploitation; and
- (4) responding to a court order for disclosure.

(c) If a contractor shares information about a ward, the contractor must advise the recipient of the information that the information is confidential and must not be further shared without permission.

(d) DADS does not disclose to a contractor the name of a reporter who makes a complaint of abuse, neglect, or exploitation to DFPS. If a contractor learns the reporter's name or other identifying information, the contractor must not share this information with any other agency or entity.

(e) DADS guardianship staff may orally release the reporter's name to the courts, the district or county attorney, or law enforcement agencies if directed to do so by the judge trying the guardianship case. In the event a contractor learns a reporter's name or other identifying information, the contractor must not share this information with any other agency or entity.

(f) Upon written request to a contractor, the contractor may provide a copy of guardianship case information, except the name and other identifying information about a reporter, on a ward served under a DADS guardianship contract to the following:

- (1) the ward or the ward's guardian;
- (2) a court-appointed executor or administrator of a deceased ward's estate;
- (3) the ward's private attorney;
- (4) a guardian ad litem;
- (5) the attorney representing the proposed guardian in a guardianship proceeding initiated by the contractor;

(6) a court investigator or court visitor appointed by the court in a guardianship proceeding;

(7) Advocacy, Inc., the federally mandated protection and advocacy system; and

(8) out-of-state protective agencies.

(g) Upon oral request to a contractor, the contractor may release a copy of the guardianship case information, except the name and other identifying information about a reporter, to the attorney ad litem. If the attorney ad litem requests the name of the reporter and asserts this information is necessary to the attorney's ability to adequately represent the client, the contractor must notify the DADS Guardianship Program and request approval to release the information to the attorney ad litem. The contractor must not release information about the reporter to the attorney ad litem without written approval from the DADS Guardianship Program.

(h) Upon oral or written request, a contractor must release a copy of the entire case record, including the name of the reporter and information from other agencies, to a law enforcement agency or prosecuting attorney requesting a case under current criminal investigation, prosecution, or litigation against the contractor or DADS. A law enforcement agency must provide proof of identity before the contractor may release the requested information.

(i) If a contractor releases information to an individual or entity as allowed under this section, the contractor must record the following information in the ward's case record:

- (1) the name of the requester;
- (2) the information that the contractor provided;
- (3) the date the contractor provided the information; and
- (4) a dated copy of the written request or date of the oral request.

(j) When the DADS Guardianship Program makes a referral to a contractor, DADS does not provide the entire case record unless the contractor is awarded guardianship and submits a written request for this information. Upon referral to a contractor, DADS provides only the following information:

(1) oral case record information, except the name and other identifying information about a reporter; and

(2) written information, including the Client Assessment completed by the DADS guardianship specialist, medical and psychological information, names and addresses of relatives, financial information and documents, and personal data (for example, Social Security number, Medicaid number, and date of birth) pertaining to the proposed ward.

(k) A contractor must comply with federally mandated restrictions concerning the sharing of the AIDS/HIV positive status of a ward or proposed ward with a proposed guardian.

(l) If a contractor's case files contain confidential reports from other professional individuals or agencies (for example, physicians, psychologists, law enforcement, the Department of Assistive and Rehabilitative Services, or DFPS), the contractor must not release this information to anyone other than the ward or the ward's guardian without first contacting the issuing professional individual or agency for consent to release the information. If the professional individual or agency does not agree in writing to the request, the contractor must not release the information. If the ward or the ward's guardian requests confidential reports from a professional individual or agency, a contractor may release the information, except a police report.

(m) A contractor may orally share case information, except the name and other identifying information about a reporter and the AIDS/HIV positive status of a ward or a proposed ward, with authorized personnel of a social services or medical agency working with the ward or the proposed ward to the extent this information is necessary for the agency to provide services to the ward or the proposed ward.

(n) A contractor may release written case information, except the name and other identifying information about a reporter, to a social services or medical agency working with a ward or a proposed ward only if the proposed ward or the current guardian has authorized the release in writing. The social services or medical agency receiving the information must agree to keep the information confidential.

§10.403. Documentation Requirements.

(a) A contractor must maintain all financial and contract-related records:

(1) according to recognized fiscal and accounting practices; and

(2) in accordance with DADS contract requirements.

(b) A contractor must document interactions with a ward as soon as possible after the interaction. If the contractor cannot document at the time of an interaction, the documentation must:

(1) be dated the day that it is written;

(2) indicate the date of the interaction; and

(3) be signed by or otherwise identify the individual that had the contact.

(c) A contractor must sign all printed service delivery records in ink. White-out may not be used in any documentation. If there is a mistake, it must be crossed through, dated, and initialed.

(d) Documentation stored via electronic means must include the name of the person who delivered the services, the date performed, and the date the entry was made.

(e) Data must be readily accessible, and there must be a means to retrieve the data in case of electrical outage or equipment failure.

(f) A contractor must not preprint or pre-enter any record of time on a form used to document all required elements of the services delivered, as provided in the program specific rules.

(g) Records must include:

(1) copies of all legal documents related to the ward, preferably file-stamped copies if documents are file-stamped by the court in the local area when submitted;

(2) financial documents, including receipts of disbursements, bank account statements, and investment statements;

(3) documentation of all case actions, including monthly status updates;

(4) case actions, including the monthly status update, which must be documented within 10 working days after the activity;

(5) significant incidents regarding progress, illness, and accidents that may be used as part of the service plan for the ward;

(6) termination records and transfer summaries; and

(7) abuse, neglect, or exploitation incidents referred to the appropriate investigative authority.

(h) A contractor must maintain personnel records on every employee and volunteer, and must also maintain records on subcontractors if utilized.

§10.405. Maintenance of Records.

A contractor must maintain all records according to Chapter 69 of this title (relating to Contract Administration).

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

General Counsel

Department of Aging and Disability Services

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SUBCHAPTER E. CONTRACT MONITORING AND COMPLIANCE

40 TAC §§10.501, 10.503, 10.505, 10.507, 10.509

Statutory Authority

The new sections are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Human Resources Code, §§161.101 - 161.113, which authorizes DADS to serve as guardian of the person or estate, or both, for an incapacitated individual and, if appropriate, to contract with another entity to provide guardianship services if appropriate.

The new sections implement Texas Government Code, §531.0055; and Texas Human Resources Code, §§161.021 and 161.101 - 161.113.

§10.501. Monitoring Reviews.

(a) DADS conducts monitoring reviews of a contractor's services to determine if the contractor is in compliance with the contract and program rules and requirements. A monitoring review is conducted at the location where the contractor is providing the services unless DADS specifies a different location.

(b) At the conclusion of the review, DADS determines the level of compliance on each standard reviewed. If DADS considers the contractor out of substantial compliance with the contract and with the program rules and requirements, the contractor is subject to corrective action and may be subject to sanctions.

(c) During the monitoring review, the contractor must provide:

- (1) adequate working space for reviewing the records; and
- (2) all records DADS requests for review.

(d) During the monitoring review, DADS may:

- (1) review a sample of wards' records to determine the contractor's compliance with contract requirements;
- (2) interview wards and staff;

(3) observe wards and staff;

(4) interview individuals with whom agency staff interact on a regular basis, such as individuals associated with the probate courts; and

(5) conduct other activities as appropriate.

(e) DADS may conduct a follow-up monitoring review to determine if the agency has corrected the deficiencies identified at a preceding monitoring review. A follow-up monitoring review may:

(1) be a focused review using targeted samples; and

(2) focus only on those standards that DADS determined to be out of compliance at the immediately preceding monitoring review.

(f) DADS may expand a monitoring review period or the review sample at any time.

§10.503. Complaint Investigations.

(a) DADS conducts a complaint investigation of a contractor's services if DADS receives complaints that relate to program rules or procedures.

(b) DADS may conduct a complaint investigation at any time without notice to the contractor.

(c) DADS does not disclose the name of the individual who made the complaint unless specifically ordered to by a court of law or requested by law enforcement to disclose to law enforcement.

(d) During the complaint investigation, the contractor must provide:

(1) adequate working space for reviewing the records; and

(2) all records DADS requests for the review.

(e) DADS may conduct a follow-up to the complaint investigation to determine if the contractor has corrected the deficiencies identified during the complaint investigation. A follow-up complaint investigation may include:

(1) a review of a sample of wards' records to determine if the allegations are valid and if the complaint affects more than the ward whom the complaint concerned;

(2) interviews with wards and staff;

(3) observation of wards and staff;

(4) consultation with others, as appropriate; and

(5) other activities, as appropriate.

(f) DADS may conduct a follow-up complaint investigation to determine if the contractor has corrected the deficiencies identified during the complaint investigation. A follow-up complaint investigation may:

(1) be a focused review using targeted samples; and

(2) focus only on those standards that DADS determined to be out of compliance at the immediately preceding complaint investigation.

(g) DADS may expand the review period or the review sample for a complaint investigation or follow-up complaint investigation at any time.

§10.505. Fiscal Monitoring.

(a) Fiscal monitoring is the review of documentation that supports the contractor's billings as it exists at the time DADS staff arrive to conduct the review. DADS may recoup payment if the service delivery documentation does not support the contractor's billing.

(b) DADS may conduct a fiscal monitoring review:

- (1) in conjunction with a monitoring review;
- (2) independently of a monitoring review;
- (3) when a contract is terminated; or
- (4) as a result of conducting a complaint investigation.

(c) If DADS identifies fiscal errors, DADS recovers the funds without extrapolation.

§10.507. Sanctions.

(a) DADS may impose a sanction if the contractor fails to follow the terms of the contract or the contractor fails to comply with program rules, policies, and procedures. DADS may impose sanctions for reasons that include:

- (1) DADS' determination that a ward's health and safety are jeopardized;
- (2) the contractor's failure to comply with its corrective action plan;
- (3) the contractor's failure to follow an agreed-upon audit resolution payment plan;
- (4) the contractor's failure to provide services according to the contract or program requirements; and
- (5) a validated report of abuse, neglect, or exploitation when the perpetrator is an owner, employee, or volunteer who has direct access to the wards.

(b) Types of sanctions include the following:

- (1) Corrective action plan. DADS requires the contractor to submit a plan of action with the date the deficiency will be corrected.
- (2) Protective action plan. DADS requires the contractor to take immediate action and put into place an abbreviated and immediate corrective action plan if health or safety issues are identified. The plan must address the contractor's actions to be taken to ensure the health and safety of the ward.
- (3) Recoupment. DADS collects money the contractor owes as the result of overpayments or other billing irregularities or both.
- (4) Ward referral hold. DADS does not refer new wards to the contractor. The ward referral hold is released when DADS determines the contractor has resolved the reason for the hold.
- (5) Contractor hold. DADS withholds the contractor's payments. The contractor hold is released when DADS determines the contractor has resolved the reason for the hold.
- (6) Involuntary contract termination. DADS may terminate the contractor's contract for cause by citing the contractor's failure to comply with the terms of the contract or with DADS program rules, policies, and procedures.

(7) Suspension. DADS may temporarily suspend the contractor's right to conduct business with DADS. The causes for and conditions of suspension are described in subsection (a) of this section. A suspension is in effect until an investigation, hearing, or trial is concluded and DADS can make a determination about the agency's future right to contract. DADS may impute the conduct of an individual, corporation, partnership, or other association to the contractor.

(c) A contractor may appeal an adverse action DADS takes against its contract. To appeal an action, the contractor must request the appeal in writing in accordance with I TAC Chapter 357, Subchapter I.

§10.509. Administrative Review.

(a) A contractor may request an administrative review of the review team's methodology if the contractor suspects a formal compliance monitoring may not have been conducted according to established rules and procedures.

(b) A contractor's request for an administrative review must:

- (1) be in writing;
- (2) identify the rules and procedures the contractor believes DADS failed to follow;
- (3) state the basis for believing the review was not conducted according to established rules and procedures; and
- (4) be received by DADS within 10 calendar days after the contractor's receipt of the written review findings.

(c) DADS gives the contractor written notice of the result of the administrative review via certified mail.

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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Department of Aging and Disability Services

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PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 807. CAREER SCHOOLS AND COLLEGES

The Texas Workforce Commission (Commission) proposes the repeal of the following sections of Chapter 807 relating to Career Schools and Colleges:

Subchapter G. Courses of Instruction, §§807.91 - 807.104

Subchapter H. Application Fees and Other Charges, §§807.111 - 807.113

Subchapter I. Advertising, §§807.121 - 807.126

Subchapter J. Admission, §§807.141 - 807.147

Subchapter K. Progress Standards, §§807.161 - 807.164

Subchapter L. Attendance Standards, §§807.171 - 807.175

Subchapter M. Cancellation and Refund Policy, §§807.191 - 807.194

Subchapter N. Records, §§807.211 - 807.214

Subchapter O. Complaints, §807.221 and §807.222

Subchapter P. Truck Driver Training Programs, §§807.231 - 807.235

Subchapter Q. Closed Schools, §807.251 and §807.252

Subchapter R. Cease and Desist Orders, §§807.271 - 807.282

The Commission proposes the following new sections to Chapter 807 relating to Career Schools and Colleges:

Subchapter E. School Director and Administrative Staff, §§807.66

Subchapter G. Staff Education Requirements, §§807.101 - 807.103

Subchapter H. Courses of Instruction, §§807.121 - 807.134

Subchapter I. Application Fees and Other Charges, §§807.151 - 807.153

Subchapter J. Advertising, §§807.171 - 807.176

Subchapter K. Admission, §§807.191 - 807.197

Subchapter L. Progress Standards, §§807.221 - 807.224

Subchapter M. Attendance Standards, §§807.241 - 807.245

Subchapter N. Cancellation and Refund Policy, §§807.261 - 807.264

Subchapter O. Records, §§807.281 - 807.284

Subchapter P. Complaints, §§807.301 and §807.302

Subchapter Q. Truck Driver Training Programs, §§807.321 - 807.325

Subchapter R. Closed Schools, §§807.341 and §807.342

Subchapter S. Cease and Desist Orders, §§807.361 - 807.366

The Commission proposes amendments to the following sections of Chapter 807 relating to Career Schools and Colleges:

Subchapter A. General Provisions, §807.2

Subchapter B. Certificates of Approval, §807.14

Subchapter E. School Director and Administrative Staff, §§807.62 and §807.64

Subchapter F. Instructors, §§807.81 - 807.84

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

PART III. IMPACT STATEMENTS

PART IV. COORDINATION ACTIVITIES

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the rule amendment is to address statutory changes directed in House Bills (HB) 2333 and 2806, enacted by the 79th Texas Legislature, Regular Session (2005), which revise and amend Chapter 132 of the Texas Education Code.

HB 2333 directs initial and annual continuing education of six hours per year for directors of admissions, instructors, and chief administrative officers, or owners with supervisory authority, in career schools and colleges. The bill charges the Commission with establishing the minimum qualifications and training requirements in rule.

In addition to adding and amending several definitions, HB 2806 amends Texas Education Code, Chapter 132 by:

1. deleting the requirement to provide cost comparisons with exempt schools;
2. removing references to some of the currently required information on the certificate of approval, but leaving the final form to the Commission's discretion;

3. removing the reference to a bond from the section listing prohibitions; and

4. expanding the Commission's authority to arrange a teach-out (an arrangement with another school or college to provide for completion of the training of students of a closed school) to include any school or college, not only career schools or colleges as currently allowed.

More significantly, HB 2806 states that a career school or college that is eligible to participate in student financial aid programs under Title IV, Higher Education Act of 1965 (20 U.S.C. §1070 et seq.) is not required to take attendance. The bill deletes all references to "attendance" in Texas Education Code, Chapter 132, and also directs schools:

1. to provide written notice to students of all policies related to program interruption, including the student's responsibility to inform the school of his or her withdrawal; and

2. to verify the student's enrollment by documenting the student's participation in an academically related activity at the end of the first week, at the end of the first month, at the midpoint, and at the end of each semester or other academic term of the program.

Further, HB 2806 authorizes the Commission to adopt rules governing records necessary to make refunds.

Texas Education Code, Chapter 132, Subchapter J, regarding Cease and Desist Orders, allows the Commission to take action against career schools that are operating without a certificate of authority issued by the Commission. The Commission has had several hearings under Subchapter J, with two appeals to the Commission. The Commission's experiences with the hearings indicate that modifications of the process are necessary.

Through Texas Education Code, Chapter 132 and this chapter, the Agency licenses and regulates most private postsecondary career schools that offer vocational training or continuing education. The Agency also investigates complaints about schools, monitors schools to ensure regulatory compliance, arranges for the disposition of students affected by a school closure and administers the tuition trust account to pay tuition refunds to students when a school closes. In carrying out its regulatory duties, the Agency seeks to provide customer protection for Texas students as well as ensure quality training of the labor force to meet the needs of Texas employers.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

(Note: Minor, nonsubstantive, editorial changes are made throughout Chapter 807 that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

SUBCHAPTER A. GENERAL PROVISIONS

The Commission proposes the following amendments:

§807.2. Definitions

Section 807.2(3) adds a definition of "academic term." Neither Texas Education Code, Chapter 132 nor this chapter currently defines the term.

Section 807.2(4) adds a definition of "academically related activity." Neither Texas Education Code, Chapter 132 nor this chapter currently defines the term.

Section 807.2(7), the definition of "Board" is deleted because it is defined in Chapter 800.2 of this title; therefore, it is unnecessary to redefine the term in this chapter.

Section 807.2(8), the definition of "clock hour" is deleted because it is obsolete. Throughout the chapter, the term "clock hour" is replaced by the term "course time," which is defined in new §807.2(12).

Section 807.2(9), the definition of "Commission" is deleted because it is defined in Chapter 800.2 of this title; therefore, it is unnecessary to redefine the term in this chapter.

Section 807.2(9) adds a definition of "class or course." Adding the Texas Education Code definition of "class" or "course"; replacing the term "subject" with the terms "class" or "course" throughout the chapter, as appropriate; and deleting the §807.2(28) definition of "subject" implements the provisions of HB 2806, which amends §132.001(1-a) of the Texas Education Code. Generally, "class" refers to a single period of instruction that is part of a "course."

Section 807.2(11), the definition of "Course of Instruction" is unchanged, but renumbered from §807.2(13), in order to be listed in alphabetical order.

Section 807.2(12) adds a definition of "course time." Adding the Texas Education Code definition of "course time"; replacing the term "clock hour" with the term "course time" throughout the chapter; and deleting the §807.2(8) definition of "clock hour" implements the provisions of HB 2806, which amends §132.001(1-b) of the Texas Education Code.

Section 807.2(19) adds a definition of "program or program of instruction." Adding the Texas Education Code definition of "program or program of instruction"; replacing "program" with the term "program or program of instruction" throughout the chapter, as appropriate; and deleting the §807.2(18) definition of "program" implements the provisions of HB 2806, which amends §132.001(14) of the Texas Education Code.

Section 807.2(31) adds a definition of "Title IV school." Neither Texas Education Code, Chapter 132 nor this chapter currently defines the term.

Certain paragraphs in §807.2 have been renumbered to accommodate additions or deletions.

SUBCHAPTER B. CERTIFICATES OF APPROVAL

The Commission proposes the following amendments:

§804.14. Locations

The term "clock hour" is changed to "course time."

SUBCHAPTER E. SCHOOL DIRECTOR AND ADMINISTRATIVE STAFF

The Commission proposes the following amendments:

§807.62. School Director Qualifications and Duties

Section 807.62(a) removes the exemption for initial training for the school director of a small school. The school director is considered to be the chief administrative officer of or an owner with supervisory authority over a career school or college. The Commission proposes this revision in order to ensure that school directors meet the requirements of HB 2333. Additionally, the requirement to attend a workshop has been replaced with online training, set forth in new §807.101(a), which eliminates the cost and time associated with travel.

Section 807.62(d) is deleted and the information moved to new Subchapter G. Staff Education Requirements.

Section 807.62(i) is deleted because the provision is obsolete.

Certain subsections in §807.62 have been relettered to accommodate additions or deletions.

§807.64. Director of Education Requirements

Section 807.64(a) eliminates the grandfather clause, which is obsolete because of the passage of time.

§807.66. Director of Admissions Requirements

Section 807.66 is added to establish the minimum qualifications for the director of admissions position as directed in HB 2333.

SUBCHAPTER F. INSTRUCTORS

The Commission proposes the following amendments:

§807.81. Instructor Qualifications

The term "subject" is changed to "course" or "class" and the term "clock hour" is changed to "course time."

Section 807.81(e) is deleted because the provision is obsolete.

Certain subsections in §807.81 have been relettered to accommodate additions or deletions.

§807.82. Temporary Instructors

The term "subject" is changed to "course" or "class."

§807.83. Instructor Application

The term "subjects" is changed to "classes."

§807.84. School Responsibilities Regarding Instructors

Section 807.84(c), §807.84(f), and §807.84(g) are deleted and the information contained in each is moved to new Subchapter G, Staff Education Requirements.

Certain subsections in §807.84 have been relettered to accommodate additions or deletions.

SUBCHAPTER G. STAFF EDUCATION REQUIREMENTS

The Commission proposes new Subchapter G, Staff Education Requirements, as follows:

HB 2333 amends Texas Education Code by adding §132.0551(a) and §132.0551(b), which require each director of admissions, each full-time instructor, and the chief administrative officer or owner with supervisory authority in a career school or college to meet minimum qualifications and training requirements established by Commission rule. Currently, Chapter 807 identifies the position of "chief administrative officer or owner with supervisory authority" as the school director. Furthermore, Chapter 807 contains minimum qualifications and training requirements for these two positions. This new subchapter establishes the minimum qualifications and training requirements for the director of admissions position and consolidates the training requirements for the three positions.

§807.101. Initial Training

Section 807.101 consolidates initial training requirements previously set forth in repealed §807.62(d), §807.84(c), §807.84(f), and §807.84(g). Additionally, new §807.101(a) adds an option for online training to meet the initial training requirement for school directors.

§807.102. Continuing Education

HB 2333 amends Texas Education Code by adding §132.0551(g), which establishes that the requirements of the new subsections do not take effect until September 1, 2006. The bill directs the Commission to prescribe by rule procedures that will allow an individual to meet the requirements prior to that date.

Section 807.102(a) sets forth the requirement that providers must submit an application for approval of continuing education training to the Commission, unless they are exempt.

Section 807.102(b) provides for approval of any training conducted after January 1, 2006, but prior to September 1, 2006.

Section 807.102(c) sets forth the training requirements previously located in §807.84(c).

Section 807.102(d) requires that each school director, full-time instructor, and director of admissions must complete a minimum of six hours of course time of continuing education applicable to the position within 12 months of employment in the position and each calendar year thereafter.

Section 807.102(e) states that the school must provide and document in-service training that provides updates on skills, knowledge, and technology required by business and industry for those instructors who have taught for two years, but have not gained relevant work experience during the two-year period.

§807.103. Record Keeping

Section 807.103 establishes the requirements for record keeping to document accomplishment of training and continuing education in accordance with the direction of HB 2333.

SUBCHAPTER H. COURSES OF INSTRUCTION

The Commission proposes new Subchapter H, Courses of Instruction, as follows:

§807.121. Definitions Relating to Courses of Instruction

The term "subject" is changed to "class" and the term "clock hour" is changed to "course time."

Otherwise, §807.121 has no changes to the text of repealed §807.91; however, it is renumbered to accommodate additions or deletions throughout the chapter.

§807.122. General Information for Courses of Instruction

The term "subject" is changed to "class" and the term "clock hour" is changed to "course time." Otherwise, §807.122 has no changes to the text of repealed §807.92; however, it is renumbered to accommodate additions or deletions throughout the chapter.

§807.123. Applications for Additional Courses of Instruction

Section 807.123 has no changes to the text of repealed §807.93; however, it is renumbered to accommodate additions or deletions throughout the chapter.

§807.124. Stated Occupation

Section 807.124 has no changes to the text of repealed §807.94; however, it is renumbered to accommodate additions or deletions throughout the chapter.

§807.125. Curriculum Content

The term "subject" is changed to "class" in the section. Otherwise, §807.125 has no changes to the text of repealed §807.95;

however, it is renumbered to accommodate additions or deletions throughout the chapter.

§807.126. Curriculum Length

The term "subject" is changed to "class." Otherwise, §807.126 has no changes to the text of repealed §807.96; however, it is renumbered to accommodate additions or deletions throughout the chapter.

§807.127. Program Title

Section 807.127 has no changes to the text of repealed §807.97; however, it is renumbered to accommodate additions or deletions throughout the chapter.

§807.128. Equipment

Section 807.128 has no changes to the text of repealed §807.98; however, it is renumbered to accommodate additions or deletions throughout the chapter.

§807.129. Facilities

Section 807.129 has no changes to the text of repealed §807.99; however, it is renumbered to accommodate additions or deletions throughout the chapter.

§807.130. Admission Requirements Relating to Programs

Section 807.130 has no changes to the text of repealed §807.100; however, it is renumbered to accommodate additions or deletions throughout the chapter.

§807.131. School Responsibilities Regarding Programs

The term "subject" is changed to "class." Otherwise, §807.131 has no changes to the text of repealed §807.101; however, it is renumbered to accommodate additions or deletions throughout the chapter.

§807.132. Program Revisions

Section 807.132 has no changes to the text of repealed §807.102; however, it is renumbered to accommodate additions or deletions throughout the chapter.

§807.133. Program Requirements for Degree Granting Schools

Section 807.133 has no changes to the text of repealed §807.103; however, it is renumbered to accommodate additions or deletions throughout the chapter.

§807.134. Penalties Relating to Courses of Instruction

Section 807.134 has no changes to the text of repealed §807.104; however, it is renumbered to accommodate additions or deletions throughout the chapter.

SUBCHAPTER I. APPLICATION FEES AND OTHER CHARGES

The Commission proposes new Subchapter I, Application Fees and Other Charges, as follows:

§807.151. Fee Schedule

Section 807.151 has no changes to the text of repealed §807.111; however, it is renumbered to accommodate additions or deletions throughout the chapter.

§807.152. Renewal Fees

Section 807.152 has no changes to the text of repealed §807.112; however, it is renumbered to accommodate additions or deletions throughout the chapter.

§807.153. Installment Payments

Section 807.153 has no changes to the text of repealed §807.113; however, it is renumbered to accommodate additions or deletions throughout the chapter.

SUBCHAPTER J. ADVERTISING

The Commission proposes new Subchapter J, Advertising, as follows:

§807.171. General Information for Advertising

Section 807.171 has no changes to the text of repealed §807.121; however, it is renumbered to accommodate additions or deletions throughout the chapter.

§807.172. Advertisement Method

Section 807.172 has no changes to the text of repealed §807.122; however, it is renumbered to accommodate additions or deletions throughout the chapter.

§807.173. Advertisement Content

The term "subjects" is changed to "classes." Otherwise, §807.173 has no changes to the text of repealed §807.123; however, it is renumbered to accommodate additions or deletions throughout the chapter.

§807.174. Financial Incentives

Section 807.174 has no changes to the text of repealed §807.124; however, it is renumbered to accommodate additions or deletions throughout the chapter.

§807.175. Catalog

The term "subject" is changed to "class" and the term "clock hour" is changed to "course time." Otherwise, §807.175 has no changes to the text of repealed §807.125; however, it is renumbered to accommodate additions or deletions throughout the chapter.

§807.176. Advertisement Monitoring

Section 807.176 has no changes to the text of repealed §807.126; however, it is renumbered to accommodate additions or deletions throughout the chapter.

SUBCHAPTER K. ADMISSION

The Commission proposes new Subchapter K, Admission, as follows:

§807.191. General Information for Admission

The term "subject" is changed to "class" and the term "clock hour" is changed to "course time." Otherwise, §807.191 has no changes to the text of repealed §807.141; however, it is renumbered to accommodate additions or deletions throughout the chapter.

§807.192. Admission Requirements

The term "subjects" is changed to "classes." Otherwise, §807.192 has no changes to the text of repealed §807.142; however, it is renumbered to accommodate additions or deletions throughout the chapter.

§807.193. Receipt of Enrollment Policies

HB 2806 amends Texas Education Code §132.055(5) by deleting the requirements to provide students with regulations pertaining to absences and with notice of the availability of the cost comparison information for exempt schools. (Although

Title IV schools are no longer required to take attendance, the requirement remains for non-Title IV schools.) Therefore, new §807.193(b)(4) specifies that attendance is a requirement for non-Title IV schools.

HB 2806 amends Texas Education Code by adding §132.065(b), which requires schools participating in Title IV programs to provide written notice of all policies related to program interruption prior to completion and to notify each student in writing that if the student withdraws, it is the student's responsibility to inform the school or college. Therefore, in addition to the requiring written notice to be provided to the student prior to enrollment, §807.193(b)(12) adds a requirement to provide written notice of all policies related to program interruption prior to completion and written notice of the student's responsibility to inform the school if the student withdraws.

Additionally, the term "subjects" is changed to "classes" and the term "clock hour" is changed to "course time."

Otherwise, §807.193 has no changes to the text of repealed §807.143; however, it is renumbered to accommodate additions or deletions throughout the chapter.

§807.194. Enrollment Agreement

HB 2806 requires Title IV schools to terminate the enrollment of a student if the student's participation in an academically related activity cannot be documented at certain points during a term. The statute also authorizes the Commission to adopt rules necessary to make refunds. Section 807.194(e)(5) adds that the executed enrollment agreement must include a student's e-mail address if any part of the instruction or academically related activity is Web based.

Otherwise, §807.194 has no changes to the text of repealed §807.144; however, it is renumbered to accommodate additions or deletions throughout the chapter.

§807.195. Conduct Policy

Section 807.195 has no changes to the text of repealed §807.145; however, it is renumbered to accommodate additions or deletions throughout the chapter.

§807.196. Tuition and Fees

The term "subjects" is changed to "classes." Otherwise, §807.196 has no changes to the text of repealed §807.146; however, it is renumbered to accommodate additions or deletions throughout the chapter.

§807.197. Admission Requirements for Degree Granting Schools

Section 807.197 has no changes to the text of repealed §807.147; however, it is renumbered to accommodate additions or deletions throughout the chapter.

SUBCHAPTER L. PROGRESS STANDARDS

The Commission proposes new Subchapter L, Progress Standards, as follows:

§807.221. General Requirements for Progress Standards

The term "subject" is changed to "class." Otherwise, §807.221 has no changes to the text of repealed §807.161; however, it is renumbered to accommodate additions or deletions throughout the chapter.

§807.222. Progress Requirements for Residence Schools

The term "clock hour" is changed to "course time." Otherwise, §807.222 has no changes to the text of repealed §807.162; however, it is renumbered to accommodate additions or deletions throughout the chapter.

§807.223. Progress Requirements for Distance Education Schools

Section 807.223 has no changes to the text of repealed §807.163; however, it is renumbered to accommodate additions or deletions throughout the chapter.

§807.224. Progress Requirements for Degree Granting Schools

The term "subjects" is changed to "classes." Otherwise, §807.224 has no changes to the text of repealed §807.164; however, it is renumbered to accommodate additions or deletions throughout the chapter.

SUBCHAPTER M. ATTENDANCE STANDARDS

The Commission proposes new Subchapter M, Attendance Standards, as follows:

§807.241. General Requirements for Attendance

Section 807.241(b) adds that Title IV schools are not required to take attendance. Otherwise, §807.241 has no changes to the text of repealed §807.171; however, it is renumbered to accommodate additions or deletions throughout the chapter.

§807.242. Attendance Requirements for Degree Granting Schools

Section 807.242(a) clarifies that the requirements are for non-Title IV schools and Title IV schools that voluntarily take attendance. Additionally, the term "clock hour" is changed to "course time." Otherwise, §807.242 has no changes to the text of repealed §807.172; however, it is renumbered to accommodate additions or deletions throughout the chapter.

§807.243. Termination of Enrollment

Section 807.243(b)(1) - 807.243(b)(4) adds the requirement that a Title IV school that does not voluntarily take attendance must terminate enrollment for a student whose participation in an academically related activity cannot be documented at specified points during the academic term.

Section 807.243(c) specifies that for purposes of §807.243, the definition of "month" is four weeks.

The term "subject" is changed to "class" and the term "clock hour" is changed to "course time." Otherwise, §807.243 has no changes to the text of repealed §807.173; however, it is renumbered to accommodate additions or deletions throughout the chapter.

§807.244. Make-up Work

The term "clock hour" is changed to "course time." Otherwise, §807.244 has no changes to the text of repealed §807.174; however, it is renumbered to accommodate additions or deletions throughout the chapter.

§807.245. Leaves of Absence

The term "subject" is changed to "class" and the term "clock hour" is changed to "course time." Otherwise, §807.245 has no changes to the text of repealed §807.175; however, it is renumbered to accommodate additions or deletions throughout the chapter.

SUBCHAPTER N. CANCELLATION AND REFUND POLICY

The Commission proposes new Subchapter N, Cancellation and Refund Policy, as follows:

§807.261. Right to Cancel after Tour

Section 807.261 has no changes to the text of repealed §807.191; however, it is renumbered to accommodate additions or deletions throughout the chapter.

§807.262. Consummation of Refund

Section 807.262 has no changes to the text of repealed §807.192; however, it is renumbered to accommodate additions or deletions throughout the chapter.

§807.263. Refund Requirements for Residence Schools

Section 807.263(d) adds instruction on the calculation of refunds for Title IV and non-Title IV schools. Otherwise, §807.263 has no changes to the text of repealed §807.193; however, it is renumbered to accommodate additions or deletions throughout the chapter.

§807.264. Penalties Relating to Refunds

Section 807.264 has no changes to the text of repealed §807.194; however, it is renumbered to accommodate additions or deletions throughout the chapter.

SUBCHAPTER O. RECORDS

The Commission proposes new Subchapter O, Records, as follows:

§807.281. General Information for Records

Section 807.281 has no changes to the text of repealed §807.211; however, it is renumbered to accommodate additions or deletions throughout the chapter.

§807.282. Student Records

Section 807.282 has no changes to the text of repealed §807.212; however, it is renumbered to accommodate additions or deletions throughout the chapter.

§807.283. Attendance Record Keeping

Section 807.283(a) states that the requirements in this subsection apply only to non-Title IV schools.

Section 807.283(a)(1) provides that no separate master record of attendance is required of a school that offers seminars or other programs in which students do not change instructors during the school day.

Section 807.283(a)(2) specifies that schools must maintain a master record of attendance for each student that clearly reflects the number of scheduled hours each day and the hours of absence.

Section 807.283(a)(3) details the required manner in which each instructor must maintain a record of attendance for each student.

Section 807.283(b)(1) adds the requirement for Title IV schools to maintain a form signed and dated by the student to document participation in an academically related activity. An e-mail sent from the student's e-mail account of record will meet this requirement.

Section 807.283(b)(2) adds the requirement that Title IV schools maintain a class schedule, including the number of hours for each class day or the number of scheduled hours for each week for synchronous distance education for each student.

Section 807.283(c) adds that a Title IV school may voluntarily take attendance to meet the requirements of Texas Education Code, Chapter 132 and this chapter.

§807.284. Employment Records

Section 807.284 has no changes to the text of repealed §807.214; however, it is renumbered to accommodate additions or deletions throughout the chapter.

SUBCHAPTER P. COMPLAINTS

The Commission proposes new Subchapter P, Complaints, as follows:

§807.301. School Policy Regarding Complaints

Section 807.301 has no changes to the text of repealed §807.221; however, it is renumbered to accommodate additions or deletions throughout the chapter.

§807.302. Complaints and Investigations

Section 807.302 has no changes to the text of repealed §807.222; however, it is renumbered to accommodate additions or deletions throughout the chapter.

SUBCHAPTER Q. TRUCK DRIVER TRAINING PROGRAMS

The Commission proposes new Subchapter Q, Truck Driver Training Programs, as follows:

§807.321. General Information Regarding Truck Driver Training

Section 807.321 specifies that truck driver instructors complete a "truck driver instructor development course with at least 40 hours of course time."

§807.322. Truck Driver Instructor Development Course

The term "clock hours" is changed to "course time." Otherwise, §807.322 has no changes to the text of repealed §807.232; however, it is renumbered to accommodate additions or deletions throughout the chapter.

§807.323. Behind-the-Wheel Instruction

Section 807.323 has no changes to the text of repealed §807.233; however, it is renumbered to accommodate additions or deletions throughout the chapter.

§807.324. Motor Vehicle Insurance

Section 807.324 has no changes to the text of repealed §807.234; however, it is renumbered to accommodate additions or deletions throughout the chapter.

§807.325. Prohibited Activities Regarding Truck Driver Training.

Section 807.325 has no changes to the text of repealed §807.235; however, it is renumbered to accommodate additions or deletions throughout the chapter.

SUBCHAPTER R. CLOSED SCHOOLS

The Commission proposes new Subchapter R, Closed Schools, as follows:

§807.341. School Closures

Section 807.341 has no changes to the text of repealed §807.251; however, it is renumbered to accommodate additions or deletions throughout the chapter.

§807.342. Tuition Trust Account

Section 807.342 has no changes to the text of repealed §807.252; however, it is renumbered to accommodate additions or deletions throughout the chapter.

SUBCHAPTER S. CEASE AND DESIST ORDERS

The Commission proposes new Subchapter S, Cease and Desist Orders, as follows:

§807.361. Statement of Charges and Notice of Hearing on Cease and Desist Orders

Section 807.361 provides that the Agency may issue a statement of charges and notice of hearing to consider issuance of a cease and desist order, if the Agency believes a person is operating a career school or college without a certificate of approval.

§807.362. Contents of Statement of Charges and Notice of Hearing

Section 807.362 changes the reference to "Executive Director" to "Agency."

Section 807.362(2) changes the reference to "Commission" to "Agency."

Otherwise, §807.362 has no changes to the text of repealed §807.273; however, it is renumbered to accommodate additions or deletions throughout the chapter.

§807.363. Service of Statement of Charges and Hearing Notice for the Issuance of Cease and Desist Orders

Section 807.363 has no changes to the text of repealed §807.274; however, it is renumbered to accommodate additions or deletions throughout the chapter.

§807.364. Ex Parte Consultations

Section 807.364 adds requirements to ensure that the Agency and all parties comply with standard prohibitions against ex parte contacts.

§807.365. Hearing Decision and Final Review by the Commission

Section 807.365(a) clarifies that the hearing officer's decision becomes final on the 15th day after receipt in order to be consistent with §807.365(b).

Section 807.365(c) specifies that the Commission must consider a written appeal and promptly issue a decision. Additionally, if oral argument is requested and approved, the Commission must schedule and hold an oral argument not later than 90 days after the receipt of the written appeal.

Otherwise, §807.365 has no changes to the text of repealed §807.281; however, it is renumbered to accommodate additions or deletions throughout the chapter.

§807.366. Cease and Desist Order

Section 807.366(a) changes the reference to "Executive Director" to "hearing officer," and specifies that a cease and desist order also must be issued against the person operating a career school or college without a certificate of approval.

Otherwise, §807.366 has no changes to the text of repealed §807.282; however, it is renumbered to accommodate additions or deletions throughout the chapter.

PART III. IMPACT STATEMENTS

Randy Townsend, Chief Financial Officer, has determined that for each year of the first five years the rules will be in effect, the following statements will apply:

There are no additional estimated costs to the state and local governments expected as a result of enforcing or administering the rules.

There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rules.

There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules.

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rules.

There are anticipated economic costs to persons required to comply with the rules. In order to estimate the costs, the Agency surveyed eleven career schools. Proposed §807.91(a), adding an option for on-line training to meet the initial training requirement for school directors, resulted in survey results indicating that six respondents estimated no cost, and that four respondents estimated costs not to exceed \$500. Proposed §807.92(c), adding a requirement for each school director, full-time instructor and director of admissions to complete a minimum of six hours of course time of continuing education applicable to the position within 12 months of employment and annually thereafter, resulted in survey results indicating that three respondents estimated no cost, and that seven respondents estimated costs ranging from \$300 to \$4,900 per school per year. However, two respondents indicated that these would not be new or additional costs. All other proposed new sections or revisions of current sections were estimated to have no new cost or only de minimis costs.

There is no anticipated adverse economic impact on small or microbusinesses as a result of enforcing or administering the rules.

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

Mark Hughes, Director of Labor Market Information, has determined that there is no significant negative impact upon employment conditions in the state as a result of the rules.

Luis M. Macias, Director, Workforce Development Division, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rules shall be to provide rules that are easier to understand and comply with and make the process simpler for current and prospective school owners to obtain a certificate of approval and operate a school. Workforce areas may experience economic benefits from improved training of qualified workers and job seekers. Additionally, employers in the workforce areas will have the opportunity to access a more qualified workforce, which may provide businesses with increased efficiencies, lower costs, better products, and a growing customer base. The extent to which the economies of workforce areas will be affected by the changes in Chapter 807 will vary greatly across the state and will depend on such factors as population, demographics, the technical experience of the existing workforce, and the number of job seekers needing training and access to training resources.

PART IV. COORDINATION ACTIVITIES

In the development of these rules for publication and public comment, the Commission sought the involvement of each of Texas' 28 Boards, TWC Advisory Committee, and the career schools and colleges regulated by the Agency. The Commission provided the policy concept to each of these groups for consideration and review. During the rulemaking process, the Commission considered all information gathered in order to develop a rule that provides clear and concise direction to all parties involved.

Comments on the proposed rules may be submitted to TWC Policy Comments, Workforce and UI Policy, 101 East 15th Street, Room 440T, Austin, Texas 78778; faxed to (512) 475-3577; or e-mailed to TWCPolicyComments@twc.state.tx.us. The Commission must receive comments postmarked no later than 30 days from the date this proposal is published in the *Texas Register*.

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §807.2

The amended section is proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The proposed amendment affects Title 4, Texas Labor Code, particularly Chapters 301 and 302, as well as Texas Education Code, Chapter 132.

§807.2. Definitions.

In addition to the definitions contained in §800.2 of this title, the ~~[The]~~ following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

(1) Academic quarter--A period of instruction that includes at least ten weeks of instruction, unless otherwise approved by the Commission.

(2) Academic semester--A period of instruction that includes at least 15 weeks of instruction, unless otherwise approved by the Commission.

(3) Academic term--An academic quarter, academic semester, or other progress evaluation period.

(4) Academically related activity--Includes, but is not limited to, an exam, a tutorial, computer-assisted instruction, academic counseling, academic advisement, turning in a class assignment, or attending a study group that is assigned by the institution, or other activity as determined by the Commission.

(5) ~~[(3)]~~ Accountant--An independent certified public accountant properly registered with the appropriate state board of accountancy.

(6) ~~[(4)]~~ Act--Texas Education Code, Chapter 132, Career Schools and Colleges.

(7) ~~[(5)]~~ Advertising--Any affirmative act designed to call attention to a school or program for the purpose of encouraging enrollment.

(8) ~~[(6)]~~ Asynchronous distance education--Distance education training that the Commission determines is not synchronous.

~~[(7)] Board--A local workforce development board as created under the Workforce and Economic Competitiveness Act.]~~

~~{(8) Clock hour--Fifty minutes of instruction during a 60-minute period.}~~

~~{(9) Commission--The Texas Workforce Commission.}~~

(9) Class or course--An identifiable unit of instruction that is part of a program of instruction.

(10) Coordinating Board--The Texas Higher Education Coordinating Board.

(11) Course of instruction--A program or seminar.

(12) Course time--A course or class period that is:

(A) a 50-minute to 60-minute lecture, recitation, or class, including a laboratory class or shop training, in a 60-minute period;

(B) a 50-minute to 60-minute internship in a 60-minute period; or

(C) 60 minutes of preparation in asynchronous distance education.

(13) ~~{(11)} Distance education course--Either a seminar or a program that is offered to non-residence school students via correspondence or other media from a remote site on a self-paced schedule, excluding programs using interactive instruction.~~

(14) ~~{(12)} Distance education school--A school that offers only distance education courses.~~

~~{(13) Course of instruction--A program or seminar.}~~

(15) ~~{(14)} Employment--A graduating or graduate student's employment in the same or substantially similar occupation for which the student was trained.~~

(16) ~~{(15)} Good reputation--A person is considered to be of good reputation if the person:~~

(A) has never been convicted of a felony related to the operation of a school, and the person has been rehabilitated, including completion of parole or probation, from any other convictions that would constitute risk of harm to the school or students as determined by the Commission;

(B) has never been successfully sued for fraud or deceptive trade practices within the last 10 years;

(C) does not own a school currently in violation of legal requirements, has never owned a school with repeated violations, and has never owned a school that closed with violations including, but not limited to, unpaid refunds; and

(D) has not knowingly falsified or withheld information from the Commission.

(17) ~~{(16)} Job placement--An affirmative effort by the school to assist the student in obtaining employment in the same or substantially similar stated occupation for which the student was trained.~~

(18) ~~{(17)} Master student registration list--A comprehensive list with an entry made for any person who signs an enrollment agreement, makes a payment to attend the school, or attends a class. The entry shall be made on the date the first of these events occurs.~~

~~{(18) Program--A sequence of approved subjects offered by a school that teaches skills and fundamental knowledge required for employment in the stated occupation.}~~

(19) Program or program of instruction--A postsecondary program of organized instruction or study that may lead to an academic,

professional, or vocational degree, certificate, or other recognized educational credential.

(20) ~~{(19)} Reimbursement contract basis--A school operating, or proposing to operate, under a contract with a state or federal entity in which the school receives payment upon completion of the training.~~

(21) ~~{(20)} Residence school--A school that offers at least one program that includes classroom instruction or synchronous distance education.~~

(22) ~~{(21)} School--A "career school or career college," as defined in the Act, that includes each location where courses of instruction shall be offered.~~

(23) ~~{(22)} Secondary education--Successful completion of public, private, or home schooling at the high school level or obtainment of a recognized high school equivalency credential.~~

(24) ~~{(23)} Seminar--A course of instruction that enhances a student's career, as opposed to a program that teaches skills and fundamental knowledge required for a stated occupation. A seminar may include a workshop, an introduction to an occupation or cluster of occupations, a short course that teaches part of the skills and knowledge for a particular occupation, language training, continuing professional education, and review for postsecondary examination.~~

(25) ~~{(24)} Seminar school--A school that offers only seminars.~~

(26) ~~{(25)} Small school--A "small career school or college" as defined in the Act.~~

(27) ~~{(26)} Stated occupation--An occupation for which a program is offered that:~~

(A) is recognized by a state or federal law or by a state or federal agency as existing or emerging;

(B) is in demand; and

(C) requires training to achieve entry-level proficiencies.

(28) ~~{(27)} Student--Any individual solicited, enrolled, or trained in Texas by a school.~~

~~{(28) Subject--A component of a program that includes specific content designed to advance the practical skills and knowledge necessary to prepare a student for employment in the stated occupation. A subject in a school is similar to a course at a community or technical college.}~~

(29) Suspension of enrollments--A Commission sanction that requires the school to suspend enrollments, re-enrollments, advertising, and solicitation, and to cease, in any way, advising prospective students, either directly or indirectly, of the available courses of instruction.

(30) Synchronous distance education--The Commission may determine distance education to be synchronous under the following conditions:

(A) The training is conducted simultaneously in real time, or the training is conducted so that the manner of delivery ensures that even if the instructor and student are separated by time, the course time ~~[clock hours]~~ of instruction that the student experiences can be determined; and

(B) There is consistent interaction between the student(s) and the instructor on a schedule that includes a definite time for completion of the program and periodic verifiable student comple-

tion/performance measures that allow the application of the progress standards of Subchapter L [K] and attendance standards of Subchapter M [L] of this chapter.

(31) Title IV school--A career school or college that participates in student financial aid programs under Title IV, Higher Education Act of 1965 (20 U.S.C. Section 1070 et seq.).

(32) [(31)] Tour--An inspection of the facilities and equipment pertaining to a course of instruction.

(33) [(32)] Week--Seven consecutive calendar days.

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 B. CERTIFICATES OF APPROVAL

40 TAC §807.14

The amended section is proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The proposed amendment affects Title 4, Texas Labor Code, particularly Chapters 301 and 302, as well as Texas Education Code, Chapter 132.

§807.14. Locations.

(a) A school shall obtain a certificate of approval for each location where courses of instruction will be offered, unless the school has a certificate of approval and meets one of the exceptions in this section.

(b) The Commission may approve the following as exempt from applying for approval for a new or additional location, if requested at least 30 days in advance:

(1) seminars, including preparation for licensing examinations, educational institution entrance examinations, and reading improvement;

(2) classes in no more than one location at a time as an itinerant school;

(3) classes at facilities used for additional classrooms for instructional services only, which are within a one-mile radius of the main campus and are dependent on the main campus for administration, supervision, fiscal control, and student services; or

(4) short-term programs. Short term programs:

(A) include course time of 200 [e] hours or less of instruction; and

(B) are conducted with at least a 90-day interval between cessation of one program and the beginning of the next.

(c) The school shall file an application for a certificate of approval to reflect a new or additional location, including all documents deemed necessary by the Commission, and the appropriate fee. The Commission may issue the certificate of approval after inspection of the new facilities.

(d) If the Commission determines that a move of the school presents an unreasonable transportation hardship which would prevent a student from completing the training at the new location, the school shall provide a full refund of all monies paid and a release from all obligations to the student.

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. SCHOOL DIRECTOR AND ADMINISTRATIVE STAFF

40 TAC §§807.62, 807.64, 807.66

The amended and new sections are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The amended and new rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302, as well as Texas Education Code, Chapter 132.

§807.62. School Director Qualifications and Duties.

(a) A school director of a small school shall have administrative or management experience ~~and~~ [A school director of a small school] shall be of good reputation. ~~[and is not required to attend a Commission-sponsored workshop prior to initial approval by the Commission.]~~

(b) A school director of other than a small school shall be of good reputation and have a total of five years of administrative or management experience. An equivalent duration of higher education, college or university, may be substituted for each year of experience.

(c) The school shall obtain Commission approval for the school director before employment of the school director.

~~[(d) A school director shall attend a Commission-sponsored workshop and demonstrate a proficiency of the knowledge required to operate a school before final Commission approval may be granted. The Commission may require a school director to attend additional workshops scheduled by the Commission in order to maintain skills and continue as an approved school director.]~~

(d) [(e)] The school director is responsible for the courses of instruction, organization of classes, designation of a liaison for Commission compliance visits, maintenance of the school facilities and proper administrative records, and all other matters related to the administration of the school, as determined by the Commission.

(e) ~~[(f)]~~ The school director shall sign and agree to the terms of the Director's Statement.

(f) ~~[(g)]~~ The Commission may require the school director to attend additional training to continue approved director status if a school has more than one substantiated complaint from students during a one-year period. If the school has repeat violations from a previous year under the same director, the Commission may revoke the approval of the school director.

(g) ~~[(h)]~~ The school director shall:

(1) ensure that all facilities, including housing endorsed by the school, comply with local, city, county, municipal, state, and federal regulations such as, but not limited to, fire, building, and sanitation codes; and

(2) inspect facilities, including housing, before endorsement.

~~[(i) The Commission shall grandfather the director of a school from meeting the requirements contained in this section, providing that the school has submitted the application for that school director to the Commission prior to the effective date of this section, and the application results in approval by the Commission.]~~

§807.64. Director of Education Requirements.

(a) A school may have a director of education. ~~[The Commission shall grandfather schools from meeting the director of education requirements contained in this section for a particular director of education provided that the school has submitted the application for approval of the director of education to the Commission prior to the effective date of this section and the application results in approval by the Commission.]~~

(b) If the school employs a director of education, the director shall meet the same qualifications as an instructor and, in addition, shall have:

- (1) one year of employment as a postsecondary instructor;
- (2) one year of employment as a supervisor; and
- (3) a bachelor's degree, appropriate for the skills required, as determined by the Commission.

§807.66. Director of Admissions Requirements.

(a) A school may have a director of admissions. An individual employed by a school as a director of admissions prior to the effective date of this section is not subject to §807.66(b)(1) and §807.66(b)(2).

(b) If the school employs a director of admissions, the director shall be of good reputation and, in addition, shall have:

- and
- (1) one year of management or administrative experience;
 - (2) one year of admissions experience.

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. INSTRUCTORS

40 TAC §§807.81 - 807.84

The amended sections are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The amended rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302, as well as Texas Education Code, Chapter 132.

§807.81. Instructor Qualifications.

(a) The instructor shall be of good reputation and shall not be a current student in the same or similar program, as determined by the Commission, in which the instructor teaches.

(b) Instructors shall possess and affirm on forms provided by the Commission that the instructor has one of the following qualifications that applies to the course [subject] area to be taught. In such cases where the practical experience is gained on a seasonal basis as an industry standard, the season of at least three months of experience shall be considered as one year of experience.

(1) The instructor has a master's degree or higher that:

(A) includes satisfactory completion of six semester credit hours or eight quarter credit hours in the class [subject] to be taught;

(B) includes satisfactory completion of three semester credit hours or four quarter credit hours in the course [subject] area and one year of related practical experience within the ten years immediately preceding employment by the school, if the class [subject] to be taught is in a technical field;

(C) includes satisfactory completion of three semester credit hours, or four quarter credit hours in the course [subject] area to be taught, if the class [subject] to be taught is in a non-technical field; or

(D) includes one year of related practical experience in the class [subject] to be taught within the ten years immediately preceding employment by the school, if the class [subject] to be taught is in a non-technical field.

(2) The instructor has a bachelor's degree that:

(A) includes nine semester hours or 12 quarter hours related to the course [subject] area to be taught;

(B) includes satisfactory completion of six semester credit hours or eight quarter credit hours in the course [subject] area to be taught and one year of related practical experience within the ten years immediately preceding employment by the school, if the class [subject] to be taught is in a technical field;

(C) includes satisfactory completion of three semester credit hours or four quarter credit hours in the course [subject] area and one year of related practical experience within the ten years immediately preceding employment by the school, if the class [subject] to be taught is in a non-technical field; or

(D) includes two years of related practical experience within the ten years immediately preceding employment by the school.

(3) The instructor has an associate's degree that:

(A) includes satisfactory completion of nine semester credit hours or 12 quarter hours in the course [subject] area to be taught and two years of related practical experience within the ten years immediately preceding employment by the school; or

(B) includes three years of related practical experience within the ten years immediately preceding employment by the school.

(4) The instructor has a secondary education if it includes a certificate of completion from a recognized postsecondary school for a program with course time of at least [a] 900 hours [clock-hour program] in a relevant course [subject] area and four years of related practical experience within the ten years immediately preceding employment by the school; or

(5) The instructor has proof of satisfactory completion of secondary education if accompanied by five years of related practical experience within the ten years immediately preceding employment by the school.

(c) In addition to the other applicable requirements for instructors, including the good reputation requirement, the following qualifications apply to the specific instructors listed in this subsection.

(1) The Commission requires that a court reporting instructor of only machine shorthand theory and speedbuilding shall have:

(A) an associate's degree or higher and certificate of completion of machine shorthand theory requirements in an accredited court reporting program;

(B) an associate's degree in court reporting from any state-recognized school;

(C) a Registered Professional Reporter or Certified Shorthand Reporter certification from any state; or

(D) a certificate of completion of a court reporting program from a state-certified school.

(2) The Commission requires that a court procedures and technology instructor shall have:

(A) a Registered Professional Reporter or Certified Shorthand Reporter certification; and

(B) one year of court reporting experience.

(3) The Commission requires that a modeling instructor shall have, at a minimum:

(A) a secondary education and certificate of completion from a modeling program of at least 45 ~~[clock]~~ hours of course time from a state recognized school and at least five verifiable paid modeling jobs completed within the past five years; or

(B) a secondary education and at least ten verifiable paid modeling jobs completed within the past five years.

(4) The Commission requires that a truck driving instructor shall have, at a minimum:

(A) a secondary education;

(B) certified proof of successful completion of course time of 40 [clock] hours in safety education and driver training as required by this chapter; and

(C) three years of full-time tractor trailer driving experience within the ten years immediately preceding employment by the school.

(5) The Commission requires that a bartending instructor shall be certified by the Texas Alcoholic Beverage Commission as having completed the required awareness course.

(d) The director shall ensure that an instructor applicant demonstrates sufficient language to teach the class [subject] for which the instructor is applying to teach.

~~{(e) The Commission shall grandfather schools from meeting the instructor requirements contained in this section for a particular instructor provided that the school has submitted the application for approval of the instructor to the Commission prior to the effective date of this section and the application results in approval by the Commission.}~~

(e) ~~{(f)}~~ For those instructors who return to the school prior to one full year of absence, and who will be teaching the same classes [subjects] as previously approved, the school shall document the leave and reinstatement dates in the instructor's personnel file. When an instructor begins teaching new classes [subjects] or the absence was more than one year, the school shall submit a new application to the Commission.

§807.82. Temporary Instructors.

(a) The Commission may allow a school to use a previously unapproved instructor to teach temporarily for a reasonable amount of time in the case of an emergency, as determined by the Commission.

(b) In such circumstances, the school shall provide written notice to the Commission delivered no later than the first day the temporary instructor begins teaching. The notice shall include:

(1) the class [subject] to be taught;

(2) the name of the approved instructor;

(3) the name of the temporary instructor; and

(4) the reason for the temporary instructor.

(c) Failure to properly notify the Commission shall result in penalties for the use of an unapproved instructor.

(d) The temporary instructor shall have practical experience or education in the course [subject] area to be taught, and shall not have been previously disapproved to teach the class [subject].

(e) There shall be no more than one temporary instructor per grading period in an individual class [subject], unless specifically approved in advance by the Commission.

(f) Failure to comply with this section shall result in penalties, up to and including, a full refund to all students attending such classes.

§807.83. Instructor Application.

(a) A school that has been licensed for at least one year and is accredited by an agency recognized by the U. S. Secretary of Education is not required to submit instructor applications to the Commission for approval. Documentation that the instructor meets the requirements of this chapter must be kept on file at the school and available for review immediately upon request.

(b) The school shall file an application for approval of an instructor on forms provided by the Commission in accordance with the following criteria and ensure that the instructor is of good reputation.

(1) The application shall be postmarked within five calendar days of employment as an instructor subject to the conditions outlined in this subchapter. A school may employ an instructor pending approval by the Commission.

(2) Depending upon the qualifications indicated on the application, the application shall include one or more of the following:

(A) a legible copy of the postsecondary certificate or degree, or a transcript indicating appropriate coursework completed, as applicable;

(B) proof of a current occupational license; and

(C) proof of secondary education.

(c) A school with degree programs shall ensure that instructors are of good reputation and meet all the qualifications required by the Coordinating Board.

(d) The Commission may approve a variance from the specific qualifications contained in §807.81 of this subchapter with sufficient justification and an assurance that the program quality will not be lessened.

(e) The Commission may consider current approvals of instructors by other Texas state agencies responsible for approval and regulation of the program, or any professional certifications held by the instructor when submitted with the Commission's instructor application. The Commission will accept notification, in lieu of a new instructor application, for any instructor that has a current approval by the Commission to teach the same classes [subjects] at other schools that have the same owners.

(f) The Commission may require the school director of an accredited school to file applications for instructors if there have been two substantiated complaints regarding instructors in the previous year, or if the school is unable to produce, when requested, documentation that all instructors meet the requirements of this subchapter.

(g) The Commission may require a school director to submit and receive approvals for instructor applications in advance of employing the instructors for a period of one year if the school has had three instructor applications finally disapproved within the previous two years.

§807.84. *School Responsibilities Regarding Instructors.*

(a) The school shall ensure that an appropriate number of instructors, as determined by the Commission, have proper licensure or certificates required for the stated occupation's objective. The holder of the license or certificate shall actively participate in program development and revisions.

(b) The school shall ensure continuity of instruction through reasonable retention of instructors to provide students with a quality education.

~~[(c)] The school shall implement, maintain, and update annually a written plan for staff development, which includes, at a minimum, continuing education, staff meetings, attendance at trade and professional conferences, and observation of, or participation in, on-the-job activities.~~

(c) ~~[(d)]~~ The school director or director of education shall formally evaluate each instructor in writing at least annually, subject to review by the Commission.

(d) ~~[(e)]~~ The school director or director of education shall ensure that students are allowed the opportunity to formally evaluate each instructor in writing at least annually and incorporate said evaluation in the instructor's overall evaluation. These student evaluations are subject to review by the Commission.

~~[(f)] The school shall provide in-service training within the first three months of teaching to those instructors hired lacking teaching experience. In-service training includes planned professional~~

~~development opportunities that enable inexperienced instructors to learn and develop effective teaching strategies and skills. Topics shall include competency-based training, instructional methods, adult learning styles, and student learning and skills assessment. Competency-based training specifies the skills and skill levels required to complete a training program, develops and organizes teaching and learning methods to enable students to achieve the identified skills and levels of proficiency, and uses criterion-referenced evaluation to measure achievement.~~

~~[(g)] The school shall provide and document in-service training that provides updates on skills, knowledge, and technology required by business and industry for those instructors who have taught for two years, but have not gained relevant work experience during the two-year period.~~

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SUBCHAPTER G. COURSES OF INSTRUCTION

40 TAC §§807.91 - 807.104

(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 Workforce Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The repeal affects Title 4, Texas Labor Code, particularly Chapters 301 and 302, as well as Texas Education Code, Chapter 132.

§807.91. *Definitions Relating to Courses of Instruction.*

§807.92. *General Information for Courses of Instruction.*

§807.93. *Applications for Additional Courses of Instruction.*

§807.94. *Stated Occupation.*

§807.95. *Curriculum Content.*

§807.96. *Curriculum Length.*

§807.97. *Program Title.*

§807.98. *Equipment.*

§807.99. *Facilities.*

§807.100. *Admission Requirements Relating to Programs.*

§807.101. *School Responsibilities Regarding Programs.*

§807.102. *Program Revisions.*

§807.103. *Program Requirements for Degree Granting Schools.*

§807.104. *Penalties Relating to Courses of Instruction.*

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. APPLICATION FEES AND OTHER CHARGES

40 TAC §§807.111 - 807.113

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The repeal is proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The repeal affects Title 4, Texas Labor Code, particularly Chapters 301 and 302, as well as Texas Education Code, Chapter 132.

§807.111. *Fee Schedule.*

§807.112. *Renewal Fees.*

§807.113. *Installment Payments.*

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 I. ADVERTISING

40 TAC §§807.121 - 807.126

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deems necessary for the effective administration of Agency services and activities.

The repeal affects Title 4, Texas Labor Code, particularly Chapters 301 and 302, as well as Texas Education Code, Chapter 132.

§807.121. *General Information for Advertising.*

§807.122. *Advertisement Method.*

§807.123. *Advertisement Content.*

§807.124. *Financial Incentives.*

§807.125. *Catalog.*

§807.126. *Advertisement Monitoring.*

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 J. ADMISSION

40 TAC §§807.141 - 807.147

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The repeal is proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The repeal affects Title 4, Texas Labor Code, particularly Chapters 301 and 302, as well as Texas Education Code, Chapter 132.

§807.141. *General Information for Admission.*

§807.142. *Admission Requirements.*

§807.143. *Receipt of Enrollment Policies.*

§807.144. *Enrollment Agreement.*

§807.145. *Conduct Policy.*

§807.146. *Tuition and Fees.*

§807.147. *Admission Requirements for Degree Granting Schools.*

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. PROGRESS STANDARDS

40 TAC §§807.161 - 807.164

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The repeal affects Title 4, Texas Labor Code, particularly Chapters 301 and 302, as well as Texas Education Code, Chapter 132.

§807.161. *General Requirements for Progress Standards.*

§807.162. *Progress Requirements for Residence Schools.*

§807.163. *Progress Requirements for Distance Education Schools.*

§807.164. *Progress Requirements for Degree Granting Schools.*

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. ATTENDANCE STANDARDS

40 TAC §§807.171 - 807.175

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The repeal affects Title 4, Texas Labor Code, particularly Chapters 301 and 302, as well as Texas Education Code, Chapter 132.

§807.171. *General Requirements for Attendance.*

§807.172. *Attendance Requirements for Degree Granting Schools.*

§807.173. *Termination of Enrollment.*

§807.174. *Make-up Work.*

§807.175. *Leaves of Absence.*

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. CANCELLATION AND REFUND POLICY

40 TAC §§807.191 - 807.194

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The repeal affects Title 4, Texas Labor Code, particularly Chapters 301 and 302, as well as Texas Education Code, Chapter 132.

§807.191. *Right to Cancel after Tour.*

§807.192. *Consummation of Refund.*

§807.193. *Refund Requirements for Residence Schools.*

§807.194. *Penalties Relating to Refunds.*

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 N. RECORDS

40 TAC §§807.211 - 807.214

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The repeal is proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The repeal affects Title 4, Texas Labor Code, particularly Chapters 301 and 302, as well as Texas Education Code, Chapter 132.

§807.211. *General Information for Records.*

§807.212. *Student Records.*

§807.213. *Attendance Record Keeping.*

§807.214. *Employment Records.*

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 O. COMPLAINTS

40 TAC §807.221, §807.222

(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 Workforce Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The repeal affects Title 4, Texas Labor Code, particularly Chapters 301 and 302, as well as Texas Education Code, Chapter 132.

§807.221. *School Policy Regarding Complaints.*

§807.222. *Complaints and Investigations.*

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 P. TRUCK DRIVER TRAINING PROGRAMS

40 TAC §§807.231 - 807.235

(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 Workforce Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The repeal affects Title 4, Texas Labor Code, particularly Chapters 301 and 302, as well as Texas Education Code, Chapter 132.

§807.231. *General Information Relating to Truck Driver Training.*

§807.232. *Truck Driver Instructor Development Course.*

§807.233. *Behind-the-Wheel Instruction.*

§807.234. *Motor Vehicle Insurance.*

§807.235. *Prohibited Activities Regarding Truck Driver Training.*

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 Q. CLOSED SCHOOLS

40 TAC §807.251, §807.252

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The repeal affects Title 4, Texas Labor Code, particularly Chapters 301 and 302, as well as Texas Education Code, Chapter 132.

§807.251. *School Closures.*

§807.252. *Tuition Trust Account.*

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 R. CEASE AND DESIST ORDERS

40 TAC §§807.271 - 807.282

(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 Workforce Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The repeal affects Title 4, Texas Labor Code, particularly Chapters 301 and 302, as well as Texas Education Code, Chapter 132.

§807.271. *Definitions Relating to Cease and Desist Orders.*

§807.272. *Statement of Charges and Notice of Hearing on Cease and Desist Orders.*

§807.273. *Contents of Statement of Charges and Notice of Hearing.*

§807.274. *Service of Statement and Charges and Hearing Notice for the Issuance of Cease and Desist Orders.*

§807.275. *Agreements to Hold the Hearing at a Later Date.*

§807.276. *Hearing.*

§807.277. *Evidence.*

§807.278. *Hearing Officer Disqualification and Withdrawal.*

§807.279. *Hearing Procedure.*

§807.280. *Continuance of Hearing.*

§807.281. *Hearing Decision and Final Review by the Commissioners.*

§807.282. *Effect of the Cease and Desist Order.*

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SUBCHAPTER G. STAFF EDUCATION REQUIREMENTS

40 TAC §§807.101 - 807.103

The new sections are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The proposed new rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302, as well as Texas Education Code, Chapter 132.

§807.101. *Initial Training.*

(a) A school director shall complete the online training contained in the Director's Resource Guide or attend a Commission-sponsored workshop and demonstrate a proficiency of the knowledge required to operate a school before final Commission approval may be

granted. The Commission may require a school director to retrain in order to maintain skills and continue as an approved school director.

(b) The school shall provide in-service training within the first three months of teaching to those instructors hired lacking teaching experience. In-service training includes planned professional development opportunities that enable inexperienced instructors to learn and develop effective teaching strategies and skills. Topics shall include competency-based training, instructional methods, adult learning styles, and student learning and skills assessment. Competency-based training specifies the skills and skill levels required to complete a training program, develops and organizes teaching and learning methods to enable students to achieve the identified skills and levels of proficiency, and uses criterion-referenced evaluation to measure achievement.

§807.102. *Continuing Education.*

(a) Except for exempt providers as defined in the Act, providers shall submit an application for approval of continuing education training. In approving continuing education training, the Commission shall consider the factors set out in §132.0551 of the Act.

(b) If a continuing education training provider submits an application for approval prior to September 1, 2006, and the application and courses are approved, all training conducted on or after January 1, 2006, will be considered as approved continuing education if the training is determined by the Commission to be substantially similar to the application.

(c) The school shall implement, maintain, and update annually a written plan for staff development, which includes at a minimum, continuing education, staff meetings, attendance at trade and professional conferences, and observation of, or participation in, on-the-job activities.

(d) Each school director, full-time instructor, and director of admissions shall complete a minimum of six hours of course time of continuing education applicable to the position within 12 months of employment in the position and each calendar year thereafter.

(e) The school shall provide and document in-service training that provides updates on skills, knowledge, and technology required by business and industry for those instructors who have taught for two years, but have not gained relevant work experience during the two-year period.

§807.103. *Record Keeping.*

The school shall:

(1) maintain records of any continuing education or training received by its officials or personnel indicating for which position the training was received;

(2) maintain records of any continuing education or training for officials or personnel for five years; and

(3) retain the records on the premises of the school or college so the records are immediately available for review.

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SUBCHAPTER H. COURSES OF INSTRUCTION

40 TAC §§807.121 - 807.134

The new sections are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The proposed new rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302, as well as Texas Education Code, Chapter 132.

§807.121. Definitions Relating to Courses of Instruction.

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

(1) Externship--Practical, program-related, off-campus training under direct or indirect instructor supervision, with a pre-planned outline of experiences and competencies.

(2) Laboratory experience--A specific experience of observation, experimentation, practice, study, technical investigation, analysis, and practical application of theory or verbal instruction involving hands-on supervised study in a selected vocation or class.

(3) Lecture--A presentation of theories, concepts, procedures, or information about a particular class.

(4) New program--A program:

(A) not previously offered;

(B) previously offered and then discontinued;

(C) with a revised objective such that the program provides preparation for different jobs than those for which the program was originally approved (examples: legal secretary to paralegal; dental technician to medical technician; computer operator to computer programmer); or

(D) with a 25 percent or more change within a 12-month period to the total number of hours, content, or lessons (examples: course time from 1,000 hours to 750, 600 hours to 900, 20 lessons to 30, 60 semester credit hours to 80).

(5) New seminar--A seminar:

(A) not previously offered;

(B) previously offered and then discontinued;

(C) with a revised objective; or

(D) with a 25 percent or more change in a 12-month period to the total number of hours of the approved seminar.

(6) Revised program or seminar--Revisions include changes in admission requirements, title, class title, objective description (but not the detailed objective), class course time or credit hours, or class hours of lecture, laboratory, or externship. Scheduling and price changes are catalog changes, not revisions.

§807.122. General Information for Courses of Instruction.

(a) A school submitting applications for approval of seminars shall use abbreviated forms provided by the Commission.

(b) No class or program shall be approved by the Commission unless the school demonstrates that the program's quality, content, and length reasonably and adequately imparts the job skills and knowledge necessary for the student to obtain employment in the stated occupation.

(c) A school may not solicit students, otherwise advertise, or conduct classes for a course of instruction prior to the Commission's approval of the course of instruction. Any such activity by the school, prior to the Commission's approval of the course of instruction, shall constitute a misrepresentation by the school and shall entitle each student in the course of instruction to a full refund of all tuition and fees paid by the student and release from all obligations.

(d) The school shall establish and maintain a formal advisory committee of at least five members, unless the Commission approves a lesser number of persons in advance, for each type of program with course time in excess of 200 hours in length. At least annually, the committee shall evaluate the curriculum, instructional materials and media, equipment, and facilities to ensure they meet the needs of the job market. The school shall have written documentation of the evaluation available for review by the Commission. If the school does not follow an advisory committee recommendation, the school shall maintain written documentation of the justification for not following the recommendation.

(e) If the applicant requests approval to measure programs in credit hours, the following conversion table shall be used.

(1) One academic quarter credit hour equals a minimum course time of:

(A) 10 hours of classroom lecture;

(B) 20 hours of laboratory experience; or

(C) 30 hours of externship.

(2) One academic semester credit hour is equal to a minimum course time of:

(A) 15 hours of classroom lecture;

(B) 30 hours of laboratory experience; or

(C) 45 hours of externship.

(3) The school shall calculate lecture, laboratory, and externship credit hour conversions individually for each class, rounding down to the nearest half credit hour. The school shall add the total for the credit hours for lecture, laboratory, and externship to determine the total credit hours for a class.

§807.123. Applications for Additional Courses of Instruction.

(a) A school applying for approval of an additional course of instruction, after receiving an original certificate of approval, shall submit a complete application that includes:

(1) the appropriate fee;

(2) a completed application for approval on forms provided by the Commission; and

(3) any other revisions or evidence as requested by the Commission.

(b) The Commission may require an abbreviated program application if:

- (1) the school has the exact program approved at another location;
- (2) the program objective changes;
- (3) the program length changes 25% or more; or
- (4) the school's completion and employment rates are exemplary, as determined by the Commission.

(c) The Commission may deny an application for approval of an additional course of instruction if the school is not in full compliance with the Act or this chapter.

§807.124. Stated Occupation.

(a) The school shall ensure that each program prepares the student for the stated occupation.

(b) The school shall demonstrate that a student who successfully completes the program is more likely to be employed in the stated occupation than an individual who does not complete the program, all other things being equal.

(c) The school shall identify a demonstrable occupational demand for the stated occupation. The Commission may consider the following in evaluating the school's statement of occupational demand:

- (1) publications of established relevant occupational associations;
- (2) targeted occupation lists of Boards, if approved by the Commission, or other local or state entities;
- (3) references to advertisements in media for employment;
- (4) occupation employment rate of students;
- (5) percentage of graduating students who have previously completed the same or substantially similar program and who have obtained employment in the same or substantially similar stated occupation for which they have been trained;
- (6) relative supply and demand for the stated occupation, including letters from potential employers that describe their need for trained employees; and
- (7) reports or publications relating to the specific occupational demand.

§807.125. Curriculum Content.

- (a) The school shall:
- (1) provide competency-based programs;
- (2) assess skills using primarily performance-based methods;
- (3) use instructional media, methods, and materials appropriate for the program content and students' knowledge and abilities;
- (4) offer programs in a logical sequence of knowledge and skills; and
- (5) if deemed appropriate by the Commission, provide an externship or a simulation of the workplace for the program.

(b) Each class in the program shall teach the practical skills and knowledge required for employment in the stated occupation. The proportion of lecture, laboratory, and externship hours for each class and for the program shall be reasonable for the skills and knowledge to be learned for the stated occupation.

(c) The Commission may use or validate existing skill standards or competencies, or develop statewide skill standards with the assistance of industry, schools, and other relevant entities as determined by the Commission.

§807.126. Curriculum Length.

(a) Each class submitted for approval shall identify the course time or credit hours allocated to that class. A class or program that exceeds a length reasonable to prepare the student for the stated occupation shall not be approved.

(b) The Commission may establish minimum and maximum program lengths for stated occupations consistent with the intent of the Act.

§807.127. Program Title.

(a) Each program submitted for approval shall be identified by a title.

(b) The title shall clearly identify the stated occupation and shall be a title commonly used by business or industry.

(c) The Commission shall not approve false, misleading, or deceptive program titles.

§807.128. Equipment.

(a) Equipment required for instruction shall be comparable to that commonly found in the stated occupation.

(b) The school shall remove equipment not in working order from the instructional area, mark it as out-of-order, or properly identify it as awaiting repair.

(c) The school shall provide equipment of sufficient quality and quantity to meet the maximum use requirements of the current students, as demanded by the activity patterns of the training program.

§807.129. Facilities.

(a) In determining adequate space for lecture and laboratory experiences, the Commission shall consider that the amount of lecture and laboratory space meets the use requirements of the maximum number of current students in class with appropriate seating facilities and/or workstations, as needed by the activity patterns of the program.

(b) Enrollment shall not exceed the design characteristics of the available workstations.

§807.130. Admission Requirements Relating to Programs.

(a) The school shall submit, for approval by the Commission, its admission requirements for each program with justification for the requirements.

(b) The school shall ensure that the student demonstrates to the school sufficient proficiency in the language of instruction to successfully complete the training program.

§807.131. School Responsibilities Regarding Programs.

(a) As a condition of program approval or renewal, the school shall identify any portion of instruction that is self-paced or not conducted in English.

(b) To maintain program approval, the school shall demonstrate the following:

- (1) a reasonable student completion rate for each program;
and

(2) a minimum employment rate for program graduates in jobs related to the stated occupation.

(c) When a school is approved to offer a program, the school shall maintain sufficient instructors to teach all subjects for completing the program during the length of time stipulated in the school catalog, regardless of the size of the class.

(d) The school shall schedule classes so that students will be able to complete the program during the length of time stipulated in the school catalog.

(e) The school shall ensure that students receive the lecture and laboratory experience hours with sufficient instructors and scheduling. An instructor may not be simultaneously supervising a laboratory experience and a lecture even if they are in the same room.

(f) A school shall provide course outlines to students at the beginning of each subject which lists students' performance objectives, references and resources, and a general content outline for the subject.

(g) A school shall have and use lesson plans for all subjects.

(h) A school may not use classes from one or more approved programs to create a new program and award a certificate of completion without prior approval.

(i) The student-to-instructor ratio shall be sufficient for students to learn, practice, and demonstrate the necessary knowledge and skills. These ratios may be varied at the discretion of the Commission to conform to conditions in an individual school. The following student-instructor ratios may be acceptable for single classes:

(1) business lecture or laboratory--30 to one;

(2) technical, vocational, or allied health lecture--30 to one;

(3) technical lab (examples: computer programming, data processing, electronics)--20 to one;

(4) vocational lab (examples: auto mechanics, air conditioning and refrigeration, drafting)--20 to one; and

(5) intensive language instruction (beginning)--15 to one; (intermediate to advanced)--20 to one.

§807.132. Program Revisions.

(a) The school shall submit a revised program application for any proposed changes in the program that shall be reflected in the school catalog's program information.

(b) The school shall receive approval of proposed program revisions in writing from the Commission before implementing the revisions.

(c) The school shall work closely with employers in its job market to ensure that the program meets employers' needs.

§807.133. Program Requirements for Degree Granting Schools.

A school shall provide evidence to the Commission that they are authorized by the Coordinating Board to offer degree programs.

§807.134. Penalties Relating to Courses of Instruction.

(a) If an approved course of instruction is discontinued for any reason, the Commission shall be notified within 72 hours of discontinuance and furnished with the names and addresses of any students who were prevented from completion of the course of instruction due to discontinuance. Should the school fail to make arrangements satisfactory to the students and the Commission for the completion of the course of instruction, the full amount of all tuition and fees paid by the students are then due and refundable. Any course of instruction discontinued will be removed from the list of approved courses of instruction.

(b) The Commission may suspend enrollments in a particular course of instruction at any time the Commission finds cause. For purposes of this subsection, cause includes, but is not limited to:

(1) inadequate instruction;

(2) unapproved or inadequate curriculum;

(3) inadequate equipment; or

(4) inadequate facilities.

(c) If a school begins teaching a course of instruction or revised course of instruction that has not been approved by the Commission, the Commission may require the school to refund to the enrolled students all or a portion of the tuition fees.

(d) If upon review and consideration of an original, renewal, or revised application for course of instruction approval, the Commission determines that the applicant fails to meet the requirements in the Act or this chapter, the Commission shall notify the school, setting forth in writing the reasons for the denial. This may include summaries of peer evaluations from both educators and employers offering similar courses of instruction.

(e) The Commission may revoke approval of a school's course of instruction at any time the Commission finds cause. For purposes of this subsection, cause includes, but is not limited to:

(1) any statement contained in the application for the course of instruction approval which is untrue;

(2) the school's failure to maintain the instructors, facilities, equipment, or courses of instruction, or course of instruction outcomes on the basis of which approval was issued;

(3) advertising made on behalf of the school which is false, misleading, or deceptive, including those that use the word "associate" to describe a degree other than those approved by the Coordinating Board;

(4) courses of instruction without clearly stated limited transferability if there are no articulation agreements with other postsecondary institutions in the same geographic area;

(5) courses of instruction for which financial aid is advertised but is not available;

(6) repeated violations by the school that negatively impact the quality of a particular course of instruction; or

(7) violations by the school of any applicable provision of the Act or this chapter.

(f) A school whose course of instruction approval is denied or revoked shall have the right to appeal. The Commission will conduct hearings in accordance with Commission policies and procedures applicable to the appeal.

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SUBCHAPTER I. APPLICATION FEES AND OTHER CHARGES

40 TAC §§807.151 - 807.153

The new sections are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The proposed new rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302, as well as Texas Education Code, Chapter 132.

§807.151. Fee Schedule.

The Commission shall collect fees according to the following schedule.

- (1) The initial fee for a certificate of approval for a small school is \$1,001.
- (2) The initial fee for any other school is \$3,000.
- (3) In the event of a change in ownership of the school, the new owner shall pay the same fee as that charged for an initial fee for a school.
- (4) The initial registration fee for a representative is \$90.
- (5) The annual renewal fee for a representative is \$45.
- (6) The fee for a change of name of the school or owner is \$150.
- (7) The fee for a change of address of a school is \$270.
- (8) The fee for a change in the name or address of a representative or a change of the name or address of a school that causes the reissuance of the notice of permitted representative is \$15.
- (9) The application fee for a course of instruction that is an additional program is \$225.
- (10) The application fee for a course of instruction that is a seminar program is \$35.
- (11) The application fee for a school director, administrative staff member, or instructor is \$20.
- (12) The fee for an inspection of classroom facilities that are separate from the main campus is \$375.
- (13) The fee for an investigation of a complaint against a school is \$400, if assessed.

§807.152. Renewal Fees.

- (a) For small schools, if a certificate of approval is issued for more than one year, the renewal fee is \$1,001, which may be paid with \$501 the first year and \$250 on the anniversary date of the certificate for each subsequent year.
- (b) For all other schools, the renewal fee is based on the gross amount minus refunds of annual student tuition and fees. The renewal fee is the greater of:
 - (1) 0.31% of the school's gross tuition and fees, excluding refunds as provided by the Act; or
 - (2) \$500.
- (c) For all schools, the Commission shall assess a penalty of 10% of the renewal fee, not less than \$200 or more than \$1,000, if the school fails to file a complete application for renewal at least 30 days before the expiration date of the certificate of approval.

§807.153. Installment Payments.

(a) With the exception of the renewal installment schedule for small schools, a school may elect to pay any single fee in excess of \$1,000 by quarterly installment. A service charge of 10% of the fee shall be added, and the total divided into equal quarterly installment payments. The first payment shall be due on the date the fee is due. The successive payments shall be due in 90-day increments.

(b) Failure to pay any installment by the due date may result in one or more of the following:

(1) a penalty being assessed in the amount of 50% of the total amount of the fee;

(2) full payment of the penalty and outstanding balance due within 30 days; or

(3) suspension of participation in the installment payment plan for the next renewal period.

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SUBCHAPTER J. ADVERTISING

40 TAC §§807.171 - 807.176

The new sections are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The proposed new rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302, as well as Texas Education Code, Chapter 132.

§807.171. General Information for Advertising.

(a) A school shall not make deceptive statements in attempting to enroll students.

(b) The Commission may require a school to furnish proof to the Commission of any of its advertising claims, when requested.

§807.172. Advertisement Method.

(a) A school may advertise for prospective students under "instruction," "education," "training," or a similarly titled classification.

(b) A school shall not be advertised under any "help wanted," "employment," or similar classification.

(c) No school advertisements shall use the word "wanted," "help wanted," or "trainee," either in the headline or the body of the advertisement, nor shall any advertisement indicate, in any manner, that the school has or knows of employment of any nature available to prospective students; only "placement assistance," if offered, may be advertised.

(d) A school shall not use terms to describe the significance of the approval that specify or connote greater approval. Terms that

schools may not use to connote greater approval by the Commission include, but are not limited to, "accredited," "supervised," "endorsed," and "recommended." A school shall not use the words "guarantee," "guaranteed," or "free" unless approved in writing by the Commission.

(e) Any advertisement that includes a reference to awarding of credit hours shall include the statement, "limited transferability." Where a school has an arrangement with a college or university to accept transfer hours, such information may be advertised, but any limitations shall be included in the advertisement.

§807.173. Advertisement Content.

(a) Advertisement content shall include, and clearly indicate, the full and correct name of the school and its address, including city, as they appear on the certificate of approval.

(b) Advertisements shall not include:

(1) statements that the school or its programs are accredited unless the accreditation is that of an agency recognized by the United States Department of Education;

(2) statements that the school or its courses of instruction have been approved unless the approval can be substantiated by an appropriate certificate of approval issued by an agency of the state or federal government; or

(3) representation of the school as an employment agency under the same name, or a confusingly similar name, or at the same location of the school.

(c) A school holding a franchise to offer specialized programs or classes not available to other schools shall not advertise such programs in such a manner as to diminish the value and scope of programs offered by other schools not holding such a franchise. Advertising of special classes or programs offered under a franchise shall be limited to the classes or programs offered.

(d) A school shall not use endorsements, commendations, or recommendations by students in favor of a school except with the consent of the student and without any offer of financial or other material compensation. Endorsements shall bear the legal or professional name of the student.

(e) A school shall not use a photograph, cut, engraving, illustration or graphic in advertising in such a manner as to:

(1) convey a false impression of size, importance, or location of the school, equipment, or facilities associated with the school, or

(2) circumvent any of the requirements of this chapter regarding written or oral statements.

(f) Every advertisement must clearly indicate that training is being offered, and shall not, either by actual statement, omission, or intimation, imply that prospective employees are being sought.

§807.174. Financial Incentives.

(a) Advertisements shall not:

(1) state that students shall be guaranteed employment while enrolled in the school;

(2) state that employment shall be guaranteed for students after graduation; or

(3) misrepresent opportunities for employment upon completion of any program.

(b) Advertisements shall not contain dollar amounts as representative or indicative of the earning potential of graduates unless

those dollar amounts have been published by the United States Department of Labor. This provision shall not be construed as prohibiting the school from providing earning potential to the student individually on the student's receipt of enrollment policies or other such Commission-approved document.

(c) Advertisements for student tuition loans shall:

(1) contain the language "financial aid available, if qualified"; and

(2) appear in type no larger than the font used for the name of the school and in similar color and style.

(d) Advertising of student tuition loans as described in this section does not preclude disclosure of the school's eligibility under the various state and federal loan programs.

§807.175. Catalog.

(a) The catalog shall include the following:

(1) table of contents or index;

(2) name and complete street address of the school;

(3) volume number, date of publication, and effective dates;

(4) history of any accreditations or approvals, including statement of approval and regulation by the Commission;

(5) description of space, facilities, and equipment;

(6) list of all trustees, directors, officers of the corporation, and owners;

(7) list of management staff and faculty, including education relating to the areas of instruction;

(8) tuition, fees, other charges, and applicable scholarship terms;

(9) school calendar;

(10) school hours of operation and class schedule, including the amount of time allocated for breaks and mealtimes;

(11) policies regarding enrollment, including entrance requirements, previous education credit, cancellation and refund, progress, attendance, leave of absence, and conduct;

(12) veterans administration refund policy, if applicable;

(13) description of courses of instruction, including the number of hours of course time of a seminar, seminar topic, lecture, lab, and externship, as well as credit hours in each class, if applicable;

(14) description of each class;

(15) description of the grading policy, including requirements for graduation;

(16) description of placement assistance, if available;

(17) statement of policies regarding grievances; and

(18) a statement signed by the owner or director indicating that all of the information contained in the catalog is true and correct.

(b) Any classes defined as self-paced shall be noted as such in the catalog.

§807.176. Advertisement Monitoring.

(a) The Commission may order corrective action to counteract the effect of advertising in violation of the Act or rules, including:

(1) retraction by the school of such advertising claims published in the same manner as the claims themselves; and

(2) cancellation of telephone numbers without an automatic forwarding message.

(b) As corrective action for violations of the Act or rules, the Commission may require schools to submit all advertisements to the Commission for pre-approval at least 30 days before proposed submission of the advertisements to the advertising medium.

(c) Nothing in these guidelines shall prohibit release of information to students as required by a state or federal agency.

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SUBCHAPTER K. ADMISSION

40 TAC §§807.191 - 807.197

The new sections are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The proposed new rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302, as well as Texas Education Code, Chapter 132.

§807.191. General Information for Admission.

(a) The Commission may approve specific admission requirements for seminars and small schools.

(b) Small schools with programs with course time of 40 hours or less, individual class offerings, and seminars are not required to grant credit for previous education and training.

(c) The school shall make appropriate adjustments to the program length and price based upon credit granted for previous education and training, where warranted.

(d) For a school having specific term-beginning dates, a school may not start students after the third day of classes during any given term, except in those cases where appropriate credit for previous education and training has been given according to the Act and this chapter.

(e) A continuously enrolled student has the right to graduate under the academic requirements stated in the catalog in effect at the time of the student's enrollment.

§807.192. Admission Requirements.

(a) The school shall require for admission into its programs proof of one of the following:

(1) secondary education;

(2) successful completion or the equivalent of one full-time academic semester (12 academic semester hours) or academic quar-

ter (18 academic quarter hours) at an accredited college, university, or other postsecondary school; or

(3) for certificate programs only, proven ability-to-benefit by obtaining a satisfactory score on the approved entrance test.

(b) Entrance test requirements shall be in accordance with the following provisions.

(1) Any entrance test shall be a nationally recognized standardized test or a nonstandardized test developed by the appropriate industry and approved by the Commission. A nonstandardized test shall be validated by a qualified third party, such as an expert in tests and measurements, for both appropriateness and the specific score level required for admission into the program. The name of the test and its publisher, any time limitations, a minimum acceptable score, and an explanation of score meanings, as referenced in the test material, shall be provided to the student with a copy of the test, if the test is not already on file with the Commission.

(2) If multiple opportunities are allowed for retaking the same entrance test, such students shall wait a minimum of five calendar days prior to retaking the test. A student may take a second entrance test on the same day provided a substantially different test is administered. This shall be stated in the admissions policy published in the school catalog.

(3) A representative is not allowed to administer the test, nor is anyone allowed to assist the student in answering the questions.

(4) If the entrance test reveals the student to be ineligible as an ability-to-benefit student, the student may be enrolled as a remedial student. The school shall have an evaluation procedure approved by the Commission to determine remedial needs and to determine when the required level of remediation has been reached. The school shall also have a remediation plan for such students consisting of classes approved by the Commission as a part of the program. The students may be charged for the remedial portion of the program on an hourly pro rata basis, but the student is not obligated for the tuition and fees of the program until the entrance requirements are met.

(c) Evidence shall be maintained in each student's file to show the admissions requirements have been met. A full refund of all monies paid and a full release from all obligations shall be due, as determined by the Commission, to any student for whom the school cannot establish that the admission requirements were met.

§807.193. Receipt of Enrollment Policies.

(a) For all enrollments other than for seminars, individual classes, and small schools with programs of course time of 40 hours or less, each school shall use a form provided by the Commission to verify the prospective student's receipt of the information required in this section.

(b) Unless otherwise required in this chapter, prior to enrollment the school shall furnish the following to each prospective student:

(1) a school catalog and program outline, unless the prospective student enrolls in a seminar;

(2) a schedule of tuition, fees, and other charges;

(3) the cancellation and refund policy;

(4) the progress and grievance policies and, for non-Title IV schools, attendance policies;

(5) the rules of operation and conduct;

(6) if available, the average starting salary per pay period and annually for the prospective student's stated occupation, and information regarding the number of job openings in the program objective

field in a specified area within the last 12 months, including the name of the information source;

(7) the regulations pertaining to incomplete grades;

(8) written and verbal information regarding loans and grants and their differences, if the school participates in a loan or grant program;

(9) the requirements, if any, for any state or national licensing, certifications, or registrations;

(10) the exam passage rates for programs that prepare students for state licensing, certification, or registration exams;

(11) the job placement and employment data for the stated occupation as required in this chapter; and

(12) notice of all policies related to program interruption prior to completion and written information informing the student that if the student withdraws, it is the student's responsibility to inform the school or college.

(c) Any school that refers to the awarding of credit hours shall explain to each student during the enrollment process that transferability of such hours may be limited. Each student shall sign a statement indicating such an explanation has been provided.

(d) Should a school have an articulation agreement with an accredited college or university, or other postsecondary school, such information shall be provided to the student, including any known agreement limitations. Such schools shall also provide a list of known Texas postsecondary schools that accept any or all of the credit hours so earned.

(e) Students shall acknowledge receipt of each piece of information or documentation as set forth in this section by initialing each page and providing a complete signature at the end of the receipt of the enrollment policy form.

(f) A copy of the receipt of the enrollment policies form shall be given to the student and a copy maintained as a part of the student's files.

§807.194. Enrollment Agreement.

(a) A school does not need an enrollment agreement to enroll a student in a seminar that will be completed within three consecutive calendar days.

(b) For distance education schools, the enrollment agreement shall specify the amount of time allotted to the student to complete the program.

(c) A school shall submit an enrollment agreement to the Commission for approval.

(d) A school shall use only an approved enrollment agreement to enroll students.

(e) The executed enrollment agreement shall include, but is not limited to, the following:

(1) full and correct name and location of the school;

(2) program title, tuition, fees, reasonable estimate cost of books and supplies, any other expenses, total cost of the program, items subject to cost change, method of payment and payment schedule, disclosure statement if interest is charged on more than three payments, and detachable buyer's right to cancel if enrollment is procured off campus;

(3) date training is to begin and program length;

(4) name, address, and signature of the student;

(5) student's e-mail address if any part of the instruction or academically related activity is Web based;

(6) statement by the school that the student will receive a copy of the school enrollment agreement and catalog at the time of signing by the student;

(7) cancellation and refund policy; and

(8) a Federal Trade Commission statement for holder in due course, unless no loans, grants, or installment payments are involved.

(f) The school shall provide a notice of cancellation, attached to the enrollment agreement, for any student enrolled off the school premises. The notice shall:

(1) be in duplicate;

(2) be easily detachable;

(3) be printed in boldface type, with a minimum font of 10 point;

(4) contain the date of the enrollment agreement, name and address of school, the date on which the statutory 72-hour cancellation privilege will expire, and any other provisions as determined by the Commission;

(5) be printed in the same language as used in the enrollment agreement; and

(6) be in such a form that can be used by the student to notify the school of the student's desire to cancel by dating, signing, and mailing or otherwise delivering the form to the school's address shown.

(g) A copy of the enrollment agreement form shall be given to the student and a copy maintained as a part of the student's file.

(h) The Commission may permit a school to submit an abbreviated enrollment agreement for students enrolled on a reimbursement contract basis.

§807.195. Conduct Policy.

The school shall submit for approval a copy of the rules and regulations pertaining to conduct, which shall include statements regarding:

(1) conditions for dismissal; and

(2) conditions for reenrollment of those students dismissed for violating the conduct policy.

§807.196. Tuition and Fees.

(a) A school shall disclose to potential students all tuition, fees, and other charges, and state such information in the school's application for a certificate of approval. The school may not use an estimated tuition amount, nor may the school increase the student's tuition if the student remains continuously enrolled and completes the training as approved at the time of admission. If the school charges to repeat classes, the amount of the charges must be disclosed to the student.

(b) A school shall make available for review by the Commission upon request:

(1) a description of the methods of payment that are available to enrolling students;

(2) the names and addresses of lending institutions used by the school for student tuition loans; and

(3) the true annual percentage rate and any other fees or charges associated with student tuition loans.

(c) A school shall refund or forfeit any tuition, fees, or other charges not previously disclosed to the Commission.

(d) A school may offer scholarships providing the terms of scholarships are disclosed to the Commission.

(e) The school shall maintain, in a permanent format that is acceptable and readily accessible to the Commission, a record of any funds received from, or on behalf of, the student. A school shall clearly identify the payor, the type of funding, and the reason for the charges. These records shall be posted and kept current.

(f) A school shall issue written receipts of any charges or payments to the student and maintain such records for review upon request by the Commission. Each separately charged item shall be clearly itemized on a student-signed receipt.

§807.197. Admission Requirements for Degree Granting Schools.

(a) Students who transfer from other postsecondary schools shall complete at least 20 academic semester hours or 30 academic quarter hours in residency at the school that will grant the degree. This does not apply to transfers within the same school system.

(b) A school shall allow students attending at the time a school becomes a degree granting school to earn a degree, providing the student:

(1) meets all the prerequisites for acceptance into the degree program; and

(2) satisfactorily completes all courses or equivalent courses of the degree program.

(c) Former students shall meet all the prerequisites for acceptance into the degree program and shall satisfactorily complete all courses or equivalent courses in the approved degree program to qualify for a degree.

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SUBCHAPTER L. PROGRESS STANDARDS

40 TAC §§807.221 - 807.224

The new sections are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The proposed new rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302, as well as Texas Education Code, Chapter 132.

§807.221. General Requirements for Progress Standards.

(a) The Commission may approve specific progress standards for self-paced, competency-based programs.

(b) Seminars, because of their nature and duration, are not required to have progress standards.

(c) The progress evaluation records shall be of the type and nature to reflect whether the student is making satisfactory progress to the point of being able to complete all subject matter within the allotted time provided in the course curriculum.

(d) The school shall submit its policies pertaining to incomplete grades to the Commission for approval and publish those policies in the school's catalog. The policies shall address the possibility of the classes being discontinued when the student returns and clarify options available to that student pursuant to the Act.

(e) Approved court reporting program students may receive one grade of "IP" (in progress) in any speedbuilding class if they have not achieved the required speed at the end of the grading period.

§807.222. Progress Requirements for Residence Schools.

(a) For programs with course time of 40 hours or less, the school is only required to give a final exam at the end of the program to determine whether the student has sufficient knowledge to warrant a certificate of completion, in lieu of a progress evaluation.

(b) For programs with course time of 41 to 200 hours, the school shall record a student's grades at the midpoint and end of each progress evaluation period. A student not making satisfactory progress at the midpoint shall be placed on academic probation for the remainder of the progress evaluation period. If the student does not achieve satisfactory progress by the end of the probationary period, the student's enrollment shall be terminated.

(c) For schools approved on a course time basis and offering programs in excess of 200 hours, the school shall evaluate progress at least every eight weeks. A school approved on a credit hour basis shall evaluate progress at the midpoint and end-of-term for academic semester or academic quarter or at least every eight weeks. For programs with course time in excess of 200 hours, the following shall apply.

(1) The school shall place a student making unsatisfactory progress for the program at the end of a progress evaluation period on academic probation for the next progress evaluation period. If the student on academic probation achieves satisfactory progress for the subsequent progress evaluation period, but does not achieve the required grades to meet overall satisfactory progress for the program, the student may be continued on academic probation for one more progress evaluation period.

(2) If a student on academic probation fails to achieve satisfactory progress for the first probationary progress evaluation period, the student's enrollment shall be terminated.

(3) The enrollment of a student who fails to achieve overall satisfactory progress for the program at the end of two successive probationary progress evaluation periods shall be terminated.

(d) When a student is placed on academic probation, the school shall counsel the student prior to the student returning to class. The date, action taken, and terms of probation shall be clearly indicated in the student's permanent file.

(e) The school may allow a student whose enrollment was terminated for unsatisfactory progress to reenroll after a minimum of one progress evaluation period. Such reenrollment does not circumvent the approved refund policy.

(f) The school shall place a student who returns after their enrollment was terminated for unsatisfactory progress on academic probation for the next grading period. The school shall advise the student

of this action and document the student's file accordingly. If the student does not demonstrate satisfactory progress at the end of this probationary period, that student's enrollment shall be terminated.

§807.223. Progress Requirements for Distance Education Schools.

(a) Distance education schools shall evaluate progress as the school receives each lesson assignment. The school shall maintain the record of progress on forms approved by the Commission. Forms shall include:

- (1) the date course materials are mailed to the student;
- (2) the date the lesson assignment is received from the student;
- (3) the grade on a per-lesson basis;
- (4) the instructor's name;
- (5) the date graded assignments are returned to the student;

and

(6) the final grade for the program with completion date indicated.

(b) If at the end of the time period specified in the enrollment agreement, the student has not completed the program, the student's enrollment shall be terminated.

§807.224. Progress Requirements for Degree Granting Schools.

For a school offering degree programs, the progress standards shall include the following:

- (1) a student progress evaluation every academic semester, academic quarter, or at least every eight weeks in block-time programs;
- (2) a minimum grade point average for graduation from all degree programs of 2.0 based on a 4.0 scale, and that a student achieve a passing grade in all required classes;
- (3) a probationary period of one academic semester, academic quarter, or approved grading period following the end of the academic semester, academic quarter, or approved grading period in which the student's grades become unsatisfactory; and
- (4) provisions for termination at the end of not more than two consecutive probationary periods if the student's cumulative grade point average does not improve to the level required for graduation.

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SUBCHAPTER M. ATTENDANCE STANDARDS

40 TAC §§807.241 - 807.245

The new sections are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal

such rules as it deems necessary for the effective administration of Agency services and activities.

The proposed new rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302, as well as Texas Education Code, Chapter 132.

§807.241. General Requirements for Attendance.

(a) Seminar programs that begin and end during one day are not required to maintain an attendance policy.

(b) Title IV schools are not required to take attendance.

(c) The Commission may approve specific attendance requirements for self-paced, competency-based programs.

(d) No provision in this subchapter shall require a school to terminate the enrollment of a student for lack of attendance at a point at which a refund would not be due.

(e) A school shall charge for a full day of absence when the student fails to attend all of the scheduled classes on that day. The school shall charge for a partial day of absence for any period of absence during the day.

(f) A school shall not consider school holidays, such as summer vacation and Christmas holidays, etc., as days of absence.

§807.242. Attendance Requirements for Degree Granting Schools.

(a) The following requirements are for non-Title IV schools and Title IV schools that voluntarily take attendance.

(b) For a school offering degree programs, the attendance standards shall include the following:

(1) provisions for termination or probation during the next academic quarter, academic semester, or approved term when a student is absent for more than 20% of the scheduled course time hours during an academic quarter, academic semester, or approved term;

(2) provisions for termination when a student is absent for more than 20% of the scheduled course time hours during the probationary academic quarter, academic semester, or approved term; and

(3) provisions for termination prior to the last quarter, when a student is absent in excess of 10 consecutive school days or 20% of the total course time hours in the course, whichever occurs first.

§807.243. Termination of Enrollment.

(a) A school shall terminate the enrollment of a student who accumulates the lesser of the following amounts of absences:

(1) more than 10 consecutive school days;

(2) more than 20% of the total course time hours in a program with course time of more than 200 hours;

(3) more than 25% of the total course time hours in a program or individual class with course time of 41 to 200 hours;

(4) more than 25% of the total course time hours for seminars, individual classes, or programs with course time of 40 hours or less; or

(5) any number of days if the student fails to return as scheduled from an approved leave of absence.

(b) A Title IV school that does not voluntarily take attendance shall terminate the enrollment of a student if the student's participation in an academically related activity cannot be documented:

(1) at the end of the first week of the academic term;

(2) at the end of the first month of the academic term;

(3) at the midpoint of each academic term; and

(4) at the end of each academic term.

(c) For purposes of this section, "month" is defined as four weeks.

(d) Students whose enrollments are terminated for violation of the attendance policy may not reenroll before the start of the next progress evaluation period. This provision does not circumvent the approved refund policy.

§807.244. Make-up Work.

(a) No more than 5% of the total course time hours for a program may be made up.

(b) The school shall submit make-up work policies to the Commission for approval.

(c) Make-up work shall:

(1) be supervised by an instructor approved for the class being made up;

(2) require the student to demonstrate substantially the same level of knowledge or competence expected of a student who attended the scheduled class session;

(3) be completed within two weeks of the end of the grading period during which the absence occurred;

(4) be documented by the school as being completed, recording the date, time, duration of the make-up session, and the name of the supervising instructor; and

(5) be signed and dated by the student to acknowledge the make-up session.

§807.245. Leaves of Absence.

(a) Seminars and small schools with programs with course time of 40 hours or less shall not grant leaves of absence.

(b) A school director may grant a leave of absence after determining that good cause is shown.

(c) In a 12-month calendar period, a student may have no more than two leaves of absence. For a program with course time of 200 hours or less, a student may be on leave of absence for a total of 30 calendar days. For programs with course time of more than 200 hours, a student may be on leave of absence for a total of 60 calendar days.

(d) School attendance records shall clearly define the dates of the leave of absence. A written statement as to why the leave of absence was granted, signed by both the student and the school director indicating approval, shall be placed in the student's permanent file.

(e) In addition to the requirements concerning leaves of absence in this subchapter, a school offering degree programs that schedules their courses on an academic quarter or academic semester basis may include in their attendance policies provisions for summer leaves of absence. These leaves of absence shall not exceed the lesser of 120 days or the interval between the end of the spring academic quarter or academic semester and the start of the fall academic quarter or academic semester.

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SUBCHAPTER N. CANCELLATION AND REFUND POLICY

40 TAC §§807.261 - 807.264

The new sections are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The proposed new rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302, as well as Texas Education Code, Chapter 132.

§807.261. Right to Cancel after Tour.

(a) Distance education, combination distance education-residence, and seminars are not required to provide the student a tour.

(b) Any potential student who has not been provided the opportunity to tour the school facilities and inspect the equipment before signing an enrollment contract has an additional three days, excluding Saturdays, Sundays, and legal holidays, following a tour and inspection to cancel enrollment and request a full refund of any money paid to the school and release from all obligations. The student shall sign and date an acknowledgement form certifying the completion of the tour.

§807.262. Consummation of Refund.

(a) A school shall document refunds by written record indicating the date of the refund transaction, the name of the student receiving the refund, the total amount refunded, and the specific reason for the refund. Proof of consummation shall be on file within 120 days of the effective date of termination and shall include:

(1) copies of both sides of the cancelled check;

(2) printed proof of completed transaction of electronic funds transfer or other similar electronic means; or

(3) documentation of an awarded credit to a credit card or other similar account.

(b) To ensure a school's good faith effort to timely consummate a refund owed directly to a student, the student's file shall contain evidence of the following proof of a certified mailing of the refund to the:

(1) student's last known address;

(2) student's permanent address, if different from the student's last known address; or

(3) address of the student's parent or legal guardian, if different from the student's last known and permanent addresses.

(c) If after making a good faith effort to timely consummate a refund, the school is unable to consummate the refund, the school shall forward to the Commission the appropriate refund amount and any pertinent student information to assist the Commission in locating the student.

§807.263. Refund Requirements for Residence Schools.

(a) Students are entitled to a full refund for classes attended if the school does not provide a class with:

- (1) an approved instructor;
- (2) an instructor for whom an application has been properly submitted to the Commission; or
- (3) a temporary instructor for whom the school submitted notice to the Commission.

(b) If a class has no instructor for more than one class period, students are entitled to a full refund for each such class attended.

(c) The length of a program, for purposes of calculating refunds owed, is the shortest scheduled time period in which the program may be completed by continuous attendance of a full-time student.

(d) A non-Title IV school shall calculate refunds for students based upon scheduled hours of classes through the last date of attendance. A Title IV school shall calculate refunds for students based upon scheduled hours of classes through the last documented day of an academically related activity. Neither type of school shall count leaves of absence, suspensions, school holidays, days when classes are not offered, and summer vacations for purposes of calculating a student's refund.

(e) For all schools other than distance education, combination distance education-residence, and seminars, a student may cancel enrollment, request a full refund, and request a release from any obligations to the school within three days, excluding Saturdays, Sundays, and legal holidays following:

- (1) the first day of the student's scheduled classes if the student is not provided an opportunity to tour the school facilities, which includes inspection of equipment, before signing an enrollment contract; or
- (2) the day the tour of the school facilities, including inspection of the equipment, is completed, when provided before the first day of the student's scheduled classes.

§807.264. Penalties Relating to Refunds.

(a) A penalty shall be paid on any refund not consummated in a timely manner as required by the Act. The penalty assessment shall begin on the first day following the expiration of the statutorily defined refund period and end on the day preceding the date the refund is consummated.

(b) Penalties assessed on late refunds for grants shall be paid to the tuition trust account if the amount is \$15 or less. Any other penalty assessed on a school's late payment of student refunds shall be disbursed in the following order of priority:

- (1) to the student's account at a lending institution for the balance of principal and interest on the student loan;
- (2) to the student for tuition and fees paid directly by the student; and
- (3) to the tuition trust account for any remaining balance of assessed penalty.

(c) If the Commission determines that the method used by the school to calculate refunds is in error or the school does not routinely pay refunds within the time required by the Act, the school shall submit an audited report conducted by an accountant of the refunds due former students that includes any penalty due as specified in the Act. An audit opinion letter shall accompany a schedule of student refunds due, which discloses the following information for the four years prior to the date of the Commission's request:

(1) student information, including name, address, and social security number;

(2) pertinent dates, including last date of attendance and date of termination; and

(3) refund information, including amount of refund with principal, penalty, and any balance due separately stated, payee, and date and check number of payment if payment has been made.

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SUBCHAPTER O. RECORDS

40 TAC §§807.281 - 807.284

The new sections are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The proposed new rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302, as well as Texas Education Code, Chapter 132.

§807.281. General Information for Records.

(a) A school shall permanently maintain a master student registration list (MSRL). If the school maintains the MSRL in electronic form, the school must be able to produce a printed copy immediately upon request. The MSRL must contain at least the following information:

- (1) date of applicable entry;
- (2) name of student;
- (3) address of student including city, state, and zip code;
- (4) telephone number;
- (5) social security number;
- (6) date of birth; and
- (7) name of program.

(b) A school shall maintain current records and necessary data for each student required to be on the master student registration list to show compliance with the Act and this chapter. These records shall be:

- (1) maintained on-site; and
- (2) made available to the Commission for inspection.

(c) If applicable, the school shall maintain and ensure that copies of the accreditation authorization and letter of eligibility from the United States Department of Education are available for Commission review.

(d) Degree granting schools shall maintain a copy of the certificate of authorization from the Coordinating Board for each authorized degree program.

(e) The Commission may conduct unannounced compliance inspections.

(f) A school shall maintain complete records of all advertising, sales, and enrollment materials used by or on behalf of the school for a five-year period. Materials maintained shall include, but not be limited to, direct mail pieces, brochures, printed literature, films, leaflets, handbills, fliers, video and audiotapes disseminated through the broadcast media, materials disseminated through the print media or Internet, and sales and recruitment manuals used to instruct sales personnel.

§807.282. Student Records.

(a) A school shall permanently maintain student transcripts of academic records. A school shall provide such transcripts to students and prospective employers at a reasonable charge if the student has fulfilled the financial obligation to the school and is neither in default nor owes a refund to any federal or state student financial aid program.

(b) A school shall retain financial records in accordance with federal retention requirements.

(c) A school shall retain all student records for at least a five-year period and these records shall include:

(1) a written record of previous education and training on a form provided by the Commission; and

(2) official transcripts from all previous postsecondary schools attended by the student.

§807.283. Attendance Record Keeping.

(a) The following requirements are for non-Title IV schools:

(1) A school offering seminars or other programs where students do not change instructors during the school day is not required to maintain a separate master record of attendance.

(2) A school shall maintain a master record of attendance on each student that clearly indicates the number of scheduled hours each day and the hours of absence.

(3) Each instructor shall maintain a record of attendance, which shall indicate a positive record of each student's attendance. Entries in the record of attendance shall be made in ink or other permanent medium, including other permanent computer records, and shall not be changed in a manner that precludes reading the original entry.

(b) The following requirements are for Title IV schools:

(1) The school shall maintain a form signed and dated by the student to document the student's participation in an academically related activity. An e-mail sent from the student's e-mail account listed on the enrollment agreement fulfills this requirement.

(2) The school shall maintain a master record for each student that clearly indicates the student's class schedule as well as the number of scheduled hours for each class day. For synchronous distance education students, the record shall indicate the number of scheduled hours for each week.

(c) Nothing in this chapter prevents a Title IV school from voluntarily using attendance as a manner of fulfilling the requirements of this chapter.

§807.284. Employment Records.

(a) A school offering programs approved for an occupational objective shall complete the labor market information survey on forms

provided by the Commission and submit them on or before the date provided in the survey packet as requested by the Commission.

(b) A school shall report program completion, job placement, and employment data on an annual basis in each program approved for an occupational objective.

(1) The school shall provide the data in a form acceptable to the Commission.

(2) Verifiable documentation shall be made available for review to support data reported. The documentation shall include the names of graduates and the names, addresses, and telephone numbers of their employers.

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 May 11, 2006.

TRD-200602626

Reagan Miller

Deputy Director for Workforce and UI Policy

Texas Workforce Commission

Earliest possible date of adoption: June 25, 2006

For further information, please call: (512) 475-0829



SUBCHAPTER P. COMPLAINTS

40 TAC §807.301, §807.302

The new sections are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The proposed new rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302, as well as Texas Education Code, Chapter 132.

§807.301. School Policy Regarding Complaints.

The school shall:

(1) submit a written grievance procedure designed to resolve disputes between current and former students and the school for Commission approval;

(2) provide a copy of the grievance procedure to each student and maintain proof of such delivery;

(3) maintain records regarding grievance filings and resolutions; and

(4) diligently work to resolve all complaints at the local school level.

§807.302. Complaints and Investigations.

(a) The Commission may investigate a complaint about a school and may determine the extent of investigation needed by considering various factors, such as:

(1) the seriousness of the alleged violation;

(2) the source of the complaint;

(3) the school's history of compliance and complaints;

(4) the timeliness of the complaint; and

(5) any other reasonable matter deemed appropriate.

(b) The Commission may require documentation or other evidence of the violation before initiating a complaint investigation.

(c) The investigation fee authorized by the Act is based on a per site visit. The school director shall be notified that an on-site visit was conducted when the investigation results in assessment of a fee.

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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Reagan Miller

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For further information, please call: (512) 475-0829



SUBCHAPTER Q. TRUCK DRIVER TRAINING PROGRAMS

40 TAC §§807.321 - 807.325

The new sections are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The proposed new rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302, as well as Texas Education Code, Chapter 132.

§807.321. General Information Regarding Truck Driver Training.

A school providing truck driver training shall ensure that the truck driver instructors complete a truck driver instructor development course with at least 40 hours of course time.

§807.322. Truck Driver Instructor Development Course.

(a) A school shall apply to the Commission for approval to provide a truck driver instructor development course.

(b) The instructor development course shall consist of 40 hours of course time, which includes at least the following topics.

(1) Five hours shall cover techniques of instruction including: qualities of a competent instructor, the learning process, methods of teaching, development of efficient teaching habits, demonstration teaching, the use of instruction material and training aids, course preparation, lesson plans, testing and evaluation, and the duration and frequency of lessons.

(2) Two hours shall cover personality factors affecting the driver and pedestrian including: natural abilities; senses; mind and nerves; bones and muscles; knowledge of vehicle, road, traffic, and self; attitudes and emotions; reaction time; and reactions to alcohol, carbon monoxide, over-the-counter drugs, prescription drugs, illegal drugs, heart ailments, epilepsy, diabetes, insanity, exhaustion, tension, and monotony.

(3) Six hours shall cover state laws as located in the Texas Motor Vehicle Law book relating to the operation of motor vehicles including: driver's license, vehicle registration, certificate of title, operation of vehicles, uniform act, miscellaneous offenses, and safety responsibility.

(4) Eight hours shall cover driving procedures including: handling--city, rural, night, mountain, and freeway driving; fog, rain, sandstorms, and other hazardous weather conditions; road hazards and recovery procedures for slick roads; blowout hazards and running off the road; traffic signs, markings, and signals; use of rearview mirrors; vehicle braking and stopping distances; following distances; right-of-way, when and how to yield it; vehicle acceleration and deceleration; yielding right-of-way to emergency vehicles; driver signals; proper passing procedures; procedures and problems for passing on two and three-lane roadways; and super-size motorized equipment.

(5) Three hours shall cover physical forces affecting the motor vehicle in motion including: forces of gravity; friction; acceleration, mass, and force; inertia and centrifugal force; kinetic energy and momentum; kinetic energy and braking; and horsepower and acceleration.

(6) Two hours shall cover highway characteristics including: primary, secondary, expressway, freeway, farm or ranch road, two-way two-lane, two-way three-lane, two-way multilane, two-way multilane divided, one-way multilane, parking, and traffic controls. Traffic control topics consist of the following:

(A) sign topics including shape, color, location and importance;

(B) traffic marking topics including center and lane lines, no passing zone, transition markings, turn lane marking, stop lines, crosswalk lines, etc.; and

(C) signal topics including classification, location, type, timing.

(7) Two hours shall cover automobile systems and maintenance including: electrical system--generator, alternator, battery, lighting, and electric-powered equipment; cooling system--lubrication and fuel systems; power train--engine, transmission, and differential; brake system--wheels and tires, caster, camber, toe-in, balance, inflation, tire condition, and care; exhaust system; instruments and gauges; compartment adjustments--seat, ventilation, mirrors, headrests, seat belts, and shoulder harness; starting the engine and warm-up procedures; safety devices--door locks, headrests; and miscellaneous features--windshield wipers, heater, and defroster.

(8) Two hours shall cover behind-the-wheel elementary lessons with demonstration in an appropriate vehicle and practice to be performed in the presence of the instructor including: starting; steering; stopping; shifting gears; backing; turning--right and left; and parking and starting on grade.

(9) Six hours shall cover behind-the-wheel driving safety lessons with demonstration in an appropriate vehicle and practice to be performed in the presence of the instructor including: developing good seeing habits; speed control; safe following; lane driving and lane changing; intersections and right-of-way; proper signaling; correct turn procedures; detecting of and handling problems--vehicle, cycle, pedestrian; freeway driving--ramp use, entering, exiting, lane use, emergency stopping; parking procedures; entering traffic from parked position; and night driving.

(10) Two hours shall cover school and instructor approval requirements including the following: school approval requirements, instructor approval requirements, classroom and automotive equipment requirements, required student records, contract requirements, and department of instructors.

(11) Two hours shall cover specialized training regarding the following: students with physical, mental, or emotional handicaps;

illiterate students; non-English-speaking students; and habitual violators and problem drivers.

§807.323. Behind-the-Wheel Instruction.

A school providing behind-the-wheel instruction shall ensure that the instruction includes:

- (1) actual driving practice while the motor vehicle is in motion;
- (2) no more than four persons, excluding the instructor, occupying any motor vehicle during the behind-the-wheel instruction;
- (3) notice in all contracts and advertisements of behind-the-wheel instruction being conducted with groups of students, if applicable; and
- (4) credit toward satisfying minimum standards for behind-the-wheel instruction for only actual time spent behind the wheel in vehicle operation.

§807.324. Motor Vehicle Insurance.

A school providing truck driver training shall ensure that:

- (1) a current list of vehicles used in truck driver training is filed with the Commission on a form provided by the Commission;
- (2) an insurance certificate accompanies each motor vehicle used in training and is filed with the Commission on or before the date the school files an original or renewal application for approval of the program with the Commission;
- (3) an insuring company or carrier issues an insurance certificate on a form furnished by the Commission directly to the Commission, which states the insurance company or carrier has issued a policy or policies of insurance, and the amounts of insurance for each vehicle listed on the list of vehicles used in truck driver training;
- (4) a written notice is provided to the Commission by registered or certified mail at least 10 days prior to the expiration date of insurance coverage of a listed vehicle; and
- (5) a copy of the written notice of cancellation of insurance on any listed vehicle is provided to the Commission by registered or certified mail immediately upon receipt of notice by the school.

§807.325. Prohibited Activities Regarding Truck Driver Training.

(a) A school, a trainer of truck driver instructors, or a truck driver instructor shall not:

- (1) allow an instructor to give instruction or allow a student to secure instruction in the classroom or in a motor vehicle if that instructor or student is using or exhibits any evidence or effect of an alcoholic beverage, controlled substance, or other such impairment;
- (2) permit a student to operate a motor vehicle without a valid driver's license or instruction permit in the student's possession during behind-the-wheel instruction;
- (3) permit more than a ratio of four students per vehicle and three vehicles per instructor on truck driving ranges;
- (4) permit more than four students per vehicle per instructor during street instruction for truck driver training; or
- (5) advertise or otherwise state or imply that a driver's license or permit is guaranteed or assured to any student or individual who may take or complete any instruction or course of instruction, enroll, or otherwise receive instruction in any truck driver training school.

(b) The Commission may suspend, revoke, or refuse to renew approval of a truck driver instructor or a trainer of truck driver instructors, upon determining that the applicant or instructor has been:

(1) convicted under the laws of this state, another state, or the United States of any felony; of an offense of criminally negligent homicide committed as a result of the person's operation of a motor vehicle; of an offense involving driving while intoxicated or under the influence; or of an offense involving tampering with a governmental record; or

(2) found incompetent or is incompetent to:

(A) safely operate a motor vehicle; or

(B) properly conduct classroom or behind-the-wheel instruction.

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 May 11, 2006.

TRD-200602628

Reagan Miller

Deputy Director for Workforce and UI Policy

Texas Workforce Commission

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For further information, please call: (512) 475-0829



SUBCHAPTER R. CLOSED SCHOOLS

40 TAC §807.341, §807.342

The new sections are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The proposed new rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302, as well as Texas Education Code, Chapter 132.

§807.341. School Closures.

(a) The Commission may declare a school to be closed when:

(1) written notification is received by the Commission from the school owner stating the school will close;

(2) Commission determines that the school facility has been vacated without prior notification of a change of address given to the Commission;

(3) an owner with multiple school locations transfers all students from one school location to another school location;

(4) the school dismisses all students, contrary to the school's class schedule as printed in the school catalog; or

(5) the school fails to maintain the faculty, facilities, equipment, or courses of instruction on the basis for which approval was issued.

(b) After the Commission determines that a school will close or is closed, the Commission will attempt to notify students concerning their options to accept a teach-out or to receive a proportional tuition refund based on available funds. Notification to students may include constructive notice in news media, student meetings, or mailings to students.

(c) Each teach-out requires approval of the Commission to determine whether the course of instruction is available, reasonable, and

comparable with the course of instruction of the closed school. The teach-out is subject to the following conditions:

(1) Transfers of students from a closed school to another school under the same ownership shall not constitute a teach-out.

(2) In order to be eligible for a teach-out, students shall submit a signed statement of acceptance to the teach-out school by the deadline as established by the Commission.

(3) The school offering the teach-out shall give credit for all comparable training received at the closed school, as determined by the Commission.

§807.342. Tuition Trust Account.

(a) In a year in which the Commission determines it is necessary to charge a fee under §132.2415(b) of the Act, each school shall make a payment to the tuition trust account at the time the school renewal fee is paid.

(b) The amount in the tuition trust account, as provided in the Act, is an accrued balance. The accrued balance is the cash balance of the tuition trust account less the sum of the accrued liabilities from unpaid student refunds and teach-out claims.

(c) Disbursements shall be made from the tuition trust account for student refunds and reimbursable teach-out expenses incurred during each 12-month period ending August 31, and shall be:

(1) made first for student refunds in accordance with §132.2415(d) of the Act;

(2) disbursed for reimbursable teach-out expenses based upon remaining funds; and

(3) calculated after other funding sources have been determined.

(d) Following the graduation or termination of the students from the teach-out school, the teach-out school shall determine actual expenses and submit a claim for reimbursement to the Commission on or before the date provided in the application packet. The teach-out school shall:

(1) not claim expenses for facilities, equipment, utilities, or other items which were owned, rented, used, or otherwise obligated by the school prior to the Commission's approval of the teach-out program, even though such items may be used for the teach-out program;

(2) be limited to expenses for tuition and fees that are non-recoverable from all financial resources, including grants and loans; and

(3) ensure that the sum of the tuition and fees paid to the student's account at the closed school and the teach-out school is the lesser amount the student would have been charged for the complete program at the closed school or the teach-out school.

(e) For schools in their first two years of operation that have not been required to furnish financial statements to comply with §807.35(b), the payment to the tuition trust account shall be calculated at the rate determined by the Commission using the projected gross amount of tuition and fees, as required in §807.33(c), to be charged by the school for the year in which the payment is collected. Once the school has submitted the actual amount of tuition and fees collected by the school in compliance with §807.35(b), the Commission shall reconcile the projected and actual amounts of tuition and fees collected. Upon reconciliation, the Commission shall determine if the school is entitled to a refund or must pay an additional amount to the tuition trust account.

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-200602629

Reagan Miller

Deputy Director for Workforce and UI Policy

Texas Workforce Commission

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For further information, please call: (512) 475-0829



SUBCHAPTER S. CEASE AND DESIST ORDERS

40 TAC §§807.361 - 807.366

The new sections are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The proposed new rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302, as well as Texas Education Code, Chapter 132.

§807.361. Statement of Charges and Notice of Hearing on Cease and Desist Orders.

If the Agency believes a person is operating a career school or college without a certificate of approval in violation of §132.151 of the Act, the Agency may issue a statement of charges and notice of hearing to consider the issuance of a cease and desist order.

§807.362. Contents of Statement of Charges and Notice of Hearing.

The statement of charges and notice of hearing issued by the Agency shall contain the following information:

(1) The name and last known address of the person against whom the order may be entered;

(2) A short and plain statement of the reasons the Agency believes the person is operating a career school or college without a certificate of approval;

(3) A copy of the Commission's Career Schools and Colleges rules, Title 40, Chapter 807 of the Texas Administrative Code; and

(4) The date, time, and location of the hearing.

§807.363. Service of Statement and Charges and Hearing Notice for the Issuance of Cease and Desist Orders.

The statement of charges and notice of hearing to consider a cease and desist order shall be served by certified mail, return receipt requested, on the person against whom the order is entered. Notice is presumed received five days from the date it is mailed by the Agency.

§807.364. Ex Parte Consultations.

(a) A Commissioner or employee of the Agency assigned to render a decision or to make findings of fact and conclusions of law in a cease and desist proceeding shall not directly or indirectly communicate in connection with an issue of fact or law with the Commission, a person, a party, or a representative of those entities, except on notice and opportunity for each party to participate.

(b) A Commissioner or employee of the Agency assigned to render a decision or to make findings of fact and conclusions of law in a cease and desist hearing may communicate ex parte with an Agency employee who has not participated in a hearing in the case for the purpose of using the special skills or knowledge of the agency and its staff in evaluating the evidence.

(c) This section shall be construed liberally to promote the effectiveness and efficiency of issuance of cease and desist orders.

§807.365. Hearing Decision and Final Review by the Commission.

(a) Within 10 days after the hearing is held, the hearing officer shall issue a written decision granting or denying the request for the issuance of a cease and desist order that includes findings of fact and conclusions of law. The hearing decision shall be mailed by certified mail, return receipt requested, and is presumed received five days from the date it is mailed. The hearing officer's decision becomes final the 15th day after receipt of the hearing decision unless an appeal is filed under subsection (b) of this section.

(b) A party that is not satisfied with the decision of the hearing officer may file a written appeal of the decision to the Commission for a final review no later than the 15th day after receipt of the hearing decision. The written appeal shall contain the party's arguments as to why the decision of the hearing officer should be reversed. A party may request oral argument on the written appeal before the Commission. If oral argument is approved, each party or its hearing representative may present argument in support of its position.

(c) Upon receipt of the written appeal of the hearing officer's decision, the Commission shall consider the appeal and issue a decision promptly. If in the written appeal, oral argument is requested by a party and approved, the Commission shall schedule and hold oral argument not later than 90 days of receipt of the written appeal. The Commission shall consider the appeal on the basis of the record made before the hearing officer. The decision of the Commission shall be mailed by certified mail, return receipt requested, and is presumed received 5 days from the date it is mailed.

§807.366. Cease and Desist Order.

(a) If the request for the issuance of a cease and desist order becomes final under the provisions of §807.365(a) or, if after an appeal the decision under §807.365(c) upholds the issuance of a cease and desist order by the Commission, the hearing officer shall issue a cease and desist order against the person that is found operating a career school or college without a certificate of approval in violation of §132.151 of the Act.

(b) The cease and desist order shall be delivered by certified mail, return receipt requested, and is presumed received five days from the date it is mailed.

(c) From the date of receipt of the issuance of the cease and desist order, the person must completely cease and desist operating the career school or college.

(d) The cease and desist order shall remain in effect until the person comes into complete compliance with the Act as determined by the Commission, or unless otherwise provided by the order of the Commission.

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 May 11, 2006.

TRD-200602630

Reagan Miller

Deputy Director for Workforce and UI Policy

Texas Workforce Commission

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For further information, please call: (512) 475-0829

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TITLE 43. TRANSPORTATION

PART 3. AUTOMOBILE THEFT PREVENTION AUTHORITY

CHAPTER 57. AUTOMOBILE THEFT PREVENTION AUTHORITY

43 TAC §57.56

The Automobile Theft Prevention Authority (ATPA) proposes amendments to §57.56, concerning General Requirements for Advisory Committees. The proposed amendments to change the date the board's advisory committees will be abolished in §57.56(6). The Government Code §2110.008 requires the Authority to approve the continuation of its advisory committees and reset the date of their abolishment, or the committees will be abolished by operation of law. The proposed amendment to §57.56(6) changes the date to August 31, 2010. Adoption of this proposal will act as the Authority's approval of the continuation of these committees.

Susan Sampson, Director of the ATPA, has determined that for the first five-year period the amendments are in effect, there will be no additional fiscal implications for state and local governments as a result of enforcing or administering the proposed amendments.

Ms. Sampson also has determined that for each year of the first five years the amendments are in effect the public benefit anticipated as a result of the proposed amendments will be better notice to the public as to the Authority's continuation of its advisory committees, which assist the Authority in its mission to prevent and reduce auto theft. There will be no economic effect on micro or small businesses with the amendment as proposed. There is no anticipated economic cost to persons who are required to comply with the amendments as proposed.

Comments on the proposed amendments may be submitted to Susan Sampson, Director, Automobile Theft Prevention Authority, 4000 Jackson Ave, Austin, Texas 78731, for a period of 30 days from the date that the proposed action is published in the *Texas Register*.

The amendments are proposed under Texas Civil Statutes, Article 4413(37), §6(a), which the Authority interprets as authorizing it to adopt rules implementing its statutory powers and duties, and Government Code §2110.008, which the Authority interprets as requiring it to set a date of abolishment for its advisory committees or face automatic abolishment of them.

The following are the statutes, articles, or codes affected by the amendments: §57.56 - Article 4413(37), §6(a), Government Code §2110.008.

§57.56. General Requirements for Advisory Committees.

The border solutions advisory committee, the grantee advisory committee and the insurance fraud advisory committees are subject to the following provisions:

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

(6) Committee's term. Each committee is abolished on August 31, 2010 [~~August 31, 2006~~], unless the ATPA amends this paragraph to establish a different date.

(7) (No change.)

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

Filed with the Office of the Secretary of State on May 11, 2006.

TRD-200602649

Susan Sampson

Director

Automobile Theft Prevention Authority

Earliest possible date of adoption: June 25, 2006

For further information, please call: (512) 374-5101



WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 31. NUTRITION SERVICES

SUBCHAPTER C. SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS, AND CHILDREN (WIC)

25 TAC §§31.21, 31.32, 31.34 - 31.36

The Department of State Health Services withdraws the proposed amendments to §§31.21, 31.32, 31.34 - 31.36 which ap-

peared in the December 9, 2005, issue of the *Texas Register* (30 TexReg 8273).

Filed with the Office of the Secretary of State on May 15, 2006.

TRD-200602684

Cathy Campbell

General Counsel

Department of State Health Services

Effective date: May 15, 2006

For further information, please call: (512) 458-7111 x6972



ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text as published in 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 3. OFFICE OF THE ATTORNEY GENERAL

CHAPTER 55. CHILD SUPPORT ENFORCEMENT

SUBCHAPTER F. COLLECTIONS AND DISTRIBUTIONS

1 TAC §55.140

The Office of the Attorney General, Child Support Division adopts an amendment to §55.140, concerning the recoupment of child support collections reversed after distribution. The amendment is adopted without changes to the proposed text as published in the April 7, 2006, issue of the *Texas Register* (31 TexReg 2949) and will not be republished.

The amendment adds language to 1 TAC §55.140(a) and (b) to clarify the types of child support payments received by all custodial parents or other persons entitled to receive child support, and the Office of the Attorney General's policy for recovering child support payments which have been reversed after they have been disbursed.

No comments were received regarding the adoption of the amendment.

The amendment to §55.140 is adopted under the Texas Family Code §231.002, which authorizes the State's Title IV-D agency to adopt rules for the provision of child support 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.

Filed with the Office of the Secretary of State on May 15, 2006.

TRD-200602692

Stacey Schiff

Deputy Attorney General

Office of the Attorney General

Effective date: June 4, 2006

Proposal publication date: April 7, 2006

For information regarding this publication, you may contact Lauri Saathoff, Agency Liaison, at (512) 463-2096.



SUBCHAPTER O. STATE DISBURSEMENT UNIT

1 TAC §§55.801 - 55.804

The Office of the Attorney General, Child Support Division adopts new §§55.801 - 55.804, concerning the operation of the State Disbursement Unit. The new sections are adopted without changes to the proposed text as published in the April 7, 2006, issue of the *Texas Register* (31 TexReg 2949) and will not be republished.

The new sections provide information regarding the State Disbursement Unit, which is responsible for receiving, disbursing, maintaining and furnishing child support payments and records in accordance with applicable federal and state law.

No comments were received regarding the adoption of the amendment.

The new §§55.801 - 55.804 are adopted under the Texas Family Code §234.006, which authorizes the State's Title IV-D agency to adopt rules in compliance with federal law for the operation of the state case registry and the state disbursement unit.

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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TRD-200602707

Stacey Schiff

Deputy Attorney General

Office of the Attorney General

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For information regarding this publication, you may contact Lauri Saathoff, Agency Liaison, at (512) 463-2096.



TITLE 10. COMMUNITY DEVELOPMENT

PART 5. OFFICE OF THE GOVERNOR, ECONOMIC DEVELOPMENT AND TOURISM DIVISION

CHAPTER 176. ENTERPRISE ZONE PROGRAM

10 TAC §§176.1 - 176.10

The Office of the Governor, Economic Development and Tourism Division (Office), formerly the Texas Department of Economic Development, adopts the repeal of Chapter 176, §§176.1 - 176.10, setting forth rules of the Enterprise Zone Program (Program). The repeal is adopted without changes

to the proposal as published in the April 7, 2006, issue of the *Texas Register* (31 TexReg 2950).

The rules are being repealed because Senate Bill 275 of the 78th Legislature made substantive changes to the Program which require substantial changes be made to the existing rules. New rules will be adopted. New rules are needed because the statutory changes to the Program require substantial changes be made to the existing rules.

No comments were received regarding the proposed repeal.

The repeal is adopted under Texas Government Code, §2303.051(c), which authorizes the executive director of the Office to adopt rules necessary for the Program, and Texas Government Code, Chapter 2001, Subchapter B, which prescribes the process for rulemaking by state agencies. Texas Government Code, Chapter 481, creating the Office, Texas Government Code, Chapter 489, creating the Economic Development Bank within the Office, and Texas Government Code, Chapter 2303, the Texas Enterprise Zone Act, are affected by the repeal.

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 May 8, 2006.

TRD-200602551

Tracye McDaniel

Executive Director

Office of the Governor, Economic Development and Tourism Division

Effective date: May 28, 2006

Proposal publication date: April 7, 2006

For further information, please call: (512) 936-0501



10 TAC §§176.1 - 176.5

The Office of the Governor, Economic Development and Tourism Division (Office), formerly the Texas Department of Economic Development, adopts new Chapter 176, §§176.1 - 176.5, setting forth rules of the Enterprise Zone Program (Program). The rules are adopted without changes to the proposed text as published in the April 7, 2006, issue of the *Texas Register* (31 TexReg 2951).

The new rules are being adopted because Senate Bill 275 of the 78th Legislature made substantive changes to the Program which require substantial changes be made to the existing rules. The rules are needed because the statutory changes to the Program require substantial changes be made to the existing rules.

Section 176.1 sets forth the purpose and definitions for the chapter.

Section 176.2 sets forth procedures for local government participation in the Program.

Section 176.3 sets forth requirements for designation as an Enterprise Project and the number of eligible project designations available for municipalities based on population.

Section 176.4 sets forth required elements for Enterprise Project designation applications and authorizes the Bank to approve requests for concurrent project designations, name changes and assignment or assumption of enterprise projects.

Section 176.5 sets forth the monitoring and reporting requirements for program participants.

No comments were received regarding the proposed rules.

The rules are adopted under Texas Government Code, §2303.051(c), which authorizes the executive director of the Office to adopt rules necessary for the Program, and Texas Government Code, Chapter 2001, Subchapter B, which prescribes the process for rulemaking by state agencies. Texas Government Code, Chapter 481, creating the Office, Texas Government Code, Chapter 489, creating the Economic Development Bank within the Office, and Texas Government Code, Chapter 2303 are affected by the rules.

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 May 8, 2006.

TRD-200602552

Tracye McDaniel

Executive Director

Office of the Governor, Economic Development and Tourism Division

Effective date: May 28, 2006

Proposal publication date: April 7, 2006

For further information, please call: (512) 936-0501



TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 70. INDUSTRIALIZED HOUSING AND BUILDINGS

16 TAC §§70.10, 70.20, 70.30, 70.50, 70.60, 70.70, 70.73, 70.75

The Texas Department of Licensing and Regulation ("Department") adopts amendments to existing rules at 16 Texas Administrative Code, §§70.10, 70.20, 70.30, 70.50, 70.60, 70.70, 70.73, and 70.75 regarding industrialized housing and buildings, as published in the January 6, 2006, issue of the *Texas Register* (31 TexReg 10). These amendments are adopted without changes and will not be republished.

The amendments are necessary to implement statutory changes made by Senate Bill 443, 79th Legislature, Regular Session, which took effect September 1, 2005. The amendments also clarify and update requirements for manufacturers and builders of industrialized housing and buildings. These amendments were approved by the Industrialized Building Code Council on November 16, 2005.

The proposed new rules were published in the *Texas Register* on January 6, 2006 and the comments period closed on February 6, 2006.

The amendment to §70.10(a) removes language from the definition of "commercial structure" that excluded certain types of buildings. The substance of this language is moved to the list of exemptions in §70.30(a). The amendment is necessary to reflect changes made by Senate Bill 443, 79th Legislature, to §1202.003 of the Texas Occupations Code.

Also in §70.10(a), the definition of "industrialized builder" is amended to include a person who purchases industrialized housing and buildings from other industrialized builders. The purpose of this change is to recognize that industrialized builders may purchase industrialized housing and buildings for sale or lease to the public from either manufacturers or other industrialized builders.

The amendments to §70.20(5) require an industrialized builder to notify the Department when a module or modular component is sold to another industrialized builder and when an industrialized manufacturer takes possession of units previously reported as shipped to an industrialized builder. The amendments are to clarify that the rule encompasses a sale to another industrialized builder. The amendments also clarify that transfers to a manufacturer must be reported to the Department so that the Department may assure compliance with the installation and site inspection requirements of the statute and rules.

The amendments to §70.30(a) add to the list of exemptions commercial structures that are installed in a manner other than on a permanent foundation and are either not open to the public or less than 1,500 square feet in total area and used other than as a school or a place of religious worship. In addition, the exemption for "construction site office buildings" is changed to "construction site buildings." The amendments are necessary to implement statutory changes made by Senate Bill 443 to §1202.001 and §1202.003 of the Texas Occupations Code.

The amendment to §70.50(b) requires an industrialized builder to report to the Department when the builder sells or transfers a unit to another registered person. An amendment adds new subsection (e) requiring a manufacturer to report on its monthly report the disposition of units previously reported as shipped. The amendments are necessary to clarify that the rule encompasses a sale to another person and to assure that manufacturers report the disposition of repossessed units.

The amendments to §70.60 restate the purpose of a certification inspection, divide subsection (a) into two subsections (a) and (b), and re-letter existing subsections (b) and (c). The amendments also require both the manufacturer and the third party inspection agency responsible for in-plant inspections to assure that conditions of certification are met, require the addition of conditions of certification to the plant certification report, and require that a non-compliance report be issued when a certification team determines that a manufacturer is not capable of meeting the certification requirements. The amendments are necessary to provide a clearer understanding of the purpose of the certification inspection and the requirements to become certified.

The amendments to §70.70(d) require a manufacturer to provide critical load points for the attachment of an industrialized house or building to the foundation, rather than requiring the manufacturer to provide a foundation design. The amendments also require the manufacturer to provide minimum requirements for connection and attachment of all modules and modular components to the foundation system. The amendments are necessary because a manufacturer generally does not have enough information about the installation site to provide a relevant foundation design. New subsection (e) is added to §70.70 requiring foundation system designs by licensed Texas engineers or architects and specifying the minimum information required in a foundation system design. The amendment is necessary to assure compliance of the foundation system with the mandatory building codes, since review of the foundation system design by a design

review agency is not required, and to assure that the foundation system design contains all applicable information required for the industrialized builder to properly install the industrialized housing or building. The amendments concerning unique on-site details re-letter this provision as subsection (f), remove the requirements for foundation system designs, and add the requirement that unique on-site details shall comply with the mandatory building codes. The amendments are necessary since foundation requirements were added to new subsection (e), and the amendments are necessary to clarify that construction on-site must also comply with the mandatory building codes.

For consistency with changes to §70.70, the amendments to §70.73(a) require that industrialized housing and buildings sited within a municipality comply with the foundation system design and any unique on-site details. Similarly, the amendments to §70.73(b) require industrialized housing and buildings sited outside the jurisdiction of a municipality to comply with the foundation system design and any unique on-site details. Paragraphs (1) and (2) are added to §70.73(b) to indicate when site inspections are required outside the jurisdiction of a municipality. The new paragraphs are necessary to implement statutory changes made by Senate Bill 443 to §1202.203 of the Texas Occupations Code. Section 1202.203 now specifies that the Commission is to determine by rule if on-site inspections are required for industrialized buildings located outside a municipality.

The amendment to §70.75(a) requires that the manufacturer provide the builder or installation permit holder a set of approved plans as necessary to complete construction of the house or building and that the approved plans shall include critical load points for attachment of the house or building to the foundation. This amendment is necessary to correlate with the amendments to §70.70 and to clarify the requirements for documentation provided to the industrialized builder or installation permit holder. The amendments to §70.75(b) require the industrialized builder to provide certain documentation to either the purchaser or installation permit holder, including a copy of the foundation system design and any unique on-site details. These amendments, and a corresponding amendment to subsection (d), are necessary for consistency with the amendments to §70.70 and to assure that installation permit holders are also provided with necessary documentation.

The department drafted and distributed the proposed rules to persons internal and external to the agency. No comments were received in response to the proposed amendments.

The amendments are adopted under Texas Occupations Code, Chapters 51 and 1202, which authorizes the Commission to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department. In particular, the adopted rules implement provisions of Senate Bill 443, 79th Legislature, Regular Session.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51 and 1202. No other statutes, articles, or codes are affected by the adoption. No other statutes, articles, or codes are 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 May 12, 2006.

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William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
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Proposal publication date: January 6, 2006
For further information, please call: (512) 463-6208



TITLE 19. EDUCATION

PART 7. STATE BOARD FOR EDUCATOR CERTIFICATION

CHAPTER 230. PROFESSIONAL EDUCATOR PREPARATION AND CERTIFICATION

SUBCHAPTER G. CERTIFICATION REQUIREMENT FOR CLASSROOM TEACHERS

19 TAC §§230.191, 230.193 - 230.196, 230.198, 230.199

The State Board for Educator Certification (SBEC) adopts amendments to §§230.191, 230.193 - 230.196, 230.198, and 230.199, relating to certification requirement for classroom teachers. The amendments are adopted without changes to the proposed text as published in the March 31, 2006, issue of the *Texas Register* (31 TexReg 2782) and will not be republished.

The sections establish provisions relating to preparation required in all programs (§230.191); teacher certificate--secondary (§230.193); teacher certificate--all-level (§230.194); special education certificates (§230.195); vocational agriculture certificates (§230.196); vocational marketing education certificates (§230.198); and endorsements (§230.199). The adopted amendments provide for the SBEC to cease issuing certain ExCET-based certificates on September 1, 2007. The superseded certificates will remain valid and SBEC will not require educators who hold one of these certificates to obtain the corresponding new certificate. The amendments will allow for an overlap of the superseded certificates and corresponding certification exams.

With the exception of technical edits, the adopted amendments reflect rule actions adopted by the SBEC in 2005. Specifically, the adopted amendments accomplish the following.

In §230.191, language is added to subsections (c)(2)(A)(v), (c)(2)(B)(iii), and (f) to allow provisions for the ExCET-based secondary Grades 6-12 certificates and all level prekindergarten-Grade 12 certificates to expire on September 1, 2007. Additional non-substantive, technical edits are also made to this section.

In §230.193, language is modified in subsection (d) to allow provisions relating to art, dance, journalism, speech communications, and theatre arts to expire on September 1, 2007, and provisions relating to business and other languages to expire on September 1, 2008.

In §230.194, language is added in subsection (c) to allow provisions relating to art, speech communications-theatre arts, and theatre arts to expire on September 1, 2007.

In §230.195, language is added in subsection (c) to allow provisions of the section to expire on September 1, 2007. Additional non-substantive, technical edits are also made to this section.

In §230.196, language is added in subsection (g) to allow provisions of the section to expire on September 1, 2007. Additional non-substantive, technical edits are also made to this section.

In §230.198, language is added in subsection (f) to allow provisions of the section to expire on September 1, 2007. Additional non-substantive, technical edits are also made to this section.

In §230.199, language is added in subsection (c)(4)(D) to allow provisions relating to endorsements for the visually handicapped delivery system area to expire on September 1, 2007. Additional non-substantive, technical edits are also made to this section.

The amendments are adopted in conjunction with adopted amendments to rules in Subchapter P, Requirements for Standard Certificates and Specialized Assignments or Programs, of this chapter and adopted amendments in 19 TAC Chapter 233, Categories of Classroom Teaching Certificates.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Texas Education Code sections: §21.031(a), which vests the SBEC with the authority to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.041(b)(1), which requires the SBEC to adopt rules that provide for the regulation of educators and the general administration of Chapter 21, Subchapter B, in a manner consistent with that subchapter; §21.041(b)(2), which requires the SBEC to specify the classes of certificates to be issued; and §21.041(b)(3), which requires the SBEC to specify the period for which each class of educator certificate is valid.

The adopted amendments implement Texas Education Code, §21.031(a) and §21.041(b)(1), (2), and (3).

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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Raymond Glynn

Deputy Associate Commissioner, Educator Certification and Standards
State Board for Educator Certification

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Proposal publication date: March 31, 2006

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



SUBCHAPTER P. REQUIREMENTS FOR STANDARD CERTIFICATES AND SPECIALIZED ASSIGNMENTS OR PROGRAMS

19 TAC §§230.482 - 230.484

The State Board for Educator Certification (SBEC) adopts amendments to §§230.482 - 230.484, relating to requirements for standard certificates and specialized assignments or programs. The amendments are adopted without changes to the proposed text as published in the March 31, 2006, issue of the *Texas Register* (31 TexReg 2787) and will not be republished.

The sections establish provisions relating to specific requirements for standard certificates and endorsements (§230.482); specific requirements for standard career and technology cer-

tificates based on experience and preparation (§230.483); and eligibility requirements for specialized assignments or programs (§230.484). The adopted amendments provide for the SBEC to cease issuing certain ExCET-based certificates on September 1, 2007. The superseded certificates will remain valid and SBEC will not require educators who hold one of these certificates to obtain the corresponding new certificate. The amendments will allow for an overlap of the superseded certificates and corresponding certification exams.

With the exception of technical edits, the adopted amendments reflect rule actions adopted by the SBEC in 2005. Specifically, the adopted amendments accomplish the following.

In §230.482, language is added in subsection (e) to establish that the provisions of subsection (a)(2), (3), and (4), and subsections (b) and (c) of this section, relating to standard classroom teacher certificate-all level; standard special education certificates; standard agricultural science and standard horticultural science certificates; standard marketing education certificates; and endorsements shall expire on September 1, 2007.

In §230.483, language is added in subsection (b)(4) to allow provisions relating to the standard marketing education certificate to expire on September 1, 2007. Additional non-substantive, technical edits are also made to this section.

In §230.484, language is added in subsection (d)(2)(F) to allow provisions relating to agricultural science and technology to expire on September 1, 2007. Additional non-substantive, technical edits are also made to this section.

These amendments are adopted in conjunction with adopted amendments to rules in Subchapter G, Certification Requirements for Classroom Teachers, of this chapter and adopted amendments in 19 TAC Chapter 233, Categories of Classroom Teaching Certificates.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the following Texas Education Code sections: §21.031(a), which vests the SBEC with the authority to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.041(b)(1), which requires the SBEC to adopt rules that provide for the regulation of educators and the general administration of Chapter 21, Subchapter B, in a manner consistent with that subchapter; §21.041(b)(2), which requires the SBEC to specify the classes of certificates to be issued; and §21.041(b)(3), which requires the SBEC to specify the period for which each class of educator certificate is valid.

The adopted amendments implement Texas Education Code, §21.031(a) and §21.041(b)(1), (2), and (3).

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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Raymond Glynn

Deputy Associate Commissioner, Educator Certification and Standards
State Board for Educator Certification

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

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CHAPTER 232. GENERAL CERTIFICATION PROVISIONS

SUBCHAPTER B. CERTIFICATE RENEWAL AND CONTINUING PROFESSIONAL EDUCATION REQUIREMENTS

19 TAC §232.850, §232.851

The State Board for Educator Certification (SBEC) adopts amendments to §232.850 and §232.851, relating to certificate renewal and continuing professional education (CPE) requirements. The amendments are adopted without changes to the proposed text as published in the March 31, 2006, issue of the *Texas Register* (31 TexReg 2789) and will not be republished.

The sections establish the number and content of required CPE hours (§232.850) and specify the CPE requirements by classes of certificates (§232.851). The adopted amendments establish a prorated schedule of CPE hours that may be used by educators seeking to renew multiple classes of standard certificates issued with different effective dates during the same five-year renewal cycle. The adopted amendments also add CPE requirements for holders of school librarian certificates and holders of standard certificates for supervisors, special education supervisors, vocational supervisors, visiting teachers, and special education visiting teachers. Holders of certain newly added certificates are exempt from the CPE hours during the first five-year renewal period. The purpose of the rule action is to clarify renewal requirements and provide relief to educators who will renew multiple classes of certificates issued during the same five-year renewal cycle.

With the exception of technical edits, the adopted amendments reflect the separate rule actions adopted by the SBEC in 2004 and 2005. Specifically, the adopted amendments accomplish the following:

(1) change language in §232.850(a) to indicate that the appropriate number of CPE hours must be completed during each five-year renewal period for each class of certification held;

(2) add language in §232.850(e) to allow an educator who is issued an additional class of certificate after the beginning of the five-year renewal cycle to satisfy the renewal requirement by completing a minimum of one-fifth of the required CPE hours for each full year that the additional class of certificate is valid;

(3) add language in §232.851(d) to require school librarians to complete the same 200 CPE hour requirement as learning resources specialists;

(4) add language to §232.851(l) to clarify that the holder of more than one class of standard certification would be required to complete no more than 200 CPE hours for renewal of all certificates held unless otherwise specified;

(5) add language to §232.851(m) to require 200 CPE hours every five years for renewal of standard certificates for supervisors, special education supervisors, vocational supervisors, visiting teachers, and special education visiting teachers; and

(6) add language to §232.851(n) to exempt supervisors, special education supervisors, vocational supervisors, visiting teachers, and special education visiting teachers from the CPE hours during the first five-year renewal period of the standard certificate.

The adopted amendments also re-title the chapter and subchapter, as follows. The title of 19 TAC Chapter 232 changes to "General Certification Provisions" from "General Requirements Applicable to All Certificates Issued." Subchapter "R" is changed to "B" to allow for greater use of this chapter.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the following Texas Education Code sections: §21.031(a), which vests the SBEC with the authority to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.041(b)(1), which requires the SBEC to adopt rules that provide for the regulation of educators and the general administration of Chapter 21, Subchapter B, in a manner consistent with that subchapter; §21.041(b)(2), which requires the SBEC to specify the classes of certificates to be issued; and §21.041(b)(9), which requires the SBEC to provide for continuing education requirements.

The adopted amendments implement Texas Education Code, §21.031(a) and §21.041(b)(1), (2), and (9).

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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TRD-200602737

Raymond Glynn

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



19 TAC §§232.860, 232.870 - 232.872

The State Board for Educator Certification (SBEC) adopts amendments to §232.860 and §232.870 and new §232.871 and §232.872, relating to certificate renewal and continuing professional education requirements. The amendments and new section are adopted without changes to the proposed text as published in the March 31, 2006, issue of the *Texas Register* (31 TexReg 2791) and will not be republished.

The existing sections establish provisions relating to types of acceptable continuing professional education (CPE) activities (§232.860) and approval of CPE providers or sponsors (§232.870). The adopted new sections address approval of private companies, private entities, and individuals (§232.871) and provider registration requirements (§232.872). The adopted amendments clarify the certificate renewal requirements, the registration process and the approval of potential CPE providers.

The adopted amendment to §232.860 changes language in subsection (a) to reference new §232.872 and removes reference to §232.870. Language is added to subsection (b) to clarify where to find in rule the list of regional accrediting agencies.

The adopted amendment to §232.870 changes the title to "Pre-Approved Professional Education Provider or Sponsor." The adopted amendment modifies subsection (a) to add the reference for the new §232.872 and subsection (a)(3) to add the reference to the definition of accredited entities. The adopted

amendment also adds a new subsection (b) that outlines that a pre-approved provider is responsible for ensuring the quality and documentation requirements of CPE activities conducted on their behalf by other entities or individuals. Existing subsection (b) is deleted and the provisions relating to approval of providers or sponsors is moved to new §232.871 to provide clarification between pre-approved providers and private companies, private entities, and individuals. Subsections (c) - (f) are deleted for purposes of clarity and moved to new §232.872.

Adopted new §232.871 is added to distinguish the approval process for private companies, private entities, and individuals. The new section clarifies that if CPE activities are provided by private companies, private entities, or individuals, it is the educator's responsibility to ensure that the provider is approved by SBEC.

Adopted new §232.872 is added to specify provider registration requirements, including the minimum information that should be provided to educators as a record of CPE completion and documentation of all CPE activities offered, participants, dates and CPE credit hours.

The adopted amendments also re-title the chapter and subchapter, as follows. The title of 19 TAC Chapter 232 changes to "General Certification Provisions" from "General Requirements Applicable to All Certificates Issued." Subchapter "R" is changed to "B" to allow for greater use of this chapter.

Additional non-substantive, technical edits are also made to the sections.

With the exception of technical edits, the adopted amendments and new sections reflect rule actions taken by the SBEC in 2005.

No comments were received regarding adoption of the amendments and new sections.

The amendments and new sections are adopted under the following Texas Education Code sections: §21.031(a), which vests the SBEC with the authority to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.041(b)(1), which requires the SBEC to adopt rules that provide for the regulation of educators and the general administration of Chapter 21, Subchapter B, in a manner consistent with that subchapter; §21.041(b)(2), which requires the SBEC to specify the classes of certificates to be issued; and §21.041(b)(3), which requires the SBEC to specify the period for which each class of educator certificate is valid.

The adopted amendments and new sections implement Texas Education Code, §21.031(a) and §21.041(b)(1), (2), and (3).

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 May 15, 2006.

TRD-200602742

Raymond Glynn

Deputy Associate Commissioner, Educator Certification and Standards
State Board for Educator Certification

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



CHAPTER 233. CATEGORIES OF CLASSROOM TEACHING CERTIFICATES

19 TAC §§233.3, 233.8, 233.10, 233.12, 233.14, 233.15

The State Board for Educator Certification (SBEC) adopts amendments to §§233.3, 233.8, 233.10, and 233.12 and new §233.14 and §233.15, relating to categories of classroom teaching certificates. The amendments and new sections are adopted without changes to the proposed text as published in the March 31, 2006, issue of the *Texas Register* (31 TexReg 2795) and will not be republished.

The existing sections address certificates for English language arts and reading; social studies (§233.3); special education (§233.8); fine arts (§233.10); and career and technology education, not requiring experience and preparation in skills areas (§233.12). The new sections address certificates for career and technology education, requiring experience and preparation in a skill area (§233.14) and languages other than English (§233.15). The adopted amendments provide for the SBEC to issue new categories of classroom teaching certificates beginning on September 1, 2005. The superseded certificates will remain valid and the SBEC will not require educators who hold one of these certificates to obtain the corresponding new certificate. The amendments will allow for an overlap of the superseded certificates and corresponding certification exams.

With the exception of technical edits, the adopted amendments reflect rule actions adopted by the SBEC in 2005. Specifically, the adopted amendments add the following certificates beginning September 1, 2005.

In §233.3, language is added in subsection (g) to create a certificate for journalism which allows the holder to teach all journalism courses in Grades 8-12. Language is also added in subsection (h) to create a certificate for speech which allows the holder to teach all speech courses in Grades 8-12.

In §233.8, language is added in subsection (c) to create a certificate for a teacher of the deaf and hard of hearing which allows the holder to teach at any level in a special education instructional program serving eligible students, unless otherwise specified. Language is also added in subsection (d) to create a supplemental certificate for a teacher of students with visual impairments which allows the holder to teach at any level in a special education instructional program serving eligible students, unless otherwise specified.

In §233.10, the unnumbered paragraph is now identified as subsection (a) since new subsections are added to the section. Additional non-substantive, technical edits are made in new subsection (a). Language is added in subsection (b) to create a certificate for art which allows the holder to teach art in a prekindergarten program, in kindergarten, and in Grades 1-12. Language is added in subsection (c) to create a certificate for theatre which allows the holder to teach theatre in a prekindergarten program, in kindergarten, and in Grades 1-12. Language is added in subsection (d) to create a certificate for dance which allows the holder to teach all dance courses in Grades 8-12.

In §233.12, language is added in subsection (f) to create a certificate for agricultural science and technology that allows the holder to teach all agricultural science and technology courses in Grades 6-12, including Introductory Horticulture and Introductory Agricultural Mechanics.

New §233.14 establishes requirements for individuals seeking a TExES-based career and technology education certificate that requires experience and preparation in a skill area. The new section also creates a certificate for marketing education, requiring two years of specific wage-earning experience, which allows the holder to teach all marketing education courses in Grades 8-12.

New §233.15 creates a certificate for American Sign Language which allows the holder to teach American Sign Language in a prekindergarten program, in kindergarten, and in Grades 1-12.

These amendments are adopted in conjunction with adopted amendments to rules in 19 TAC Chapter 230, Professional Educator Preparation and Certification, Subchapter G, Certification Requirements for Classroom Teachers, and adopted amendments in Chapter 230, Subchapter P, Requirements for Standard Certificates and Specialized Assignments or Programs.

No comments were received regarding adoption of the amendments and new sections.

The amendments and new sections are adopted under the following Texas Education Code sections: §21.031(a), which vests the SBEC with the authority to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.041(b)(1), which requires the SBEC to adopt rules that provide for the regulation of educators and the general administration of Chapter 21, Subchapter B, in a manner consistent with that subchapter; §21.041(b)(2), which requires the SBEC to specify the classes of certificates to be issued; §21.041(b)(3), which requires the SBEC to specify the period for which each class of educator certificate is valid; and §21.041(b)(6), which requires the SBEC to provide for special or restricted certification of educators, including certification of instructors of American Sign Language.

The adopted amendments and new sections implement Texas Education Code, §21.031(a) and §21.041(b)(1), (2), (3), and (6).

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 May 15, 2006.

TRD-200602739

Raymond Glynn

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State Board for Educator Certification

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



19 TAC §233.4

The State Board for Educator Certification (SBEC) adopts an amendment to §233.4, relating to categories of classroom teaching certificates. The amendment is adopted without changes to the proposed text as published in the March 31, 2006, issue of the *Texas Register* (31 TexReg 2797) and will not be republished.

The section addresses certificates for mathematics and science. The adopted amendment provides for the SBEC to issue new categories of classroom teaching certificates beginning on September 1, 2005, for mathematics/physical science/engineering and chemistry.

With the exception of technical edits, the adopted amendment reflects rule action adopted by the SBEC in 2005. Specifically, the adopted amendment adds the new certificates beginning September 1, 2005.

In subsection (i), language is added to create a certificate for mathematics/physical science/engineering which allows the holder to teach mathematics in Grade 8 and all mathematics courses in Grades 9-12. The holder is also eligible to teach science in Grade 8, Integrated Physics and Chemistry and all of the technology education courses in Grades 8-12, and Scientific Research and Design in Grades 9-12. The new subsection specifies required training for beginning principles of technology teachers.

In subsection (j), language is added to create a certificate for chemistry which allows the holder to teach science in Grade 8 and all chemistry courses in Grades 9-12.

Non-substantive, technical edits are made in subsections (g) and (h).

No comments were received regarding adoption of the amendment.

The amendment is adopted under the following Texas Education Code sections: §21.031(a), which vests the SBEC with the authority to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.041(b)(1), which requires the SBEC to adopt rules that provide for the regulation of educators and the general administration of Chapter 21, Subchapter B, in a manner consistent with that subchapter; §21.041(b)(2), which requires the SBEC to specify the classes of certificates to be issued; and §21.041(b)(3), which requires the SBEC to specify the period for which each class of educator certificate is valid.

The adopted amendment implements Texas Education Code, §21.031(a) and §21.041(b)(1), (2), and (3).

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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TRD-200602741

Raymond Glynn

Deputy Associate Commissioner, Educator Certification and Standards
State Board for Educator Certification

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



**CHAPTER 239. STUDENT SERVICES
CERTIFICATES
SUBCHAPTER E. MASTER TEACHER
CERTIFICATE**

19 TAC §239.104

The State Board for Educator Certification (SBEC) adopts new §239.104, concerning the master teacher certificates. The new section is adopted without changes to the proposed text as published in the March 31, 2006, issue of the *Texas Register* (31 TexReg 2798) and will not be republished.

The new section establishes certification requirements for master science teachers to ensure that there are teachers with special training to mentor other teachers and work with students in order to improve student science performance.

Adopted new §239.104 creates master science teacher certificates to teach science in early childhood programs through Grade 4, Grades 4-8, and Grades 8-12. The adopted new section includes eligibility criteria and addresses training requirements.

Additional non-substantive, technical edits are also made to this section.

With the exception of the technical edits, the adopted new section reflects action taken by the SBEC in 2005.

No comments were received regarding adoption of the new section.

The new section is adopted under the following Texas Education Code sections: §21.031(a), which vests the SBEC with the authority to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.041(b)(1), which requires the SBEC to adopt rules that provide for the regulation of educators and the general administration of Chapter 21, Subchapter B, in a manner consistent with that subchapter; §21.041(b)(2), which requires the SBEC to specify the classes of certificates to be issued; and §21.0484, which requires the SBEC to establish master science teacher certificates to teach at elementary school, middle school and high school grade levels.

The adopted new section implements Texas Education Code, §21.031(a), §21.041(b)(1) and (2), and §21.0484.

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 May 15, 2006.

TRD-200602743

Raymond Glynn

Deputy Associate Commissioner, Educator Certification and Standards
State Board for Educator Certification

Effective date: June 4, 2006

Proposal publication date: March 31, 2006

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



TITLE 22. EXAMINING BOARDS

**PART 5. STATE BOARD OF DENTAL
EXAMINERS**

**CHAPTER 114. EXTENSION OF DUTIES
OF AUXILIARY PERSONNEL--DENTAL
ASSISTANTS**

22 TAC §§114.20 - 114.23

The Texas State Board of Dental Examiners (Board) adopts new §§114.20 - 114.23, regarding radiologic credentialing for dental assistants, to be added to 22 TAC Chapter 114. Specifically, these sections cover radiologic credentialing of dental assistants, requirements for dental assistant registration courses

and examinations, dental assistant course objectives and dental assistant examination integrity. Section 114.20 is adopted with changes to the proposed text as published in the February 17, 2006, issue of the *Texas Register* (31 TexReg 958). Sections 114.21 - 114.23 are adopted without changes, and these sections will not be republished. These sections enact certain requirements imposed by Senate Bill 610, §9, 79th Legislature, which requires that dental assistants who perform radiologic procedures be certified by the Board. The language adopted is consistent with the revised statutory language, similar Board rules regarding registration, and the recommendations of the Dental Assistant Advisory Committee, which consisted of dentists, dental assistants, dental hygienists, and educators.

New §114.20 addresses the general requirements and process for the certification of dental assistants who perform radiologic procedures.

New §114.21 addresses the minimum requirements for entities wishing to offer a course or examination to fulfill the requirements for dental assistant registration.

New §114.22 addresses the minimum requirements for dental assistant course objectives.

New §114.23 addresses the minimum requirements for maintaining dental assistant examination integrity.

The SBDE received comments regarding the new rules from the Texas Dental Association (TDA) and the Texas Dental Hygiene Association (TDHA). A summary of the comments and the Board's responses are set out below.

The TDA commented that §114.20(d)(3) may need additional language to clarify the meaning of the rule. Staff clarified §114.20(d)(3) by adding additional language to ensure consistency with Senate Bill 610 and to clarify dental assistant registration renewal requirements. The Board adopted §114.20 with this additional language.

The TDHA commented that §114.20(h) should be changed to replace the word "may" with the word "shall" in the second sentence to ensure that dental assistants are required to display their annual registrations in each office where they practice in the same manner as dentists and dental hygienists. Staff changed §114.20(h) by replacing the word "may" with the word "shall" in the second sentence as suggested. The Board adopted §114.20 with this change.

The TDHA also commented that under §114.20(d)(2)(C)(ii) there should be similar limits on the number of self-study CE course hours accepted for dental assistants as there is for dentists and dental hygienists, that the words "and the Dental Assistant Advisory Committee" should be struck from §114.21(c)(1) and (2), (d)(1) and §114.22, and that the SBDE should amend the course objectives mentioned in the proposed rule under §114.22(1) and (2) to include a practicum in order to establish a minimum standard of both clinical and didactic competency among dental hygienists. Staff appreciates these comments from the TDHA; however, no changes were made to the rules in response to these comments. Staff believes that the CE course hour requirements, the inclusion of the phrase "and the Dental Assistant Advisory Committee" and the course objectives as laid out in the rules, are consistent with the intent of Senate Bill 610.

The new sections are adopted 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, and Senate Bill 610,

§9, 79th Legislature, which requires the Board to establish rules for the certification of dental assistants who position or expose radiographs.

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

§114.20. Radiologic Credential.

(a) Beginning September 1, 2006, a dental assistant may not position or expose dental x-rays unless the dental assistant holds a certificate of registration issued by the State Board of Dental Examiners under either this section or §114.2 of this chapter, except that:

(1) any dental assistant certified under former §115.10 (now recodified as §114.10 of this chapter) prior to September 1, 2004, and who has not been registered under §114.2 of this chapter prior to September 1, 2006, shall not be required to register under this §114.20 until September 1, 2007, and shall continue to be governed by §114.10 until September 1, 2007; and,

(2) any dental assistant certified under §114.2 of this chapter prior to September 1, 2006 shall not be required to reapply under §114.20, but shall be considered duly registered pursuant to the requirements of this section.

(b) To be eligible for a certificate of registration as a dental assistant under this section, an applicant must present on or accompanying an application form approved by the State Board of Dental Examiners proof satisfactory to the Board that the applicant has:

(1) Paid all application, examination and licensing fees required by law and Board rules and regulations;

(2) Successfully completed a current course in basic life support; and,

(3) Either:

(A) taken and passed a course and examination as required by §114.21 of this chapter; or,

(B) if the applicant is currently certified as a dental assistant by the Dental Assisting National Board, completed a course and passed an examination covering jurisprudence, as defined in §114.21 of this chapter.

(c) The State Board of Dental Examiners has established a staggered dental assistant registration system comprised of initial registration periods followed by annual registrations (i.e., renewals). The initial, staggered registration periods will range from 6 months to 17 months. Each dental assistant for whom an initial certificate of registration is issued will be assigned a computer-generated check digit. The length of the initial registration period will be according to the assigned check digit as follows:

(1) a dental assistant assigned to check digit 1 will be registered for 6 months;

(2) a dental assistant assigned to check digit 2 will be registered for 7 months;

(3) a dental assistant assigned to check digit 3 will be registered for 8 months;

(4) a dental assistant assigned to check digit 4 will be registered for 9 months;

(5) a dental assistant assigned to check digit 5 will be registered for 11 months;

(6) a dental assistant assigned to check digit 6 will be registered for 12 months;

(7) a dental assistant assigned to check digit 7 will be registered for 13 months;

(8) a dental assistant assigned to check digit 8 will be registered for 14 months;

(9) a dental assistant assigned to check digit 9 will be registered for 15 months; and

(10) a dental assistant assigned to check digit 10 will be registered for 17 months.

(11) Initial dental assistant registration fees will be prorated according to the number of months in the initial registration period.

(d) Subsequent to the initial registration period, a registered dental assistant's annual renewal will occur on the first day of the month that follows the last month of the dental assistant initial registration period.

(1) Approximately 60 days prior to the expiration date of the initial dental assistant registration period, renewal notices will be mailed to all registered dental assistants who have that expiration date.

(2) A dental assistant registered under this section who wishes to renew his or her registration must:

(A) Pay a renewal fee set by Board rule;

(B) Submit proof that the applicant has successfully completed a current course in basic life support; and,

(C) Provide proof of completion of at least six (6) hours of continuing education in the previous registration year.

(i) The continuing education curriculum must cover dental assistant duties.

(ii) The continuing education requirement may be met through self-study, interactive computer courses, or lecture courses as offered or endorsed by continuing education providers listed in §104.2 of this title.

(3) A registration that has been expired for more than one year will be canceled and may not be renewed. An applicant whose registration has been canceled must submit a new application under the terms of subsection (b) of this section. An applicant who submits an application for a certificate of registration is not required to retake the course and examination required by subsection (b)(3)(A) of this section if the course and examination was successfully completed within two years prior to the date of application.

(e) Applications for registration or for renewal of registration must be submitted to the office of the State Board of Dental Examiners.

(f) An application for registration is filed with the State Board of Dental Examiners when it is actually received, date stamped, and logged in by the State Board of Dental Examiners along with all required documentation and fees. An incomplete application and fee will be returned to the applicant within three working days with an explanation of additional documentation or information needed.

(g) Dental assistants registered under this section must maintain a current mailing address on record with the SBDE.

(h) A dental assistant shall display a current registration certification in each office where the dental assistant provides services for which registration is required by this chapter. When a dental assistant provides such services at more than one location, a duplicate registration certificate issued by the Board shall be displayed. Photocopies are not acceptable. The duplicate may be obtained from the State Board of Dental Examiners for a fee set 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 May 9, 2006.

TRD-200602575

Jim Zukowski, Ed.D.

Executive Director

State Board of Dental Examiners

Effective date: May 29, 2006

Proposal publication date: February 17, 2006

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



PART 8. TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD

CHAPTER 157. RULES RELATING TO PRACTICE AND PROCEDURE SUBCHAPTER A. GENERAL PROVISIONS

22 TAC §157.7

The Texas Appraiser Licensing and Certification Board adopts an amendment to §157.7, concerning Denial of a License without changes to the proposed text as published in the March 24, 2006, issue of the *Texas Register* (31 TexReg 2368) and will not be republished.

The adopted amendment clarifies that individuals wishing to contest the denial of a license or certification may appeal to the agency's Administrative Law Judge instead of seeking an appeal through the State Office of Administrative Hearings (SOAH).

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Appraiser Licensing and Certification Act, Subchapter D, Board Powers and Duties (Occupations Code, Chapter 1103), which provides the board with authority to adopt rules under §1103.151 Rules Relating to Certification and Licenses.

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 May 10, 2006.

TRD-200602602

Wayne Thorburn

Commissioner

Texas Appraiser Licensing and Certification Board

Effective date: May 30, 2006

Proposal publication date: March 24, 2006

For further information, please call: (512) 465-3959



TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 31. NUTRITION SERVICES

The Executive Commissioner of the Health and Human Services Commission (commission) on behalf of the Department of State Health Services (department), adopts amendments to §§31.11, 31.12, 31.22, 31.23, 31.25 - 31.31, 31.33, 31.37 and the repeal of §31.24, concerning the Farmers' Market Nutrition Program (FMNP) and the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC). The amendments to §§31.31 and 31.37 are adopted with changes to the proposed text as published in the December 9, 2005, issue of the *Texas Register* (30 TexReg 8273). Sections 31.11, 31.12, 31.22, 31.23, 31.25 - 31.30, and 31.33 and the repeal of §31.24 are adopted without changes and, therefore, the sections will not be republished. Proposed amendments to §§31.21, 31.32, and 31.34 - 31.36 were published in the same issue, but are being withdrawn and will not be adopted.

BACKGROUND AND PURPOSE

Under federal and state enabling legislation, the WIC Program is funded entirely by a combination of federal grant funds and by rebates from manufacturers of infant formula and infant cereal that can only be expended to defray WIC food costs. The FMNP is funded by a federal grant and a 30% state match for the administrative portion of the federal grant. The United States Department of Agriculture (USDA) awards federal grant funds to the department to administer the programs, provided the department does so in accordance with federal law and regulations and in accordance with the department's annual submission of a state plan approved by USDA. The department issues rules governing the two programs in accordance with the state plan.

The amendments also comply with Agriculture Code, Chapter 15, which requires the department to adopt rules necessary for carrying out the requirements of Chapter 15 concerning the FMNP. Numerous sections of the proposed rules were revised to clarify, delete provisions that only restate federal regulations, establish consistency in existing language, and reflect changes in department structure and related terminology.

Government Code, §2001.039, requires that each state agency review and consider for reoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 31.11 - 31.12 relating to FMNP and §§31.22, 31.23, 31.25 - 31.31, 31.33, and 31.37 relating to WIC have been reviewed, and the department has determined that reasons for adopting the sections continue to exist, in that rules on these subjects are needed. However, the rules require revision as described in this preamble. Section 31.24 has been reviewed, and the department has determined that reasons for adopting the section no longer continue to exist.

SECTION-BY-SECTION SUMMARY

Amendments to §§31.11 - 31.12 delete and replace references to the legacy agency name with references to the Department of State Health Services; add definitions; and clarify the proper procedures for delivery of benefit coupons to recipients and redemption of the coupons by sellers of the produce for the FMNP. Amendments to §§31.22 - 31.23, 31.25 - 31.31, and 31.33 also update references to the agency name as well as the Office of Inspector General, Health and Human Services Commission; eliminate duplicated federal regulations governing the WIC Program; clarify client certification and enrollment requirements; delete restrictions regarding delivery of food benefits to a proxy designated by the recipient of WIC services; eliminate provisions concerning internal administrative procedures; and eliminate pro-

cedures that affect only those persons who choose to contract with the department and that do not affect the general public. Amendments to §31.37 clarify the food benefits issued to WIC recipients.

Section 31.24, regarding provision of immunizations to WIC applicants and recipients, is being repealed because the section duplicates the provisions of contracts between the department and WIC local service delivery providers.

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 USDA staff, program staff, individuals, associations, and/or corporations, including the Gulf Coast Retailers Association and Wal-Mart Stores, Inc. The commenters were not against the rules in their entirety; however, the commenters suggested recommendations for change as discussed in the summary of comments.

Comment: Concerning §31.31(c), the commenter suggested that the word "Services" should be changed to "Service."

Response: The commission agrees, and this spelling error has been corrected in response to the comment.

Comment: Concerning the deletion of the components of "income" at §31.22(a)(3)(C) and inclusion of only a reference to the federal regulations defining "income" at 7 CFR §246.7, the commenter stated on behalf of the Food and Nutrition Service, USDA, that the department must also ensure that the definition of "income," including exclusions from income, is issued by policy to local service delivery providers.

Response: The commission agrees and notes that current WIC Policy CS: 09.0, Definition of Income, issued to service delivery providers, includes the provisions of the federal regulations. No changes to the rule were made in response to this comment.

Comment: Concerning §31.33, the commenter opposed deletion of the detailed criteria applicable to the department's consideration of a retail vendor's application for reauthorization if deletion of the criteria from the rule means stakeholders will have no opportunity to comment on changes to the criteria.

Response: Deletion of the reauthorization criteria from the rule will not mean that stakeholders cannot comment on changes, because the criteria will continue to be enforced by policy. The commission agrees that stakeholders should have the opportunity to comment on any proposed changes in policies concerning WIC vendor reauthorization criteria, to the extent possible. No changes to the rule were made as a result of this comment.

The department staff on behalf of the commission provided comments, and the commission has reviewed and agrees to the following changes.

Change: Concerning §§31.21, 31.32, and 31.34 - 31.36, even if amended as proposed, the sections are likely to be inconsistent with policies and clarifications yet to be issued by USDA concerning the Interim Rule on WIC vendor cost containment published in the *Federal Register* on November 29, 2005. The proposed amendments concerning management of retail vendors authorized to participate in the WIC Program have been withdrawn until final USDA directives are received.

Change: Concerning §31.37(l)(1)(B), the restriction concerning evaporated milk as an allowable WIC food item was eliminated to

accommodate children who need an evaporated milk substitute due to an allergy to cow's and/or soy milk, and who can tolerate goat's milk.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Cathy Campbell, 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. FARMERS' MARKET NUTRITION PROGRAM

25 TAC §31.11, §31.12

STATUTORY AUTHORITY

The amendments are authorized under Agriculture Code, §15.005, which authorizes the executive commissioner of the Health and Human Services Commission to adopt rules necessary for carrying out the requirements of Chapter 15 concerning the Farmers' Market Nutrition Program. Government Code, §531.0055(e), and Health and Safety Code, §1001.075, also 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 Chapter 1001, Health and Safety Code.

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 May 15, 2006.

TRD-200602682

Cathy Campbell
General Counsel

Department of State Health Services

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Proposal publication date: December 9, 2005

For further information, please call: (512) 458-7111 x6972



SUBCHAPTER C. SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS, AND CHILDREN (WIC)

25 TAC §§31.22, 31.23, 31.25 - 31.31, 31.33, 31.37

STATUTORY AUTHORITY

The amendments are authorized under Agriculture Code, §15.005, which authorizes the executive commissioner of the Health and Human Services Commission to adopt rules necessary for carrying out the requirements of Chapter 15 concerning the Farmers' Market Nutrition Program. Government Code, §531.0055(e), and Health and Safety Code, §1001.075, also 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 Chapter 1001, Health and Safety Code.

§31.31. *Selection of a Local Agency as a WIC Provider.*

(a) Selection of a local agency to provide WIC Program services will be based on the local agency priority system as follows:

(1) A public or private nonprofit health agency which can provide ongoing routine pediatric and obstetric care or administrative services shall receive first priority consideration.

(2) A public or private nonprofit health or human service agency which will enter into a written agreement with another agency for either ongoing pediatric and obstetric care or administrative services shall receive second priority consideration.

(3) A public or private nonprofit health agency which will enter into a written agreement with private physicians licensed by the state to provide ongoing pediatric and obstetric care to a specific category of participants (women, infants, or children) shall receive third priority consideration.

(4) A public or private nonprofit human service agency which will enter into a written agreement with private physicians licensed by the state to provide ongoing routine pediatric and obstetric care shall receive fourth priority consideration.

(5) A public or private nonprofit human service agency which will provide ongoing routine pediatric and obstetric care through referral to a health provider shall receive fifth priority consideration.

(6) No WIC Program funds shall be expended to reimburse private physicians for the health services performed.

(b) The state agency shall establish an affirmative action plan each year to rank order each county's relative need for WIC Program services based on the total number of potentially eligible persons in each county.

(c) All WIC Program initiation and expansion shall be executed utilizing a request for proposal (RFP) in accordance with state agency policy, state law, USDA Food and Nutrition Service Instruction 802-1, and the state agency's approved affirmative action plan under one of the following conditions:

(1) the state agency determines it is in the best interests of the state to initiate an open competitive statewide RFP;

(2) an existing WIC Program local agency is either disqualified as a provider of WIC Program services or does not wish to continue as a local agency;

(3) a state agency health services region wishes to transfer direct WIC Program services to a local agency; or

(4) a prospective agency satisfactorily documents to the state agency that a specific geographical area is underserved and the current WIC local agency providing services in that area is unable to provide services to that geographical area and declines to develop a collaborative effort to deliver services to meet the documented unmet need.

(d) The state agency shall evaluate proposals to serve as a WIC Program local agency submitted in response to an RFP.

(e) The state agency shall advise respondent agencies of the status of their applications to provide WIC Program services in accordance with the schedule of events in the public notice and the RFP.

(f) In the event of an emergency or unexpected interruption of WIC Program services, the state agency WIC Director may waive any or all parts of the application process if necessary to ensure uninterrupted delivery of WIC services in a geographic area or areas.

§31.37. *Selection of Allowable WIC Program Supplemental Foods.*

(a) Criteria for approving products for inclusion in the WIC Program food package are based on federal regulations, packaging, cost, cultural acceptability, and nutritive value.

(b) A product shall meet the federal regulations governing the WIC Program food package in order to be considered for approval through the WIC Program.

(c) The state agency may restrict the number of brands and types of any products in order to contain the cost of the food package and minimize the confusion for WIC participants. The state agency is not obligated to authorize every available food that meets the federal requirements.

(d) The state agency shall review the WIC Program list of allowable foods annually to determine the need for adding or deleting food products.

(1) If the state agency determines that the list of allowable cereals or juices should be changed, the state agency shall notify both juice and cereal manufacturers of that intent through a request for information (RFI).

(2) Juice and cereal manufacturers may contact the WIC Program at any time during the year to request that their names and addresses be added to the mailing list for an RFI.

(3) Manufacturers of juice and cereal shall certify through their RFI response that their products meet the requirements for nutritional content as specified in federal regulations governing the program.

(e) The state agency may restrict the size of packages and types of containers of any products for any food type including limiting package size and container type within brands of products in order to contain the cost of the food package and minimize the confusion for WIC participant.

(f) A product for any food type shall be available for retail purchase in Texas on or before the effective date of the approved food list or it will not be considered by the state agency for authorization.

(g) The product form and marketing approach for any product for any food type shall be consistent with the promotion of good nutrition and education.

(h) The state agency reserves the right to solicit rebates for any eligible foods from manufacturers through a competitive bid process.

(i) The state agency reserves the right to determine the numbers and types of foods within a food type to be authorized.

(j) In determining the number of brands and types of any products to be approved, the state agency may consider consumer, cultural, and/or ethnic acceptability, and suitability for children.

(k) Products having similar names and package designs shall not be approved if the similarity in name and/or packaging would cause substantial confusion for vendors and/or participants.

(l) Additional criteria for each food type are as follows:

(1) Milk. Milk shall be:

(A) unflavored, fresh, whole, reduced fat, low-fat or fat-free (nonfat or skim) milk including cultured buttermilk fortified with vitamins A and D to meet the federal standards;

(B) whole, low-fat, or fat-free (nonfat) evaporated milk fortified with vitamins A and D to meet the federal standards; and/or

(C) nonfat, dry, powdered milk fortified with vitamins A and D to meet the federal standards.

(2) Cheese. Cheese shall be unflavored and pasteurized.

(3) Cereals.

(A) Cereal shall contain a minimum of 28 milligrams of iron per 100 grams of dry cereal, and not more than 21.2 grams of sucrose and other sugars per 100 grams of dry cereal (6 grams per ounce).

(B) The state agency reserves the right to determine the number and brands of cereals, which shall include at least one hot cereal and at least one corn, wheat, oat, rice, and multi-grain cereal.

(4) Juice.

(A) Juices shall be single-strength fluid fruit or vegetable juices containing a minimum of 30 milligrams of vitamin C per 100 milliliters and/or concentrated fruit or vegetable juices containing a minimum of 30 milligrams of vitamin C per 100 milliliters of reconstituted juice.

(B) Juices shall be 100% juice and shall contain no added sugar, or other natural or artificial sweeteners.

(C) Juices packaged in a variety of containers, even though made by the same manufacturer, shall be evaluated separately.

(5) Eggs. Eggs shall be fresh grade A or grade AA large, medium, or small.

(6) Beans/Peas/Lentils. Beans, peas, and lentils shall be dry with the exception of canned beans/peas/lentils which may be authorized only for the homeless food package.

(7) Peanut Butter. Peanut butter shall contain no other ingredients such as jelly or candy pieces.

(8) Tuna. Tuna shall be packed in water.

(9) Carrots. Carrots shall be bagged, fresh, large carrots without tops and/or canned, sliced carrots.

(10) Infant formula. Infant formulas shall be registered with the United States Food and Drug Administration as complying with the legal definition of infant formula.

(11) Infant cereal. Infant cereal shall contain a minimum of 45 milligrams of iron per 100 grams of dry cereal in dehydrated flake form.

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 May 15, 2006.

TRD-200602683

Cathy Campbell

General Counsel

Department of State Health Services

Effective date: June 4, 2006

Proposal publication date: December 9, 2005

For further information, please call: (512) 458-7111 x6972



25 TAC §31.24

STATUTORY AUTHORITY

The repeal is authorized under Agriculture Code, §15.005, which authorizes the executive commissioner of the Health and Human Services Commission to adopt rules necessary for carrying out the requirements of Chapter 15 concerning the Farmers' Market Nutrition Program. Government Code, §531.0055(e), and

Health and Safety Code, §1001.075, also 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 Chapter 1001, Health and Safety Code.

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 May 15, 2006.

TRD-200602685

Cathy Campbell
General Counsel

Department of State Health Services

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Proposal publication date: December 9, 2005

For further information, please call: (512) 458-7111 x6972



CHAPTER 229. FOOD AND DRUG SUBCHAPTER F. PRODUCTION, PROCESSING, AND DISTRIBUTION OF BOTTLED AND VENDED DRINKING WATER

25 TAC §§229.81 - 229.91

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), adopts amendments to §§229.81 - 229.91, concerning the production, processing, and distribution of bottled and vended drinking water without changes to the proposed text as published in the February 3, 2006, issue of the *Texas Register* (31 TexReg 647), and the sections will not be republished.

BACKGROUND AND PURPOSE

The amendments are necessary to update vended water sampling requirements and increase the examination fee to cover the cost of administering the Bottled and Vended Water Certified Operator examination to applicants who do not make a passing score, and apply to retake the exam.

Government Code, §2001.039, requires that each state agency review and consider for re-adoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 229.81 - 229.91 have been reviewed and the department has determined the reasons for adopting the sections continue to exist because rules are required by the enabling statute, the department continues to regulate this activity, and persons engaged in the activity are required to comply with the rules.

SECTION-BY-SECTION SUMMARY

An amendment to §229.81 reflects the department name change to "Department of State Health Services". Amendments to §§229.82, 229.84, 229.87, 229.88, and 229.91 include grammatical corrections to improve sentence structure. An amendment to §229.83 updates language for consistency within the sections concerning water-hauling records. An amendment to §229.85 updates examples for labeling and advertising. An amendment to §229.86 changes the sampling frequency from monthly to once every 90-calendar days; revises the name of

the unit, phone number, and e-mail address; and deletes the requirement to report coliform negative samples to the department. An amendment to §229.89 increases the reexamination fee from \$25 to \$50. An amendment to §229.90 deletes language relating to a three-year license prior to January 1, 2005, because the department no longer issues three-year licenses, and updates the department name change.

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, Cathy Campbell, certifies that the rules, as adopted, have been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

STATUTORY AUTHORITY

The adopted amendments are authorized under the Health and Safety Code, §§431.241 and 441.003, which provide the department with the authority to adopt necessary regulations pursuant to the enforcement of Chapters 431 and 441; and §12.0111, which requires the department to charge fees for issuing or renewing licenses; 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 May 15, 2006.

TRD-200602681

Cathy Campbell
General Counsel

Department of State Health Services

Effective date: June 4, 2006

Proposal publication date: February 3, 2006

For further information, please call: (512) 458-7111, x6972



SUBCHAPTER G. MANUFACTURE, STORAGE, AND DISTRIBUTION OF ICE SOLD FOR HUMAN CONSUMPTION, INCLUDING ICE PRODUCED AT POINT OF USE

25 TAC §§229.111 - 229.115

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), adopts amendments to §§229.111 - 229.115, concerning the manufacture, storage and distribution of ice sold for human consumption, including ice produced at point of use without changes to the proposed text as published in the February 3, 2006, issue of the *Texas Register* (31 TexReg 650), and the sections will not be republished.

BACKGROUND AND PURPOSE

The amendments revise ice manufacturing, storage and distribution requirements; change the name of the department; and update regulatory references that have been changed.

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 229.111 - 229.115 have been reviewed and the department has determined the reasons for adopting the sections continue to exist because rules are required by the enabling statute, the department continues to regulate this activity, and persons engaged in the activity are required to comply with the rules.

SECTION-BY-SECTION SUMMARY

Amendments to §§229.111, 229.114, and 229.115 reflect grammatical revisions to improve sentence structure. An amendment to §229.112 includes grammatical revisions and provides the department's name change to the Department of State Health Services. An amendment to §229.113 updates the reference to the Texas Natural Resource Conservation Commission with the name change to the Texas Commission on Environmental Quality.

COMMENTS

The department, on behalf of the Health and Human Services Commission, did not receive any comments regarding the proposed rules during the comment period.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Cathy Campbell, certifies that the rules, as adopted, have been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

STATUTORY AUTHORITY

The adopted amendments are authorized by the Health and Safety Code, §431.241, which provides the department with the authority to adopt necessary regulations pursuant to the enforcement of Chapter 431; 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 May 15, 2006.

TRD-200602686

Cathy Campbell

General Counsel

Department of State Health Services

Effective date: June 4, 2006

Proposal publication date: February 3, 2006

For further information, please call: (512) 458-7111 x6972



CHAPTER 448. STANDARD OF CARE

The Executive Commissioner of the Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department), adopts amendments to §§448.603, 448.701 and 448.706 concerning the regulation of training, client bill of rights, and restraint and seclusion in chemical dependency treatment facilities. The amendments to §§448.603 and 448.706 are adopted with changes to the proposed text as published in the March 31, 2006, issue of the *Texas Register* (31 TexReg 2823). Section 448.701 is adopted without changes and, therefore, will not be republished.

BACKGROUND AND PURPOSE

The rules amendments are necessary to implement legislation by the 79th Legislature, Regular Session, 2005. Specifically, amendments to the Health and Safety Code added Chapter 322 (Senate Bill (SB) 325), and, in particular, Subchapter B, relating to the restraint and seclusion of residents in certain health care facilities. These rules amendments implement statutory requirements relating to chemical dependency treatment facilities, and are required by SB 325 to be adopted by no later than June 1, 2006.

SECTION-BY-SECTION SUMMARY

Amendments to §448.603(d)(5) add requirements to the restraint and/or seclusion training program. Amendments to §448.701(a) clarify the responsibility of treatment facilities to implement and enforce client rights, and add to the rights for which the facility is responsible the right of the client and the client's legally authorized representative to be notified of the rules and policies related to restraints and seclusion. Amendments to §448.706 add to existing regulation of restraint and seclusion a definition of small residential facilities not subject to the new requirement for an observer when a prone or supine hold is used and define practices to promote the safe, limited, and appropriate use of restraint and seclusion in chemical dependency treatment facilities. Amendments were added specifically governing the use of a prone or supine hold; adding restrictions and safeguards relating to interventions and restraints to reduce their frequency and minimize the risk of harm; and requiring certain actions after an episode of restraint or seclusion to help reduce the frequency and increase the safety of any future use of restraint or seclusion. In addition, to avoid conflict with Health and Safety Code, §322.052(c), language requiring the authorization of personal restraint in certain facilities was removed from the rule. While removing the specific requirement that personal restraint be authorized, the amendment should not be read to prevent or discourage those facilities from retaining authorization for the use of personal restraint, if it could be necessary in certain circumstances to protect the safety of clients or others when less restrictive alternatives have been exhausted, and thus to fulfill the facility's duty to maintain a safe environment at all times and under all circumstances.

COMMENTS

The department, on behalf of the commission, has reviewed and prepared responses to oral and written comments received during the comment period regarding the proposed rules amendments, which the commission has reviewed and accepts. The commenters were Phoenix Houses of Texas, Inc., Advocacy, Inc., and Crisis Prevention Institute. The commenters were not against the rules amendments in their entirety; however, the commenters made recommendations for changes as discussed in the summary of comments.

Comment: Concerning §448.603(d)(5), Phoenix Houses of Texas, Inc., commented that few chemical dependency treat-

ment facilities authorize the use of mechanical restraint or seclusion and suggested that, if a training requirement wholly relates to a type of restraint or seclusion which is not authorized by the facility, that training requirement need not be included in the facility's training program.

Response: The commission agrees with the commenter's suggestion. Section 448.603(d)(5) requires the listed training only where restraint or seclusion is used or authorized by the facility, but, in §448.603(d)(5)(D)(v)-(x), (xii) and (xiii), where the requirements are specific to restraint, seclusion, or a particular type of restraint (personal or mechanical), clarifying language has been added to require the training only if that type of restraint or seclusion is used or authorized by the facility. Specifically, in §448.603(d)(5)(D)(v), (vi), (x), (xii), and (xiii), the phrase "if the facility uses or authorizes the use of restraint" has been added after references to "restraint" or "being restrained"; in §448.603(d)(5)(D)(viii), the phrase "if the facility uses or authorizes the use of personal restraint" has been added after a reference to "personal restraint"; in §448.603(d)(5)(D)(vii), (x), (xii) and (xiii), the phrase "if the facility uses or authorizes the use of seclusion" has been added after references to "seclusion"; and, in §448.603(d)(5)(D)(ix), the phrase "if the facility has on premises, authorizes the use of, or uses any mechanical restraint devices" has been added after a reference to "restraint devices."

Comment: Concerning §448.603(d)(5), Crisis Prevention Institute (CPI), Inc., of Brookfield, WI. commented that CPI encourages competency-based testing as a component of training and advocates for re-testing every six to twelve months.

Response: The commission does not agree that testing and re-testing should be mandated. Section 448.603(d)(5) is consistent with Interventions in Mental Health Programs, §415.257, Subchapter F, Staff Training, that requires staff demonstrate competency before assuming job duties and the commission does not believe that it must reach the level of testing and re-testing if the staff are trained and can demonstrate competency as required. No changes were made based on this comment.

Comment: Concerning §448.603(d)(5)(D)(vi), Crisis Prevention Institute (CPI), of Brookfield, WI. suggests including the "risks of ALL restraints" since positional, compression, and restraint asphyxia may occur in positions other than prone or supine. CPI also suggests adding education on all risks of restraints: physical/physiological, psychological/emotional, and social risks.

Response: The commission disagrees with the commenter. The rule does not prohibit staff training that exceeds the minimum requirements. When a facility identifies risks associated with their client population the facility must include those risks into the staff-training program. No changes were made based on this comment.

Comment: Concerning §448.701, Advocacy, Inc., commented that the patient bill of rights notifies the client of the right to be told of the program's rules and regulations but the rule does not state that they will be told. The commenter understands that there are separate enforcement provisions of this right in the rules, in §448.701(a), which provides that the facility shall respect, protect, implement, and enforce each client right required to be contained in the facility's client Bill of Rights, and in §448.802(b), which provides that the facility shall obtain written authorization from the consentor before providing any treatment or medication, including that the consentor received and understood the

their patient rights. The commenter continued that the regulations are formatted in such a way that it makes it difficult for public use.

Response: The commission appreciates the comments regarding the patient bill of rights but disagrees with the commenter. Section 448.802(b) not only ensures the client is told of their rights before any treatment is given it requires documentation that client and consentor have received the information and also understood the information. No changes were made based on this comment.

Comment: Concerning §448.706(f)(2), Advocacy, Inc., commented that it believes it is unclear from the language that authorization for mechanical restraint or seclusion still must be by a Qualified Credentialed Counselor (QCC), even though the QCC authorization may be based on the face-to-face evaluation of direct care staff initiating or implementing the procedure. The commenter suggested wording such as "authorization by the QCC for mechanical restraint or seclusion" to begin §448.706(f)(2), rather than simply "authorization for mechanical restraint or seclusion." The commenter also thought that including QCC in the term "direct care staff" authorized to perform the face-to-face evaluation upon which authorization is based fails to give the QCC the preferred role the QCC should have in performing the face-to-face evaluation, when available to do so.

Response: The commission agrees in part and disagrees in part with the commenter, and is making a change in response to the comment. With respect to the commenter's first point, the term "authorization" is used repeatedly in §448.706(f)(1)-(3) without repeating that it refers to authorization by the QCC since §448.706(f) (1)-(3) are already subject to the mandate for QCC authorization stated in §448.706(f). The commission therefore did not make the commenter's suggested change in relation to the first point.

The commission agrees, however, with the commenter's second point and has changed the proposed language for §448.706(f)(2) from "Authorization for mechanical restraint or seclusion shall be based on a face-to-face evaluation by the direct care staff initiating or implementing the procedure" to "Authorization for mechanical restraint or seclusion shall be based on a face-to-face evaluation by the authorizing QCC, if on site or reasonably available, or by the direct care staff initiating or implementing the procedure." The added language, which refers to the "authorizing QCC" also serves to address the commenter's first point by referring to the "authorizing" QCC.

Comment: Concerning §448.706(g), Crisis Prevention Institute (CPI), of Brookfield, WI suggests the release criteria be "as soon as possible when the acting-out individual is no longer an imminent threat of harm to self or others."

Response: The commission disagrees with the commenter. The phrase "as soon as possible" is not definable and release based on criteria defined by the facility serves to protect patients who have been restrained.

Comment: Concerning §448.706(j), Crisis Prevention Institute (CPI), of Brookfield, WI cautions the specific description of a restraint hold, as it may be difficult for an organization to determine if it is approved or not. General restrictions such as a prohibition of a prone restraint are clear and easily understood.

Response: The commission understands the commenter's concerns however, Texas Senate Bill 325, 79th Legislature, Regular Session (2005), codified at Health and Safety Code, Chapter

322, requires the department define acceptable restraint holds. No changes were made based on the comment.

Comment: Concerning §448.706(m), Crisis Prevention Institute (CPI), of Brookfield, WI recommends that this requirement apply to ALL residential facilities.

Response: The commission appreciates the comment, however, Texas Senate Bill 325, 79th Legislature, Regular Session (2005), codified at Health and Safety Code, Chapter 322, carves out an exemption for "small residential facilities" thereby limiting the department's authority to expand this particular requirement to small residential facilities. No changes were made based on this comment.

Comment: Concerning §448.706(r)(2), Crisis Prevention Institute (CPI), of Brookfield, WI recommends continuous monitoring for up to 24 hours following the release of a restraint.

Response: The commission appreciates the comment, yet disagrees with the commenter. Section 448.706(r)(2) is consistent with Interventions in Mental Health Programs in §415.273(a)(2), Subchapter F, which requires staff observe the individual for at least 15 minutes following release from restraint or seclusion. No changes were made related to this comment.

Comment: Concerning §448.706(s), Crisis Prevention Institute (CPI), of Brookfield, WI suggests that all persons involved in a restraint situation be debriefed, including all staff and bystanders.

Response: The commission agrees with the commenter regarding the recommendation that all staff be debriefed and as a result deleted the word "available". The rule was changed from "§448.706(s) As soon as possible after an episode of restraint or seclusion, "available" staff members involved in the episode, supervisory staff, the client, the legally authorized representative, if any, and, with the consent of the client, family members must meet to discuss the episode." to "§448.706(s) As soon as possible after an episode of restraint or seclusion, staff members involved in the episode, supervisory staff, the client, the legally authorized representative, if any, and, with the consent of the client, family members must meet to discuss the episode."

The commission disagrees that bystanders are not already included in the rule regarding who will be debriefed. Section 448.706(s) provides that the one of the purposes of the debriefing is, when clinically indicated or upon the request of individuals who witnessed the restraint to debrief persons who witnessed the restraint.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Cathy Campbell, 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 F. PERSONNEL PRACTICES AND DEVELOPMENT

25 TAC §448.603

STATUTORY AUTHORITY

The amendment is authorized by Health and Safety Code, §464.009, which authorizes the Executive Commissioner of the Health and Human Services Commission (Executive Commissioner) to adopt rules governing chemical dependency treatment facilities, including their policies and procedures, minimum staffing requirements, protection of client rights, and

requirements to ensure client safety, protection, health and comfort; Health and Safety Code, §§322.051, 322.052, and 322.053, which require rulemaking to implement Health and Safety Code, Chapter 322, added by the 79th Legislature, Regular Session, 2005 (SB 325); and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner 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.

§448.603. Training.

(a) Unless otherwise specified, video, manual, or computer-based training is acceptable if the supervisor discusses and documents the material with the staff person in a face-to-face session to highlight key issues and answer questions.

(b) The facility shall maintain documentation of all required training.

(1) Documentation of external training shall include:

- (A) date;
- (B) number of hours;
- (C) topic;
- (D) instructor's name; and
- (E) signature of the instructor (or equivalent verification).

(2) The facility shall maintain documentation of all internal training. For each topic, the file shall include:

- (A) an outline of the contents;
- (B) the name, credentials, relevant qualifications of the person providing the training, and
- (C) the method of delivery.

(3) For each group training session, the facility shall maintain on file a dated attendee sign-in sheet.

(c) Prior to performing their duties and responsibilities, the facility shall provide orientation to staff, volunteers, and students. This orientation shall include information addressing:

- (1) TCADA rules;
- (2) facility policies and procedures;
- (3) client rights;
- (4) client grievance procedures;
- (5) confidentiality of client-identifying information (42 C.F.R. pt. 2; HIPAA);
- (6) standards of conduct; and
- (7) emergency and evacuation procedures.

(d) The following initial training(s) must be received within the first 90 days of employment and must be completed before the employee can perform a function to which the specific training is applicable. Subsequent training must be completed as specified.

(1) Abuse, Neglect, and Exploitation. All residential program personnel with any direct client contact shall receive eight hours of face-to-face training as described in Figure: 40 TAC §148.603(d)(1) which is attached hereto and incorporated herein as if set forth at length. All outpatient program personnel with any direct client contact shall receive two hours of abuse, neglect and exploitation training.

Figure: 25 TAC §448.603(d)(1) (No change.)

(2) HIV, Hepatitis B and C, Tuberculosis and Sexually Transmitted Diseases. All personnel with any direct client contact shall receive this training. The training shall be based on the Texas Commission on Alcohol and Drug Abuse Workplace and Education Guidelines for HIV and Other Communicable Diseases.

(A) The initial training shall be three hours in length.

(B) Staff shall receive annual updated information about these diseases.

(3) Cardio Pulmonary Resuscitation (CPR).

(A) All direct care staff in a residential program shall maintain current CPR and First Aid certification.

(B) Licensed health professionals and personnel in licensed medical facilities are exempt if emergency resuscitation equipment and trained response teams are available 24 hours a day.

(4) Nonviolent Crisis Intervention. All direct care staff in residential programs and outpatient programs shall receive this training. The face-to-face training shall teach staff how to use verbal and other non-physical methods for prevention, early intervention, and crisis management. The instructor shall have documented successful completion of a course for crisis intervention instructors or have equivalent documented training and experience.

(A) The initial training shall be four hours in length.

(B) Staff shall complete two hours of annual training thereafter.

(5) Restraint and/or Seclusion. All direct care staff in residential programs and programs accepting court commitments that use or authorize the use of restraint or seclusion shall have face-to-face training and demonstrate competency in the safe methods of the specific procedures before assuming job duties involving direct care responsibilities. This includes programs that accept adolescent residential and emergency detentions.

(A) The initial training must be four hours in length.

(B) Staff shall complete four hours of annual training thereafter.

(C) The training shall include hands-on practice under the supervision of a qualified instructor.

(D) The training program shall include:

(i) identifying the underlying causes of threatening behaviors exhibited by the clients receiving services;

(ii) identifying aggressive or threatening behavior;

(iii) explaining how the behavior of personnel can affect the behaviors of clients;

(iv) using de-escalation, mediation, self-protection, and other techniques;

(v) recognizing and responding to signs of physical distress in clients who are being restrained, if the facility uses or authorizes the use of restraint;

(vi) identifying the risks associated with positional, compression, or restraint asphyxiation and with prone and supine holds, if the facility uses or authorizes the use of restraint;

(vii) the initiation of seclusion, if the facility uses or authorizes the use of seclusion;

(viii) the application of personal restraint, if the facility uses or authorizes the use of personal restraint;

(ix) the application of approved restraint devices, if the facility has on premises, authorizes the use of, or uses any mechanical restraint devices;

(x) monitoring cardiac and respiratory status and interpreting their relevance to the physical safety of the client in restraint, if the facility uses or authorizes the use of restraint, or seclusion, if the facility uses or authorizes the use of seclusion;

(xi) addressing physical and psychological status and comfort, including signs of distress;

(xii) assisting clients in meeting behavioral criteria for the discontinuation of restraint, if the facility uses or authorizes the use of restraint, or seclusion, if the facility uses or authorizes the use of seclusion;

(xiii) recognizing readiness for the discontinuation of restraint, if the facility uses or authorizes the use of restraint, or seclusion, if the facility uses or authorizes the use of seclusion; and

(xiv) recognizing when to contact emergency medical services to evaluate and/or treat a client for an emergency medical condition.

(6) Intake, Screening and Admission Authorization. All staff who conduct intake, screening and authorize admission for applicants to receive program services shall complete training in the program's screening and admission procedures. The training shall include two hours of DSM diagnostic criteria for substance-related disorders, and other mental health diagnoses.

(A) The initial training shall be eight hours in length.

(B) Staff shall complete eight hours of annual training thereafter.

(C) The training shall be completed before staff screen or authorize applicants for admission.

(7) Self-administration of Medication. All personnel responsible for supervising clients in self-administration of medication, who are not credentialed to administer medication, shall complete this training before performing this task.

(A) Staff shall complete two hours initial one time training.

(B) The training shall be provided by a physician, pharmacist, physician assistant, or registered nurse before administering medication and shall include:

(i) prescription labels;

(ii) medical abbreviations;

(iii) routes of administration;

(iv) use of drug reference materials;

(v) storage, maintenance, handling, and destruction of medication;

(vi) documentation requirements; and

(vii) procedures for medication errors, adverse reactions, and side effects.

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 May 12, 2006.

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Cathy Campbell

General Counsel

Department of State Health Services

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For further information, please call: (512) 458-7111 x6972



SUBCHAPTER G. CLIENT RIGHTS

25 TAC §448.701, §448.706

STATUTORY AUTHORITY

The amendments are authorized by Health and Safety Code, §464.009, which authorizes the Executive Commissioner of the Health and Human Services Commission (Executive Commissioner) to adopt rules governing chemical dependency treatment facilities, including their policies and procedures, minimum staffing requirements, protection of client rights, and requirements to ensure client safety, protection, health and comfort; Health and Safety Code, §§322.051, 322.052, and 322.053, which require rulemaking to implement Health and Safety Code, Chapter 322, added by the 79th Legislature, Regular Session, 2005 (SB 325); and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner 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.

§448.706. *Restraint and Seclusion.*

(a) A small residential facility is defined as a treatment facility with less than eight licensed beds.

(b) The governing body shall adopt a policy to either authorize or prohibit the use of personal restraint, mechanical restraint, and seclusion. Any facility authorizing use of restraint or seclusion shall comply with and have a written procedure that ensures compliance with Health and Safety Code, Chapter 322, including its definition of seclusion; the rules adopted under that chapter; and this section. Outpatient programs shall prohibit the use of restraint or seclusion, except as it relates to court commitment clients.

(c) In programs authorizing use of restraint or seclusion, direct care staff shall be trained as described in the applicable provisions of §448.603 of this title (relating to Training). Staff sufficient in number and who have the training required by §448.603 of this title to safely implement any permitted restraint or seclusion shall be on duty at all times.

(d) Staff shall not use restraint or seclusion unless it is necessary to intervene to prevent imminent probable death or substantial bodily harm to the client or imminent physical harm to another and less restrictive methods have been tried and failed.

(e) Staff shall not use more force than is necessary to prevent imminent harm and shall ensure the safety, well-being, and dignity of clients who are restrained or secluded, including attention for personal needs. Staff shall not deny bathroom privileges, water, sleep, or regularly scheduled meals and snacks.

(f) Staff shall obtain authorization from the supervising Qualified Credentialed Counselor (QCC) before starting restraint or seclusion or as soon as possible after initiation or implementation.

(1) The facility shall not use standing authorizations for restraint or seclusion.

(2) Authorization for mechanical restraint or seclusion shall be based on a face-to-face evaluation by the authorizing QCC, if on site or reasonably available, or by the direct care staff initiating or implementing the procedure.

(3) Each authorization shall include a specific time limit, not to exceed 12 hours.

(4) The QCC must take into consideration information that could contraindicate or otherwise affect the use of restraint or seclusion, including information obtained during the initial assessment of each client at the time of admission or intake. This information includes, but is not limited to:

(A) techniques, methods, or tools that would help the client effectively cope with his or her environment;

(B) pre-existing medical conditions or any physical disabilities and limitations, including substance use disorders, that would place the client at greater risk during restraint or seclusion;

(C) any history of sexual or physical abuse that would place the client at greater psychological risk during restraint or seclusion; and

(D) any history that would contraindicate seclusion, the type of restraint (personal or mechanical), or a particular type of restraint device.

(g) When the client has been safely restrained or secluded, staff shall tell the client what behavior and timeframes are required for release and shall release the client as soon as the criteria are met.

(h) Clinical staff shall review and document alternative strategies for dealing with behaviors necessitating the use of restraint or seclusion for an individual client two or more times in any 30-day period.

(i) The chief executive officer of the facility or designee shall review all incident reports involving restraint or seclusion and take action to address unwarranted use of these measures.

(j) A client held in restraint shall be under continuous direct observation. The facility shall ensure adequate breathing and circulation during restraint and shall only use devices designed for therapeutic restraint. An acceptable hold is one that engages one or more limbs close to the body to limit or prevent movement and is performed in a manner consistent with the requirements set forth in this section.

(k) Seclusion rooms shall be constructed to prevent clients from harming themselves and shall allow staff to observe clients easily in all parts of the room. When a client is in seclusion, staff shall conduct a visual check at least every 15 minutes.

(l) Staff shall record the following information in the client record within 24 hours:

(1) the circumstances leading to the use of restraint or seclusion;

(2) the specific behavior necessitating the restraint or seclusion and the behavior required for release;

(3) less restrictive interventions that were tried before restraint or seclusion began;

(4) the signed authorization of the supervising QCC;

(5) the names of the staff members who implemented the restraint or seclusion;

- (6) the date and time the procedure began and ended;
 - (7) the behavior and timeframes required for release;
 - (8) the client's response;
 - (9) observations made, including the 15 minute checks;
- and
- (10) attention given for personal needs.

(m) A prone or supine hold shall not be used except as a last resort when other less restrictive interventions have proven to be ineffective. The hold shall be used only to transition a client into another position, and shall not exceed one minute in duration. Except in small residential facilities, when the prone or supine hold is used, an observer, who is trained to identify the risks associated with positional, compression, or restraint asphyxiation and with prone and supine holds, and who is not involved in the restraint, shall ensure the client's breathing is not impaired.

(n) No intervention, voluntary or involuntary, shall be used:

- (1) as a means of discipline, retaliation, punishment, or coercion;
- (2) for the purpose of convenience of staff members or other individuals; or
- (3) as a substitute for effective treatment.

(o) A restraint shall not be used that:

- (1) secures a client to a stationary object while the client is in a standing position;
- (2) causes pain to restrict a client's movement (pressure points or joint locks);
- (3) restricts circulation;
- (4) obstructs a client's airway, including a procedure that places anything in, on, or over a client's mouth or nose or puts pressure on the torso;
- (5) impairs a client's breathing;
- (6) interferes with a client's ability to communicate; or
- (7) is inconsistent with training received in compliance with §448.603 of this title (relating to Training).

(p) Use of chemical restraint is prohibited.

(q) Use of restraint or seclusion solely as a behavior therapy program or as part of a behavior therapy program is prohibited.

(r) Immediately following the release of a client from restraint or seclusion, a direct care staff must:

- (1) take appropriate action to facilitate the client's reentry into the facility environment by providing the client with transition activities and an opportunity to return to ongoing activities;
- (2) observe the client for at least 15 minutes; and
- (3) document observations of the client's behavior during this transition period in the client's record.

(s) As soon as possible after an episode of restraint or seclusion, available staff members involved in the episode, supervisory staff, the client, the legally authorized representative, if any, and, with the consent of the client, family members must meet to discuss the episode. The purpose of the debriefing is to:

- (1) identify what led to the episode and what could have been handled differently;

(2) identify strategies to prevent future restraint or seclusion, taking into consideration suggestions from the client;

(3) ascertain whether the client's physical well-being, psychological comfort, and right to privacy were addressed;

(4) counsel the client in relation to any trauma that may have resulted from the episode;

(5) when indicated, identify appropriate modifications to the client's treatment plan; and

(6) when clinically indicated or upon request of individuals who witnessed the restraint debrief persons who witnessed the restraint.

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 May 12, 2006.

TRD-200602665

Cathy Campbell

General Counsel

Department of State Health Services

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For further information, please call: (512) 458-7111 x6972



PART 11. TEXAS CANCER COUNCIL

CHAPTER 703. PROJECT CONTRACTS AND GRANTS

25 TAC §§703.3, 703.5, 703.6, 703.10

The Texas Cancer Council adopts amendments to 25 TAC §§703.3, 703.5, 703.6, and 703.10 concerning the scope, project proposal submission, review process, and funding restrictions without changes as published in the March 10, 2006, issue of the *Texas Register* (31 TexReg 1596).

No public comments were received.

The amendments are adopted under the Texas Health & Safety Code Annotated §102.0002 and §102.009, which provides the Texas Cancer Council with the authority to develop, implement, and revise the Texas Cancer Plan.

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 May 9, 2006.

TRD-200602558

Sandra Balderrama

Executive Director

Texas Cancer Council

Effective date: May 29, 2006

Proposal publication date: March 10, 2006

For further information, please call: (512) 438-3029



CHAPTER 704. TEXANS CONQUER CANCER PROGRAM

25 TAC §704.5, §704.7

The Texas Cancer Council adopts amendments to 25 TAC §704.5 and §704.7 concerning guidelines for expenditures and guidelines for awarding support services funds without changes as published in the March 10, 2006, issue of the *Texas Register* (31 TexReg 1596).

No public comments were received.

The amendments are adopted under the Texas Health & Safety Code Annotated §102.0002 and §102.009, which provides the Texas Cancer Council with the authority to develop, implement, and revise the Texas Cancer Plan.

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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Sandra Balderrama

Executive Director

Texas Cancer Council

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For further information, please call: (512) 438-3029



TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 21. TRADE PRACTICES

SUBCHAPTER EE. HIGH DEDUCTIBLE HEALTH PLANS

28 TAC §21.3901 - 21.3905

The Commissioner of Insurance adopts new §§21.3901 - 21.3905 concerning high deductible health plans (HDHP). Sections 21.3901 - 21.3904 are adopted with changes to the proposed text as published in the November 11, 2005, issue of the *Texas Register* (30 TexReg 7363). Section 21.3905 is adopted without changes.

The 79th Texas Legislature's enactment of House Bill 1602 added new Chapter 1653 to the Texas Insurance Code, authorizing a carrier to apply deductible or copayment requirements to benefits, including state-mandated health benefits, to qualify a health benefit plan as an HDHP. The department adopts these new sections to implement HB 1602.

To qualify as an HDHP, a health plan must meet standards specified in §223, Internal Revenue Code of 1986. Section 1201 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Pub. L. No. 108-173, added §223 to the Internal Revenue Code to permit eligible individuals to establish health savings accounts (HSAs) for taxable years beginning after December 31, 2003. Among the requirements for an individual to qualify as an eligible individual under §223(c)(1) (and thus to be eligible to make tax-favored contributions to an HSA) is the requirement that the individual be covered under an HDHP, a health plan that satisfies certain requirements with respect

to minimum deductibles and maximum out-of-pocket expenses. Generally, an HDHP may not provide benefits for any year until the deductible for that year is satisfied. Section 223(c)(2)(C), however, provides a safe harbor in that a plan does not lose its status as an HDHP by reason of failing to have a deductible for preventive care. An HDHP may therefore provide preventive care benefits without a deductible or with a deductible below the minimum annual deductible.

Texas law requires health plans to provide certain health care benefits or services without regard to a deductible, and health carriers should take care to follow federal guidance regarding whether such benefits or services fall within the §223(c)(2)(C) safe harbor for preventive care. For example, Texas Insurance Code, §1367.053, requires coverage of certain childhood immunizations through age six without regard to a deductible, copayment, or coinsurance requirement. Similarly, Texas Insurance Code, §1367.103, requires coverage of certain screening tests for hearing loss in children from birth through the date the child is 30 days old without regard to deductible or dollar limits. The federal government has identified both these types of benefits or services, in IRS Bulletin 2004-15, as within the preventive safe harbor, so this rule would not authorize a carrier to apply a deductible or copayment requirement to these benefits or services. In that Bulletin, the IRS also indicated that it may publish additional guidance on the definition of preventive care, so carriers should monitor IRS publications to remain in compliance with all applicable law.

The IRS has provided transitional relief for individuals in states where HDHPs are not available because state laws require health plans to provide certain benefits without regard to a deductible or below the minimum annual deductible of §223(c)(2)(A)(i). The transitional relief covers months before January 1, 2006. To achieve full implementation of HB 1602, this proposal contains a provision making the rule applicable to plans issued, amended to be effective, renewed, or issued for delivery on or after that date. This provision will ensure that HDHPs in Texas, to the extent necessary, will be able to maintain federal tax qualification after the end of transitional relief. Carriers seeking to amend existing plans not scheduled for renewal before January 1, 2006 must comply with all state and federal laws before effecting amendment, including obtaining the consent of the policyholder where required.

The adoption includes changes to the new sections as proposed. In response to a comment, the department changed §21.3901 to state that Texas Insurance Code, Chapter 1653, prohibits construing state statutes to prevent a health carrier from applying deductible or copayment requirements to benefits in order to qualify a health benefit plan as a high deductible health plan. The department also added §21.3902(8) defining preventive services in response to a comment.

The department responded to a comment by deleting the language proposed in §21.3904(b). Subsection (b) no longer contains a reference to a "minimum" amount. Further, in response to another comment regarding this section, the department has clarified that preventive benefits or services that are paid on a first-dollar basis will not disallow a plan from qualifying as an HDHP. Additionally, the amended text of §21.3904(b) states that subsection (a) will not apply to a preventive care benefit or service, such as childhood immunizations. Other minor mechanical changes in relation to grammar and punctuation are included in §§21.3901 - 21.3904.

New §21.3901 expresses the purpose of the rule. New §21.3902 includes definitions of terms used in the subchapter. New §21.3903 provides that high deductible health plans are subject to state mandated health benefits, except as provided by new §21.3904, which defines the scope of the exemption from state requirements as necessary to qualify a health benefit plan as a high deductible health plan. New §21.3905 makes the subchapter applicable to coverage under a health benefit plan issued, amended to be effective, renewed, or issued for delivery on or after January 1, 2006.

Comment: A commenter argues that §1653.001(b) of HB 1602 overrides (a), but that the rule does not reflect this preemption. The commenter is concerned that the proposed rule will interfere with the ability to have a high deductible plan that is not subject to the mandated benefits enacted by the legislature.

Agency Response: The department changed the text of proposed rule §21.3901 to conform to the statutory language and standard.

Comment: A commenter notes that the proposed rule does not distinguish between preventive services and other services.

Agency Response: The department adds §21.3902(8) which defines preventive services.

Comment: A commenter recommends revising the beginning of §21.3903 to make the permitted exceptions for health carriers in §21.3904 clearer and to avoid unintended misinterpretation.

Agency Response: The department declines to make the requested changes as the proposed language mirrors that of Insurance Code, §1653.002.

Comment: Several commenters object to the language in the proposed rule §21.3904(b) that refers to a minimum amount necessary to qualify a health benefit plan as a high deductible health plan. They state that this language goes beyond the scope of the legislation.

Agency Response: The language of §21.3904(b) has been deleted, and the proposed rule no longer contains a reference to a "minimum" amount.

Comment: A commenter notes that the preamble of the proposed regulation goes beyond the scope of HB 1602, misinterpreting IRS notice 2004-23 by implying that the rule would not authorize a carrier to apply a deductible or copayment requirement to preventive benefits or services.

Agency Response: The department disagrees with the commenter's interpretation. While the commenter is correct that federal law only allows the application of a deductible to preventive care benefits or services, it does not take into account state statutes forbidding application of a deductible to certain preventive care; to wit, Insurance Code, §1367.053 and §1367.054, require a health benefit plan to cover certain childhood immunizations without making them subject to a deductible, copayment, or coinsurance requirement. Since this benefit falls under the federal law safe harbor, HB 1602 does not prevent its application to a high deductible health plan. In §21.3904(b), the rule now clarifies that preventive benefits or services that are paid on a first-dollar basis will not disallow a plan from qualifying as a high deductible health plan.

Comment: A commenter believes that the proposed rule is consistent with HB 1602. The commenter suggests that, if there are any changes made, the rule should also indicate that any service

falling within the safe harbor will be subject to any deductible restrictions specified by Texas law.

Agency Response: The department has amended the text of §21.3904(b) to state that subsection (a) of §21.3904 does not apply to preventive care.

For: Office of Public Insurance Counsel.

Against: Texas Association of Health Plans, American Health Insurance Plans.

Against: Kyle Janek, State Senator for District 17, Texas Association of Underwriters, Texas Association of Life and Health Insurers, Unicare, and Blue Cross and Blue Shield of Texas.

The amendments are adopted under the Insurance Code, §1653.003 and §36.001. Section 1653.003 provides rulemaking authority to the Commissioner of Insurance for the purpose of administering the statute and directs the Commissioner to adopt rules necessary to implement the chapter. Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

§21.3901. Purpose.

The purpose of this subchapter is to implement Texas Insurance Code Chapter 1653 which prohibits construing state statutes to prevent a health carrier from applying deductible or copayment requirements to benefits, including state-mandated health benefits, in order to qualify health benefit plans as high deductible health plans.

§21.3902. Definitions.

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

(1) Accident and health insurance policy--Any policy or contract that provides insurance against loss resulting from:

- (A) accidental bodily injury;
- (B) accidental death; or
- (C) sickness.

(2) Evidence of coverage--Any certificate, agreement, or contract, including a blended contract, that:

- (A) is issued to an enrollee; and
- (B) states the coverage to which the enrollee is entitled.

(3) Health benefit Plan--An accident and health insurance policy or evidence of coverage.

(4) Health carrier--A health insurer or health maintenance organization.

(5) Health insurer--Includes:

- (A) a life, health, and accident insurance company;
- (B) a mutual insurance company, including:
 - (i) a mutual life insurance company; and
 - (ii) a mutual assessment life insurance company;
- (C) a local mutual aid association;
- (D) a mutual or natural premium life or casualty insurance company;
- (E) a general casualty company;

- (F) a Lloyd's plan;
- (G) a reciprocal or interinsurance exchange;
- (H) a nonprofit hospital, medical, or dental service corporation, including a corporation operating under Texas Insurance Code Chapter 842; and

(I) another insurer issuing an accident and health insurance policy and required by law to be authorized by the department.

(6) Health maintenance organization--A person who arranges for or provides to enrollees on a prepaid basis a health care plan, a limited health care service plan, or a single health care service plan.

(7) High deductible health benefit plan--Has the meaning assigned by Section 223, Internal Revenue Code of 1986.

(8) Preventive care--Has the meaning assigned by Section 223(c)(2)(C), Internal Revenue Code of 1986. Preventive care does not generally include any service or benefit intended to treat an existing illness, injury, or condition. Preventive care includes, but is not limited to:

- (A) periodic health evaluations, including tests and diagnostic procedures ordered in connection with routine examinations, such as annual physicals;
- (B) routine prenatal and well-child care;
- (C) child and adult immunizations;
- (D) tobacco cessation programs;
- (E) obesity weight-loss programs; and
- (F) screening services.

§21.3903. Applicability of State Mandates to High Deductible Health Plans.

Subject to §21.3904(a) of this subchapter (relating to Exemption from State Mandates for High Deductible Health Plans), a high deductible health plan is subject to any law mandating a minimum health insurance benefit or reimbursement.

§21.3904. Exemption from State Mandates for High Deductible Health Plans.

(a) No provision of the Insurance Code may be construed to prevent a health carrier or other entity issuing a health benefit plan from applying deductible or copayment requirements to benefits and services, including state-mandated health benefits and services, in order to qualify the health benefit plan as a high deductible health plan.

(b) Subsection (a) of this section does not apply to a preventive care benefit or service. Example: Insurance Code §§1367.053 and 1367.054 require a health benefit plan to cover certain childhood immunizations without making them subject to a deductible, copayment, or coinsurance requirement. While compliance with this Texas statute would ostensibly prevent a health benefit plan from qualifying as a high deductible health plan, since IRS Bulletin 2004-15 classifies the benefit as preventive care, the safe harbor of 29 U.S.C. §228 allows a high-deductible health plan to cover it on a first-dollar basis. Accordingly, compliance with §§1367.053 and 1367.054 does not prevent a health benefit plan from qualifying as a high deductible health plan, and Insurance Code §1653.002 thus would not except a health carrier issuing a high deductible health plan from compliance with the state mandate.

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 May 11, 2006.

TRD-200602650
 Gene C. Jarmon
 General Counsel and Chief Clerk
 Texas Department of Insurance
 Effective date: May 31, 2006
 Proposal publication date: November 11, 2005
 For further information, please call: (512) 463-6327



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 4. COMMERCIAL VEHICLE REGULATIONS AND ENFORCEMENT PROCEDURES

SUBCHAPTER A. REGULATIONS GOVERNING HAZARDOUS MATERIALS

37 TAC §4.1

The Texas Department of Public Safety adopts amendments to Chapter 4, Subchapter A, §4.1, concerning Regulations Governing Hazardous Materials, without changes to the proposed text as published in the March 31, 2006, issue of the *Texas Register* (31 TexReg 2838).

Adoption of the amendments to §4.1 is necessary in order to ensure that the Federal Hazardous Material Regulations, incorporated by reference in the section, reflect all amendments and interpretations issued through February 1, 2006.

On April 25, 2006, the department held a public hearing to receive comments from all interested persons regarding adoption of the proposed amendments. No comments were received regarding adoption of the proposed amendments.

The amendments are adopted pursuant to Texas Government Code, §411.018, which authorizes the director to adopt all or part of the federal hazardous materials rules by reference; and Texas Transportation Code, §644.051, which authorizes the director to adopt all or part of the federal safety regulations by reference.

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 May 10, 2006.

TRD-200602588
 Thomas A. Davis, Jr.
 Director
 Texas Department of Public Safety
 Effective date: May 30, 2006
 Proposal publication date: March 31, 2006
 For further information, please call: (512) 424-2135



SUBCHAPTER B. REGULATIONS GOVERNING TRANSPORTATION SAFETY

37 TAC §§4.11 - 4.15, 4.21

The Texas Department of Public Safety adopts amendments to Chapter 4, Subchapter B, §§4.11 - 4.15 and 4.21, concerning Regulations Governing Transportation Safety, without changes to the proposed text as published in the March 31, 2006, issue of the *Texas Register* (31 TexReg 2839).

Adoption of the amendments to §4.11 are necessary in order to ensure that the Federal Motor Carrier Safety Regulations, incorporated by reference in the section, reflect all amendments and interpretations issued through that particular date.

Adoption of the amendments to §4.12 are necessary in order to correct an inaccuracy made in citing the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) (Pub. L. 109-59). In addition, outdated language is removed.

Adoption of the amendments to §4.13 are necessary in order to clarify that Level I inspections conducted on vehicles containing non-bulk quantities of hazardous materials, cargo tank vehicles, vehicles containing other bulk packaging, and passenger vehicles also counts towards the general 32 Level I inspection requirement per calendar year.

Adoption of the amendments to §4.14 are necessary in order to clarify how the department will determine if a municipality meets the population threshold amounts listed in Texas Transportation Code, §644.101, and clarify that paper copies of roadside inspection reports must also be sent to the department for timely quality control of uploaded data and that certified municipalities and counties can be decertified for reporting data to the department in an untimely manner.

Adoption of the amendments to §4.15 are necessary in order to clarify when a final unsatisfactory safety rating and order to cease all intrastate transportation becomes effective when a motor carrier evades service of these documents, and to specify procedures for issuing an Order to Cease all or part of a motor carrier's intrastate operations when they constitute an Imminent Hazard.

Adoption of the amendments to §4.21 are necessary in order to clarify that a dilute positive drug test is considered a valid positive test for reporting purposes. However, a dilute negative drug test is not considered a valid positive test for reporting purposes.

On April 25, 2006, the department held a public hearing to receive comments from all interested persons regarding adoption of the proposed amendments. No comments were received regarding adoption of the proposed amendments.

The amendments are adopted pursuant to Texas Transportation Code, §644.051, which authorizes the director to adopt rules regulating the safe transportation of hazardous materials and the safe operation of commercial motor vehicles; and authorizes the director to adopt all or part of the federal safety regulations, by reference.

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 May 10, 2006.
TRD-200602589

Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Effective date: May 30, 2006
Proposal publication date: March 31, 2006
For further information, please call: (512) 424-2135

PART 3. TEXAS YOUTH COMMISSION

CHAPTER 81. INTERACTION WITH THE PUBLIC

37 TAC §81.35

The Texas Youth Commission (the commission) adopts an amendment to §81.35, concerning Rights of Victims, without changes to the proposed text as published in the March 24, 2006, issue of the *Texas Register* (31 TexReg 2447).

The justification for amending the section is the protection of victims and victims' identifying information. The amendment makes personally identifying information in a victim impact statement or submitted in preparation of a victim impact statement confidential. Any victim involvement while the youth offender is in the custody of the commission is also made confidential.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Family Code, §57.002, which provides the commission with the authority to provide specific rights within the juvenile justice system to victims.

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 May 11, 2006.

TRD-200602648
Dwight Harris
Executive Director
Texas Youth Commission
Effective date: May 31, 2006
Proposal publication date: March 24, 2006
For further information, please call: (512) 424-6041

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 9. MENTAL RETARDATION SERVICES--MEDICAID STATE OPERATING AGENCY RESPONSIBILITIES

SUBCHAPTER D. HOME AND COMMUNITY- BASED SERVICES (HCS) PROGRAM

The Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS),

adopts amendments to §§9.151 - 9.166, 9.169 - 9.171, 9.173, 9.174, and 9.176 - 9.178; the repeal of §§9.179 - 9.182; and new §9.179 and §§9.185 - 9.188 in Chapter 9, Subchapter D, governing the Home and Community-based Services (HCS) Program. The amendments to §9.153 and §9.173, and new §9.179 are adopted with changes to the proposed text published in the February 24, 2006, issue of the *Texas Register* (31 TexReg 1218). The amendments to §§9.151, 9.152, 9.154 - 9.166, 9.169 - 9.171, 9.174, and 9.176 - 9.178; the repeal of §§9.179 - 9.182; and new §§9.185 - 9.188 are adopted without changes to the proposed text.

The amendments, new sections, and repeal are adopted to comply with Senate Bill (SB) 325, 79th Legislature, Regular Session, 2005, which added Chapter 322 to the Texas Health and Safety Code. Chapter 322 addresses the use of restraint and seclusion in certain health care facilities. Section 322.055 requires compliance by Medicaid waiver program providers that provide supervised living or residential support, although DADS has elected to apply the requirements to all HCS Program providers. The Home and Community-based Services (HCS) Program is the only DADS Medicaid waiver program that offers supervised living or residential support.

To comply with Texas Health and Safety Code, Chapter 322, HHSC, on behalf of DADS, is adopting amendments to §§9.173, 9.177, and 9.178, and is adopting new §9.179 governing certification principles for HCS Program providers that (1) define acceptable restraint holds, (2) govern the use of seclusion, (3) develop practices to decrease the frequency of the use of restraint and seclusion, and (4) ensure that each individual enrolled in the HCS Program and the individual's legally authorized representative (LAR) are notified of the rules and policies related to restraint and seclusion. Although Texas Health and Safety Code, §322.051(b) allows the use of prone and supine holds as transitional holds in a behavioral emergency, the adopted rules prohibit HCS Program providers from using prone and supine holds under any circumstance. The amendment to §9.178 includes new subsection (x), which is adopted to comply with Texas Health and Safety Code, §322.054, which prohibits a program provider from retaliating against a person because the person in good faith provides information relating to the misuse of restraint or seclusion by the program provider or against an individual because someone on behalf of the individual in good faith provides information relating to the misuse of restraint or seclusion by the program provider.

The repeal of §§9.179 - 9.182 is adopted so that new §9.179 can be adopted as a new certification principle in logical order with other certification principles and so that additional sections will be available for future certification principles between new §9.179 and new §§9.185 - 9.188.

The amendments and new sections are also adopted to update and clarify rule language and correct rule cross-references that were rendered incorrect upon transfer of the rules from Title 25, Part 2 to Title 40, Part 1 of the Texas Administrative Code. This transfer resulted from the consolidation of several state agencies, including part of the Texas Department of Mental Health and Mental Retardation, to create DADS.

A change was made to the definition of "behavioral emergency" at §9.153(3) to be consistent with a change in rule language made in response to a comment on the licensure rules for intermediate care facilities for persons with mental retardation or related conditions in 40 TAC Chapter 90, adopted elsewhere in this issue of the *Texas Register*.

Minor editorial changes were made in §9.173(a)(2) and (c) to improve the accuracy of the section.

DADS received written comments from Advocacy, Inc., and the Private Providers Association of Texas. A summary of the comments and the responses follow.

Comment: A commenter stated that, although Senate Bill 325 focused on the use of restraint and seclusion in emergency situations, the proposed amendments and new section address the use of restraint not only in emergency situations but also as an approved intervention in behavior therapy programs. The commenter stated that this creates confusion in interpreting the rules, particularly concerning the use of mechanical devices.

Response: The agency does not agree that HCS Program providers will be confused by rules that address the use of restraint in a behavioral emergency and as an intervention in a behavior therapy program. The agency believes that rules addressing the appropriate use of restraint in both situations are necessary for the HCS Program.

Comment: Concerning §9.153(22), a commenter stated the definition of "large intermediate care facility for persons with mental retardation or related conditions (ICF/MR)" parallels the definition of "large facility" in the ICF/MR reimbursement methodology rules (1 TAC §355.456(b)(1)) but differs from the definition used in the ICF/MR licensure rules. The commenter recommended that the definitions be consistent across all rules, or that the basis for differences be explained in the rules.

Response: The agency acknowledges there are differences in the definitions but declines to make a change, because the definitions used in this chapter are appropriate for its purposes.

Comment: Concerning §9.153(35), a commenter stated that the definition of "restraint" implies that an intervention that restricts the free movement or normal functioning of all or a portion of an individual's body is not restraint if the reason for the restriction is to provide physical guidance or prompting of brief duration. The commenter stated that the determining factor should be whether the individual voluntarily complies with the restriction or resists it either verbally or through action.

Response: The agency agrees with the commenter's reasoning and has revised the definition to state that guidance or prompting of brief duration becomes a restraint if the individual resists the physical guidance or prompting.

Comment: Also concerning §9.153(35), a commenter stated that, while the definition of restraint references both manual methods and the use of mechanical devices, the proposed rules do not directly address the use of mechanical devices for restraint. The commenter recommended that future rule revisions provide direction on who can initiate the use of a mechanical device, who can order its use, the type of assessment to be conducted, how frequently and for how long it can be used, safety and protection issues, and release procedures.

Response: The agency believes that the rules as proposed adequately address the use of mechanical devices, but will consider the commenter's concerns in future revisions of the rules.

Comment: Concerning §9.179(a)(1)(C), a commenter stated that prohibiting the use of restraint in a manner that interferes with an individual's ability to communicate appears to preclude the use of restraint with an individual who communicates primarily with hands or eyes. The commenter explained that staff might be unable to effectively intervene to prevent injury to the

individual or others, and recommended that the provision be removed or modified to allow flexibility in the use of communication during restraint contingent on the situation and the individual's mode of communication.

Response: The agency declines to make the recommended revision, and explains that Texas Health and Safety Code, §322.051, as added by SB 325, requires the prohibition.

Comment: Concerning §9.179(a)(2), a commenter stated that the phrase "disciplinary purposes" is ambiguous and subject to multiple interpretations. The commenter recommended that, if DADS' intent is to prohibit penal, retaliatory, or vengeful use of restraint, the provision should be changed.

Response: The agency does not believe that the phrase is ambiguous and cites its use in federal ICF/MR regulations at Code of Federal Regulations, Title 42, §483.450(b)(3). The agency has revised the provision, however, to include "retaliation" and "retribution," which are clarifying terms the Centers for Medicare and Medicaid Services uses in its "interpretive guidelines" to the federal ICF/MR regulations.

Comment: Concerning §9.179(b)(2) and (4), a commenter requested clarification or reconsideration of the use of "voluntary" to describe inappropriate behavior exhibited by an individual that may be addressed in a behavior therapy program and of "involuntary" to describe inappropriate and often self-injurious behavior from which an individual should be protected. The commenter stated that professionals disagree on "when, whether or not, and to what extent behavior is 'voluntary'." The commenter further stated that "involuntary behaviors may be "therapeutically modified or managed through the appropriate use of restraint" and questioned why the distinction is necessary or useful.

Response: The agency disagrees with the comment and has not changed the rule in response to the comment. The agency believes the distinction between "voluntary" and "involuntary" is both necessary and useful to distinguish those behaviors that can be successfully addressed through a therapy program.

Comment: Concerning §9.179(c)(1), a commenter requested clarification be included in the rule of whether the identification by an interdisciplinary team (IDT) of "conditions, factors, and limitations" for the use of restraint with an individual refers to the development of behavior therapy interventions utilizing restraint or only to the use of restraint to address a behavioral emergency. The commenter also recommended that the IDT should also be required to "consider" the conditions and factors in the design of a restraint intervention.

Response: The agency has not changed the rule in response to the comment. Section 9.179(d) requires a provider to "take into account the conditions, factors, and limitations on specific restraint techniques or mechanical restraint devices" identified by the IDT not only when restraining an individual in a behavioral emergency or as approved in a behavior therapy program but also, as stated in the referenced section §9.179(b), (1) in response to a medical or dental procedure or to promote healing, (2) to protect an individual from involuntary self-injury, and (3) to provide postural support to an individual or assist an individual in obtaining and maintaining normative bodily functioning.

Comment: Concerning §9.179(d)(3), a commenter stated that the use of a mechanical device to restrain an individual makes the individual vulnerable to harm, including harm by other individ-

uals. The commenter recommended that DADS require a program provider to provide continuous, one-on-one monitoring of an individual who is restrained using a mechanical device.

Response: The agency disagrees that continuous, one-on-one monitoring is necessary in every instance in which an individual is restrained using a mechanical device. The agency believes §9.179(d)(3), which requires a provider to "safeguard the individual's dignity, privacy, and well-being" while an individual is being restrained, is adequate to ensure that a provider employs the level of monitoring appropriate for the circumstances and the type of mechanical device used during restraint.

40 TAC §§9.151 - 9.166, 9.169 - 9.171, 9.173, 9.174, 9.176 - 9.179, 9.185 - 9.188

The amendments and new sections are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Health and Safety Code, Chapter 322, which governs the use of restraint and seclusion in certain health care facilities and in Medicaid waiver programs that provide supervised living or residential support.

§9.153. Definitions.

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

(1) Actively involved--Significant and ongoing involvement with the individual that the individual's service planning team deems to be supportive based on the following:

- (A) observed interactions of the person with the individual;
- (B) advocacy for the individual;
- (C) knowledge of and sensitivity to the individual's preferences, values, and beliefs; and
- (D) availability to the individual for assistance or support when needed.

(2) Applicant--A Texas resident seeking services in the HCS Program.

(3) Behavioral emergency--A situation in which severely aggressive, destructive, violent, or self-injurious behavior exhibited by an individual:

- (A) poses a substantial risk of imminent probable death of, or substantial bodily harm to, the individual or others;
- (B) has not abated in response to attempted preventive de-escalatory or redirection techniques;
- (C) is not addressed in a written behavior intervention plan; and

(D) does not occur during a medical or dental procedure.

(4) CARE--DADS' Client Assignment and Registration System, a database with demographic and other data about an individual who is receiving services and supports or on whose behalf services and supports have been requested.

(5) CRCG (Community Resource Coordination Group)--A local interagency group composed of public and private agencies that develops service plans for individuals whose needs can be met only through interagency coordination and cooperation. The group's role and responsibilities are described in the Memorandum of Understanding on Coordinated Services to Persons Needing Services from More Than One Agency, available on the HHSC website at www.hhsc.state.tx.us/crcg/crcg.htm.

(6) Critical incident data--Information a program provider enters in CARE that includes the number of behavior intervention plans authorizing restraint, the number of restraints used, the number of medication errors, the number of serious physical injuries, and the number of deaths.

(7) DADS--The Department of Aging and Disability Services.

(8) DARS--The Department of Assistive and Rehabilitative Services.

(9) DFPS--The Department of Family and Protective Services.

(10) Family-based alternative--A family setting in which the family provider or providers are specially trained to provide support and in-home care for children with disabilities or children who are medically fragile.

(11) HCS Program--The Home and Community-based Services Program operated by DADS as authorized by the Centers for Medicare and Medicaid Services in accordance with §1915(c) of the Social Security Act.

(12) HCS case manager--An employee of the program provider who is responsible for the overall coordination and monitoring of HCS Program services provided to an individual.

(13) HHSC--The Texas Health and Human Services Commission.

(14) ICAP--Inventory for Client and Agency Planning.

(15) ICF/MR--Intermediate care facility for persons with mental retardation or related conditions.

(16) IDT (interdisciplinary team)--A planning team constituted by the program provider for each individual consisting of, at a minimum, the individual and LAR, HCS case manager, and a nurse. Other applicable persons assigned to provide or who are currently providing direct services to the individual and, as appropriate, a physician and other professional personnel may be included as team members as necessary.

(17) IPC (individual plan of care)--A document that describes the type and amount of each HCS Program service component to be provided to an individual and describes medical and other services and supports to be provided through non-program resources.

(18) IPC cost--Estimated annual cost of program services included on an IPC.

(19) IPC year--A 12-month period of time starting on the date an authorized initial or renewal IPC begins.

(20) Individual--A person enrolled in the HCS Program.

(21) ISP (individual service plan)--A written plan, from which the IPC is derived, developed by the IDT using person-directed planning and, if appropriate, permanency planning. The ISP describes the assessments, recommendations, deliberations, conclusions, justifications, and outcomes regarding the specific services provided to the individual by the program provider.

(22) Large ICF/MR--A non-state operated ICF/MR with a Medicaid certified capacity of 14 or more.

(23) LAR (legally authorized representative)--A person authorized by law to act on behalf of a person with regard to a matter described in this subchapter, and may include a parent, guardian, or managing conservator of a minor, or the guardian of an adult.

(24) LOC (level of care)--A determination given to an individual as part of the eligibility determination process based on data submitted on the MR/RC Assessment.

(25) LON (level of need)--An assignment given by DADS to an individual upon which reimbursement for foster/companion care, supervised living, residential support, and day habilitation is based. The LON assignment is derived from the service level score obtained from the administration of the ICAP to the individual and from selected items on the MR/RC Assessment.

(26) LVN--Licensed vocational nurse.

(27) MRA (mental retardation authority)--An entity to which HHSC's authority and responsibility described in Texas Health and Safety Code, §531.002(11) has been delegated.

(28) MR/RC Assessment--A form used by DADS for LOC determination and LON assignment.

(29) Natural support network--Those persons, including family members, church members, neighbors, and friends, who assist and sustain an individual with supports that occur naturally within the individual's environment and that are not reimbursed or purposely developed by a person or system.

(30) PDP (person-directed plan)--A plan developed for an applicant in accordance with §9.164 of this subchapter (relating to Process for Enrollment of Applicants) that describes the supports and services necessary to achieve the desired outcomes identified by the applicant or LAR on behalf of the applicant.

(31) Person-directed planning--A process that empowers the individual (and the LAR on the individual's behalf) to direct the development of a plan for supports and services that meet the individual's outcomes. The process:

(A) identifies existing supports and services necessary to achieve the individual's outcomes;

(B) identifies natural supports available to the individual and negotiates needed services system supports;

(C) occurs with the support of a group of people chosen by the individual (and the LAR on the individual's behalf); and

(D) accommodates the individual's style of interaction and preferences regarding time and setting.

(32) Permanency planning--A philosophy and planning process that focuses on the outcome of family support for an individual under 22 years of age by facilitating a permanent living arrangement in which the primary feature is an enduring and nurturing parental relationship.

(33) **Permanency Planning Review Screen**--A screen in CARE that, when completed by an MRA or program provider, identifies community supports needed to achieve an individual's permanency planning outcomes and provides information necessary for approval to provide supervised living or residential support to the individual.

(34) **Program provider**--An entity that provides HCS Program services under a waiver program provider agreement with DADS as defined in Subchapter Q of this chapter (relating to Enrollment of Medicaid Waiver Program Providers).

(35) **Restraint**--

(A) A manual method, except for physical guidance or prompting of brief duration, or a mechanical device to restrict:

(i) the free movement or normal functioning of all or a portion of an individual's body; or

(ii) normal access by an individual to a portion of the individual's body.

(B) Physical guidance or prompting of brief duration becomes a restraint if the individual resists the physical guidance or prompting.

(36) **RN**--Registered nurse.

(37) **Seclusion**--The involuntary separation of an individual away from other individuals and the placement of the individual alone in an area from which the individual is prevented from leaving.

(38) **Service coordinator**--An employee of an MRA responsible for assisting an individual or LAR on behalf of the individual in accessing medical, social, educational, and other appropriate services, including HCS Program services.

(39) **Service planning team**--A planning team constituted by an MRA consisting of an applicant, LAR, service coordinator, and other persons chosen by the applicant or LAR on behalf of the applicant.

(40) **TANF**--Temporary Assistance for Needy Families.

(41) **SSI**--Supplemental Security Income.

§9.173. *Certification Principles: Rights of Individuals.*

(a) The program provider must assist the:

(1) individual, or the LAR on behalf of the individual, in exercising the same rights and responsibilities exercised by people without disabilities; and

(2) LAR or family members in encouraging the individual to exercise the same rights and responsibilities exercised by people without disabilities.

(b) The program provider must protect and promote the following rights of the individual:

(1) to manage, be trained to manage, or have assistance in managing financial affairs upon documentation of the individual's written request for assistance;

(2) to access public accommodations;

(3) to be informed of requirements for participation;

(4) to be informed both orally and in writing of all the HCS Program services available and rules pertaining to the individual's enrollment and participation in the program provider's program, including those related to the use of restraint and seclusion, as well as any changes in these that occur;

(5) to be informed of the individual's ISP and IPC, including any restrictions affecting the individual's rights;

(6) to participate in decisions and be informed of the reasons for decisions regarding plans for enrollment, service termination, transfer, relocation, or denial of HCS Program services;

(7) to be informed about the individual's own health, mental condition, and related progress;

(8) to be informed of the name and qualifications of any person serving or treating the individual and to choose among various available service providers;

(9) to receive visitors without prior notice to the program provider unless such rights are contraindicated by the individual's rights or the rights of other individuals;

(10) to have privacy in visitation with family and other visitors;

(11) to make and receive telephone calls;

(12) to send and to receive sealed and uncensored mail;

(13) to attend religious activities of choice;

(14) to participate in developing a pre-discharge plan that addresses assistance for the individual after he or she leaves the program;

(15) to be free from the use of unauthorized restraints;

(16) to live in a normative residential living environment;

(17) to access free public schooling according to the Texas Education Code;

(18) to live where the individual is within proximity of and can access treatment and services that are best suited to meet the individual's needs and abilities and enhance that individual's strengths;

(19) to have a personalized ISP and IPC based on individualized assessments that meet the individual's needs and abilities and enhance that individual's strengths;

(20) to help decide what the ISP will be;

(21) to be informed as to the progress or lack of progress being made in the execution of the ISP;

(22) to choose from the same services that are available to all community members;

(23) to be evaluated as needed, but at least annually, to determine the individual's strengths, needs, preferences, and appropriateness of the ISP;

(24) to complain at any time to any member of the program provider's personnel;

(25) to receive appropriate support and encouragement from any member of the program provider's personnel if the individual dislikes or disagrees with the services being rendered or thinks that his or her rights are being violated;

(26) to live free from abuse, neglect or exploitation in a healthful, comfortable, and safe environment;

(27) to participate in decisions regarding the individual's living environment, including location, furnishings, other individuals residing in the residence, and moves to other residential locations;

(28) to have personnel who are accountable to the individual and, at the same time, are responsible to the overall functioning of the HCS Program;

(29) to have active personal assistance in exercising civil and self-advocacy rights attainment by provisions for:

- (A) complaints;
- (B) voter's registration;
- (C) citizenship information and education;
- (D) advocacy services; and
- (E) guardianship;

(30) to receive counseling concerning the use of money;

(31) to possess and to use money in personal and individualized ways or be learning to do so;

(32) to access all financial records regarding the individual's funds;

(33) to have privacy during treatment and care of personal needs;

(34) to have privacy during visits by his or her spouse if living apart;

(35) to share a room when both the husband and wife are living in the same residence;

(36) to be free from serving as a source of labor when residing with persons other than family members;

(37) to communicate, associate, and to meet privately with individuals of his or her choice, unless this violates the rights of another individual;

(38) to participate in social, recreational, and community group activities;

(39) to have his or her LAR involved in activities, including:

(A) being informed of all rights and responsibilities when the individual is enrolled in the program provider's program as well as of any changes in rights or responsibilities before they become effective;

(B) participating in the planning for HCS Program services; and

(C) advocating for all rights of the individual;

(40) to be informed of the individual's option to transfer to other program providers as chosen by the individual or LAR as often as desired;

(41) to be informed orally and in writing of any charges assessed by the program provider against the individual's personal funds, the purpose of those charges, and effects of the charges in relation to the individual's financial status;

(42) to complain to DADS when the program provider's resolution of a complaint is unsatisfactory to the individual or LAR, and to be informed of the DADS Office of Consumer Rights and Services telephone number to initiate complaints (1-800-458-9858); and

(43) to be free from the use of seclusion.

(c) The program provider must provide the individual, LAR, or family member with a written copy of the rights listed in subsection (b) of this section.

(d) The program provider must document that the individual, LAR, or family member is informed orally of the rights described in

subsection (b) of this section and is presented with a current copy of those rights:

(1) upon enrollment of the individual in the program provider's program;

(2) upon revisions of subsection (b) of this section by DADS; and

(3) upon request.

(e) The documentation required in subsection (d) of this section must be signed by:

(1) the individual or LAR;

(2) the program provider or employee who explained the rights to the individual, LAR, or family member; and

(3) a third-party witness.

§9.179. Certification Principles: Restraint.

(a) A program provider must not use restraint:

(1) in a manner that:

(A) obstructs the individual's airway, including the placement of anything in, on, or over the individual's mouth or nose;

(B) impairs the individual's breathing by putting pressure on the individual's torso;

(C) interferes with the individual's ability to communicate;

(D) places the individual in a prone or supine position;

(E) extends muscle groups away from each other;

(F) uses hyperextension of joints; or

(G) uses pressure points or pain;

(2) for disciplinary purposes, that is, as retaliation or retribution;

(3) for the convenience of staff or other individuals; or

(4) as a substitute for effective treatment or habilitation.

(b) A program provider may use restraint:

(1) in a behavioral emergency;

(2) as part of a behavior intervention plan that addresses inappropriate behavior exhibited voluntarily by an individual;

(3) during a medical or dental procedure if necessary to protect the individual or others and as a follow-up after a medical or dental procedure or following an injury to promote the healing of wounds;

(4) to protect the individual from involuntary self-injury; and

(5) to provide postural support to the individual or to assist the individual in obtaining and maintaining normative bodily functioning.

(c) In order to decrease the frequency of the use of restraint and to minimize the risk of harm to an individual, a program provider must ensure that the IDT:

(1) with the involvement of a physician, identifies:

(A) the individual's known physical or medical conditions that might constitute a risk to the individual during the use of restraint;

(B) the individual's ability to communicate; and

(C) other factors that must be taken into account if the use of restraint is considered, including the individual's:

(i) cognitive functioning level;

(ii) height;

(iii) weight;

(iv) emotional condition (including whether the individual has a history of having been physically or sexually abused); and

(v) age;

(2) documents the conditions and factors identified in accordance with paragraph (1) of this subsection, and, as applicable, limitations on specific restraint techniques or mechanical restraint devices in the individual's record; and

(3) reviews and updates with a physician, RN, or LVN, at least annually or when a condition or factor documented in accordance with paragraph (2) of this subsection changes significantly, information in the individual's record related to the identified condition, factor, or limitation.

(d) If a program provider restrains an individual as provided in subsection (b) of this section, the program provider must:

(1) take into account the conditions, factors, and limitations on specific restraint techniques or mechanical restraint devices documented in accordance with subsection (c)(2) and (3) of this section;

(2) use the minimal amount of force or pressure that is reasonable and necessary to ensure the safety of the individual and others;

(3) safeguard the individual's dignity, privacy, and well-being; and

(4) not secure the individual to a stationary object while the individual is in a standing position.

(e) In a circumstance described in subsection (b)(1) or (2) of this section, a program provider may use only a restraint hold in which the individual's limbs are held close to the body to limit or prevent movement and that does not violate the provisions of subsection (a)(1) of this section.

(f) A program provider must release an individual from restraint:

(1) as soon as the individual no longer poses a risk of imminent physical harm to the individual or others;

(2) if the individual in restraint experiences a medical emergency, as soon as possible as indicated by the medical emergency; or

(3) as soon as an individual in a restraint hold described in subsection (e) of this section who moves toward the floor reaches the floor.

(g) After restraining an individual in a behavioral emergency, a program provider must:

(1) as soon as possible but no later than one hour after the use of restraint, notify an RN or LVN of the restraint;

(2) ensure that medical services are obtained for the individual as necessary;

(3) as soon as possible but no later than 24 hours after the use of restraint, notify one of the following persons, if there is such a person, that the individual has been restrained:

(A) the individual's LAR; or

(B) a person actively involved with the individual, unless the release of this information would violate other law; and

(4) notify the individual's HCS case manager by the end of the first business day after the use of restraint.

(h) If, under the Health Insurance Portability and Accountability Act, the program provider is a "covered entity," as defined in 45 Code of Federal Regulations (CFR) §160.103, any notification provided under subsection (g)(3)(B) of this section must be to a person to whom the program provider is allowed to release information under 45 CFR §164.510.

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 May 12, 2006.

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Marianne Reat

Interim General Counsel

Department of Aging and Disability Services

Effective date: June 1, 2006

Proposal publication date: February 24, 2006

For further information, please call: (512) 438-3734



40 TAC §§9.179 - 9.182

The repeals are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Health and Safety Code, Chapter 322, which governs the use of restraint and seclusion in certain health care facilities and in Medicaid waiver programs that provide supervised living or residential support.

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 19. NURSING FACILITY REQUIREMENTS FOR LICENSURE AND MEDICAID CERTIFICATION

The Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS), adopts amendments to §§19.101, 19.403, 19.408, and 19.601 in Chapter 19, governing Nursing Facility Requirements for Licensure and Medicaid Certification. The amendments to §19.101 and §19.601 are adopted with changes to the proposed text published in the February 24, 2006, issue of the *Texas Register* (31 TexReg 1239). The amendments to §19.403 and §19.408 are adopted without changes to the proposed text.

The amendments are adopted to implement Senate Bill (SB) 325, 79th Legislature, Regular Session, 2005, which added Chapter 322 to the Texas Health and Safety Code. Chapter 322 requires DADS to prohibit certain restraints in a variety of health care facilities, including nursing facilities. To comply with Chapter 322, the amendments are adopted to (1) define acceptable restraint holds, (2) develop practices to decrease the frequency of the use of restraint and seclusion, (3) allow less use of restraint than allowed by the rules in the chapter, and (4) ensure that each resident and the resident's legally authorized representative are notified of the rules and policies related to restraints and seclusion. Although Health and Safety Code, §322.051(b) allows the use of prone and supine holds as transitional holds, the amendment to §19.601 prohibits nursing facilities from administering a restraint that places a resident in a prone and supine hold under any circumstance.

The amendment to §19.408 is adopted to comply with Health and Safety Code, §322.054, which prohibits a facility from retaliating against a person because the person in good faith provides information relating to the misuse of restraint or seclusion at the facility or against a resident because someone on behalf of the resident in good faith provides information relating to the misuse of restraint or seclusion at the facility.

In addition, the amendments are adopted to clarify and update rule language, including replacing references to the former Texas Department of Human Services with references to DADS.

DADS received written comments from Advocacy, Incorporated. A summary of the comments and the responses follow.

Comment: Concerning §19.101(126), the commenter stated the definition of "restraint hold" implies that an intervention that restricts the free movement or normal functioning of all or a portion of an individual's body is not a restraint if it is used for physical guidance or prompting of brief duration. The determining factor of whether a hold is a restraint should be whether it is voluntary or if the person is resistant. Physical guidance or prompting may still be a restraint if the individual resists the guidance or prompt either verbally or by their actions. The commenter suggested that "except for physical guidance or prompting of brief duration" be deleted from the definition, and that additional language be added to indicate restraint does not include physical guidance or prompting if it is voluntary.

Response: The agency agrees in part with the comment and has added language to §19.101(126) to indicate that physical guidance or prompting of brief duration becomes a restraint if the resident resists the guidance or prompting. However, DADS did not remove the phrase "except for physical guidance or prompting of brief duration," because there are situations in which physical

guidance or prompting can calm the resident or prevent the situation from escalating.

Comment: Concerning §19.601(a)(2)(D), the commenter asked for clarification on the proposed language prohibiting placing the resident in a prone or supine position. The commenter interprets the language to mean that a facility is prohibited from restraining a resident in bed. The concern is that prone or supine restraints may be used but not categorized as such.

Response: The agency agrees in part with the comment and has changed §19.601(a)(2)(D) to indicate that a facility must not administer to a resident a restraint that places the resident in a prone or supine hold. The agency does not interpret the prohibition of a prone or supine hold as a prohibition of a restraint that is applied to a resident in bed. The current rule at §19.601(a)(1) indicates that restraints may be required to treat the resident's medical condition. Therefore, there will be cases in which a restraint may be used on a resident in bed to treat a medical condition as determined by the treating physician, but that would not be considered placing a resident in a prone or supine hold.

Comment: The commenter was concerned that mechanical restraints can leave residents particularly vulnerable to the risk of harm from others, particularly other residents. The commenter recommended that the agency add strong language related to the care, monitoring and safety measures provided to the type of restraint imposed on the individual.

Response: The agency agrees that mechanical restraints leave residents particularly vulnerable to risk of harm from others, particularly other residents, but disagrees that its current rules on the care and monitoring of mechanical restraints are inadequate to protect residents. The agency has not changed the language in response to the comment. It is DADS' belief that nursing facility staff should protect the safety of the residents while monitoring the use of mechanical restraints. Current rule language addresses the care and monitoring of mechanical restraints in §19.601(a)(1), which states that if physical restraints (which include mechanical restraints) are used because they are required to treat the resident's medical condition, the restraints must be released and the resident repositioned as needed to prevent deterioration in the resident's condition. The use of restraints must be documented in the clinical record. Additionally, residents must be monitored hourly and, at a minimum, restraints must be released every two hours for a minimum of ten minutes, and the resident repositioned. Also, current rule language in §19.601(c) states that the facility must develop and implement written policies and procedures that prohibit mistreatment, neglect, and abuse of residents. This would include the protection and promotion of rights of each resident.

SUBCHAPTER B. DEFINITIONS

40 TAC §19.101

The amendment is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code, Chapter 242, which authorizes DADS to license and regulate nursing facilities, and Chapter 322, which governs the use of

restraint and seclusion in certain health care facilities, including nursing facilities.

§19.101. *Definitions.*

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

(1) Abuse--Any act, failure to act, or incitement to act done willfully, knowingly, or recklessly through words or physical action which causes or could cause mental or physical injury or harm or death to a resident. This includes verbal, sexual, mental/psychological, or physical abuse, including corporal punishment, involuntary seclusion, or any other actions within this definition.

(A) "Involuntary seclusion"--Separation of a resident from others or from his room against the resident's will or the will of the resident's legal representative. Temporary monitored separation from other residents will not be considered involuntary seclusion and may be permitted if used as a therapeutic intervention as determined by professional staff and consistent with the resident's plan of care.

(B) "Mental/psychological abuse"--Mistreatment within the definition of "abuse" not resulting in physical harm, including, but not limited to, humiliation, harassment, threats of punishment, deprivation, or intimidation.

(C) "Physical abuse"--Physical action within the definition of "abuse," including, but not limited to, hitting, slapping, pinching, and kicking. It also includes controlling behavior through corporal punishment.

(D) "Sexual abuse"--Any touching or exposure of the anus, breast, or any part of the genitals of a resident without the voluntary, informed consent of the resident and with the intent to arouse or gratify the sexual desire of any person and includes but is not limited to sexual harassment, sexual coercion, or sexual assault.

(E) "Verbal abuse"--The use of any oral, written, or gestured language that includes disparaging or derogatory terms to a resident or within the resident's hearing distance, regardless of the resident's age, ability to comprehend, or disability.

(2) Act--Chapter 242 of the Health and Safety Code.

(3) Activities assessment--See Comprehensive Assessment and Comprehensive Plan of Care.

(4) Activities director--The qualified individual appointed by the facility to direct the activities program as described in §19.702 of this title (relating to Activities).

(5) Addition--The addition of floor space to an institution.

(6) Administrator--Licensed nursing facility administrator.

(7) Admission determination of medical necessity--The decision regarding an individual's need for medical and nursing services upon his entry into a nursing facility or upon his becoming eligible for Medicaid. The admission determination of medical necessity is valid for up to 120 days from the effective date assigned by the Utilization Review Committee.

(8) Affiliate--With respect to a:

(A) partnership, each partner thereof;

(B) corporation, each officer, director, principal stockholder, and subsidiary; and each person with a disclosable interest;

(C) natural person, which includes each:

(i) person's spouse;

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

(iii) corporation in which said person is an officer, director, principal stockholder, or person with a disclosable interest.

(9) Agent--An adult to whom authority to make health care decisions is delegated under a durable power of attorney for health care.

(10) Applicant--A person or governmental unit, as those terms are defined in the Health and Safety Code, Chapter 242, applying for a license under that chapter.

(11) APA--The Administrative Procedure Act, Texas Government Code, Chapter 2001.

(12) Attending physician--A physician, currently licensed by the Texas State Board of Medical Examiners, who is designated by the resident or responsible party as having primary responsibility for the treatment and care of the resident.

(13) Authorized electronic monitoring--The placement of an electronic monitoring device in a resident's room and using the device to make tapes or recordings after making a request to the facility to allow electronic monitoring.

(14) Barrier precautions--Precautions including the use of gloves, masks, gowns, resuscitation equipment, eye protectors, aprons, facemasks, and protective clothing for purposes of infection control.

(15) CARE form--The DADS Client Assessment, Review and Evaluation (CARE) form completed by Medicaid-certified nursing facilities which allows for determination of medical necessity, reimbursement rate, initial level of the Preadmission Screening and Resident Review (PASARR) and the initial medical care determination and reassessment of the 1915(c) waivers.

(16) Care and treatment--Services required to maximize resident independence, personal choice, participation, health, self-care, psychosocial functioning and reasonable safety, all consistent with the preferences of the resident.

(17) Case mix--A method of classifying recipients based upon resource and service needs and paying nursing facilities a per diem rate according to the recipient's classification.

(18) Certification--The determination by DADS that a nursing facility meets all the requirements of the Medicaid and/or Medicare programs.

(19) CFR--Code of Federal Regulations.

(20) CMS--Centers for Medicare & Medicaid Services, formerly the Health Care Financing Administration (HCFA).

(21) Complaint--Any allegation received by DADS other than an incident reported by the facility. Such allegations include, but are not limited to, abuse, neglect, exploitation, or violation of state or federal standards.

(22) Comprehensive assessment--An interdisciplinary description of a resident's needs and capabilities including daily life functions and significant impairments of functional capacity.

(23) Comprehensive care plan--A plan of care prepared by an interdisciplinary team that includes measurable short-term and long-term objectives and timetables to meet the resident's needs developed for each resident after admission. The plan addresses at least the following needs: medical, nursing, rehabilitative, psychosocial, dietary, activity, and resident's rights. The plan includes strategies developed by the team, as described in §19.802(b)(2) of this title (relating to Comprehensive Care Plans), consistent with the physician's prescribed plan

of care, to assist the resident in eliminating, managing, or alleviating health or psychosocial problems identified through assessment. Planning includes:

- (A) goal setting;
- (B) establishing priorities for management of care;
- (C) making decisions about specific measures to be used to resolve the resident's problems; and/or
- (D) assisting in the development of appropriate coping mechanisms.

(24) **Controlled substance**--A drug, substance, or immediate precursor as defined in the Texas Controlled Substance Act, Texas Health and Safety Code, Chapter 481, and/or the Federal Controlled Substance Act of 1970, Public Law 91-513.

(25) **Controlling person**--A person with the ability, acting alone or in concert with others, to directly or indirectly, influence, direct, or cause the direction of the management, expenditure of money, or policies of a nursing facility or other person. A controlling person does not include a person, such as an employee, lender, secured creditor, or landlord, who does not exercise any influence or control, whether formal or actual, over the operation of a facility. A controlling person includes:

(A) a management company, landlord, or other business entity that operates or contracts with others for the operation of a nursing facility;

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

(C) any other individual who, because of a personal, familial, or other relationship with the owner, manager, landlord, tenant, or provider of a nursing facility, is in a position of actual control or authority with respect to the nursing facility, without regard to whether the individual is formally named as an owner, manager, director, officer, provider, consultant, contractor, or employee of the facility.

(26) **Covert electronic monitoring**--The placement and use of an electronic monitoring device that is not open and obvious, and the facility and DADS have not been informed about the device by the resident, by a person who placed the device in the room, or by a person who uses the device.

(27) **DADS**--The Department of Aging and Disability Services.

(28) **Dangerous drugs**--Any drug as defined in the Texas Health and Safety Code, Chapter 483.

(29) **Dentist**--A practitioner licensed by the Texas State Dental Examiners Board.

(30) **Department**--Department of Aging and Disability Services.

(31) **DHS**--Formerly, this term referred to the Texas Department of Human Services; it now refers to DADS, unless the context concerns an administrative hearing. Administrative hearings were formerly the responsibility of DHS; they now are the responsibility of the Texas Health and Human Services Commission (HHSC).

(32) **Dietitian**--A qualified dietitian is one who is qualified based upon either:

(A) registration by the Commission on Dietetic Registration of the American Dietetic Association; or

(B) licensure, or provisional licensure, by the Texas State Board of Examiners of Dietitians. These individuals must have one year of supervisory experience in dietetic service of a health care facility.

(33) **Direct care by licensed nurses**--Direct care consonant with the physician's planned regimen of total resident care includes:

(A) assessment of the resident's health care status;

(B) planning for the resident's care;

(C) assignment of duties to achieve the resident's care;

(D) nursing intervention; and

(E) evaluation and change of approaches as necessary.

(34) **Distinct part**--That portion of a facility certified to participate in the Medicaid Nursing Facility program.

(35) **Drug** (also referred to as medication)--Any of the following:

(A) any substance recognized as a drug in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them;

(B) any substance intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man;

(C) any substance (other than food) intended to affect the structure or any function of the body of man; and

(D) any substance intended for use as a component of any substance specified in subparagraphs (A)-(C) of this definition. It does not include devices or their components, parts, or accessories.

(36) **Electronic monitoring device**--Video surveillance cameras and audio devices installed in a resident's room, designed to acquire communications or other sounds that occur in the room. An electronic, mechanical, or other device used specifically for the nonconsensual interception of wire or electronic communication is excluded from this definition.

(37) **Emergency**--A sudden change in a resident's condition requiring immediate medical intervention

(38) **Exploitation**--The illegal or improper act or process of a caretaker using the resources of an elderly or disabled person for monetary or personal benefit, profit, or gain.

(39) **Exposure (infections)**--The direct contact of blood or other potentially infectious materials of one person with the skin or mucous membranes of another person. Other potentially infectious materials include the following human body fluids: semen, vaginal secretions, cerebrospinal fluid, peritoneal fluid, amniotic fluid, saliva in dental procedures, and body fluid that is visibly contaminated with blood, and all body fluids when it is difficult or impossible to differentiate between body fluids.

(40) **Facility**--Unless otherwise indicated, a facility is an institution that provides organized and structured nursing care and service and is subject to licensure under Health and Safety Code, Chapter 242.

(A) For Medicaid, a facility is a nursing facility which meets the requirements of §1919(a)-(d) of the Social Security Act. A facility may not include any institution that is for the care and treatment of mental diseases except for services furnished to individuals age 65 and over and who are eligible as defined in §19.2500 of this title (relating to Preadmission Screening and Resident Review (PASARR)).

(B) For Medicare and Medicaid purposes (including eligibility, coverage, certification, and payment), the "facility" is always the entity which participates in the program, whether that entity is comprised of all of, or a distinct part of, a larger institution.

(C) "Facility" is also referred to as a nursing home or nursing facility. Depending on context, these terms are used to represent the management, administrator, or other persons or groups involved in the provision of care of the resident; or to represent the physical building, which may consist of one or more floors or one or more units, or which may be a distinct part of a licensed hospital.

(41) Facility nurse assessor--The licensed nurse in the nursing facility, who completes the Client Assessment, Review and Evaluation (CARE) forms.

(42) Family representative--An individual appointed by the resident to represent the resident and other family members, by formal or informal arrangement.

(43) Fiduciary agent--An individual who holds in trust another's monies.

(44) Free choice--Unrestricted right to choose a qualified provider of services.

(45) Goals--Long-term: general statements of desired outcomes. Short-term: measurable time-limited, expected results that provide the means to evaluate the resident's progress toward achieving long-term goals.

(46) Governmental unit--A state or a political subdivision of the state, including a county or municipality.

(47) HCFA--Health Care Financing Administration, now the Centers for Medicare & Medicaid Services (CMS).

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

(49) Hearing--A contested case hearing held in accordance with the Administrative Procedure Act, Texas Government Code, Chapter 2001, and the formal hearing procedures in 1 TAC Chapter 357, Subchapter I.

(50) HIV--Human Immunodeficiency Virus.

(51) Incident--An abnormal event, including accidents or injury to staff or residents, which is documented in facility reports. An occurrence in which a resident may have been subject to abuse, neglect, or exploitation must also be reported to DADS.

(52) Infection control--A program designed to prevent the transmission of disease and infection in order to provide a safe and sanitary environment.

(53) Inspection--Any on-site visit to or survey of an institution by DADS for the purpose of licensing, monitoring, complaint investigation, architectural review, or similar purpose.

(54) Interdisciplinary care plan--See the definition of "comprehensive care plan."

(55) IV--Intravenous.

(56) Legend drug or prescription drug--Any drug that requires a written or telephonic order of a practitioner before it may be dispensed by a pharmacist, or that may be delivered to a particular resident by a practitioner in the course of the practitioner's practice.

(57) Licensed health professional--A physician; physician assistant; nurse practitioner; physical, speech, or occupational therapist; pharmacist; physical or occupational therapy assistant; registered professional nurse; licensed vocational nurse; licensed dietitian; or licensed social worker.

(58) Licensed nursing home (facility) administrator--A person currently licensed by the Texas Board of Nursing Facility Administrators.

(59) Licensed vocational nurse (LVN)--A nurse who is currently licensed by the Board of Nurse Examiners for the State of Texas as a licensed vocational nurse.

(60) Life Safety Code (also referred to as the Code or NFPA 101)--The Code for Safety to Life from Fire in Buildings and Structures, Standard 101, of the National Fire Protection Association (NFPA).

(61) Life safety features--Fire safety components required by the Life Safety Code, including, but not limited to, building construction, fire alarm systems, smoke detection systems, interior finishes, sizes and thicknesses of doors, exits, emergency electrical systems, and sprinkler systems.

(62) Life support--Use of any technique, therapy, or device to assist in sustaining life. (See §19.419 of this title (relating to Directives and Medical Powers of Attorney)).

(63) Local authorities--Persons, including, but not limited to, local health authority, fire marshal, and building inspector, who may be authorized by state law, county order, or municipal ordinance to perform certain inspections or certifications.

(64) Local health authority--The physician appointed by the governing body of a municipality or the commissioner's court of the county to administer state and local laws relating to public health in the municipality's or county's jurisdiction as defined in Health and Safety Code, §121.021.

(65) Long-term care-regulatory--DADS' Regulatory Services Division, which is responsible for surveying nursing facilities to determine compliance with regulations for licensure and certification for Title XIX participation.

(66) Manager--A person, other than a licensed nursing home administrator, having a contractual relationship to provide management services to a facility.

(67) Management services--Services provided under contract between the owner of a facility and a person to provide for the operation of a facility, including administration, staffing, maintenance, or delivery of resident services. Management services do not include contracts solely for maintenance, laundry, or food service.

(68) Medicaid applicant--A person who requests the determination of eligibility to become a Medicaid recipient.

(69) Medicaid nursing facility vendor payment system--Electronic billing and payment system for reimbursement to nursing facilities for services provided to eligible Medicaid recipients.

(70) Medicaid recipient--A person who meets the eligibility requirements of the Title XIX Medicaid program, is eligible for nursing facility services, and resides in a Medicaid-participating facility.

(71) Medical director--A physician licensed by the Texas State Board of Medical Examiners, who is engaged by the nursing home to assist in and advise regarding the provision of nursing and health care.

(72) Medical necessity (MN)--The determination that a recipient requires the services of licensed nurses in an institutional setting to carry out the physician's planned regimen for total care. A recipient's need for custodial care in a 24-hour institutional setting does not constitute a medical need.

(73) Medical necessity assessment--The process by which the applicant's or recipient's medical condition is evaluated to determine the need for nursing facility care based upon information supplied by the nursing facility.

(74) Medical power of attorney--The legal document that designates an agent to make treatment decisions if the individual designator becomes incapable.

(75) Medical-social care plan--See Interdisciplinary Comprehensive Care Plan.

(76) Medically related condition--An organic, debilitating disease or health disorder that requires services provided in a nursing facility, under the supervision of licensed nurses.

(77) Medication aide--A person who holds a current permit issued under the Medication Aide Training Program as described in Chapter 95 of this title (relating to Medication Aides--Program Requirements) and acts under the authority of a person who holds a current license under state law which authorizes the licensee to administer medication.

(78) Minimum data set (MDS)--See Resident Assessment Instrument (RAI).

(79) Misappropriation of funds--The taking, secretion, misapplication, deprivation, transfer, or attempted transfer to any person not entitled to receive any property, real or personal, or anything of value belonging to or under the legal control of a resident without the effective consent of the resident or other appropriate legal authority, or the taking of any action contrary to any duty imposed by federal or state law prescribing conduct relating to the custody or disposition of property of a resident.

(80) Natural Death Act--Provisions of Texas Health and Safety Code, Chapter 672.

(81) Neglect--A deprivation of life's necessities of food, water, or shelter, or a failure of an individual to provide services, treatment, or care to a resident which causes or could cause mental or physical injury, or harm or death to the resident.

(82) NHIC--Formerly, this term referred to the National Heritage Insurance Corporation, which was the intermediary for the Texas Medicaid program; it now refers to the current intermediary for the Texas Medicaid program, the Texas Medicaid and Health Partnership.

(83) Nonnursing personnel--Persons not assigned to give direct personal care to residents; including administrators, secretaries, activities directors, bookkeepers, cooks, janitors, maids, laundry workers, and yard maintenance workers.

(84) Nurse aide--An individual who provides nursing or nursing-related services to residents in a facility under the supervision of a licensed nurse. This definition does not include an individual who is a licensed health professional, a registered dietitian, or someone who volunteers such services without pay. A nurse aide is not authorized to provide nursing and/or nursing-related services for which a license or registration is required under state law. Nurse aides do not include those individuals who furnish services to residents only as paid feeding assistants.

(85) Nurse aide trainee--An individual who is attending a program teaching nurse aide skills.

(86) Nurse practitioner--A person licensed by the Texas Board of Nurse Examiners (BNE) as a registered professional nurse, authorized by the BNE as an advanced practice nurse in the role of nurse practitioner.

(87) Nurse reviewer--A registered professional nurse employed by HHSC to monitor the accuracy of the CARE form assessment data.

(88) Nursing assessment--See definition of "comprehensive assessment" and "comprehensive care plan."

(89) Nursing care--Services provided by nursing personnel which include, but are not limited to, observation; promotion and maintenance of health; prevention of illness and disability; management of health care during acute and chronic phases of illness; guidance and counseling of individuals and families; and referral to physicians, other health care providers, and community resources when appropriate.

(90) Nursing facility/home--An institution that provides organized and structured nursing care and service, and is subject to licensure under Health and Safety Code, Chapter 242. The nursing facility may also be certified to participate in the Medicaid Title XIX program. Depending on context, these terms are used to represent the management, administrator, or other persons or groups involved in the provision of care to the residents; or to represent the physical building, which may consist of one or more floors or one or more units, or which may be a distinct part of a licensed hospital.

(91) Nursing facility/home administrator--See the definition of "licensed nursing home (facility) administrator."

(92) Nursing personnel--Persons assigned to give direct personal and nursing services to residents, including registered nurses, licensed vocational nurses, nurse aides, orderlies, and medication aides. Unlicensed personnel function under the authority of licensed personnel.

(93) Objectives--See definition of "goals."

(94) OBRA--Omnibus Budget Reconciliation Act of 1987, which includes provisions relating to nursing home reform, as amended.

(95) Ombudsman--An advocate who is a certified representative, staff member, or volunteer of the DADS Office of the State Long Term Care Ombudsman.

(96) Optometrist--An individual with the profession of examining the eyes for defects of refraction and prescribing lenses for correction who is licensed by the Texas Optometry Board.

(97) Paid feeding assistant--An individual who meets the requirements of §19.1113 of this chapter (relating to Paid Feeding Assistants) and who is paid to feed residents by a facility or who is used under an arrangement with another agency or organization.

(98) PASARR--Preadmission Screening and Resident Review.

(99) Palliative Plan of Care--Appropriate medical and nursing care for residents with advanced and progressive diseases for whom the focus of care is controlling pain and symptoms while maintaining optimum quality of life.

(100) Patient care-related electrical appliance--An electrical appliance that is intended to be used for diagnostic, therapeutic, or monitoring purposes in a patient care area, as defined in Standard 99 of the National Fire Protection Association.

(101) Person--An individual, firm, partnership, corporation, association, joint stock company, limited partnership, limited liability company, or any other legal entity, including a legal successor of those entities.

(102) Person with a disclosable interest--A person with a disclosable interest is any person who owns at least a 5.0% interest in any corporation, partnership, or other business entity that is required to be licensed under Health and Safety Code, Chapter 242. A person with a disclosable interest does not include a bank, savings and loan, savings bank, trust company, building and loan association, credit union, individual loan and thrift company, investment banking firm, or insurance company, unless these entities participate in the management of the facility.

(103) Pharmacist--An individual, licensed by the Texas State Board of Pharmacy to practice pharmacy, who prepares and dispenses medications prescribed by a physician, dentist, or podiatrist.

(104) Physical restraint--See Restraints (physical).

(105) Physician--A doctor of medicine or osteopathy currently licensed by the Texas State Board of Medical Examiners.

(106) Physician assistant (PA)--

(A) A graduate of a physician assistant training program who is accredited by the Committee on Allied Health Education and Accreditation of the Council on Medical Education of the American Medical Association; or

(B) A person who has passed the examination given by the National Commission on Certification of Physician Assistants. According to federal requirements (42 CFR §491.2) a physician assistant is a person who meets the applicable state requirements governing the qualifications for assistant to primary care physicians, and who meets at least one of the following conditions:

(i) is currently certified by the National Commission on Certification of Physician Assistants to assist primary care physicians; or

(ii) has satisfactorily completed a program for preparing physician assistants that:

(I) was at least one academic year in length;

(II) consisted of supervised clinical practice and at least four months (in the aggregate) of classroom instruction directed toward preparing students to deliver health care; and

(III) was accredited by the American Medical Association's Committee on Allied Health Education and Accreditation; or

(C) A person who has satisfactorily completed a formal educational program for preparing physician assistants who does not meet the requirements of paragraph (d)(2), 42 CFR §491.2, and has been assisting primary care physicians for a total of 12 months during the 18-month period immediately preceding July 14, 1978.

(107) Podiatrist--A practitioner whose profession encompasses the care and treatment of feet who is licensed by the Texas State Board of Podiatric Medical Examiners.

(108) Poison--Any substance that federal or state regulations require the manufacturer to label as a poison and is to be used externally by the consumer from the original manufacturer's container. Drugs to be taken internally that contain the manufacturer's poison label, but are dispensed by a pharmacist only by or on the prescription order of a physician, are not considered a poison, unless regulations specifically require poison labeling by the pharmacist.

(109) Practitioner--A physician, podiatrist, dentist, or an advanced practice nurse or physician assistant to whom a physician has delegated authority to sign a prescription order, when relating to pharmacy services.

(110) Preadmission medical necessity determination--The determination of need for nursing facility care before the individual's admission into the nursing facility. This determination is valid until admission into a nursing facility or up to 30 days from the effective date.

(111) PRN (pro re nata)--As needed.

(112) Provider--The individual or legal business entity that is contractually responsible for providing Medicaid services under an agreement with DADS.

(113) Psychoactive drugs--Drugs prescribed to control mood, mental status, or behavior.

(114) Qualified surveyor--An employee of DADS who has completed state and federal training on the survey process and passed a federal standardized exam.

(115) Quality assessment and assurance committee--A group of health care professionals in a facility who develop and implement appropriate action to identify and rectify substandard care and deficient facility practice.

(116) Quality-of-care monitor--A registered nurse, pharmacist, or dietitian employed by DADS who is trained and experienced in long-term care facility regulation, standards of practice in long-term care, and evaluation of resident care, and functions independently of DADS' Regulatory Services Division.

(117) Recipient--Any individual residing in a Medicaid certified facility or a Medicaid certified distinct part of a facility whose daily vendor rate is paid by Medicaid.

(118) Registered nurse (RN)--An individual currently licensed by the Board of Nurse Examiners for the State of Texas as a Registered Nurse in the State of Texas.

(119) Reimbursement methodology--The method by which HHSC determines nursing facility per diem rates.

(120) Remodeling--The construction, removal, or relocation of walls and partitions, the construction of foundations, floors, or ceiling-roof assemblies, the expanding or altering of safety systems (including, but not limited to, sprinkler, fire alarm, and emergency systems) or the conversion of space in a facility to a different use.

(121) Renovation--The restoration to a former better state by cleaning, repairing, or rebuilding, including, but not limited to, routine maintenance, repairs, equipment replacement, painting.

(122) Representative payee--A person designated by the Social Security Administration to receive and disburse benefits, act in the best interest of the beneficiary, and ensure that benefits will be used according to the beneficiary's needs.

(123) Resident--Any individual residing in a nursing facility.

(124) Resident assessment instrument (RAI)--An assessment tool used to conduct comprehensive, accurate, standardized, and reproducible assessments of each resident's functional capacity as specified by the Secretary of the U.S. Department of Health and Human Services. At a minimum, this instrument must consist of the Minimum Data Set (MDS) core elements as specified by the Centers for Medicare & Medicaid Services (CMS); utilization guidelines; and Resident Assessment Protocols (RAPS).

(125) Responsible party--An individual authorized by the resident to act for him as an official delegate or agent. Responsible party is usually a family member or relative, but may be a legal guardian or other individual. Authorization may be in writing or may be given orally.

(126) Restraint hold--

(A) A manual method, except for physical guidance or prompting of brief duration, used to restrict:

(i) free movement or normal functioning of all or a portion of a resident's body; or

(ii) normal access by a resident to a portion of the resident's body.

(B) Physical guidance or prompting of brief duration becomes a restraint if the resident resists the guidance or prompting.

(127) Restraints (chemical)--Psychoactive drugs administered for the purposes of discipline, or convenience, and not required to treat the resident's medical symptoms.

(128) Restraints (physical)--Any manual method, or physical or mechanical device, material or equipment attached, or adjacent to the resident's body, that the individual cannot remove easily which restricts freedom of movement or normal access to one's body. The term includes a restraint hold.

(129) Seclusion--See the definition of "involuntary seclusion" in paragraph (1)(A) of this section.

(130) Secretary--Secretary of the U.S. Department of Health and Human Services.

(131) Services required on a regular basis--Services which are provided at fixed or recurring intervals and are needed so frequently that it would be impractical to provide the services in a home or family setting. Services required on a regular basis include continuous or periodic nursing observation, assessment, and intervention in all areas of resident care.

(132) SNF--A skilled nursing facility or distinct part of a facility that participates in the Medicare program. SNF requirements apply when a certified facility is billing Medicare for a resident's per diem rate.

(133) Social Security Administration--Federal agency for administration of social security benefits. Local social security administration offices take applications for Medicare, assist beneficiaries file claims, and provide information about the Medicare program.

(134) Social worker--A qualified social worker is an individual who is licensed, or provisionally licensed, by the Texas State Board of Social Work Examiners as prescribed by Chapter 50 of the Human Resources Code and who has at least:

(A) a bachelor's degree in social work; or

(B) similar professional qualifications, which include a minimum educational requirement of a bachelor's degree and one year experience met by employment providing social services in a health care setting.

(135) Standards--The minimum conditions, requirements, and criteria established in this chapter with which an institution must comply to be licensed under this chapter.

(136) State plan--A formal plan for the medical assistance program, submitted to CMS, in which the State of Texas agrees to administer the program in accordance with the provisions of the State Plan, the requirements of Titles XVIII and XIX, and all applicable fed-

eral regulations and other official issuances of the U.S. Department of Health and Human Services.

(137) State survey agency--DADS is the agency, which through contractual agreement with CMS is responsible for Title XIX (Medicaid) survey and certification of nursing facilities.

(138) Supervising physician--A physician who assumes responsibility and legal liability for services rendered by a physician assistant (PA) and has been approved by the Texas State Board of Medical Examiners to supervise services rendered by specific PAs. A supervising physician may also be a physician who provides general supervision of a nurse practitioner providing services in a nursing facility.

(139) Supervision--General supervision, unless otherwise identified.

(140) Supervision (direct)--Authoritative procedural guidance by a qualified person for the accomplishment of a function or activity within his sphere of competence. If the person being supervised does not meet assistant-level qualifications specified in this chapter and in federal regulations, the supervisor must be on the premises and directly supervising.

(141) Supervision (general)--Authoritative procedural guidance by a qualified person for the accomplishment of a function or activity within his sphere of competence. The person being supervised must have access to the licensed and/or qualified person providing the supervision.

(142) Supervision (intermittent)--Authoritative procedural guidance by a qualified person for the accomplishment of a function or activity within his sphere of competence, with initial direction and periodic inspection of the actual act of accomplishing the function or activity. The person being supervised must have access to the licensed and/or qualified person providing the supervision.

(143) TDMHMR-- Formerly, this term referred to the Texas Department of Mental Health and Mental Retardation; it now refers to DADS.

(144) *Texas Register*--A publication of the Texas Register Publications Section of the Office of the Secretary of State that contains emergency, proposed, withdrawn, and adopted rules issued by Texas state agencies. The *Texas Register* was established by the Administrative Procedure and Texas Register Act of 1975.

(145) Therapeutic diet--A diet ordered by a physician as part of treatment for a disease or clinical condition, in order to eliminate, decrease, or increase certain substances in the diet or to provide food which has been altered to make it easier for the resident to eat.

(146) Therapy week--A seven-day period beginning the first day rehabilitation therapy or restorative nursing care is given. All subsequent therapy weeks for a particular individual will begin on that day of the week.

(147) Threatened violation--A situation that, unless immediate steps are taken to correct, may cause injury or harm to a resident's health and safety.

(148) TILE--Texas Index for Level of Effort; an index of 11 categories plus a default that consists of relative resource utilization groups. The index determines where a nursing facility client fits based upon service and care requirements. It determines the daily rate to be paid on behalf of the client.

(149) TILE 202 restorative nursing--Nursing care and practices, based on a plan of care developed by the restorative team, designed to maintain or improve on goals achieved during physical or occupational therapy. Examples of TILE 202 restorative nursing

include training and skill practice in self-feeding, bed mobility, transfers, ambulation, dressing or grooming, and active range of motion.

(150) TILE error--Inaccuracies in a CARE form assessment of a Medicaid recipient that result in an incorrect TILE classification.

(151) Title II--Federal Old-Age, Survivors, and Disability Insurance Benefits of the Social Security Act.

(152) Title XVI--Supplemental Security Income (SSI) of the Social Security Act.

(153) Title XVIII--Medicare provisions of the Social Security Act.

(154) Title XIX--Medicaid provisions of the Social Security Act.

(155) Total health status--Includes functional status, medical care, nursing care, nutritional status, rehabilitation and restorative potential, activities potential, cognitive status, oral health status, psychosocial status, and sensory and physical impairments.

(156) UAR--HHSC's Utilization and Assessment Review Section.

(157) Uniform data set--See Resident Assessment Instrument (RAI).

(158) Universal precautions--The use of barrier and other precautions by long-term care facility employees and/or contract agents to prevent the spread of blood-borne diseases.

(159) Utilization review committee--The group of health care professionals contracted by HHSC to make individual determinations of medical necessity regarding nursing facility care. The Utilization Review Committee consists of physicians and registered nurses.

(160) Vendor payment--Payment made by DADS on a daily-rate basis for services delivered to recipients in Medicaid-certified nursing facilities. Vendor payment is based on the nursing facility's claim approval of the DADS-generated Nursing Facility Billing Statement to DADS. The Nursing Facility Billing Statement, subject to adjustments and corrections, is prepared from information submitted by the nursing facility, which is currently on file in the computer system as of the billing date. Vendor payment is made at periodic intervals, but not less than once per month for services rendered during the previous billing cycle.

(161) Working day--Any 24-hour period, Monday through Friday, excluding state and federal holidays.

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) 438-3734



SUBCHAPTER E. RESIDENT RIGHTS

40 TAC §19.403, §19.408

The amendments are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code, Chapter 242, which authorizes DADS to license and regulate nursing facilities, and Chapter 322, which governs the use of restraint and seclusion in certain health care facilities, including nursing facilities.

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 G. RESIDENT BEHAVIOR AND FACILITY PRACTICE

40 TAC §19.601

The amendment is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code, Chapter 242, which authorizes DADS to license and regulate nursing facilities, and Chapter 322, which governs the use of restraint and seclusion in certain health care facilities, including nursing facilities.

§19.601. *Resident Behavior and Facility Practice.*

(a) Restraints. The resident has the right to be free from any physical or chemical restraints imposed for purposes of discipline or convenience, and not required to treat the resident's medical symptoms.

(1) If physical restraints are used because they are required to treat the resident's medical condition, the restraints must be released and the resident repositioned as needed to prevent deterioration in the resident's condition. Residents must be monitored hourly and, at a minimum, restraints must be released every two hours for a minimum of ten minutes, and the resident repositioned.

(2) A facility must not administer to a resident a restraint that:

(A) obstructs the resident's airway, including a procedure that places anything in, on, or over the resident's mouth or nose;

(B) impairs the resident's breathing by putting pressure on the resident's torso;

(C) interferes with the resident's ability to communicate; or

(D) places the resident in a prone or supine hold.

(3) A behavioral emergency is a situation in which severely aggressive, destructive, violent, or self-injurious behavior exhibited by a resident:

(A) poses a substantial risk of imminent probable death of, or substantial bodily harm to, the resident or others;

(B) has not abated in response to attempted preventive de-escalatory or redirection techniques;

(C) could not reasonably have been anticipated; and

(D) is not addressed in the resident's comprehensive care plan.

(4) If restraint is used in a behavioral emergency, the facility must use only an acceptable restraint hold. An acceptable restraint hold is a hold in which the resident's limbs are held close to the body to limit or prevent movement and that does not violate the provisions of paragraph (2) of this subsection.

(5) A staff person may use a restraint hold only for the shortest period of time necessary to ensure the protection of the resident or others in a behavioral emergency.

(6) A facility may adopt policies that allow less use of restraint than allowed by the rules of this chapter.

(7) Use of restraints and their release must be documented in the clinical record.

(b) Abuse. The resident has the right to be free from verbal, sexual, physical and mental abuse, corporal punishment, and involuntary seclusion.

(c) Staff treatment of residents. The facility must develop and implement written policies and procedures that prohibit mistreatment, neglect, and abuse of residents, and misappropriation of residents' property.

(1) The facility must:

(A) not use verbal, mental, sexual, or physical abuse, corporal punishment, or involuntary seclusion; and

(B) not employ individuals who have:

(i) been found guilty of abusing, neglecting, or mistreating residents by a court of law, or

(ii) had a finding entered into the state nurse aide registry concerning abuse, neglect, mistreatment of residents, or misappropriation of their property; or

(iii) been convicted of any crime contained in §250.006, Health and Safety Code; and

(C) report any knowledge it has of actions by a court of law against an employee, which would indicate unfitness for service as a nurse aide or other staff to the state nurse aide registry or licensing authority.

(2) The facility must ensure that all alleged violations involving mistreatment, neglect, or abuse, including injuries of unknown source, and misappropriation of resident property, are reported immediately to the administrator of the facility and to other officials in accordance with Texas law through established procedures (see §19.602 of

this title (relating to Incidents of Abuse and Neglect Reportable to the Texas Department of Human Services and Law Enforcement Agencies by Facilities)).

(3) The facility must have evidence that all alleged violations are thoroughly investigated and must prevent further potential abuse while the investigation is in progress.

(4) The results of all investigations must be reported to the administrator or his designated representative and to other officials in accordance with Texas law (including to the state survey and certification agency) within five workdays of the incident, and if the alleged violation is verified, appropriate corrective action must be taken.

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 I. RESIDENT ASSESSMENT

40 TAC §19.801

The Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS), adopts an amendment to §19.801 in Chapter 19, Nursing Facility Requirements for Licensure and Medicaid Certification, without changes to the proposed text published in the March 3, 2006, issue of the *Texas Register* (31 TexReg 1420).

The amendment is adopted to require all nursing facilities to submit comprehensive resident assessments, including the Minimum Data Set (MDS) Resident Assessment, to DADS. The rule previously required only those facilities certified to participate in Medicaid (Medicaid-certified facilities) to submit the MDS data to DADS. However, Senate Bill 48, 79th Legislature, Regular Session, 2005, amended Texas Health and Safety Code, §242.403, to authorize DADS to require all nursing facilities to submit information necessary to ensure the quality of care in the facilities, including the MDS Resident Assessment. Under the new authority granted by Texas Health and Safety Code, §242.403, the amendment is adopted to require non-Medicaid-certified facilities to submit the MDS data to DADS.

DADS received no comments regarding adoption of the amendment.

The amendment is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan

and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Health and Safety Code, §242.403, which requires DADS to adopt standards for quality of life and quality of care for residents of convalescent and nursing facilities and related institutions.

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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Marianne Reat

Interim General Counsel

Department of Aging and Disability Services

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SUBCHAPTER J. QUALITY OF CARE

40 TAC §19.910

The Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS), adopts an amendment to §19.910 in Chapter 19, Nursing Facility Requirements for Licensure and Medicaid Certification, without changes to the proposed text published in the March 3, 2006, issue of the *Texas Register* (31 TexReg 1423).

The amendment is adopted to implement the provisions of Senate Bill (SB) 874, 79th Legislature, Regular Session, 2005, which amended Texas Health and Safety Code, §255.003. SB 874 deleted the requirement in §255.003 for DADS' quality-of-care monitors to make unannounced monitoring visits to long-term care facilities. The amendment, therefore, is adopted to provide an option for DADS' quality-of-care monitors to give a facility prior notice of their monitoring visits.

DADS received no comments regarding adoption of the amendment.

The amendment is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code, Chapter 255, which authorizes DADS to establish a quality assurance early warning system for long-term care facilities and to create rapid response teams.

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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40 TAC §19.911

The Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS), adopts an amendment to §19.911, in Chapter 19, Nursing Facility Requirements for Licensure and Medicaid Certification, without changes to the proposed text published in the March 3, 2006, issue of the *Texas Register* (31 TexReg 1424).

The amendment is adopted to allow a rapid response team to be comprised of one quality-of-care monitor. A quality-of-care monitor is a registered nurse, pharmacist, or dietician employed by DADS who is trained and experienced in long-term care facility regulation, standards of practice, and evaluation of resident care. Rapid response teams visit long-term care facilities at the request of the facility. The amendment is adopted to allow nursing facilities in Texas to request a specific type of quality-of-care monitor (that is, a nurse, a pharmacist, or a dietician) to address a specific issue identified through DADS' quality assurance early warning system.

DADS received no comments regarding adoption of the amendment.

The amendment is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code, Chapter 255, which authorizes DADS to establish a quality assurance early warning system for long-term care facilities and to create rapid response teams.

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 T. ADMINISTRATION

40 TAC §19.1917

The Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS), adopts an amendment to §19.1917, in Chapter 19, governing Nursing Facility Requirements for Licensure and Medicaid Certification, without changes to the proposed text published in the March 3, 2006, issue of the *Texas Register* (31 TexReg 1425).

The amendment is adopted to implement the provisions of Senate Bill 1525, 79th Legislature, which added Chapter 256 to the Texas Health and Safety Code. Under existing rules, a Quality Assessment and Assurance Committee is maintained by a nursing facility to identify issues regarding quality assessment and assurance activities and develop and implement appropriate plans to correct identified quality deficiencies. The amendment is adopted to add a requirement that a nursing facility's Quality Assessment and Assurance Committee adopt and ensure implementation of a policy that addresses safe resident handling and movement practices. The policy must identify, assess, and develop strategies to control risk of injury to residents and nurses associated with the lifting, transferring, repositioning, or moving of a resident.

DADS received no comments regarding adoption of the amendment.

The amendment is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Health and Safety Code, Chapter 242, which authorizes DADS to license and regulate nursing facilities; and Texas Health and Safety Code, Chapter 256, which requires a policy for safe resident handling and movement practices.

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 42. MEDICAID WAIVER PROGRAM FOR PEOPLE WHO ARE DEAF-BLIND WITH MULTIPLE DISABILITIES

The Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS), adopts the repeal of §42.12 and simultaneously adopts new §42.12 in Chapter 42, governing the Medicaid Waiver Program for People Who Are Deaf-Blind with Multiple Disabilities (DBMD), without changes to the proposed text as published in

the February 24, 2006, issue of the *Texas Register* (31 TexReg 1245).

The new section is adopted to implement Senate Bill 626, 79th Texas Legislature, Regular Session, 2005, which added §32.058 to the Texas Human Resources Code. Section 32.058 prohibits DADS from providing services in certain medical assistance waiver programs, including the DBMD Program, if the cost of services exceeds the specified individual cost limit. However, the law makes two specific exceptions to the prohibition and allows the HHSC executive commissioner to adopt a rule allowing DADS to grant an exemption in individual cases. The new section is adopted to govern the specific exceptions to the prohibition and to allow the DADS commissioner to grant an exemption in individual cases.

The repeal is adopted because the section contained provisions concerning exceptions to the individual cost limit that were superseded by the exceptions codified in Human Resources Code, §32.058.

DADS received one written comment from the Texas Association for Home Care in support of the new section.

40 TAC §42.12

The repeal is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.058, which limits the assistance provided by DADS in certain Medicaid waiver programs.

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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40 TAC §42.12

The new section is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing

the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.058, which limits the assistance provided by DADS in certain Medicaid waiver programs.

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 48. COMMUNITY CARE FOR AGED AND DISABLED

The Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS), adopts the repeal of §48.2123 and §48.6099 and simultaneously adopts new §48.2123 and §48.6099 in Chapter 48, governing Community Care for Aged and Disabled, without changes to the proposed text published in the February 24, 2006, issue of the *Texas Register* (31 TexReg 1246).

The new sections are adopted to implement Senate Bill 626, 79th Texas Legislature, Regular Session, 2005, which added §32.058 to the Texas Human Resources Code. Section 32.058 prohibits DADS from providing services in certain medical assistance waiver programs, including the Community Living Assistance and Support Services (CLASS) and Community Based Alternatives (CBA) programs, if the cost of services exceeds the specified individual cost limit. However, the law makes two specific exceptions to the prohibition and allows the HHSC executive commissioner to adopt a rule allowing DADS to grant an exemption in individual cases. The new sections are adopted to govern the specific exceptions to the prohibition and to allow the DADS commissioner to grant an exemption in individual cases. New §48.6099 is also adopted to continue the provision in the repealed section that allows an individual receiving Medically Dependent Children Program services to transition into the CBA Program at age 21 under the 133% cost limit provisions of the section.

The repeal is adopted because the sections contained provisions concerning exceptions to the individual cost limit that were superseded by the exceptions codified in Human Resources Code, §32.058.

DADS received one written comment from the Texas Association for Home Care in support of the new sections.

SUBCHAPTER C. MEDICAID WAIVER PROGRAM FOR PERSONS WITH RELATED CONDITIONS

40 TAC §48.2123

The repeal is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.058, which limits the assistance provided by DADS in certain Medicaid waiver programs.

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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40 TAC §48.2123

The new section is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.058, which limits the assistance provided by DADS in certain Medicaid waiver programs.

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 J. 1915(c) MEDICAID
HOME AND COMMUNITY-BASED WAIVER
SERVICES FOR AGED AND DISABLED
ADULTS WHO MEET CRITERIA FOR
ALTERNATIVES TO NURSING FACILITY
CARE

40 TAC §48.6099

The repeal is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.058, which limits the assistance provided by DADS in certain Medicaid waiver programs.

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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40 TAC §48.6099

The new section is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.058, which limits the assistance provided by DADS in certain Medicaid waiver programs.

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 50. §1915(c) CONSOLIDATED
WAIVER PROGRAM**

The Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS), adopts the repeal of §50.50 and simultaneously adopts new §50.50 in Chapter 50, governing the §1915(c) Consolidated Waiver Program (CWP), without changes to the proposed text published in the February 24, 2006, issue of the *Texas Register* (31 TexReg 1249).

The new section is adopted to implement Senate Bill 626, 79th Texas Legislature, Regular Session, 2005, which added §32.058 to the Texas Human Resources Code. Section 32.058 prohibits DADS from providing services in certain medical assistance waiver programs, including the CWP, if the cost of services exceeds the specified individual cost limit. However, the law makes two specific exceptions to the prohibition and allows the HHSC executive commissioner to adopt a rule allowing DADS to grant an exemption in individual cases. The new section is adopted to govern the specific exceptions to the prohibition and to allow the DADS commissioner to grant an exemption in individual cases.

The repeal is adopted because the section contained provisions concerning exceptions to the individual cost limit that were superseded by the exceptions codified in Human Resources Code, §32.058.

DADS received one written comment from the Texas Association for Home Care in support of the new section.

40 TAC §50.50

The repeal is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.058, which limits the assistance provided by DADS in certain Medicaid waiver programs.

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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40 TAC §50.50

The new section is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.058, which limits the assistance provided by DADS in certain Medicaid waiver programs.

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 51. MEDICALLY DEPENDENT CHILDREN PROGRAM

SUBCHAPTER B. ELIGIBILITY, ENROLLMENT, AND SERVICES

DIVISION 3. SERVICES

The Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS), adopts the repeal of §51.239 and simultaneously adopts new §51.239 in Chapter 51, governing the Medically Dependent Children Program (MDCP), without changes to the proposed text published in the February 24, 2006, issue of the *Texas Register* (31 TexReg 1251).

The new section is adopted to implement Senate Bill 626, 79th Texas Legislature, Regular Session, 2005, which added §32.058 to the Texas Human Resources Code. Section 32.058 prohibits DADS from providing services in certain medical assistance waiver programs, including MDCP, if the cost of services exceeds the specified individual cost ceiling. However, the law makes two specific exceptions to the prohibition and allows the HHSC executive commissioner to adopt a rule allowing DADS

to grant an exemption in individual cases. The new section is adopted to govern the specific exceptions to the prohibition and to allow the DADS commissioner to grant an exemption in individual cases.

The repeal is adopted because the section contained provisions concerning exceptions to the individual cost ceiling that were superseded by the exceptions codified in Human Resources Code, §32.058.

DADS received one written comment from the Texas Association for Home Care in support of the new section.

40 TAC §51.239

The repeal is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.058, which limits the assistance provided by DADS in certain Medicaid waiver programs.

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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40 TAC §51.239

The new section is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.058, which limits the assistance provided by DADS in certain Medicaid waiver programs.

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CHAPTER 76. CRIMINAL HISTORY CHECK OF EMPLOYEES IN FACILITIES FOR CARE OF THE AGED AND PERSONS WITH DISABILITIES

40 TAC §§76.101 - 76.106

The Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS), adopts the repeal of Chapter 76, consisting of §§76.101 - 76.106, Criminal History Check of Employees in Facilities for Care of the Aged and Persons with Disabilities, without changes to the proposal published in the March 3, 2006, issue of the *Texas Register* (31 TexReg 1432).

The repeal is adopted to delete duplicative and obsolete rules from the DADS rule base. The requirements governing criminal history checks for employees working in facilities that care for the aged and persons with disabilities are contained in Texas Health and Safety Code, Chapter 250, Nurse Aide Registry and Criminal History Checks of Employees and Applicants for Employment in Certain Facilities Serving the Elderly or Persons with Disabilities. DADS licensing rules currently refer directly to Texas Health and Safety Code, Chapter 250, therefore Chapter 76 is duplicative. Chapter 76 is based on an earlier version of Texas Health and Safety Code, Chapter 250, so that some of its provisions are now obsolete.

DADS received no comments regarding adoption of the repeal.

The repeal is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 90. INTERMEDIATE CARE FACILITIES FOR PERSONS WITH MENTAL RETARDATION OR RELATED CONDITIONS

The Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS), adopts amendments to §90.3 and §90.42, and adopts new §90.328 in Chapter 90, Intermediate Care Facilities for Persons with Mental Retardation or Related Conditions. The amendments to §90.3 and §90.42 are adopted with changes to the proposed text published in the February 24, 2006, issue of the *Texas Register* (31 TexReg 1253). New §90.328 is adopted without changes to the proposed text.

The amendments and new section are adopted to implement Senate Bill (SB) 325, 79th Legislature, Regular Session, 2005, which added Chapter 322 to the Texas Health and Safety Code. Chapter 322 requires DADS to prohibit certain restraints in a variety of health care facilities, including an intermediate care facility for persons with mental retardation (ICF/MR) licensed by DADS under Chapter 252 of the Texas Health and Safety Code.

To comply with Chapter 322, the amendments to §90.3 and §90.42 are adopted to (1) define acceptable restraint holds (referred to in the adopted rules as "personal holds"), (2) add a definition for "seclusion" to reflect its definition in Chapter 322, (3) develop practices to decrease the frequency of the use of restraint and seclusion, (4) allow less use of restraint than allowed by the rules in the chapter, (5) permit prone and supine holds only as transitional holds, and (6) ensure that each resident and the resident's legally authorized representative are notified of the rules and policies related to restraint and seclusion. In addition, the amendments are adopted to clarify and update rule language, including replacing references to the former Texas Department of Human Services with references to DADS.

New §90.328 is adopted to comply with Health and Safety Code, §322.054, which prohibits a facility from retaliating against a person because the person in good faith provides information relating to the misuse of restraint or seclusion at the facility or against a resident because someone on behalf of the resident in good faith provides information relating to the misuse of restraint or seclusion at the facility.

DADS received written comments from Advocacy, Inc., and the Private Providers Association of Texas. A summary of the comments and the responses follow.

Comment: A commenter stated that, although Senate Bill 325 focused on the use of restraint and seclusion in emergency situations, the proposed amendments and new section address the use of restraint not only in emergency situations but also as an approved intervention in behavior therapy programs. The commenter stated that this creates confusion in interpreting the rules, particularly concerning the use of mechanical devices.

Response: The agency does not agree with the commenter's reasoning that ICF/MR providers will be confused. Providers use restraints as an intervention in a behavioral therapy program plan and now will be allowed to use them as a response to a behavioral emergency. The agency believes rules addressing both situations are necessary.

Comment: Concerning §90.3(7)(A), a commenter stated that the phrase "substantial bodily harm" is ambiguous and has the potential to result in significant variation in its interpretation by direct support staff and, hence, significant variation in their judgment about whether or not an incident constitutes a behavioral emergency allowing for protective restraint. The commenter recommends clarification of the phrase or that the agency provide examples of what it considers "substantial bodily harm."

Response: The agency declines to provide examples, as it is up to the provider to document the justification for the use of the restraint and to have trained staff in the use of emergency restraints.

Comment: Concerning §90.3(7)(C), a commenter stated that the phrase "could not reasonably have been anticipated" is ambiguous. Does the phrase refer to the specific circumstances, time, and place in which the behavior occurs or more generally to the aggressor's behavioral history, which may include infrequent, but occasional, aggressive behavior or frequent aggressive behavior?

Response: The agency agrees with the comment and has deleted "could not reasonably have been anticipated" from the rule language.

Comment: Concerning §90.3(25) and §90.3(44), a commenter stated that the definition of "large facility" parallels the definition of "large facility" in the ICF/MR licensure rules but differs from the definition used in the Home and Community-based Services Program rules (§9.153 (22)) and the ICF/MR reimbursement methodology rules (1 TAC §355.456(b)(1)). The commenter also pointed out that the definition of "small facility" parallels the definition of "small facility" in the ICF/MR licensure rules but differs from the definition used in the ICF/MR reimbursement methodology rules. The commenter recommended that the definitions be consistent across all rules, or that the basis for differences be explained in the rules.

Response: The agency declines to change the definition of "large facility" and "small facility." The agency believes the definitions used in this chapter are appropriate for its purposes. Including an explanation of the differences between the definitions in this rule and other rules that use the terms "small" and "large" facility is beyond the scope of the proposed rules.

Comment: Concerning §90.3(37), two commenters requested clarification of the definition of "personal hold." One of the commenters was unclear about what differentiates "physical guidance or prompting of brief duration" and "restraint" and what amount of time is "brief"? Another commenter stated that the definition of "personal hold" implies that an intervention that restricts the free movement or normal functioning of all or a portion of an individual's body is not a restraint if the reason it is used is for physical guidance or prompting of brief duration. The determining factor of whether a hold is a restraint should be whether it is voluntary or if the person is resistant. Physical guidance or prompting may still be a restraint if the individual resists the guidance or prompt either verbally or by their actions. The commenter suggested that "except for physical guidance or prompting of brief duration" be deleted from the definition and that ad-

ditional language be added to indicate restraint does not include physical guidance or prompting if it is voluntary.

Response: The agency agrees in part with the comments and has added language to §90.3(37) to indicate that physical guidance or prompting of brief duration becomes a restraint if the individual resists the guidance or prompting. However, the agency did not remove the phrase "except for physical guidance or prompting of brief duration," because there are situations in which physical guidance or prompting can calm the individual or prevent the situation from escalating.

Comment: Concerning §90.3(42), a commenter asked that if the use of mechanical restraints is allowed, more direction be provided on their use, particularly care and safety issues. The commenter recommended that future versions of the rule provide more direction related to who can initiate, who can order, what assessments occur and how frequently, time frames, safety and protection issues, and release procedures.

Response: The agency believes that the definition of restraint is adequately addressed by the proposed rules but agrees to consider the commenter's concerns in future revisions of the rules.

Comment: A commenter stated that the use of a mechanical device to restrain an individual, especially when the individual is placed in two- or four-point restraint, makes the individual vulnerable to harm, including harm by other individuals. The commenter further stated that the use of mechanical devices to restrain an individual requires that staff be physically present to provide continuous, one-on-one monitoring of an individual who is being restrained with a mechanical device. The commenter recommended that DADS add such a provision to ensure the protection of the individual.

Response: The agency declines to make continuous, one-to-one monitoring a requirement, as it may not be necessary in every instance in which a mechanical restraint is used. The proposed rule amendment at §90.42(e)(4)(D)(ii) requires a facility to "use the minimal amount of force.. to ensure the safety of the resident and others," and §90.42(e)(4)(D)(iii) requires a facility to "safeguard the resident's dignity, privacy, and well-being." The agency believes these provisions are adequate to ensure a facility appropriately monitors a resident in a mechanical restraint.

Comment: Concerning §90.42(e)(4)(A)(i)(III), a commenter stated that prohibiting the use of restraint in a manner that interferes with an individual's ability to communicate appears to preclude the use of restraint with an individual who communicates primarily with hands or eyes. The commenter explained that staff might be unable to effectively intervene to prevent injury to the individual or others and recommended that the provision be removed or modified to allow flexibility in the use of communication during restraint contingent on the situation and the individual's mode of communication.

Response: The agency declines to make the recommended revision and explains that Texas Health and Safety Code §322.051, as added by SB 325, requires the prohibition.

Comment: A commenter stated that the phrase "disciplinary purposes" at §90.42(e)(4)(A)(ii) is ambiguous and subject to multiple interpretations. The commenter suggested that the agency's intention appeared to be to prohibit penal, retaliatory, or vengeful use of restraint and recommended clarification of the phrase.

Response: The agency does not believe that the phrase is ambiguous and cites its use in federal ICF/MR regulations at 42 CFR §483.450(b)(3). The agency has revised the provision,

however, to include "retaliation" and "retribution," which are clarifying terms the Centers for Medicare and Medicaid Services uses in its "interpretive guidelines" to the federal ICF/MR regulations.

Comment: Concerning §90.42(e)(4)(B)(ii) and (iv), a commenter requested clarification or reconsideration of the use of the word "voluntarily" to describe inappropriate behavior exhibited by an individual that may be addressed in a behavior therapy program and of "involuntary" to describe inappropriate and often self-injurious behavior from which an individual should be protected. The commenter stated that professionals disagree on "when, whether or not, and to what extent behavior is 'voluntary.'" The commenter further stated, "involuntary behaviors may also be therapeutically modified or managed through the appropriate use of restraint" and questioned why the distinction is necessary or useful.

Response: The agency has not changed the rule in response to the comment. The agency believes the distinction between "voluntary" and "involuntary" is both necessary and useful to distinguish those behaviors that can be successfully addressed through a behavior therapy program.

Comment: Concerning §90.42(e)(4)(C)(i), a commenter requested that clarification be included in the rule of whether the identification by an interdisciplinary team (IDT) of "conditions, factors, and limitations" for the use of restraint with an individual refers to the development of behavior therapy interventions utilizing restraint or only to the use of restraint to address a behavioral emergency. The commenter also recommended that the IDT be required to "consider" the conditions and factors in the design of a restraint intervention.

Response: The agency disagrees with the comment and has not changed the rule in response to the comment. Section 90.42(e)(4)(D)(i) requires a provider to "take into account the conditions, factors, and limitations on specific restraint techniques or mechanical restraint devices" identified by the IDT not only when restraining an individual in a behavioral emergency or as approved in a behavior therapy program, but also, in accordance with §90.42(e)(4)(B)(iii) - (v), a provider must take into account those conditions, factors, and limitations (1) in response to a medical or dental procedure or to promote healing, (2) to protect an individual from involuntary self-injury, and (3) to provide postural support to an individual or assist the individual in obtaining and maintaining normative bodily functioning.

Comment: Concerning §90.42(e)(4)(E)(i) - (ii), the provisions related to restraint techniques proposed in this section of the rule may place the resident and direct support staff at risk of injury. Why must staff be prone and perpendicular to the resident? It appears that their control and ability to monitor the resident would be diminished in this position. Their ability to control and monitor the resident would be enhanced if allowed to be in a kneeling position.

Response: The language the commenter referenced was not in the rule as proposed in the *Texas Register*.

Comment: Concerning §90.42(e)(4)(E)(ii)(I), a commenter requested clarification of the term "transitional hold."

Response: The proposed text of §90.42(e)(4)(E)(ii) reads: "if a resident rolls into a prone or supine position during a restraint, the facility must transition the resident to a side, sitting, or standing position as soon as possible. The facility may only use a supine or prone hold: (I) as a transitional hold." The agency

believes that the definition of transitional hold is adequately addressed in the proposed rules and declines to make the recommended revision. Texas Health and Safety Code, §322.052(b), as added by SB 325, states that the rules must permit prone and supine holds only as transitional holds for use on a resident of a facility.

SUBCHAPTER A. INTRODUCTION

40 TAC §90.3

The amendment is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Health and Safety Code, Chapter 252, which authorizes DADS to license and regulate ICF/MR, and Chapter 322, which governs the use of restraint and seclusion in certain health care facilities, including ICF/MR.

§90.3. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise. Individual subchapters may have definitions that are specific to the subchapter.

- (1) Addition--The addition of floor space to a facility.
- (2) Administrator--The administrator of a facility.
- (3) Affiliate--With respect to a:
 - (A) partnership, each partner thereof;
 - (B) corporation, each officer, director, principal stockholder, and subsidiary; and each person with a disclosable interest (defined in the section);
 - (C) natural person which includes each:
 - (i) person's spouse;
 - (ii) partnership and each partner thereof of which said person or any affiliate of said person is a partner; and
 - (iii) corporation in which said person is an officer, director, principal stockholder, or person with a disclosable interest.
- (4) Applicant--A person applying for a license under Health and Safety Code, Chapter 252.
- (5) APA--The Administrative Procedure Act, Texas Government Code, Chapter 2001.
- (6) Attendant personnel--All persons who are responsible for direct and non-nursing services to residents of a facility. (Nonattendant personnel are all persons who are not responsible for direct personal services to residents.) Attendant personnel come within the categories of: administration, dietitians, medical records, activities, house-keeping, laundry, and maintenance.
- (7) Behavioral emergency--A situation in which severely aggressive, destructive, violent, or self-injurious behavior exhibited by a resident:

(A) poses a substantial risk of imminent probable death of, or substantial bodily harm to, the resident or others;

(B) has not abated in response to attempted preventive de-escalatory or redirection techniques;

(C) is not addressed in a behavior therapy program; and

(D) does not occur during a medical or dental procedure.

(8) Care and treatment--Services required to maximize resident independence, personal choice, participation, health, self-care, psychosocial functioning and provide reasonable safety, all consistent with the preferences of the resident.

(9) Centers for Medicare and Medicaid Services (CMS)--The federal agency that provides funding and oversight for the Medicare and Medicaid programs. CMS was formerly known as the Health Care Financing Administration (HCFA).

(10) Change of ownership--A change of 50% or more in the ownership of the business organization that is licensed to operate the facility, or a change in the federal taxpayer identification number.

(11) Controlled substance--A drug, substance, or immediate precursor as defined in the Texas Controlled Substance Act, Health and Safety Code, Chapter 481, as amended, and/or the Federal Controlled Substance Act of 1970, Public Law 91-513, as amended.

(12) DADS--The Department of Aging and Disability Services.

(13) Dangerous drug--Any drug as defined in the Texas Dangerous Drug Act, Health and Safety Code, Chapter 483.

(14) Department--The Department of Aging and Disability Services.

(15) Designee--A state agency or entity with which DADS contracts to perform specific, identified duties related to the fulfillment of a responsibility prescribed by this chapter.

(16) Drug (also referred to as medication)--A drug is:

(A) any substance recognized as a drug in the official United States Pharmacopeia, official Homeopathic Pharmacopeia of the United States, or official National Formulary, or any supplement to any of them;

(B) any substance intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man;

(C) any substance (other than food) intended to affect the structure or any function of the human body; and

(D) any substance intended for use as a component of any substance specified in subparagraphs (A) - (C) of this paragraph. It does not include devices or their components, parts, or accessories.

(17) Establishment--A place of business or a place where business is conducted which includes staff, fixtures, and property.

(18) Facility--A facility serving persons with mental retardation or related conditions licensed under this chapter as described in §90.2 of this title (relating to Scope) and required to be licensed under the Health and Safety Code, Chapter 252.

(19) Governmental unit--A state or a political subdivision of the state, including a county or municipality.

(20) Hearing--A contested case hearing held in accordance with the Administrative Procedure Act, Government Code, Chapter

2001, and the formal hearing procedures in 1 TAC Chapter 357, Subchapter I.

(21) Immediate and serious threat--A situation in which there is a high probability that serious harm or injury to residents could occur at any time or has already occurred and may occur again if residents are not protected effectively from the harm or if the threat is not removed.

(22) Immediate jeopardy to health and safety--A situation in which immediate corrective action is necessary because the facility's noncompliance with one or more requirements has caused, or is likely to cause, serious injury, harm, impairment, or death to a resident receiving care in the facility.

(23) Incident--An unusual or abnormal event or occurrence in, at, or affecting the facility and/or the residents of the facility.

(24) Inspection--Any on-site visit to or survey of a facility by DADS for the purpose of inspection of care, licensing, monitoring, complaint investigation, architectural review, or similar purpose.

(25) Large facility--Facilities with 17 or more resident beds.

(26) Legal guardian--A person who is appointed guardian under §693 of the Probate Code.

(27) Legally authorized representative--A person authorized by law to act on behalf of a person with regard to a matter described in this chapter, and may include a parent, guardian, or managing conservator of a minor, or the guardian of an adult.

(28) License--Approval from DADS to establish or operate a facility.

(29) Life Safety Code (also referred to as the Code or NFPA 101)--The Code for Safety to Life from Fire in Buildings and Structures, Standard 101, of the National Fire Protection Association (NFPA).

(30) Life safety features--Fire safety components required by the Life Safety Code such as building construction, fire alarm systems, smoke detection systems, interior finishes, sizes and thicknesses of doors, exits, emergency electrical systems, sprinkler systems, etc.

(31) Local authorities--A local health authority, fire marshal, building inspector, etc., who may be authorized by state law, county order, or municipal ordinance to perform certain inspections or certifications.

(32) Local health authority--The physician having local jurisdiction to administer state and local laws or ordinances relating to public health, as described in the Health and Safety Code, §§121.021 - 121.025.

(33) Management services--Services provided under contract between the owner of a facility and a person to provide for the operation of a facility, including administration, staffing, maintenance, or delivery of resident services. Management services shall not include contracts solely for maintenance, laundry, or food services.

(34) Manager--A person having a contractual relationship to provide management services to a facility.

(35) Person--An individual, firm, partnership, corporation, association, or joint stock company, and any legal successor of those entities.

(36) Person with a disclosable interest--Any person who owns 5.0% interest in any corporation, partnership, or other business entity that is required to be licensed under Health and Safety Code,

Chapter 252. A person with a disclosable interest does not include a bank, savings and loan, savings bank, trust company, building and loan association, credit union, individual loan and thrift company, investment banking firm, or insurance company unless such entity participates in the management of the facility.

(37) Personal hold--

(A) A manual method, except for physical guidance or prompting of brief duration, used to restrict:

(i) free movement or normal functioning of all or a portion of a resident's body; or

(ii) normal access by a resident to a portion of the resident's body.

(B) Physical guidance or prompting of brief duration becomes a restraint if the resident resists the guidance or prompting.

(38) Qualified mental retardation professional (QMRP)--A person with at least a bachelor's degree who has at least one year of experience working with persons with mental retardation or related conditions.

(39) Quality-of-care monitor--A registered nurse, pharmacist, or dietitian, employed by DADS, who is trained and experienced in long-term care regulations, standards of practice in long-term care, and evaluation of resident care and functions independently of DADS' Regulatory Services Division.

(40) Remodeling--The construction, removal, or relocation of walls and partitions, or construction of foundations, floors, or ceiling-roof assemblies, including expanding of safety systems (i.e., sprinkler systems, fire alarm systems), that will change the existing plan and use areas of the facility.

(41) Renovation--The restoration to a former better state by cleaning, repairing, or rebuilding, e.g., routine maintenance, repairs, equipment replacement, painting.

(42) Restraint--A manual method, or a physical or mechanical device, material, or equipment attached or adjacent to the resident's body that the resident cannot remove easily, that restricts freedom of movement or normal access to the resident's body. This term includes a personal hold.

(43) Seclusion--The involuntary separation of a resident away from other residents and the placement of the resident alone in an area from which the resident is prevented from leaving.

(44) Small facilities--Facilities with 16 or fewer resident beds.

(45) Specialized staff--Personnel with expertise in developmental disabilities.

(46) Standards--The minimum conditions, requirements, and criteria with which a facility will have to comply to be licensed under this chapter.

(47) Universal precautions--The use of barrier precautions by facility personnel to prevent direct contact with blood or other body fluids that are visibly contaminated with blood.

(48) Well-recognized church or religious denomination--An organization which has been granted a tax-exempt status as a religious association from the state or federal government.

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 May 12, 2006.

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Department of Aging and Disability Services

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For further information, please call: (512) 438-3734



SUBCHAPTER C. STANDARDS FOR LICENSURE

40 TAC §90.42

The amendment is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Health and Safety Code, Chapter 252, which authorizes DADS to license and regulate ICF/MR, and Chapter 322, which governs the use of restraint and seclusion in certain health care facilities, including ICF/MR.

§90.42. Standards for Facilities Serving Persons with Mental Retardation or Related Conditions.

(a) Purpose. The purpose of this section is to promote the public health, safety, and welfare by providing for the development, establishment, and enforcement of standards:

(1) for the habilitation of persons based on an active treatment program in institutions defined and covered in this section; and

(2) for the establishment, construction, maintenance, and operation of such institutions which view mental retardation and other developmental disabilities within the context of a developmental model in accordance with the principle of normalization.

(b) Philosophy. Facilities regulated by the standards in this section are known as facilities for persons with mental retardation and related conditions in Texas (MR facilities). Persons in these facilities have the same civil rights, equal liberties, and due process of law as other individuals, plus the right to receive active treatment and habilitation. Facilities shall provide and promote services that enhance the development of such individuals, maximize their achievement through an interdisciplinary approach based on developmental principles, and create an environment, to the extent possible, that is normalized and normalizing.

(c) Standards. Each facility serving persons with mental retardation or related conditions shall comply with regulations promulgated by the United States Department of Health and Human Services in Title 42, Code of Federal Regulations (CFR), Part 483, Subpart I, §§483.400 - 483.480, titled, "Conditions of Participation for Intermediate Care Facilities for the Mentally Retarded." Additionally, DADS adopts by reference the federal regulations governing conditions of participation for the ICF/MR program as specified in 42 CFR, Part

483, Subpart I, §483.410, §483.420, §483.430, §483.440, §483.450, §483.460, §483.470, and §483.480 as licensing standards.

(d) Precertification training conference for new providers of service. Each new provider must attend the precertification/prelicensure training conference prior to licensing by DADS. The purpose of the training is to assure that providers of services are familiar with the licensing requirements and to facilitate the delivery of quality services to residents in facilities serving persons with mental retardation or related conditions.

(1) A new provider is an entity which has not had at least one year of administering services in a facility serving persons with mental retardation or related conditions in Texas. All new providers must attend a precertification training conference prior to the life safety code survey.

(2) Each new provider must designate at least one individual who will be involved with the direct management of the facility to attend the training conference prior to a health survey being scheduled.

(3) Each new provider will be given a training schedule. DADS will schedule training sessions, and the date, time, and location of the training will be indicated on the schedule.

(e) Additional requirements.

(1) The facility must develop and implement policies and procedures regarding injuries, accidents, and unusual incidents that involve or affect residents. These policies and procedures must include the following provisions.

(A) An investigation and report must be completed and maintained as a separate record which describes the circumstances of the injury, accident, or incident and its cause, the results of the investigation, and recommended actions. Serious injuries, accidents, or unusual incidents must be reported to the resident's responsible parties and to the department, as described in §90.212 of this title (relating to Incidents of Abuse and Neglect Investigated and Reported by Facilities to the Texas Department of Human Services (DHS)).

(B) The provider or facility must conduct a criminal history check, as outlined in §90.321 of this title (relating to Investigation of Facility Employees), in compliance with the Health and Safety Code, Title 4, 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).

(2) In the area of cardiopulmonary resuscitation (CPR), the following apply:

(A) At least one staff person per shift and on duty must be trained by a CPR instructor certified by an organization such as the American Heart Association or the Red Cross.

(B) The facility must ensure that staff maintain their certification as recommended by such organizations.

(3) In the area of behavior management, seclusion of residents may not be used.

(4) In the area of physical restraints, the following apply:

(A) A facility must not use restraint:

(i) in a manner that:

(I) obstructs the resident's airway, including the placement of anything in, on, or over the resident's mouth or nose;

(II) impairs the resident's breathing by putting pressure on the resident's torso;

(III) interferes with the resident's ability to communicate;

(IV) extends muscle groups away from each other;

(V) uses hyperextension of joints; or

(VI) uses pressure points or pain;

(ii) for disciplinary purposes, that is, as retaliation or retribution;

(iii) for the convenience of staff or other residents; or

(iv) as a substitute for effective treatment or habilitation.

(B) A facility may use restraint:

(i) in a behavioral emergency;

(ii) as an intervention in a behavior therapy program that addresses inappropriate behavior exhibited voluntarily by a resident;

(iii) during a medical or dental procedure if necessary to protect the resident or others and as a follow-up after a medical or dental procedure or following an injury to promote the healing of wounds;

(iv) to protect the resident from involuntary self-injury; and

(v) to provide postural support to the resident or to assist the resident in obtaining and maintaining normative bodily functioning.

(C) In order to decrease the frequency of the use of restraint and to minimize the risk of harm to a resident, a facility must ensure that the interdisciplinary team:

(i) with the participation of a physician, identifies:

(I) the resident's known physical or medical conditions that might constitute a risk to the resident during the use of restraint;

(II) the resident's ability to communicate; and

(III) other factors that must be taken into account if the use of restraint is considered, including the resident's:

(-a-) cognitive functioning level;

(-b-) height;

(-c-) weight;

(-d-) emotional condition (including whether the resident has a history of having been physically or sexually abused); and

(-e-) age;

(ii) documents the conditions and factors identified in accordance with clause (i) of this subparagraph, and, as applicable, limitations on specific restraint techniques or mechanical restraint devices in the resident's record; and

(iii) reviews and updates with a physician, registered nurse, or licensed vocational nurse, at least annually or when a condition or factor documented in accordance with clause (ii) of this subparagraph changes significantly, information in the resident's record related to the identified condition, factor, or limitation.

(D) If a facility restrains a resident as provided in subparagraph (B) of this paragraph, the facility must:

(i) take into account the conditions, factors, and limitations on specific restraint techniques or mechanical restraint devices documented in accordance with subparagraph (C)(ii) and (iii) of this paragraph;

(ii) use the minimal amount of force or pressure that is reasonable and necessary to ensure the safety of the resident and others;

(iii) safeguard the resident's dignity, privacy, and well-being; and

(iv) not secure the resident to a stationary object while the resident is in a standing position.

(E) If a facility uses restraint in a circumstance described in subparagraph (B)(i) or (ii) of this paragraph:

(i) the facility may use only a personal hold in which the resident's limbs are held close to the body to limit or prevent movement and that does not violate the provisions of subparagraph (A)(i) of this paragraph; and

(ii) if a resident rolls into a prone or supine position during restraint, the facility must transition the resident to a side, sitting, or standing position as soon as possible. The facility may only use a prone or supine hold:

(I) as a transitional hold, and only for the shortest period of time necessary to ensure the protection of the resident or others;

(II) as a last resort, when other less restrictive interventions have proven to be ineffective; and

(III) except in a small facility, when an observer who is trained to identify risks associated with positional, compression, or restraint asphyxiation, and with prone and supine holds is ensuring that the resident's breathing is not impaired.

(F) A facility must release a resident from restraint:

(i) as soon as the resident no longer poses a risk of imminent physical harm to the resident or others; or

(ii) if the resident in restraint experiences a medical emergency, as soon as possible as indicated by the medical emergency.

(G) If a facility restrains a resident as provided in subparagraph (B)(i) of this paragraph, the facility must obtain a physician's order authorizing the restraint by the end of the first business day after the use of restraint.

(H) A facility must ensure that each resident and the resident's legally authorized representative are notified of the DADS rules and the facility's policies related to restraint and seclusion.

(I) A facility may adopt policies that allow less use of restraint than allowed by the rules of this chapter.

(5) In the area of pharmacy services, the following applies.

(A) All pharmacy services must comply with the Texas State Board of Pharmacy requirements, the Texas Pharmacy Act, and rules adopted thereunder, the Texas Controlled Substances Act, and Health and Safety Code, Chapter 483 (relating to Dangerous Drugs).

(B) All medications must be ordered in writing by a physician, dentist, or podiatrist. Verbal orders may be taken only by a licensed nurse, pharmacist, or another physician, and must be immediately transcribed and signed by the individual taking the order. Verbal orders must be signed by the physician, dentist, or podiatrist within seven working days.

(C) The facility, with input from the consultant pharmacist and physician, must develop and implement policies and procedures regarding automatic stop orders for medications. These procedures must be utilized when the order for a medication does not specify the number of doses to be given or the time for discontinuance or re-order.

(6) Specialized nutrition support (delivery of parenteral nutrients and enteral feedings by nasogastric, gastrostomy, or jejunostomy tubes, etc.) must be given in accordance with physician's orders by a registered or licensed nurse. Proper technique must be utilized when giving nutritional support.

(7) In the area of administration of medication, the following apply.

(A) Medications may be administered only by physicians, licensed nursing personnel, permitted medication aides, or persons who are exempt from licensure or permit requirements pursuant to the Health and Safety Code, §242.1511. These persons must function in accordance with the memorandum of understanding (MOU) between DADS and the Board of Nurse Examiners. DADS adopts the MOU by reference and copies are available for review at DADS' Regulatory Services, 701 West 51st Street, Austin, Texas 78714-9030.

(i) The licensed or certified individual who removes the medication dose from the container in which it was dispensed must administer the dose.

(ii) The individual who administers the medication must record the dose after it is administered and during the shift in which it was given.

(B) Residents who have demonstrated the competency for self-administration of medications must have access to and maintain their own medications. They must have an individual storage space that permits them to store their medications under lock and key.

(C) Residents may participate in a self-administration of medication habilitation training program if the interdisciplinary team determines that self-administration of medications is an appropriate objective. Residents participating in a self-administration of medication habilitation training program must have training in coordination with and as part of the resident's total active treatment program. The resident's training plan must be evaluated as necessary by a licensed nurse. The supervision and implementation of a self-administration of medication habilitation program may be conducted by nonlicensed personnel and is not limited to personnel who have completed an approved training program in medication administration.

(D) A facility may maintain a supply of controlled substances in an emergency medication kit for a resident's emergency medication needs, as outlined under §90.324 and §90.325 of this title (relating to Emergency Medication Kit and Controlled Substances).

(8) In the area of communicable diseases, the facility must have written policies and procedures for the control of communicable diseases in employees and residents. When any reportable communicable disease becomes evident, the facility must report in accordance with Communicable Disease and Prevention Act, Health and Safety Code, Chapter 81, or as specified in 25 TAC §§97.1 - 97.13 (relating to Control of Communicable Diseases) and 25 TAC §§97.131 - 97.136 (relating to Sexually Transmitted Diseases Including Acquired Immunodeficiency Syndrome (AIDS) and Human Immunodeficiency Virus (HIV)) and in the publication titled, "Reportable Diseases in Texas," Publication 6-101a (Revised 1987). The local health authority should be contacted to assist the facility in determining the transmissibility of the disease and, in the case of employees, the ability of the employee to continue performing his duties. The facility must have written policies

and procedures for infection control, which include implementation of universal precautions as recommended by the Centers for Disease Control and Prevention (CDC).

(9) In the area of water activities, the facility must assure the safety of all individuals who participate in facility-sponsored events. For the purpose of this section, a water activity is defined as an activity which occurs in or on water that is knee deep or deeper on the majority of individuals participating in the event. To assure the safety of all individuals who participate, the requirements in subparagraphs (A) - (F) of this paragraph apply.

(A) The facility must develop a policy statement regarding the water sites utilized by the facility. Water sites include, but are not limited to, lakes, amusement parks, and pools.

(B) A minimum of one staff person with demonstrated proficiency in cardiopulmonary resuscitation (CPR) must be on duty and at the site when individuals are involved in water activities.

(C) A minimum of one person with demonstrated proficiency in water life saving skills must be on duty and at the site when activities take place in or on water that is deep enough to require swimming for life saving retrieval. This person must maintain supervision of the activity for its duration.

(D) A sufficient number of staff or a combination of staff and volunteers must be available to meet the safety requirements of the group and/or specific individuals.

(E) Each individual's program plan must address each person's needs for safety when participating in water activities including, but not necessarily limited to, medical conditions; physical disabilities and/or behavioral needs which could pose a threat to safety; the ability to follow directions and instructions pertaining to water safety; the ability to swim independently; and, when called for, special precautions.

(F) If the interdisciplinary team recommends the use of a flotation device as a precaution for any individual to engage in water activities, it must be identified and precautions outlined in the individual program plan. The device must be approved by the United States Coast Guard or be a specialized therapy flotation device utilized in the individual's therapy program.

(10) In the area of communication, a facility may not prohibit a resident or employee from communicating in the person's native language with another resident or employee for the purpose of acquiring or providing care, training, or treatment.

(11) In the area of physical exams, a facility shall ensure that a resident is given at least one physical exam on a yearly basis by a medical doctor.

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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Marianne Reat

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For further information, please call: (512) 438-3734



SUBCHAPTER L. PROVISIONS APPLICABLE TO FACILITIES GENERALLY

40 TAC §90.328

The new section is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Health and Safety Code, Chapter 252, which authorizes DADS to license and regulate ICF/MR, and Chapter 322, which governs the use of restraint and seclusion in certain health care facilities, including ICF/MR.

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 92. LICENSING STANDARDS FOR ASSISTED LIVING FACILITIES

The Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS), adopts amendments to §§92.3, 92.41, and 92.559 in Chapter 92, Licensing Standards for Assisted Living Facilities. The amendments to §92.3 and §92.41 are adopted with changes to the proposed text published in the February 24, 2006, issue of the *Texas Register* (31 TexReg 1258). The amendment to §92.559 is adopted without changes to the proposed text.

The amendments are adopted to implement Senate Bill (SB) 325, 79th Legislature, Regular Session, 2005, which added Chapter 322 to the Texas Health and Safety Code. Chapter 322 requires DADS to prohibit certain restraints in a variety of health care facilities, including assisted living facilities. To comply with Chapter 322, the amendments are adopted to (1) define acceptable restraint holds; (2) revise the definition for "seclusion" to reflect the definition for that term as it appears in Chapter 322; (3) develop practices to decrease the frequency of the use of restraint and seclusion; (4) allow less use of restraint than allowed by the rules in the chapter; and (5) ensure that each resident and the resident's legally authorized representative are notified of the rules and policies related to restraint and seclusion. Although Health and Safety Code, §322.051(b) allows the use of prone and supine holds as transitional holds,

the amendment to §92.41 prohibits assisted living facilities from using a restraint that places a resident in a prone or supine position under any circumstance.

The amendment to §92.41 is also adopted to reflect Health and Safety Code, §322.054, which prohibits a facility from retaliating against a person because the person in good faith provides information relating to the misuse of restraint or seclusion at the facility or against a resident because someone on behalf of the resident in good faith provides information relating to the misuse of restraint or seclusion at the facility. Chapter 322 also allows an administrative penalty to be assessed against a facility for violating the prohibition against retaliation in §322.054; the amendment to §92.559 is adopted to incorporate such a penalty.

In addition, the amendments are adopted to clarify and update rule language, including replacing references to the former Texas Department of Human Services with references to DADS.

A minor change was made to the text of §92.41(a)(4)(B)(vi) and (C) to clarify the language concerning staff training requirements.

DADS received written comments from Advocacy, Incorporated. A summary of the comments and the responses follows.

Comment: Concerning §92.3(35), the commenter stated that the definition of "restraint hold" implies that an intervention that restricts the free movement or normal functioning of all or a portion of an individual's body is not a restraint if it is used for physical guidance or prompting of brief duration. The determining factor of whether a hold is a restraint should be whether it is voluntary or if the person is resistant. Physical guidance or prompting may still be a restraint if the individual resists the guidance or prompt either verbally or by their actions. The commenter suggested that "except for physical guidance or prompting of brief duration" be deleted from the definition, and that additional language be added to indicate that restraint does not include physical guidance or prompting if it is voluntary.

Response: The agency agrees in part with the comment and has added language to §92.3(35) to indicate that physical guidance or prompting becomes a restraint if it is involuntary. DADS did not remove the phrase "except for physical guidance or prompting of brief duration," because an assisted living resident may require physical guidance or prompting of brief duration. The phrase "except for physical guidance or prompting of brief duration" was included in the definition of "restraint hold" to acknowledge such circumstances.

Comment: The commenter was concerned that the proposed language allows for the use of mechanical restraints that can be administered by any staff member in an emergency, yet the required staff training on the use of emergency interventions and de-escalation techniques is minimal. Mechanical restraints leave individuals particularly vulnerable to risk of harm from others, particularly other residents. Since mechanical restraints are allowed in assisted living facilities, the language should be strengthened in terms of the care and monitoring that occurs during a mechanical restraint, including time limitations. The commenter strongly recommended that language be added to address the safety measures that should be provided that would be appropriate to the type of restraint imposed on the individual.

Response: The agency disagrees with the comment and has not changed the rule in response to the comment. Restraints in an assisted living facility are mechanical/supportive devices. Mechanical restraints are physical restraints as stated in the definition of "restraints" in §92.3(36). Restraints are not allowed in

an assisted living facility unless a physician authorizes them in writing. If they are so prescribed, then qualified medical personnel, who are either on staff in the facility or provided by the facility for those purposes, must administer them. The qualified medical personnel administering and monitoring the mechanical restraints ensure that the physicians' orders are adhered to and provide protection for the residents from harm to themselves or from other residents. DADS' current rule language in §92.125 (relating to Resident's Bill of Rights and Provider Bill of Rights) governing the care and monitoring of mechanical restraints, including time limitations, and the rule language as proposed in §92.41(p)(1) indicating the authorized use, circumstances, and duration for restraint are adequate to protect residents.

Regarding staff training, current rule language in §92.41(4)(B) and (C) specifies staff training requirements for restraint purposes, and §92.125 specifies the circumstances under which a restraint can be used in an assisted living facility (physician authorization and administration by qualified medical personnel, except during an emergency). The administration of restraints only by qualified medical personnel or, in an emergency, facility staff who have been trained as required in §92.41(4)(B) and (C), and the use of restraints only according to the prescribed order of a physician limits the risk of harm to the resident. The agency believes that its current rules on the use of restraints and required training for a facility's staff are adequate to protect residents.

SUBCHAPTER A. INTRODUCTION

40 TAC §92.3

The amendment is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code, Chapter 247, which authorizes DADS to license and regulate assisted living facilities, and Chapter 322, which governs the use of restraint and seclusion in certain health care facilities, including assisted living facilities.

§92.3. Definitions.

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

- (1) Affiliate--With respect to a:
 - (A) partnership, each partner thereof;
 - (B) corporation, each officer, director, principal stockholder, subsidiary, and each person with a disclosable interest, as the term is defined in this section;
 - (C) natural person:
 - (i) each person's spouse;
 - (ii) each partnership and each partner thereof of which said person or any affiliate of said person is a partner; and
 - (iii) each corporation in which said person is an officer, director, principal stockholder, or person with a disclosable interest.

(2) Applicant--A person applying for an assisted living license under Health and Safety Code, Chapter 247.

(3) Attendants--A facility employee who provides direct care to residents. This individual may serve other functions which may include, but are not limited to, aides, cooks, janitors, porters, maids, laundry workers, security personnel, bookkeepers, managers, etc.

(4) Authorized electronic monitoring (AEM)--The placement of an electronic monitoring device in a resident's room and using the device to make tapes or recordings after making a request to the facility to allow electronic monitoring.

(5) Behavioral emergency--See §92.41(p)(2) of this chapter (relating to Standards for Type A, Type B, and Type E Assisted Living Facilities).

(6) Change of ownership--A change: of 50% or more in the ownership of the business organization that is licensed to operate the facility; in the owner holding the facility license; or in the federal taxpayer identification number.

(7) Co-mingles--The laundering of wearing apparel and/or linens of two or more individuals together.

(8) Controlling person--A person with the ability, acting alone or with others, to directly or indirectly, influence, direct, or cause the direction of the management, expenditure of money, or policies of an assisted living facility or other person. A controlling person includes:

(A) a management company, landlord, or other business entity that operates or contracts with others for the operation of an assisted living facility;

(B) any person who is a controlling person of a management company or other business entity that operates an assisted living facility or that contracts with another person for the operation of an assisted living facility; and

(C) any other individual who, because of a personal, familial, or other relationship with the owner, manager, landlord, tenant, or provider of an assisted living facility, is in a position of actual control or authority with respect to the facility, without regard to whether the individual is formally named as an owner, manager, director, officer, provider, consultant, contractor, or employee of the facility. This does not include an employee, lender, secured creditor, landlord, or other person who does not exercise formal or actual influence or control over the operation of an assisted living facility.

(9) Covert electronic monitoring--The placement and use of an electronic monitoring device that is not open and obvious, and the facility and DADS have not been informed about the device by the resident, by a person who placed the device in the room, or by a person who uses the device.

(10) DADS--The Department of Aging and Disability Services.

(11) DHS--Formerly, this term referred to the Texas Department of Human Services; it now refers to DADS.

(12) Dietitian--A person who currently holds a license or provisional license issued by the Texas State Board of Examiners of Dietitians.

(13) Disclosure statement--A DADS form for prospective residents or their representatives that each assisted living facility must complete. The form contains information regarding the preadmission, admission, and discharge process; resident assessment and service

plans; staffing patterns; the physical environment of the facility; resident activities; and facility services.

(14) Electronic monitoring device--Video surveillance cameras and audio devices installed in a resident's room, designed to acquire communications or other sounds that occur in the room. An electronic, mechanical, or other device used specifically for the nonconsensual interception of wire or electronic communication is excluded from this definition.

(15) Facility--An entity required to be licensed under the Assisted Living Facility Licensing Act, Health and Safety Code, Chapter 247.

(16) Fire suppression authority--The paid or volunteer fire-fighting organization or tactical unit that is responsible for fire suppression operations and related duties once a fire incident occurs within its jurisdiction.

(17) Governmental unit--The state or any county, municipality, or other political subdivision, or any department, division, board, or other agency of any of the foregoing.

(18) Health care professional--An individual licensed, certified, or otherwise authorized to administer health care, for profit or otherwise, in the ordinary course of business or professional practice. The term includes a physician, registered nurse, licensed vocational nurse, licensed dietitian, physical therapist, and occupational therapist.

(19) Immediate threat--There is considered to be an immediate threat to the health or safety of a resident, or a situation is considered to put the health or safety of a resident in immediate jeopardy, if there is a situation in which an assisted living facility's noncompliance with one or more requirements of licensure has caused, or is likely to cause, serious injury, harm, impairment, or death to a resident.

(20) Immediately available--The capacity of facility staff to immediately respond to an emergency after being notified through a communication or alarm system. The staff is to be no more than 600 feet from the farthest resident.

(21) Legally authorized representative--A person authorized by law to act on behalf of a person with regard to a matter described in this chapter, and may include a parent, guardian, or managing conservator of a minor, or the guardian of an adult.

(22) Management services--Services provided under contract between the owner of a facility and a person to provide for the operation of a facility, including administration, staffing, maintenance, or delivery of resident services. Management services do not include contracts solely for maintenance, laundry, or food services.

(23) Manager--The individual in charge of the day-to-day operation of the facility.

(24) Medication--Medication is any substance:

(A) recognized as a drug in the official United States Pharmacopoeia, Official Homeopathic Pharmacopoeia of the United States, Texas Drug Code Index or official National Formulary, or any supplement to any of these official documents;

(B) intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease;

(C) other than food intended to affect the structure or any function of the body; and

(D) intended for use as a component of any substance specified in this definition. It does not include devices or their components, parts, or accessories.

(25) Medication administration--The direct application of a medication or drug to the body of a resident by an individual legally allowed to administer medication in the state of Texas.

(26) Medication assistance or supervision--The assistance or supervision of the medication regimen by facility staff. Refer to §92.41(j) of this chapter.

(27) Medication (self-administration)--The capability of residents to administer their own medication/treatments without assistance from the facility staff.

(28) NFPA 101--The 1988 publication titled "NFPA 101 Life Safety Code" published by the National Fire Protection Association, Inc., 1 Batterymarch Park, Quincy, Massachusetts 02169.

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

(30) Person with a disclosable interest--Any person who owns 5.0% interest in any corporation, partnership, or other business entity that is required to be licensed under Health and Safety Code, Chapter 247. A person with a disclosable interest does not include a bank, savings and loan, savings bank, trust company, building and loan association, credit union, individual loan and thrift company, investment banking firm, or insurance company unless such entity participates in the management of the facility.

(31) Personal care services--Assistance with meals, dressing, movement, bathing, or other personal needs or maintenance; the administration of medication or the assistance with or supervision of medication; or general supervision or oversight of the physical and mental well-being of a person who needs assistance to maintain a private and independent residence in the facility or who needs assistance to manage his or her personal life, regardless of whether a guardian has been appointed for the person.

(32) Physician--A practitioner licensed by the Texas State Board of Medical Examiners.

(33) Resident--Anyone accepted for care in the assisted living facility.

(34) Respite--The provision by a facility of room, board, and care at the level ordinarily provided for permanent residents of the facility to a person for not more than 60 days for each stay in the facility.

(35) Restraint hold--

(A) A manual method, except for physical guidance or prompting of brief duration, used to restrict:

(i) free movement or normal functioning of all or a portion of a resident's body; or

(ii) normal access by a resident to a portion of the resident's body.

(B) Physical guidance or prompting of brief duration becomes a restraint if the resident resists the guidance or prompting.

(36) Restraints--Chemical restraints are psychoactive drugs administered for the purposes of discipline or convenience and are not required to treat the resident's medical symptoms. Physical restraints are any manual method, or physical or mechanical device, material, or equipment attached or adjacent to the resident that restricts freedom of movement. Physical restraints include restraint holds.

(37) Safety--Protection from injury or loss of life due to such conditions as fire, electrical hazard, unsafe building or site conditions, and the hazardous presence of toxic fumes and materials.

(38) Seclusion--The involuntary separation of a resident from other residents and the placement of the resident alone in an area from which the resident is prevented from leaving.

(39) Service plan--A written description of the medical care or the supervision and non-medical care needed by a person.

(40) Short-term acute episode--An illness of less than 30 days duration.

(41) Staff--Any employee of an assisted living facility.

(42) Standards--The minimum licensing standards in Subchapter C of this chapter (relating to Standards for Licensure) intended to protect the health and safety of the residents.

(43) Terminal condition--A medical diagnosis, certified by a physician, of an illness that will result in death in six months or less.

(44) Universal precautions--An approach to infection control in which blood, any body fluids visibly contaminated with blood, and all body fluids in situations where it is difficult or impossible to differentiate between body fluids are treated as if known to be infectious for HIV, hepatitis B, and other blood-borne pathogens.

(45) Working day--Any 24-hour period, Monday through Friday, excluding state and federal holidays.

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 C. STANDARDS FOR LICENSURE

40 TAC §92.41

The amendment is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code, Chapter 247, which authorizes DADS to license and regulate assisted living facilities, and Chapter 322, which governs the use of restraint and seclusion in certain health care facilities, including assisted living facilities.

§92.41. *Standards for Type A, Type B, and Type E Assisted Living Facilities.*

(a) Employees.

(1) Manager. Each facility must designate, in writing, a manager to have authority over the operation.

(A) Qualifications. In small facilities, the manager must have proof of graduation from an accredited high school or certification of equivalency of graduation. In large facilities, a manager must have:

- (i) an associate's degree in nursing, health care management, or a related field;
- (ii) a bachelor's degree; or
- (iii) proof of graduation from an accredited high school or certification of equivalency of graduation and at least one year of experience working in management or in health care industry management.

(B) Training in management of assisted living facilities. After August 1, 2000, a manager must have completed at least one educational course on the management of assisted living facilities, which must include information on the assisted living standards; resident characteristics (including dementia), resident assessment and skills working with residents; basic principles of management; food and nutrition services; federal laws, with an emphasis on the Americans with Disability Act's accessibility requirements; community resources; ethics, and financial management.

- (i) The course must be at least 24 hours in length.

(I) Eight hours of training on the assisted living standards must be completed within the first three months of employment.

(II) The 24-hour training requirement may not be met through in-services at the facility, but may be met through structured, formalized classes, correspondence courses, training videos, distance learning programs, or off-site training courses. All training must be provided or produced by academic institutions, assisted living corporations, or recognized state or national organizations or associations. Subject matter that deals with the internal affairs of an organization will not qualify for credit.

(III) Evidence of training must be on file at the facility and must contain documentation of content, hours, dates, and provider.

(ii) Managers hired after August 1, 2000, who can show documentation of a previously completed comparable course of study are exempt from the training requirements.

(iii) Managers hired after August 1, 2000, must complete the course by the first anniversary of employment as manager.

(iv) An assisted living manager who was employed by a licensed assisted living facility on August 1, 2000, is exempt from the training requirement. An assisted living manager who was employed by a licensed assisted living facility as the manager before August 1, 2000, and changes employment to another licensed assisted living facility as the manager, with a break in employment of no longer than 30 days, is also exempt from the training requirement.

(C) Continuing education. All managers must show evidence of 12 hours of annual continuing education. This requirement will be met during the first year of employment by the 24-hour assisted living management course. The annual continuing education requirement must include at least two of the following areas:

- (i) resident and provider rights and responsibilities, abuse/neglect, and confidentiality;
- (ii) basic principles of management;

(iii) skills for working with residents, families, and other professional service providers;

(iv) resident characteristics and needs;

(v) community resources;

(vi) accounting and budgeting;

(vii) basic emergency first aid; or

(viii) federal laws, such as Americans with Disabilities Act, Civil Rights Act of 1991, the Rehabilitation Act of 1993, Family and Medical Leave Act of 1993, and the Fair Housing Act.

(D) Manager's responsibilities. The manager must be on duty 40 hours per week and may manage only one facility, except for managers of small Type A facilities, who may have responsibility for no more than 16 residents in no more than four facilities. The managers of small Type A facilities must be available by telephone or pager when conducting facility business off-site.

(E) Manager's absence. An employee competent and authorized to act in the absence of the manager must be designated in writing.

(2) Attendants. Full-time facility attendants must be at least 18 years old or a high-school graduate.

(A) An attendant must be in the facility at all times when residents are in the facility.

(B) Attendants are not precluded from performing other functions as required by the assisted living facility.

(3) Staffing.

(A) A facility must develop and implement staffing policies, which require staffing ratios based upon the needs of the residents, as identified in their service plans.

(B) Prior to admission, a facility must disclose, to prospective residents and their families, the facility's normal 24-hour staffing pattern and post it monthly in accordance with §92.127 of this title (relating to Required Postings).

(C) A facility must have sufficient staff to:

(i) maintain order, safety, and cleanliness;

(ii) assist with medication regimens;

(iii) prepare and service meals that meet the daily nutritional and special dietary needs of each resident, in accordance with each resident's service plan;

(iv) assist with laundry;

(v) assure that each resident receives the kind and amount of supervision and care required to meet his basic needs; and

(vi) ensure safe evacuation of the facility in the event of an emergency.

(D) A facility must meet the staffing requirements described in this subparagraph.

(i) Type A and Type E facilities: Night shift staff in a small facility must be immediately available. In a large facility, the staff must be immediately available and awake.

(ii) Type B facility: Night shift staff must be immediately available and awake, regardless of the number of licensed beds.

(4) Staff training. The facility must document that staff members are competent to provide personal care before assuming responsibilities and have received the following training.

(A) All staff members must complete four hours of orientation before assuming any job responsibilities. Training must cover, at a minimum, the following topics:

- (i) reporting of abuse and neglect;
- (ii) confidentiality of resident information;
- (iii) universal precautions;
- (iv) conditions about which they should notify the facility manager;
- (v) residents' rights; and
- (vi) emergency and evacuation procedures.

(B) Attendants must complete 16 hours of on-the-job supervision and training within the first 16 hours of employment following orientation. Training must include:

- (i) in Type A and B facilities, providing assistance with the activities of daily living; in Type E facilities, medications and recognizing, reporting, and recording side effects;
- (ii) resident's health conditions and how they may affect provision of tasks;
- (iii) safety measures to prevent accidents and injuries;
- (iv) emergency first aid procedures, such as the Heimlich maneuver and actions to take when a resident falls, suffers a laceration, or experiences a sudden change in physical and/or mental status;
- (v) managing disruptive behavior;
- (vi) behavior management, for example, prevention of aggressive behavior and de-escalation techniques, practices to decrease the frequency of the use of restraint, and alternatives to restraints; and
- (vii) fall prevention.

(C) Direct care staff must complete six documented hours of education annually, based on each employee's hire date. Staff must complete one hour of annual training in fall prevention and one hour of training in behavior management, for example, prevention of aggressive behavior and de-escalation techniques, practices to decrease the frequency of the use of restraint, and alternatives to restraints. Training for these subjects must be competency-based. Subject matter must address the unique needs of the facility. Suggested topics include:

- (i) promoting resident dignity, independence, individuality, privacy, and choice;
- (ii) resident rights and principles of self-determination;
- (iii) communication techniques for working with residents with hearing, visual, or cognitive impairment;
- (iv) communicating with families and other persons interested in the resident;
- (v) common physical, psychological, social, and emotional conditions and how these conditions affect residents' care;

(vi) essential facts about common physical and mental disorders, for example, arthritis, cancer, dementia, depression, heart and lung diseases, sensory problems, or stroke;

- (vii) cardiopulmonary resuscitation;
 - (viii) common medications and side effects, including psychotropic medications, when appropriate;
 - (ix) understanding mental illness;
 - (x) conflict resolution and de-escalation techniques;
- and
- (xi) information regarding community resources.

(D) Facilities that employ licensed nurses, certified nurse aides, or certified medication aides must provide annual in-service training, appropriate to their job responsibilities, from one or more of the following areas:

- (i) communication techniques and skills useful when providing geriatric care (skills for communicating with the hearing impaired, visually impaired and cognitively impaired; therapeutic touch; recognizing communication that indicates psychological abuse);
- (ii) assessment and nursing interventions related to the common physical and psychological changes of aging for each body system;
- (iii) geriatric pharmacology, including treatment for pain management, food and drug interactions, and sleep disorders;
- (iv) common emergencies of geriatric residents and how to prevent them, for example falls, choking on food or medicines, injuries from restraint use; recognizing sudden changes in physical condition, such as stroke, heart attack, acute abdomen, acute glaucoma; and obtaining emergency treatment;
- (v) common mental disorders with related nursing implications; and
- (vi) ethical and legal issues regarding advance directives, abuse and neglect, guardianship, and confidentiality.

(b) Social services. The facility must provide an activity and/or social program at least weekly for the residents.

(c) Resident assessment. Within 14 days of admission, a resident comprehensive assessment and an individual service plan for providing care, which is based on the comprehensive assessment, must be completed. The comprehensive assessment must be completed by the appropriate staff and documented on a form developed by the facility. When a facility is unable to obtain information required for the comprehensive assessment, the facility should document its attempts to obtain the information.

(1) The comprehensive assessment must include the following items:

- (A) the location from which the resident was admitted;
- (B) primary language;
- (C) sleep-cycle issues;
- (D) behavioral symptoms;
- (E) psychosocial issues (i.e., a psychosocial functioning assessment that includes an assessment of mental or psychosocial adjustment difficulty; a screening for signs of depression, such as withdrawal, anger or sad mood; assessment of the resident's level of anx-

ity; and determining if the resident has a history of psychiatric diagnosis that required in-patient treatment);

(F) Alzheimer's/dementia history;

(G) activities of daily living patterns (i.e., wakened to toilet all or most nights, bathed in morning/night, shower or bath);

(H) involvement patterns and preferred activity pursuits (i.e., daily contact with relatives, friends, usually attended religious services, involved in group activities, preferred activity settings, general activity preferences);

(I) cognitive skills for daily decision-making (independent, modified independence, moderately impaired, severely impaired);

(J) communication (ability to communicate with others, communication devices);

(K) physical functioning (transfer status; ambulation status; toilet use; personal hygiene; ability to dress, feed and groom self);

(L) continence status;

(M) nutritional status (weight changes, nutritional problems or approaches);

(N) oral/dental status;

(O) diagnoses;

(P) medications (administered, supervised, self-administers);

(Q) health conditions and possible medication side effects;

(R) special treatments and procedures;

(S) hospital admissions within the past six months or since last assessment; and

(T) preventive health needs (i.e., blood pressure monitoring, hearing-vision assessment).

(2) The service plan must be approved and signed by the resident or a person responsible for the resident's health care decisions. The facility must provide care according to the service plan. The service plan must be updated annually and upon a significant change in condition, based upon an assessment of the resident.

(3) For respite clients, the facility may keep a service plan for six months from the date on which it is developed. During that period, the facility may admit the individual as frequently as needed.

(4) Emergency admissions must be assessed and a service plan developed for them.

(d) Resident policies.

(1) Before admitting a resident, facility staff must explain and provide a copy of the disclosure statement to the resident, family, or responsible party. An assisted living facility that provides brain injury rehabilitation services must attach to its disclosure statement a specific statement that licensure as an assisted living facility does not indicate state review, approval, or endorsement of the facility's rehabilitative services. The facility must document receipt of the disclosure statement.

(2) The facility must provide residents with a copy of the Resident Bill of Rights.

(3) The facility must have written policies regarding residents accepted, services provided, charges, refunds, responsibilities of facility and residents, privileges of residents, and other rules and regulations.

(4) Each facility must make available copies of the resident policies to staff and to residents and/or residents' responsible parties at time of admission. Documented notification of any changes to the policies must occur before the effective date of the changes.

(5) Before or upon admission of a resident, a facility must notify the resident and, if applicable, the resident's legally authorized representative, of DADS' rules and the facility's policies related to restraint and seclusion.

(e) Admission policies.

(1) A facility must not admit or retain:

(A) residents whose needs cannot be met by the assisted living facility, or the necessary services secured by the resident. As part of the facility's general supervision and oversight of the physical and mental well-being of its residents, the facility remains responsible for all care provided at the facility. If the individual is appropriate for placement in an assisted living facility, then the decision that additional services are necessary and can be secured is the responsibility of facility management with written concurrence of the resident, resident's attending physician, or legal representative. Regardless of the possibility of "aging in place" or securing additional services, the facility must meet all life safety code requirements based on each resident's evacuation capabilities, except as provided in subsection (f) of this section.

(B) an individual who requires the services of facility employees who are licensed nurses on a daily or regular basis. Individuals with a terminal condition or who are experiencing a short-term, acute episode are excluded from this requirement.

(2) There must be a written admission agreement between the facility and the resident. The agreement must specify such details as services to be provided and the charges for the services, including any nursing services and supplies, with a statement that such services and supplies could be a Medicare benefit.

(3) A facility must share a copy of the facility disclosure statement, rate schedule, and individual resident service plan with outside resources that provide any additional services to a resident. Outside resources must provide facilities with a copy of their resident care plans and must document, at the facility, any services provided, on the day provided.

(4) Each resident must have a health examination by a physician performed within 30 days before admission or 14 days after admission, unless a transferring hospital or facility has a physical examination in the medical record.

(5) The assisted living facility must secure at the time of admission of a resident the following identifying information:

(A) full name of resident;

(B) social security number;

(C) usual residence (where resident lived before admission);

(D) sex;

(E) marital status;

(F) date of birth;

(G) place of birth;

- (H) usual occupation (during most of working life);
- (I) family, other persons named by the resident, and physician for emergency notification;
- (J) pharmacy preference; and
- (K) Medicaid/Medicare number, if available.

(f) Inappropriate placement in Type A or Type B facilities.

(1) A facility is not required to move a resident who a DADS surveyor determines is inappropriately placed if the facility submits the following to DADS not later than the 10th working day after the date the facility is informed in writing of the specific basis of the surveyor's determination:

(A) a written assessment from a physician that states the resident is appropriately placed. The assessment must address the resident's medical conditions and related nursing needs, ambulatory and transfer abilities, and mental status;

(B) a written statement from the resident that he wishes to remain in the facility. If the resident lacks capacity to give a written statement, a family member or guardian may give a statement that he wishes the resident to remain in the facility; and

(C) a statement from the facility that the facility wishes the resident to remain in the facility.

(2) A facility that does not meet all requirements for the evacuation of a designated resident must apply for a waiver from DADS of all applicable requirements for evacuation not met with respect to the resident. Documentation must be submitted not later than the 10th working day after the date the facility is informed in writing of the specific basis of the surveyor's determination.

(A) Documentation. When an evacuation waiver is requested, the following documentation must be submitted to DADS in addition to the documentation required in paragraph (1)(A)-(C) of this subsection:

(i) a detailed plan that explains how the facility will meet the evacuation needs of the resident. The plan should include, for example,

(I) the specific staff positions that will be on duty to assist with evacuation and their shift times;

(II) specific staff positions that will be on duty and awake at night; and

(III) specific staff training that relates to resident evacuation;

(ii) a copy of the facility floor plan that indicates the specific resident's room;

(iii) a copy of the facility's emergency evacuation plan;

(iv) copies of the facility fire drills for the last 12-month period;

(v) a copy of the DADS notice form to the local fire marshal, or state fire marshal, if applicable (authority having jurisdiction), advising that the facility is requesting a waiver of the change of capability of resident evacuation. The DADS form must contain the signature of the fire authority having jurisdiction;

(vi) a copy of the DADS notice form to the local fire suppression authority advising that the facility is requesting a waiver of the change of capability of resident evacuation. The DADS form

must contain the signature of the fire suppression authority having jurisdiction;

(vii) a copy of a comprehensive assessment of the resident, completed within the last 60 days, that addresses the areas required by subsection (c) of this section, and the service plan, that addresses all aspects of the resident's care, particularly those areas identified by DADS. The facility must address the resident's medical condition(s) and related nursing needs, hospitalizations within the last 60 days, any significant change in condition in the last 60 days, specific staffing needs, and services that are provided by an outside provider; and

(viii) any other information that relates to the required fire safety features of the facility that will ensure the evacuation capability of any resident.

(B) Criteria. Each facility has specific characteristics that vary from other facilities, which prevents the specification of a universal emergency procedure. A facility must meet the following criteria to receive a waiver from DADS:

(i) The facility must have an emergency plan to meet the evacuation needs of the resident. The plan must ensure that:

(I) staff is adequately trained;

(II) a sufficient number of staff is on all shifts to move all residents to a place of safety;

(III) residents will be moved to appropriate locations, given health and safety issues;

(IV) inclusion of all possible locations of the fire origin area is included in the emergency plan;

(V) the emergency plan addresses all possible locations of fire origin areas and the necessity for full evacuation of the building;

(VI) the fire alarm signal is adequate;

(VII) there is an effective method for warning residents and staff during a malfunction of the building fire alarm system;

(VIII) the plan is effective for communicating the actual location of the fire to staff; and

(IX) the plan satisfies any other safety concerns that could have an effect on the residents' safety in the event of a fire.

(ii) The facility must show that the emergency plan will not have an adverse effect on other residents of the facility who have waivers of evacuation and other residents of the facility who have special needs that require staff assistance. In evaluating whether the emergency plan will have an adverse effect on other residents, DADS may also review the service plans provided by the facility.

(C) Determination. DADS will review the documentation submitted under this subsection to determine whether to grant or deny a request for a waiver under this section. DADS notifies the facility in writing of its determination not later than the 10th working day after the date the request is received in the DADS regional office.

(D) Plan of Action. Upon notification that DADS has approved a waiver of evacuation, the facility must immediately initiate all provisions of the proposed plan of action. If the facility does not follow the proper plan of action, and there are health and safety concerns, DADS may cite the facility for immediate threat to the health or safety of a resident.

(E) Waiver Renewal. A waiver of evacuation from DADS will be reviewed by DADS during the facility's annual renewal licensing inspection.

(3) If a DADS surveyor determines that a resident is inappropriately placed at a facility and the facility either agrees with the determination or fails to obtain the written statements required in this subsection, the facility must discharge the resident.

(A) The resident is allowed 30 days after the date of discharge to move from the facility.

(B) A discharge required under this subsection must be made notwithstanding:

(i) any other law, including any law relating to the rights of residents and any obligations imposed under the Property Code; and

(ii) the terms of any contract.

(C) DADS will not assess an administrative penalty against the facility because of the inappropriate placement.

(g) Advance directives.

(1) The facility must maintain written policies regarding the implementation of advance directives. The policies must include a clear and precise statement of any procedure the facility is unwilling or unable to provide or withhold in accordance with an advance directive.

(2) The facility must provide written notice of these policies to residents at the time they are admitted to receive services from the facility.

(A) If, at the time notice is to be provided, the resident is incompetent or otherwise incapacitated and unable to receive the notice, the facility must provide the written notice, in the following order of preference, to:

(i) the resident's legal guardian;

(ii) a person responsible for the resident's health care decisions;

(iii) the resident's spouse;

(iv) the resident's adult child;

(v) the resident's parents; or

(vi) the person admitting the resident.

(B) If the facility is unable, after diligent search, to locate an individual listed under subparagraph (A) of this paragraph, the facility is not required to give notice.

(3) If a resident who was incompetent or otherwise incapacitated and unable to receive notice regarding the facility's advance directives policies later becomes able to receive the notice, the facility must provide the written notice at the time the resident becomes able to receive the notice.

(4) Failure to inform the resident of facility policies regarding the implementation of advance directives will result in an administrative penalty of \$500.

(A) Facilities will receive written notice of the recommendation for an administrative penalty.

(B) Within 20 days after the date on which written notice is sent to a facility, the facility must give written consent to the penalty or make written request for a hearing to the Texas Health and Human Services Commission.

(C) Hearings will be held in accordance with the formal hearing procedures at 1 TAC Chapter 357, Subchapter I.

(h) Resident records.

(1) Records that pertain to residents must be treated as confidential and properly safeguarded from unauthorized use, loss, or destruction.

(2) Resident records must contain:

(A) information contained in the facility's standard and customary admission form;

(B) a record of the resident's assessments;

(C) the resident's service plan;

(D) physician's orders, if any;

(E) any advance directives;

(F) documentation of a health examination by a physician performed within 30 days before admission or 14 days after admission, unless a transferring hospital or facility has a physical examination in the medical record. Christian Scientists are excluded from this requirement; and

(G) documentation by health care professionals of any services delivered in accordance with the licensing, certification, or other regulatory standards applicable to the health care professional under law.

(3) Records must be available to residents, their legal representatives, and DADS staff.

(i) Personnel records. The facility must keep personnel records on all staff in a central location.

(j) Medications.

(1) Administration. Medications must be administered according to physician's orders.

(A) Residents who choose not to or cannot self-administer their medications must have their medications administered by a person who:

(i) holds a current license under state law that authorizes the licensee to administer medication; or

(ii) holds a current medication aide permit and acts under the authority of a person who holds a current nursing license under state law that authorizes the licensee to administer medication. A medication aide must function under the direct supervision of a licensed nurse on duty or on call by the facility.

(iii) is an employee of the facility to whom the administration of medication has been delegated by a registered nurse, who has trained them to administer medications or verified their training. The delegation of the administration of medication is governed by 22 TAC Chapter 225 (concerning RN Delegation to Unlicensed Personnel and Tasks Not Requiring Delegation in Independent Living Environments for Clients with Stable and Predictable Conditions), which implements the Nursing Practice Act.

(B) All resident's prescribed medication must be dispensed through a pharmacy or by the resident's treating physician or dentist.

(C) Physician sample medications may be given to a resident by the facility provided the medication has specific dosage instructions for the individual resident.

(D) Each resident's medications must be listed on an individual resident's medication profile record. The recorded information obtained from the prescription label must include, but is not limited to, the medication:

- (i) name;
- (ii) strength;
- (iii) dosage;
- (iv) amount received;
- (v) directions for use;
- (vi) route of administration;
- (vii) prescription number;
- (viii) pharmacy name; and
- (ix) the date each medication was issued by the pharmacy.

(2) Supervision. Supervision of a resident's medication regimen by facility staff may be provided to residents who are incapable of self-administering without assistance to include and limited to:

- (A) reminders to take their medications at the prescribed time;
- (B) opening containers or packages and replacing lids;
- (C) pouring prescribed dosage according to medication profile record;
- (D) returning medications to the proper locked areas;
- (E) obtaining medications from a pharmacy; and
- (F) listing on an individual resident's medication profile record the medication.

- (i) name;
- (ii) strength;
- (iii) dosage;
- (iv) amount received;
- (v) directions for use;
- (vi) route of administration;
- (vii) prescription number;
- (viii) pharmacy name; and
- (ix) the date each medication was issued by the pharmacy.

(3) Self-administration.

(A) Residents who self-administer their own medications and keep them locked in their room must be counseled at least once a month by facility staff to ascertain if the residents continue to be capable of self-administering their medications/treatments and if security of medications can continue to be maintained. The facility must keep a written record of counseling.

(B) Residents who choose to keep their medications locked in the central medication storage area may be permitted entrance or access to the area for the purpose of self-administering their own medication/treatment regimen. A facility staff member must remain in or at the storage area the entire time any resident is present.

(4) General.

(A) Facility staff will immediately report to the resident's physician and responsible party any unusual reactions to medications or treatments.

(B) When the facility supervises or administers the medications, a written record must be kept when the resident does not receive or take his/her medications/treatments as prescribed. The documentation must include the date and time the dose should have been taken, and the name and strength of medication missed; however, the recording of missed doses of medication does not apply when the resident is away from the assisted living facility.

(5) Storage.

(A) The facility must provide a locked area for all medications. Examples of areas include, but are not limited to:

- (i) central storage area;
- (ii) medication cart; and
- (iii) resident room.

(B) Each resident's medication must be stored separately from other resident's medications within the storage area.

(C) A refrigerator must have a designated and locked storage area for medications that require refrigeration, unless it is inside a locked medication room.

(D) Poisonous substances and medications labeled for "external use only" must be stored separately within the locked medication area.

(E) If facilities store controlled drugs, facility policies and procedures must address the prevention of the diversion of the controlled drugs.

(6) Disposal.

(A) Medications no longer being used by the resident for the following reasons are to be kept separate from current medications and are to be disposed of by a registered pharmacist licensed in the State of Texas:

- (i) medications discontinued by order of the physician;
- (ii) medications that remain after a resident is deceased; or
- (iii) medications that have passed the expiration date.

(B) Needles and hypodermic syringes with needles attached must be disposed as required by 25 TAC §§1.131-1.137 (Definition, Treatment, and Disposition of Special Waste from Health Care-Related Facilities).

(C) Medications kept in a central storage area are released to discharged residents when a receipt has been signed by the resident or responsible party.

- (k) Accident, injury, or acute illness.

(1) In the event of accident or injury that requires emergency medical, dental or nursing care, or in the event of apparent death, the assisted living facility will:

(A) make arrangements for emergency care and/or transfer to an appropriate place for treatment, such as a physician's office, clinic, or hospital;

(B) immediately notify the resident's physician and next of kin, responsible party, or agency who placed the resident in the facility; and

(C) describe and document the injury, accident, or illness on a separate report. The report must contain a statement of final disposition and be maintained on file.

(2) The facility must stock and maintain in a single location first aid supplies to treat burns, cuts, and poisoning.

(3) Residents who need the services of professional nursing or medical personnel due to a temporary illness or injury may have those services delivered by persons qualified to deliver the necessary service.

(l) Resident finances. The assisted living facility must keep a simple financial record on all charges billed to the resident for care and these records must be available to DADS. If the resident entrusts the handling of any personal finances to the assisted living facility, a simple financial record must be maintained to document accountability for receipts and expenditures, and these records must be available to DADS. Receipts for payments from residents or family members must be issued upon request.

(m) Food and nutrition services.

(1) A person designated by the facility is responsible for the total food service of the facility.

(2) At least three meals or their equivalent must be served daily, at regular times, with no more than a 16-hour span between a substantial evening meal and breakfast the following morning. All exceptions must be specifically approved by DADS.

(3) Menus must be planned one week in advance and must be followed. Variations from the posted menus must be documented. Menus must be prepared to provide a balanced and nutritious diet, such as that recommended by the National Food and Nutrition Board. Food must be palatable and varied. Records of menus as served must be filed and maintained for 30 days after the date of serving.

(4) Therapeutic diets as ordered by the resident's physician must be provided according to the service plan. Therapeutic diets that cannot customarily be prepared by a layperson must be calculated by a qualified dietician. Therapeutic diets that can customarily be prepared by a person in a family setting may be served by the assisted living facility.

(5) Supplies of staple foods for a minimum of a four-day period and perishable foods for a minimum of a one-day period must be maintained on the premises.

(6) Food must be obtained from sources that comply with all laws relating to food and food labeling. If food, subject to spoilage, is removed from its original container, it must be kept sealed, and labeled. Food subject to spoilage must also be dated.

(7) Plastic containers with tight fitting lids are acceptable for storage of staple foods in the pantry.

(8) Potentially hazardous food, such as meat and milk products, must be stored at 45 degrees Fahrenheit or below. Hot food must be kept at 140 degrees Fahrenheit or above during preparation and serving. Food that is reheated must be heated to a minimum of 165 degrees Fahrenheit.

(9) Freezers must be kept at a temperature of 0 degrees Fahrenheit or below and refrigerators must be 41 degrees Fahrenheit or below. Thermometers must be placed in the warmest area of the refrigerator and freezer to assure proper temperature.

(10) Food must be prepared and served with the least possible manual contact, with suitable utensils, and on surfaces that have been cleaned, rinsed, and sanitized before use to prevent cross-contamination.

(11) Facilities must prepare food in accordance with established food preparation practices and safety techniques.

(12) A food service employee, while infected with a communicable disease that can be transmitted by foods, or who is a carrier of organisms that cause such a disease or while afflicted with a boil, an infected wound, or an acute respiratory infection, must not work in the food service area in any capacity in which there is a likelihood of such person contaminating food or food-contact surfaces with pathogenic organisms or transmitting disease to other persons.

(13) Effective hair restraints must be worn to prevent the contamination of food.

(14) Tobacco products must not be used in the food preparation and service areas.

(15) Kitchen employees must wash their hands before returning to work after using the lavatory.

(16) Dishwashing chemicals used in the kitchen may be stored in plastic containers if they are the original containers in which the manufacturer packaged the chemicals.

(17) Sanitary dishwashing procedures and techniques must be followed.

(18) Facilities that house 17 or more residents must comply with 25 TAC §§229.161-229.171 and §§229.173-229.175 (Texas Food Establishment rules) and local health ordinances or requirements must be observed in the storage, preparation, and distribution of food; in the cleaning of dishes, equipment, and work area; and in the storage and disposal of waste.

(n) Infection control.

(1) Each facility must establish and maintain an infection control policy and procedure designated to provide a safe, sanitary, and comfortable environment and to help prevent the development and transmission of disease and infection.

(2) The facility must comply with departmental rules regarding special waste in 25 TAC §§1.131-1.137.

(3) The name of any resident of a facility with a reportable disease as specified in 25 TAC §§97.1-97.13 (Control of Communicable Diseases) must be reported immediately to the city health officer, county health officer, or health unit director having jurisdiction, and appropriate infection control procedures must be implemented as directed by the local health authority.

(4) The facility must have written policies for the control of communicable disease in employees and residents, which includes tuberculosis (TB) screening and provision of a safe and sanitary environment for residents and employees.

(A) If employees contract a communicable disease that is transmissible to residents through food handling or direct resident care, the employee must be excluded from providing these services as long as a period of communicability is present.

(B) The facility must maintain evidence of compliance with local and/or state health codes or ordinances regarding employee and resident health status.

(C) The facility must screen all employees for TB within two weeks of employment and annually, according to Centers

for Disease Control and Prevention (CDC) screening guidelines. All persons who provide services under an outside resource contract must, upon request of the facility, provide evidence of compliance with this requirement.

(D) All residents should be screened upon admission and after exposure to TB, in accordance with the attending physician's recommendations and CDC guidelines.

(5) Personnel must handle, store, process, and transport linens so as to prevent the spread of infection.

(6) Universal precautions must be used in the care of all residents.

(o) Access to residents. The facility must allow an employee of DADS or an employee of a local mental health and mental retardation authority into the facility as necessary to provide services to a resident.

(p) Restraints. All restraints for purposes of behavioral management, staff convenience, or resident discipline are prohibited. Seclusion is prohibited.

(1) As provided in §92.125(a)(3) of this chapter (relating to Resident's Bill of Rights and Provider Bill of Rights), a facility may use physical or chemical restraints only:

(A) if the use is authorized in writing by a physician and specifies:

(i) the circumstances under which a restraint may be used; and

(ii) the duration for which the restraint may be used;

or
(B) if the use is necessary in an emergency to protect the resident or others from injury.

(2) A behavioral emergency is a situation in which severely aggressive, destructive, violent, or self-injurious behavior exhibited by a resident:

(A) poses a substantial risk of imminent probable death of, or substantial bodily harm to, the resident or others;

(B) has not abated in response to attempted preventive de-escalatory or redirection techniques;

(C) could not reasonably have been anticipated; and

(D) is not addressed in the resident's service plan.

(3) Except in a behavioral emergency, a restraint must be administered only by qualified medical personnel.

(4) A restraint must not be administered under any circumstance if it:

(A) obstructs the resident's airway, including a procedure that places anything in, on, or over the resident's mouth or nose;

(B) impairs the resident's breathing by putting pressure on the resident's torso;

(C) interferes with the resident's ability to communicate; or

(D) places the resident in a prone or supine position.

(5) If a facility uses a restraint hold in a circumstance described in paragraph (2) of this subsection, the facility must use an acceptable restraint hold.

(A) An acceptable restraint hold is a hold in which the individual's limbs are held close to the body to limit or prevent movement and that does not violate the provisions of paragraph (4) of this subsection.

(B) After the use of restraint, the facility must:

(i) with the resident's consent, make an appointment with the resident's physician no later than the end of the first working day after the use of restraint and document in the resident's record that the appointment was made; or

(ii) if the resident refuses to see the physician, document the refusal in the resident's record.

(C) As soon as possible but no later than 24 hours after the use of restraint, the facility must notify one of the following persons, if there is such a person, that the resident has been restrained:

(i) the resident's legally authorized representative;

or
(ii) an individual actively involved in the resident's care, unless the release of this information would violate other law.

(D) If, under the Health Insurance Portability and Accountability Act, the facility is a "covered entity," as defined in 45 Code of Federal Regulations (CFR) §160.103, any notification provided under subparagraph (C)(ii) of this paragraph must be to a person to whom the facility is allowed to release information under 45 CFR §164.510.

(6) In order to decrease the frequency of the use of restraint, facility staff must be aware of and adhere to the findings of the resident assessment required in subsection (c) of this section for each resident.

(7) A facility may adopt policies that allow less use of restraint than allowed by the rules of this chapter.

(8) A facility must not discharge or otherwise retaliate against:

(A) an employee, resident, or other person because the employee, resident, or other person files a complaint, presents a grievance, or otherwise provides in good faith information relating to the misuse of restraint or seclusion at the facility; or

(B) a resident because someone on behalf of the resident files a complaint, presents a grievance, or otherwise provides in good faith information relating to the misuse of restraint or seclusion at the facility.

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 May 12, 2006.

TRD-200602675

Marianne Reat

Interim General Counsel

Department of Aging and Disability Services

Effective date: June 1, 2006

Proposal publication date: February 24, 2006

For further information, please call: (512) 438-3734



**SUBCHAPTER H. ENFORCEMENT
DIVISION 9. ADMINISTRATIVE PENALTIES
40 TAC §92.559**

The amendment is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code, Chapter 247, which authorizes DADS to license and regulate assisted living facilities, and Chapter 322, which governs the use of restraint and seclusion in certain health care facilities, including assisted living facilities.

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 May 12, 2006.

TRD-200602676

Marianne Reat

Interim General Counsel

Department of Aging and Disability Services

Effective date: June 1, 2006

Proposal publication date: February 24, 2006

For further information, please call: (512) 438-3734



REVIEW OF AGENCY RULES

notices of *intention to review*, which invite public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (<http://www.sos.state.tx.us/texreg>). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative Code* on the web site (<http://www.sos.state.tx.us/tac>).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Review

Texas Department of Insurance

Title 28, Part 1

The Texas Department of Insurance will review and consider for readoption, revision, or repeal all sections of the following chapters of Title 28, Part 1 of the Texas Administrative Code, in accordance with the Texas Government Code §2001.039: Chapter 5, Property and Casualty Insurance; Chapter 7, Corporate and Financial Regulation; Chapter 11, Health Maintenance Organizations; Chapter 15, Surplus Lines Insurance; Chapter 19, Agents' Licensing; Chapter 21, Trade Practices; Chapter 23, Prepaid Legal Service; and Chapter 26, Small Employer Health Insurance Regulations.

The Department will consider, among other things, whether the reasons for initially adopting these rules continue to exist. Any proposed revisions or repeals identified during the review of these rules will be

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)

proposed and published in the *Texas Register* in accordance with the Administrative Procedure Act, Texas Government Code Chapter 2001.

To be considered, written comments on the review of these rules must be submitted within 30 days following the publication of this notice in the *Texas Register* to Gene Jarmon, General Counsel and Chief Clerk, P.O. Box 149104, MC 113-2A, Austin, Texas 78714-9104. An additional copy of comments should be sent to Cynthia Villarreal-Reyna, Section Chief, Agency Counsel Section, Legal and Compliance Division, P.O. Box 149104, MC 110-1A, Austin, Texas 78714-9104.

TRD-200602760

Gene C. Jarmon

General Counsel and Chief Clerk

Texas Department of Insurance

Filed: May 16, 2006



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: 10 TAC §80.240(a)(13)

Texas Department of Housing and Community Affairs
Tax Lien File Layout

MUST be ASCII Fixed Record Layout (Text Format)			
516 bytes total per each record			
All text fields, addresses, names, etc should be left justified.			
ITEM	PICTURE	OFFSET	Additional Information for Accurate Filing
Home Identification Label-No	Alpha 10	1-10	The label number must be exactly 10 characters - anything more or less will be invalid. Also, additional text (<i>i.e.</i> , "Lab#" before the label or "A" or "A/B" after the number) will invalidate the field. If there is no label number, LEAVE SPACES BLANK – DO NOT enter ZEROS, UNKNOWN, NONE or anything else in this field.
Serial-No	Alpha 26	11-36	Serial numbers must only include the number of the first section - and not be prefixed with anything else (<i>i.e.</i> , SER#, #, S#, or using both section letters as A/B). The chances of recording a lien with only a serial number are very slim. Having a label number is the best chance for a successful recording. If there is no serial number, LEAVE SPACES BLANK – DO NOT enter ZEROS, UNKNOWN, NONE or anything else in this field.
FILLER (blank spaces)	Alpha 20	37-56	Model name is no longer required, so leave the 20-spaces originally allocated for this blank.
Taxpayer Identification			
Taxpayer-Name	Left Justified	Alpha 40	57-96
Taxpayer -Name2	Left Justified	Alpha 40	97-136
Taxpayer -Addr1	Left Justified	Alpha 30	137-166
Taxpayer -Addr2	Left Justified	Alpha 30	167-196
Taxpayer -City	Left Justified	Alpha 20	197-216
Taxpayer -State	Left Justified	Alpha 2	217-218
Taxpayer -Zipcode	Left Justified	Alpha 10	219-228

ITEM	PICTURE	OFFSET	Additional Information for Accurate Filing
Collector Identification			
Collector-Tax-Unit-ID	Alpha 10	229-238	The taxing unit id number MUST be 10 characters and in the following format XXX-XXX-XX. If the State Comptroller's Office has not assigned a taxing unit ID to the taxing unit, enter 999-999-99 in this field.
Collector-Name	Left Justified Alpha 40	239-278	Enter the name of the taxing jurisdiction.
Collector-Name2	Left Justified Alpha 40	279-318	Enter the name of the collector.
Collector-Addr1	Left Justified Alpha 30	319-348	
Collector-Addr2	Left Justified Alpha 30	349-378	
Collector-City	Left Justified Alpha 20	379-398	
Collector-State	Left Justified Alpha 2	399-400	
Collector-Zipcode	Alpha 10	401-410	
Lien Information			
Tax-Roll-Account-No	Alpha 26	411-436	
FILLER (blank spaces)	Alpha 8	437-444	Lien date is the date the lien is received by TDHCA and will be inserted when recorded; so leave the 8-spaces originally allocated for this blank.
Tax-Year - YYYY	Alpha 4	445-448	
FILLER (blank spaces)	Alpha 8	449-456	Tax amount is no longer required, so leave the 8-spaces originally allocated for this blank.
Release-Date - YYYYMMDD	Alpha 8	457-464	The date MUST be formatted as YYYYMMDD and have no slashes or spaces.
FILLER (blank spaces)			
County Code	Alpha 49 Alpha 3	465-513 514-516	A carriage return after entering the 3-digit County Code is needed after each record for proper formatting.

Texas Department of Housing and Community Affairs
MANUFACTURED HOUSING DIVISION
 P. O. BOX 12489 Austin, Texas 78711-2489
 (800) 500-7074, (512) 475-2200 FAX (512) 475-1109
 Pursuant to the Texas Manufactured Housing Standards Act, Chapter 1201 of the Occupations Code
 Internet Address: www.idhca.state.tx.us/rmh/index.htm

TAX LIEN RECORD/RELEASE

Please type or print clearly.

BLOCK 1: Information

Taxpayer Name and Tax Roll Account # are for information purposes only. All other information is REQUIRED.

HUD Label or Texas Seal #: _____ **OR** Serial #: _____
 Tax Roll Account #: _____
 Complete 8-Digit Taxing Unit ID #: _____
 County Code (3 digits): _____
 County Name: _____
 Year for which taxes are owed: _____
 Taxpayer Name: _____
(Name)
 Taxpayer Address: _____
(Address)

(City) *(State)* *(Zip Code)*
 Collector's Name & Name of Taxing Entity: _____
 Collector's Address: _____
(Address)

(City) *(State)* *(Zip Code)*
 Collector's Phone #: ()

BLOCK 2: Signature REQUIRED for Tax Lien Recording

I hereby certify that the lien being **RECORDED** with this form is in accordance with all applicable provisions of the Tax Code. If this lien recordation is done as a central collector, the undersigned further represents that it is on file as a central collector with the Texas Department of Housing and Community Affairs and that such records are complete and current.

(Collector's Signature)

(Date)

BLOCK 3: Signature REQUIRED for Tax Lien Release

I hereby certify that the lien being **RELEASED** with this form has been discharged and should be removed from the records of the Texas Department of Housing and Community Affairs. If this lien release is done as a central collector, the undersigned further represents that it is on file as a central collector with the Texas Department of Housing and Community Affairs and that such records are complete and current.

(Collector's Signature)

(Date)

Department Use Only

**Filing Recorded
Date:**

Filing NOT Recorded because:

- No manufactured home ID#(s) provided.
- Our records indicate that this home is real property. No lien can be recorded.
- Received after the filing deadline.
- Required Information not provided.

Figure: 10 TAC §80.260(a)(15)

Texas Department of Housing and Community Affairs
MANUFACTURED HOUSING DIVISION
P. O. BOX 12489 Austin, Texas 78711-2489
(800) 500-7074, (512) 475-2200 FAX (512) 475-1109
Pursuant to the Texas Manufactured Housing Standards Act, Chapter 1201 of the Occupations Code
Internet Address: www.tdhca.state.tx.us/mh/index.htm

NOTIFICATION OF FILING STATUS AS A CENTRAL TAX COLLECTOR

Please type or print clearly.

BLOCK 1: Central Tax Collector Information

Central Collector Name: _____
Central Collector's Address: _____
(Address) (City) (State) (Zip Code)
Primary Taxing Unit ID#: ____ - ____ - ____ Central Collector's Phone #: (____) _____

BLOCK 2: Taxing Jurisdiction Information

County Name: _____ County Code (3 digits): _____

Complete 8-Digit Taxing Unit ID #	Name of Taxing Entity

Additional taxing units may be listed on the reverse side of this form.

BLOCK 3: Notarized Signature Required

Until revoked by written notice to the Department, the undersigned will be the sole agent of each taxing unit listed herein for the recordation and release of tax liens on manufactured homes within the county specified herein. The undersigned represents and warrants that it is acting as a centralized collector and that it has legal authority to record and release such liens under the Primary Taxing Unit ID number designated herein. A lien filed for a particular year under the designated Primary Taxing Unit ID number may be for taxes due to one or more of the units for which the Central Collection Agent collects, whereas a lien release filed for that year under that same number indicates that ALL taxes due to each unit for which the Agent collects have been discharged. In the event that any of the information provided herein changes, the undersigned agrees and undertakes to provide the Department with written notice of such change at least ten (10) days prior to its taking effect, and until and unless such written notice has been actually received by the Department at least ten (10) days prior to its taking effect, the Department will not be bound by it.

(Central Collector's Signature)

(Date)

Before me personally appeared the person(s) whose signature(s) appear above, who by being sworn, upon oath, say that the statements set forth hereinabove are true and correct. Subscribed and sworn before me this ____ day of _____ 20__.

(Name of Notary)

(Notary Public)

(Commission Expires)

Notary Public State of Texas

SEAL

Chart II
Core Residency Questions

Texas Higher Education Coordinating Board §21.731 requires each student applying to enroll at an institution to respond to a set of core residency questions for the purpose of determining the student's eligibility for classification as a resident.

PART A. Student Basic Information. All Students must complete this section.

Name: _____ Student ID Number: _____

Date of Birth: _____

PART B. Previous Enrollment. For all students.

1. During the 12 months prior to the term for which you are applying, did you attend a public college or university in Texas in a fall or spring term?

Yes ___ No ___

If you answered "no", please continue to **Part C**.

If you answered "yes", complete questions 2 - 5:

2. What Texas public institution did you last attend? (Give full name, not just initials.)

3. In which terms were you last enrolled? (check all that apply)

___ fall, 200___ ___ spring, 200___

4. During your last semester at a Texas public institution, did you pay resident (in-state) or nonresident (out-of-state)?

___ resident (in-state) ___ nonresident (out-of-state) ___ unknown

5. If you paid in-state tuition at your last institution, was it because you were classified as a resident or because you were a nonresident who received a waiver?

___ resident ___ nonresident with a waiver ___ unknown

IMPORTANT: If you were enrolled at a Texas public institution during a fall or spring semester within the previous 12 months and were classified as a Texas resident, skip to Part I, sign and date this form and submit it to your institution. If you were not enrolled, or if you were enrolled but classified as a nonresident, proceed to Part C.

PART C. Residency Claim.

Are you a resident of Texas? Yes ___ No ___

If you answered yes, continue to **Part D**.

If you answered no, complete the following question and continue to **Part I**.

Of what state or country are you a resident? _____

If you are uncertain, continue to **Part D**.

PART D. Acquisition of High School Diploma or GED.

	Yes	No
1. a. Did you graduate from high school or complete a GED in TX?		
1. b. If you graduated from high school, what was the name and city of the school?		
2. Did you live in TX the 36 months leading up to high school graduation or completion of the GED?		
3. When you begin the semester for which you are applying, will you have lived in TX for the previous 12 months?		
4. Are you a U.S. Citizen or Permanent Resident?		

Instructions to Part D.:

- ◆ If you answered “no” to question 1a or 2 or 3, continue to **Part E**.
- ◆ If you answered “yes” to all four questions, skip to **Part I**.
- ◆ If you answered “yes” to questions 1, 2 and 3, but “no” to question 4, complete a copy of the **Affidavit** in Chart III, provided as an Attachment to this form, skip to **Part I** of this form, and submit both this form and the affidavit to your institution.

PART E. Basis of Claim to Residency. TO BE COMPLETED BY EVERYONE WHO DID NOT ANSWER “YES” TO QUESTIONS 1a, 2, AND 3 OF PART D.

1. Do you file your own federal income tax as an independent tax payer? Yes ___ No ___
2. Are you claimed as a dependent or are you eligible to be claimed as a dependent by a parent or court-appointed legal guardian? Yes ___ No ___ (To be eligible to be claimed as a dependent, your parent or legal guardian must provide at least one half of your support. A step-parent does not qualify as a parent if he/she has not adopted the student.)
3. If you answered “No” to both questions above, who provides the majority of your support?
 Self ___ parent or guardian ___ other: (list) _____

Instructions to Part E.

- ◆ If you answered “yes” to question 1, continue to **Part F**.
- ◆ If you answered “yes” to question 2, skip to **Part G**.
- ◆ If you answered “no” to 1 and 2 and “self” to question 3, continue to **Part F**.
- ◆ If you answered “no” to 1 and 2 and “parent or guardian” to question 3, skip to **Part G**.
- ◆ If you answered “no” to 1 and 2 and “other” to question 3, skip to **Part H** and provide an explanation, and complete Part I.

PART F. Questions for students who answered “Yes” to Question 1 or “Self” to Question 3 of PART E.

	Yes	No	Years	Mo.	Visa/Status
1. Are you a U.S. Citizen?					
2. Are you a Permanent Resident of the U.S.?					
3. Are you a foreign national whose application for Permanent Resident Status has been preliminarily reviewed? (You should have received a fee/filing receipt or Notice of Action					

(I-797) from USCIS showing your I-485 has been reviewed and has not been rejected).					
4. Are you a foreign national here with a visa or are you a Refugee, Asylee, Parolee or here under Temporary Protective Status? If so, indicate which.					
5. Do you currently live in Texas? If you are out of state due to a temporary assignment by your employer or other temporary purpose, please explain in Part H.	Yes	No			
6. a. If you currently live in Texas, how long have you been living here? b. What is your main purpose for being in the state? If for reasons other than those listed, give an explanation in Section H.			Months	Years	
		Go to College []	Establish/maintain a home []	Work Assignment []	
7. If you are a member of the U.S. military, is Texas your Home of Record? What state is listed as your military legal residence for tax purposes on your Leave and Earnings Statement?	Yes	No			
		State			

	Yes	No
8. Do any of the following apply to you? (Check all that apply)		
a. Hold the title to real property (home, land) in Texas? If yes, date acquired: _____		
b. Own a business in Texas? If yes, date acquired: _____		
c. Hold a state or local license to conduct a business or practice a profession in TX? If yes, date acquired: _____		
9. For the past 12 months, have you: (Check all that apply)		
a. been gainfully employed in TX?		
b. received services from a social service agency that provides services to homeless persons?		
10.		
a. Are you married to a person who could answer "yes" to any part of question 8 or 9?		
b. If yes, indicate which question could be answered yes by your spouse:	Question:	
	Months	Years
c. How long have you been married to the Texas resident?		

Skip Part G and Continue to Part H.

PART G. Questions for students who answered "Parent" or "Legal Guardian" to Question 3 of PART E.

	Yes	No	Years	Mo.	Visa/Status
1. Is the parent or legal guardian upon whom you base your claim of residency a U.S. citizen?					
2. Is the parent or legal guardian upon whom you base your claim of residency a Permanent Resident?					
3. Is this parent or legal guardian a foreign national whose application for Permanent Resident Status has been preliminarily reviewed? (He or she should have received a fee/filing receipt or Notice of Action (I-797) from the USCIS showing his or her I-485 has been reviewed and has not been rejected)					
4. Is this parent or legal guardian a foreign national here with a visa or a Refugee, Asylee, Parolee or here under Temporary Protective Status? If so, indicate which.					
5. Does this parent or legal guardian currently live in Texas? If he or she is out of state due to a temporary assignment by his/her employer or other temporary purpose, please explain in Part H.					
6. a. If he or she is currently living in Texas, how long has he or she been living here?			Months	Years	
b. What is your parent's or legal guardian's main purpose for being in the state? If for reasons other than those listed, give an explanation in Section H.			Go to College []	Establish/maintain a home []	Work Assignment []
7. If he or she is a member of the U.S. military, is Texas his or her Home of Record? What state is listed as his or her military legal residence for tax purposes on his or her Leave and Earnings Statement?			State		

	Yes	No
8. Do any of the following apply to your parent or guardian? (Check all that apply)		
a. Hold the title to real property (home, land) in Texas? If yes, date acquired: _____		
b. Own a business in Texas? If yes, date acquired: _____		

c. Hold a state or local license to conduct a business or practice a profession in TX? If yes, date acquired: _____		
9. For the past 12 months, has your parent or guardian: (Check all that apply) a. been gainfully employed in TX? b. received services from a social service agency that provides services to homeless persons?		
10. a. Is your parent or legal guardian married to a person who could answer "yes" to any part of question 8 or 9? b. If yes, indicate which question could be answered yes by your parent or guardian's spouse: c. How long has your parent or guardian been married to the Texas resident?		
	Question:	
	Months	Years

Part H. General Comments. Is there any additional information that you believe your college should know in evaluating your eligibility to be classified as a resident? If so, please provide it below:

PART I. Certification of Residency. All students must complete this section.

I understand that officials of my college/university will use the information submitted on this form to determine my status for residency eligibility. I authorize the college/ university to verify the information I have provided. I agree to notify the proper officials of the institution of any changes in the information provided. I certify that the information on this application is complete and correct and I understand that the submission of false information is grounds for rejection of my application, withdrawal of any offer of acceptance, cancellation of enrollment and/or appropriate disciplinary action.

Signature: _____ Date: _____

IN

ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Alamo Regional Mobility Authority

Notice of Availability of Request for Qualifications for Bond Counsel

The Alamo Regional Mobility Authority ("AlamoRMA"), a political subdivision, is soliciting statements of interest and qualifications from law firms interested in representing the AlamoRMA in bond issuances and other capital financing transactions, as well as providing advice to the authority concerning comprehensive development agreement proposals which include provisions for private financing and/or private operation (i.e., "Concession CDAs").

A request for qualifications ("RFQ") packet may be obtained electronically from the website of the AlamoRMA at www.alamorma.org. Copies will also be available by contacting the AlamoRMA at (210) 495-5256. Periodic updates, addenda, and clarifications may be posted on the AlamoRMA website, and interested parties are responsible for monitoring the website accordingly. Final proposals must be received by the Alamo Regional Mobility Authority, 16500 San Pedro Avenue-Su. 350, San Antonio, Texas 78232-2241 by 4:00 p.m. C.S.T. June 30, 2006, to be eligible for consideration.

Each firm will be evaluated based on the criteria and process set forth in the RFQ. The final selection of a firm, or dual firms submitting as a prime contractor with a subcontractor, to serve as bond counsel, if any, will be made by the AlamoRMA Board of Directors.

TRD-200602777
Terry Brechtel
Executive Director
Alamo Regional Mobility Authority
Filed: May 17, 2006



Notice of Availability of Request for Qualifications to Provide Investment Banking Services

The Alamo Regional Mobility Authority ("AlamoRMA"), a political subdivision, is soliciting statements of interest and qualifications from investment banking firms interested in representing the AlamoRMA as advisors and/or investment bankers in bond issuances, other capital financing transactions, and analysis of comprehensive development agreement proposals which include provisions for private financing and/or private operation ("Concessions CDAs"). It is the intent of the AlamoRMA to select and designate a pool of investment banking firms from which to assign firms, as needed, to assist in the financing of turnpike and mobility projects and/or in the assessment of Concession CDA proposals.

A request for qualifications ("RFQ") packet may be obtained electronically from the website of the AlamoRMA at www.alamorma.org. Copies will also be available by contacting the AlamoRMA at (210) 495-5256. Periodic updates, addenda, and clarifications may be posted on the AlamoRMA website, and interested parties are responsible for monitoring the website accordingly. Final proposals must be received by the Alamo Regional Mobility Authority, 16500 San Pedro

Avenue-Su. 350, San Antonio, Texas 78232-2241 by 4:00 p.m. C.S.T. June 30, 2006, to be eligible for consideration.

Each firm will be evaluated based on the criteria and process set forth in the RFQ. The final selection of firms for inclusion in the pool, if any, will be made by the AlamoRMA Board of Directors.

TRD-200602776
Terry Brechtel
Executive Director
Alamo Regional Mobility Authority
Filed: May 17, 2006



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 May 5, 2006, through May 11, 2006. 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 these activities extends 30 days from the date published on the Coastal Coordination Council web site. The notice was published on the web site on May 17, 2006. The public comment period for these projects will close at 5:00 p.m. on June 16, 2006.

FEDERAL AGENCY ACTIONS:

Applicant: SembCorp-Sabine Shipyard; Location: The project is located in the intersection of the Sabine-Neches Waterway and Texas Bayou, at the SembCorp Facility, at 8490 South 1st Avenue, in Sabine Pass, Jefferson County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Texas Point, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 416864; Northing: 3287146. Project Description: The applicant proposes to excavate the water channel adjacent to the facility to -34 feet Mean Low Tide (MLT). The current depth is -15 feet MLT. Approximately 197,257 cubic yards of material will be removed. The material will be placed in Placement Areas 5, 5B, 6 or at the applicant's existing 23-acre placement area. CCC Project No.: 06-0258-F1; Type of Application: U.S.A.C.E. permit application #12949(01) is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403).

Applicant: Sabine Offshore Services; Location: The project is located on the Sabine-Neches Waterway, at the Sabine Offshore facility, at 7266 South 1st Avenue, in Sabine, Jefferson County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Texas

Point, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 415836; Northing: 3288736. Project Description: The applicant proposes to excavate approximately 284,804 cubic yards of material from the Sabine Neches Waterway to obtain a depth of -34 feet Mean Low Tide (MLT). The current depth is -15 feet MLT. The applicant will use both mechanical and hydrologic dredging. The dredge material will be placed in Placement Areas 5, 5B, 6, or on a 23-acre upland placement site authorized under Permits 10253 and 12949. CCC Project No.: 06-0262-F1; Type of Application: U.S.A.C.E. permit application #22036(03) is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403).

Applicant: Mike and Lucy Burris; Location: The project is located where Mesquite Street terminates at Fulton Beach Road in Fulton, Aransas County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Rockport, TX. Approximate UTM Coordinates (NAD 83): Zone 14; Easting: 693120; Northing: 3106136. The alternate disposal area can be located on the U.S.G.S. quadrangle map entitled: Rockport, TX. Approximate UTM Coordinates (NAD 27): Zone 14; Easting: 689320; Northing: 3101405. Project Description: The applicant proposes to amend an existing permit. Permit 19089(04) was issued March 16, 2004, authorizing the stabilization of the shoreline, restoration and extension of existing breakwaters, maintenance dredging in an existing marina and boat channel, installation of a vinyl sheet-pile bulkhead, construction of a bulkhead and boatlifts with walkways, and placement of fill material behind the bulkhead. Under the proposed amendment the applicant would add an additional placement area for dredged material, extend the length of the authorized bulkhead, and change the breakwater restoration and construction method and alter the configuration and capacity of an existing drainage ditch adjacent to the property. The proposed site for an alternate dredged material placement area is the Clark Construction equipment storage yard located at 1155 West Market Street, Rockport, Texas. The applicant proposes to extend the authorized bulkhead on the north side of the property and place fill material behind it. The approximately 75-foot-long bulkhead would connect with the edge of an authorized sheet-pile bulkhead that forms the marina basin. It would be constructed along the Mean High Water (MHW) line. The shoreline behind the MHW line consists of a narrow band (about 8-10 feet-wide) of shell debris that gives way to upland vegetation. The purpose of the extension is to protect additional property that the applicant has recently acquired. Under the current permit, the applicant is authorized to repair two existing breakwaters and add 100 feet to the length of one so that it extends 175 feet into the bay. The breakwaters would be repaired and lengthened using barges from Aransas Bay. Also, the applicant is authorized to dredge the west 300-foot portion of an existing small-boat channel and marina basin to a depth of -3.5 ft MHW. Authorized dredging is to be done mechanically via a dragline and/or a barge-mounted dragline. The authorized work has not been initiated. The applicant proposes to alter the construction method to allow the contractor to construct two temporary access roads across the marina. The access roads would be constructed of material that is in place and set to be excavated during dredging of the marina and small boat channel. The roads would allow excavation equipment to traverse the marina area and drive atop the breakwaters and to reconstruct and lengthen them. Once the breakwater construction is complete, the contractor would remove the access roads and the remaining material to achieve the authorized dredge depth and configuration. On the south end of the property, the applicant proposes to extend the authorized bulkhead approximately 12 feet across an existing drainage ditch so that it joins the bulkhead associated with the Fulton Convention Center. The unfinished ditch runs between the applicant and the Fulton Convention Center properties. The applicant proposes to excavate and straighten the ditch so that it would have a 3-foot-wide bottom cut and 3-foot sidewalls with a 2:1 slope. Where the ditch empties

into Aransas Bay, the applicant would place a 12-foot-long, 4-foot-diameter culvert through the proposed bulkhead so that the ditch could still function. CCC Project No.: 06-0279-F1; Type of Application: U.S.A.C.E. permit application #19089(05) is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344).

Applicant: Kevin Loosemore; Location: The project site is located in wetlands adjacent to Taylor Lake, on Lot 2, Block 2 of Seabrook Island, in Seabrook, Harris County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: League City, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 302533; Northing: 3274240. Project Description: The applicant is requesting authorization to discharge fill material into 0.02 acre of wetlands adjacent to Taylor Lake to elevate private property. The fill will be contained behind a wooden bulkhead. Approximately 650 cubic yards of material will be discharged into wetlands behind 150 feet of a retaining wall (bulkhead). The wetlands to be impacted are located above the ordinary high water mark of Taylor Lake and are not subject to the daily ebb and flow of the tide. CCC Project No.: 06-0282-F1; Type of Application: U.S.A.C.E. permit application #24203 is being evaluated under §404 of the Clean Water Act (33 U.S.C.A. §1344).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the applications listed above may be obtained from Ms. Tammy Brooks, Program Specialist, 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-200602752

Larry L. Laine

Chief Clerk/Deputy Land Commissioner, General Land Office

Coastal Coordination Council

Filed: May 16, 2006

◆ ◆ ◆ Comptroller of Public Accounts

Certification of the Average Taxable Price of Gas and Oil

The Comptroller of Public Accounts, administering agency for the collection of the Crude Oil Production Tax, has determined that the average taxable price of crude oil for reporting period May 2006, as required by Tax Code, §202.058, is \$59.19 per barrel for the three-month period beginning on February 1, 2006, and ending April 30, 2006. Therefore, pursuant to Tax Code, §202.058, crude oil produced during the month of May 2006, from a qualified Low-Producing Oil Lease, is not eligible for exemption from the crude oil production tax imposed by Tax Code, Chapter 202.

The Comptroller of Public Accounts, administering agency for the collection of the Natural Gas Production Tax, has determined that the average taxable price of gas for reporting period May 2006, as required by Tax Code, §201.059, is \$6.24 per mcf for the three-month period beginning on February 1, 2006, and ending April 30, 2006. Therefore, pursuant to Tax Code, §201.059, gas produced during the month of May 2006, from a qualified Low-Producing Well, is not eligible for exemption from the natural gas production tax imposed by Tax Code, Chapter 201.

Inquiries should be directed to Bryant K. Lomax, Manager, Tax Policy Division, P. O Box 13528, Austin, Texas 78711-3528.

TRD-200602605
Martin Cherry
Chief Deputy General Counsel
Comptroller of Public Accounts
Filed: May 10, 2006



Notice of Award

Pursuant to Chapters 403 and 2156, Texas Government Code, the Comptroller of Public Accounts (Comptroller) announces the following contract awards:

The notice of request for proposals was published in the May 6, 2005, issue of the *Texas Register* (31 TexReg 1348) (RFP #175k).

The contractors will provide transition management services for the Texas Prepaid Higher Education Tuition Board.

Three (3) contracts were awarded as follows:

1. State Street Bank & Trust, One Lincoln Street, 5th Floor, Boston, MA 02111. The total amount of the contract is based on the percentage of securities transitioned. The term of the contract is May 5, 2006 through August 31, 2010, with option for 2 additional 1-year renewals;
2. J P Morgan Chase, 277 Park Avenue, Floor 9, New York, NY 10172. The total amount of the contract is based on the percentage of securities transitioned. The term of the contract is May 5, 2006 through August 31, 2010, with option for 2 additional 1-year renewals, and;
3. Merrill Lynch Investment Managers LLC, 800 Scudders Mill Road, Princeton, NJ 08536.

The total amount of the contract is based on the percentage of securities transitioned. The term of the contract is May 5, 2006 through August 31, 2010, with option for 2 additional 1-year renewals.

TRD-200602612
Pamela Smith
Deputy General Counsel, Contracts
Comptroller of Public Accounts
Filed: May 11, 2006



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, Tex. Fin. Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 05/22/06 - 05/28/06 is 18% for Consumer¹/Agricultural/Commercial²/credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 05/22/06 - 05/28/06 is 18% for Commercial over \$250,000.

The judgment ceiling as prescribed by §304.003 for the period of 06/01/06 - 06/30/06 is 8.00% for Consumer/Agricultural/Commercial/credit through \$250,000.

The judgment ceiling as prescribed by §304.003 for the period of 06/01/06 - 06/30/06 is 8.00% for Commercial over \$250,000.

¹Credit for personal, family or household use.

²Credit for business, commercial, investment or other similar purpose.

TRD-200602773
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: May 17, 2006



Credit Union Department

Applications to Expand Field of Membership

Notice is given that the following applications have been filed with the Credit Union Department and are under consideration:

An application was received from Public Employees Credit Union, Austin, Texas to expand its field of membership. The proposal would permit persons who live, worship, attend school or work within a ten (10) mile radius of the Public Employees Credit Union offices located at 306 East 10th Street, Austin, Texas 78701; 1200 W. 42nd Street, Austin, Texas 78756; 8013 Centre Park Drive, Austin, Texas 78754; 5838 Highway 290 West, Austin, Texas 78735; 901 Round Rock Avenue, Round Rock, Texas 78681; 4241 Eastex Freeway, Beaumont, Texas 77706, to be eligible for membership in the credit union.

An application was received from City Credit Union (#1), Dallas, Texas to expand its field of membership. The proposal would permit persons who work, worship, reside or attend school in Cooke County, Texas, to be eligible for membership in the credit union.

An application was received from City Credit Union (#2), Dallas, Texas to expand its field of membership. The proposal would permit persons who work, worship, reside or attend school in Montague County, Texas, to be eligible for membership in the credit union.

An application was received from City Credit Union (#3), Dallas, Texas to expand its field of membership. The proposal would permit persons who work, worship, reside or attend school in Grayson County, Texas, to be eligible for membership in the credit union.

An application was received from Community Resource Credit Union, Baytown, Texas to expand its field of membership. The proposal would permit persons who work, reside, or attend school, and businesses located within a 10-mile radius of the Community Resource Credit Union offices located at 2900 Decker Drive, Baytown, Texas; 2700 N. Alexander Drive, Baytown, Texas; 11540 Eagle Drive, Mount Belvieu, Texas; and Hwy. 2100, Crosby, Texas, to be eligible for membership in the credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Credit unions that wish to comment on any application must also complete a Notice of Protest form. The form may be obtained by contacting the Department at (512) 837-9236 or downloading the form at <http://www.tcred.state.tx.us/applications.html>. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Texas Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-200602778
Harold E. Feeney
Commissioner
Credit Union Department
Filed: May 17, 2006

◆ ◆ ◆
Notice of Final Action Taken

In accordance with the provisions of 7 TAC §91.103, the Credit Union Department provides notice of the final action taken on the following applications:

Applications to Expand Field of Membership--Approved

Members Credit Union, Cleburne, Texas--See *Texas Register* issue dated February 25, 2005.

Associated Credit Union of Texas, Texas City, Texas--See *Texas Register* issue dated July 29, 2005.

Texas Employees Credit Union, Dallas, Texas--See *Texas Register* issue dated January 27, 2006.

South Texas Area Resources Credit Union, Corpus Christi, Texas--See *Texas Register* issue dated February 24, 2006.

Application to Amend Articles of Incorporation--Approved

Texas One Community Credit Union, Houston, Texas--See *Texas Register* issue dated March 31, 2006.

Articles of Incorporation - 50 Years to Perpetuity--Approved

South Texas Credit Union, Kenedy, Texas

Port of Houston Credit Union, Houston, Texas

Cooperative Teachers Credit Union, Tyler, Texas

Auto Parts Employees Credit Union, Fort Worth, Texas

Grocer's Supply Employees Credit Union, Houston, Texas

Dallas U.P. Employees Credit Union, Dallas, Texas

Pampa Municipal Credit Union, Pampa, Texas

East Texas Professional Credit Union, Longview, Texas

Oak Farms Employees Credit Union, Houston, Texas

Access Credit Union, Amarillo, Texas

MCT Credit Union, Port Neches, Texas

Tex Mex Credit Union, Laredo, Texas

TRD-200602779

Harold E. Feeney

Commissioner

Credit Union Department

Filed: May 17, 2006

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Texas Commission on Environmental Quality

Enforcement Orders

A default order was entered regarding Mike Strozdas dba Best Landscape & Sprinkler, Docket No. 2003-0578-LII-E on May 4, 2006 assessing \$1,463 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Shana Horton, Staff Attorney at (512) 239-1088, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Gustine, Docket No. 2002-1324-MWD-E on May 4, 2006 assessing \$16,150 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Deborah Bynum, Staff Attorney at (512) 239-1976, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding El Paso Field Services, L.P., Docket No. 2002-0951-AIR-E on April 28, 2006 assessing \$202,400 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Amie Richardson, Staff Attorney at (512) 239-2999, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Orange Crush Recyclers Management, L.L.C., Docket No. 2004-0196-AIR-E on April 28, 2006 assessing \$80,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Amie Richardson, Staff Attorney at (512) 239-2999, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An order was entered regarding Nelson A. Collazos, Docket No. 2004-0490-PST-E on May 1, 2006 assessing \$7,700 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Deborah Bynum, Staff Attorney at (512) 239-1976, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Shiloh Ridge Property Owners Association, Docket No. 2004-0557-PWS-E on April 28, 2006 assessing \$2,468 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Xavier Guerra, Staff Attorney at (210) 490-3096, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Temple Hall Silica, Inc., Docket No. 2004-0709-WQ-E on May 3, 2006 assessing \$5,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lena Roberts, Staff Attorney at (512) 239-0019, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Tramell Crow Residential Company dba Silverado Apartments, Docket No. 2004-0880-EAQ-E on April 28, 2006 assessing \$3,150 in administrative penalties with \$630 deferred.

Information concerning any aspect of this order may be obtained by contacting Cari-Michel LaCaille, Enforcement Coordinator at (512) 239-1387, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Chevron Phillips Chemical Company LP, Docket No. 2004-0958-AIR-E on April 28, 2006 assessing \$78,697 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Sherronda Martin, Enforcement Coordinator at (713) 767-3680, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Rose City, Docket No. 2004-1303-PWS-E on April 28, 2006 assessing \$655 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Cari-Michel LaCaille, Enforcement Coordinator at (512) 239-1387, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Robert Burk dba Graham Fuel Mart, Docket No. 2004-1368-PST-E on April 28, 2006 assessing \$3,800 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Deborah Bynum, Staff Attorney at (512) 239-1976, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Pearl's LLC dba Angels Gas & Grocery, Docket No. 2004-1510-PST-E on April 28, 2006 assessing \$4,200 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Shannon Strong, Staff Attorney at (512) 239-0252, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Salim M. Jaffer dba Market Shamrock, Docket No. 2004-1709-PST-E on April 28, 2006 assessing \$2,100 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Courtney Hill, Staff Attorney at (512) 239-2436, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Anahuac, Docket No. 2004-2124-PWS-E on April 28, 2006 assessing \$510 in administrative penalties with \$102 deferred.

Information concerning any aspect of this order may be obtained by contacting Edward Moderow, Enforcement Coordinator at (512) 239-2680, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Sunoco Inc. (R&M), Docket No. 2005-0164-AIR-E on April 28, 2006 assessing \$8,700 in administrative penalties with \$1,740 deferred.

Information concerning any aspect of this order may be obtained by contacting Craig Fleming, Enforcement Coordinator at (512) 239-5806, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Petty Water Supply and Sewer Service Corporation, Docket No. 2005-0291-PWS-E on May 4, 2006 assessing \$368 in administrative penalties with \$74 deferred.

Information concerning any aspect of this order may be obtained by contacting Michael Limos, Enforcement Coordinator at (512) 239-5839, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Tor Tenax, Inc. dba Amigos 2, Docket No. 2005-0314-PST-E on April 28, 2006 assessing \$10,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Amie Richardson, Staff Attorney at (512) 239-2999, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Newark, Docket No. 2005-0488-PWS-E on April 28, 2006 assessing \$1,628 in administrative penalties with \$326 deferred.

Information concerning any aspect of this order may be obtained by contacting Jaime Garza, Enforcement Coordinator at (956) 430-6030, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Carl W. Wright dba Rayburn Tackle, Docket No. 2005-0490-PST-E on April 28, 2006 assessing \$3,375 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Amie Richardson, Staff Attorney at (512) 239-2999, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Texas Department of Transportation, Docket No. 2005-0564-PST-E on April 28, 2006 assessing \$2,000 in administrative penalties with \$400 deferred.

Information concerning any aspect of this order may be obtained by contacting Samuel Short, Enforcement Coordinator at (512) 239-5363, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ridge Utilities, Inc., Docket No. 2005-0674-MWD-E on April 28, 2006 assessing \$3,480 in administrative penalties with \$696 deferred.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (817) 588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Georgia Gulf Chemicals & Vinyls, LLC, Docket No. 2005-0766-AIR-E on April 28, 2006 assessing \$7,020 in administrative penalties with \$1,404 deferred.

Information concerning any aspect of this order may be obtained by contacting Terry Murphy, Enforcement Coordinator at (512) 239-5025, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Lamb County Hospital dba Lamb Healthcare Center, Docket No. 2005-0806-PST-E on April 28, 2006 assessing \$770 in administrative penalties with \$154 deferred.

Information concerning any aspect of this order may be obtained by contacting Cari-Michel LaCaille, Enforcement Coordinator at (512) 239-1387, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding F. K. Corporation dba Mr. JR's Grocery, Docket No. 2005-0824-PST-E on April 28, 2006 assessing \$4,200 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kari Gilbreth, Staff Attorney at (512) 239-1320, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Cowtown Enterprises, Inc. dba Cowtown RV Park, Docket No. 2005-1088-PWS-E on April 28, 2006 assessing \$1,875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Deanna Sigman, Staff Attorney at (512) 239-0619, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Lawn, Docket No. 2005-1136-PWS-E on April 28, 2006 assessing \$895 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Craig Fleming, Enforcement Coordinator at (512) 239-5806, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Union Carbide Corporation, Docket No. 2005-1204-AIR-E on April 28, 2006 assessing \$4,100 in administrative penalties with \$820 deferred.

Information concerning any aspect of this order may be obtained by contacting Trina Grieco, Enforcement Coordinator at (210) 403-4006, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Rittiman Plumbing, Inc., Docket No. 2005-1249-SLG-E on April 28, 2006 assessing \$1,300 in administrative penalties with \$260 deferred.

Information concerning any aspect of this order may be obtained by contacting Thomas Greimel, Enforcement Coordinator at (512) 239-5690, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding North Orange Water & Sewer, LLC, Docket No. 2005-1266-MWD-E on April 28, 2006 assessing \$9,320 in administrative penalties with \$1,864 deferred.

Information concerning any aspect of this order may be obtained by contacting Catherine Albrecht, Enforcement Coordinator at (713) 767-3672, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Roofing Recycle Center, Inc., Docket No. 2005-1313-MSW-E on May 4, 2006 assessing \$10,990 in administrative penalties with \$2,198 deferred.

Information concerning any aspect of this order may be obtained by contacting Jaime Garza, Enforcement Coordinator at (956) 430-6030, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Tyler Holding Company, Inc., Docket No. 2005-1354-AIR-E on April 28, 2006 assessing \$329,772 in administrative penalties with \$65,954 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Johnson, Enforcement Coordinator at (713) 422-8931, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding USA Travel Center, Inc. dba USA Travel Plaza, Docket No. 2005-1375-PST-E on April 28, 2006 assessing \$7,350 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Shana Horton, Staff Attorney at (512) 239-1088, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Energy Mart, Inc. dba James Food Mart, Docket No. 2005-1376-PST-E on April 28, 2006 assessing \$1,625 in administrative penalties with \$325 deferred.

Information concerning any aspect of this order may be obtained by contacting Thomas Greimel, Enforcement Coordinator at (512) 239-5690, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Garry Hardin, Docket No. 2005-1386-LII-E on April 28, 2006 assessing \$750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Shawn Slack, Staff Attorney at (512) 239-1877, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Praxair, Inc. dba Prazair BP Refinery, Docket No. 2005-1421-AIR-E on April 28, 2006 assessing \$5,202 in administrative penalties with \$1,040 deferred.

Information concerning any aspect of this order may be obtained by contacting Daniel Siringi, Enforcement Coordinator at (409) 899-8799, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jesamin, Inc. dba Davis Quick Stop, Docket No. 2005-1462-PST-E on April 28, 2006 assessing \$6,400 in administrative penalties with \$1,280 deferred.

Information concerning any aspect of this order may be obtained by contacting Cari-Michel LaCaille, Enforcement Coordinator at (512) 239-1387, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Cheyenne Hills/Glen Rose 618 Limited Partnership, Docket No. 2005-1488-MLM-E on April 28, 2006 assessing \$3,465 in administrative penalties with \$693 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Clausewitz, Enforcement Coordinator at (210) 403-4012, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Shell Chemical LP, Docket No. 2005-1614-AIR-E on April 28, 2006 assessing \$32,495 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting John Muennink, Enforcement Coordinator at (361) 825-3423, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Southline Metal Products Company, Docket No. 2005-1629-AIR-E on April 28, 2006 assessing \$13,000 in administrative penalties with \$2,600 deferred.

Information concerning any aspect of this order may be obtained by contacting Amy Burgess, Enforcement Coordinator at (512) 239-2540, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Van Der Horst USA Corporation, Docket No. 2005-1639-IHW-E on April 28, 2006 assessing \$28,080 in administrative penalties with \$5,616 deferred.

Information concerning any aspect of this order may be obtained by contacting Michael Meyer, Enforcement Coordinator at (512) 239-4492, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Masters Resources, LLC, Docket No. 2005-1642-AIR-E on April 28, 2006 assessing \$21,875 in administrative penalties with \$4,375 deferred.

Information concerning any aspect of this order may be obtained by contacting Jaime Garza, Enforcement Coordinator at (956) 430-6030, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Exxon Mobil Corporation, Docket No. 2005-1643-AIR-E on May 4, 2006 assessing \$5,200 in administrative penalties with \$1,040 deferred.

Information concerning any aspect of this order may be obtained by contacting Jaime Garza, Enforcement Coordinator at (956) 430-6030, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Flint Hills Resources, LP, Docket No. 2005-1659-AIR-E on May 4, 3006 assessing \$4,732 in administrative penalties with \$946 deferred.

Information concerning any aspect of this order may be obtained by contacting Miriam Hall, Enforcement Coordinator at (512) 239-1044, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Carotex, Inc., Docket No. 2005-1662-IWD-E on May 4, 3006 assessing \$8,835 in administrative penalties with \$1,767 deferred.

Information concerning any aspect of this order may be obtained by contacting Lynley Doyen, Enforcement Coordinator at (512) 239-1364, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Southwest Convenience Stores, LLC, Docket No. 2005-1670-AIR-E on April 28, 2006 assessing \$16,780 in administrative penalties with \$3,356 deferred.

Information concerning any aspect of this order may be obtained by contacting Craig Fleming, Enforcement Coordinator at (512) 239-5806, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Rick Hamilton, Docket No. 2005-1673-LII-E on April 28, 2006 assessing \$625 in administrative penalties with \$125 deferred.

Information concerning any aspect of this order may be obtained by contacting Brent Hurta, Enforcement Coordinator at (512) 239-6589, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Valley Mills, Docket No. 2005-1676-MWD-E on April 28, 2006 assessing \$12,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Brian Lehmkuhle, Enforcement Coordinator at (512) 239-4482, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding IGA Foodliner of Jacksboro, TX., Inc., Docket No. 2005-1712-PST-E on April 28, 2006 assessing \$800 in administrative penalties with \$160 deferred.

Information concerning any aspect of this order may be obtained by contacting Tel Croston, Enforcement Coordinator at (512) 239-5717, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jaeger Homes, Inc., Docket No. 2005-1757-WQ-E on April 28, 2006 assessing \$750 in administrative penalties with \$150 deferred.

Information concerning any aspect of this order may be obtained by contacting Kimberly Morales, Enforcement Coordinator at (713) 422-8938, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Texas Waste Systems, Inc., Docket No. 2005-1786-MSW-E on April 28, 2006 assessing \$15,000 in administrative penalties with \$3,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Michael Meyer, Enforcement Coordinator at (512) 239-4492, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Simi Investment Company, Ltd., Docket No. 2005-1787-PWS-E on May 4, 3006 assessing \$3,353 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Anita Keese, Enforcement Coordinator at (956) 430-6034, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Kenny Palmer dba Jetta Septic Hauling, Docket No. 2005-1819-SLG-E on April 28, 2006 assessing \$1,000 in administrative penalties with \$200 deferred.

Information concerning any aspect of this order may be obtained by contacting Brent Hurta, Enforcement Coordinator at (512) 239-6589, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Containment Solutions, Inc., Docket No. 2005-1821-AIR-E on April 28, 2006 assessing \$27,572 in administrative penalties with \$5,514 deferred.

Information concerning any aspect of this order may be obtained by contacting Samuel Short, Enforcement Coordinator at (512) 239-5363, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Hood County Utilities, Inc., Docket No. 2005-1844-MWD-E on April 28, 2006 assessing \$19,760 in administrative penalties with \$3,952 deferred.

Information concerning any aspect of this order may be obtained by contacting Sandy VanCleave, Enforcement Coordinator at (512) 239-0667, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Seven Sanders Companies, Inc., Docket No. 2005-1893-MSW-E on April 28, 2006 assessing \$2,500 in administrative penalties with \$500 deferred.

Information concerning any aspect of this order may be obtained by contacting Marlin Bullard, Enforcement Coordinator at (254) 751-0335, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Trent Water Works, Inc. dba Jones Creek Terrace, Docket No. 2005-1910-PWS-E on May 4, 3006 assessing \$318 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding North Harrison Water Supply Corporation, Docket No. 2005-1920-PWS-E on April 28, 2006 assessing \$313 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tel Croston, Enforcement Coordinator at (512) 239-5717, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Mastec North America, Inc., Docket No. 2005-1936-MSW-E on April 28, 2006 assessing \$7,500 in administrative penalties with \$1,500 deferred.

Information concerning any aspect of this order may be obtained by contacting Thomas Greimel, Enforcement Coordinator at (512) 239-5690, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Era Water Supply Corporation, Docket No. 2005-1940-PWS-E on April 28, 2006 assessing \$1,338 in administrative penalties with \$268 deferred.

Information concerning any aspect of this order may be obtained by contacting Laurie Eaves, Enforcement Coordinator at (512) 239-4495, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Sandy Creek Yacht Club, Ltd., Docket No. 2005-1946-PWS-E on May 4, 2006 assessing \$1,563 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Elvia Maske, Enforcement Coordinator at (512) 239-0789, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Mehak & Michelle, Inc. dba Six Pack Express, Docket No. 2005-1951-PST-E on May 4, 2006 assessing \$4,500 in administrative penalties with \$900 deferred.

Information concerning any aspect of this order may be obtained by contacting Deana Holland, Enforcement Coordinator at (512) 239-2504, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Liberty City Water Supply Corporation, Docket No. 2005-1962-PWS-E on April 28, 2006 assessing \$500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (210) 490-3096, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding E. I. du Pont de Nemours and Company, Docket No. 2005-1978-AIR-E on April 28, 2006 assessing \$18,150 in administrative penalties with \$3,630 deferred.

Information concerning any aspect of this order may be obtained by contacting John Barry, Enforcement Coordinator at (409) 899-8781, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Loadcraft Industries, Ltd., Docket No. 2005-1995-MLM-E on April 28, 2006 assessing \$15,275 in administrative penalties with \$3,055 deferred.

Information concerning any aspect of this order may be obtained by contacting Michael Meyer, Enforcement Coordinator at (512) 239-4492, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Oil Patch Sandblast & Paint, LTD., Docket No. 2005-2041-AIR-E on April 28, 2006 assessing \$2,180 in administrative penalties with \$436 deferred.

Information concerning any aspect of this order may be obtained by contacting Scott Barnett, Enforcement Coordinator at (713) 767-3523, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Pflugerville, Docket No. 2005-2043-MWD-E on April 28, 2006 assessing \$2,425 in administrative penalties with \$485 deferred.

Information concerning any aspect of this order may be obtained by contacting Laurie Eaves, Enforcement Coordinator at (512) 239-4495, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Flat Fork Water Supply Corporation, Docket No. 2005-2045-PWS-E on April 28, 2006 assessing \$298 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Epifanio Villareal, Enforcement Coordinator at (210) 490-3095, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Timpson, Docket No. 2005-2052-PWS-E on April 28, 2006 assessing \$313 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Audra Ruble, Enforcement Coordinator at (361) 825-3126, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Seadrift Coke L.P., Docket No. 2005-2054-PWS-E on April 28, 2006 assessing \$645 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Dana Shuler, Enforcement Coordinator at (512) 239-2505, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Gardner Telecommunications Inc, Docket No. 2005-2077-WQ-E on April 28, 2006 assessing \$5,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Laurie Eaves, Enforcement Coordinator at (512) 239-4495, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Triple J & L Construction Co., Inc., Docket No. 2006-0052-EAQ-E on April 28, 2006 assessing \$1,875 in administrative penalties with \$375 deferred.

Information concerning any aspect of this order may be obtained by contacting Edward Moderow, Enforcement Coordinator at (512) 239-2680, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-200602789
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: May 17, 2006



Notice of Deletion of the Rogers Delinted Cottonseed Company Site from the State Superfund Registry

The executive director (ED) of the Texas Commission on Environmental Quality (TCEQ or commission) is issuing this notice of deletion of the Rogers Delinted Cottonseed Company (the site) from its proposed-for-listing status on the state registry, the list of state Superfund sites. The state registry lists the contaminated sites which may constitute an imminent and substantial endangerment to public health and safety or the environment due to a release or threatened release of hazardous substances into the environment.

The site was originally proposed for listing on the state registry in the June 28, 2002, issue of the *Texas Register* (27 TexReg 5865). The site, including all land, structures, appurtenances, and other improvements, is approximately 81 acres located approximately one mile east of Farmersville, at the intersection of State Highway 380 and Farm-to-Market Road 547 in Farmersville, Collin County, Texas. In addition, the site included any areas where hazardous substances came to be located as a result, either directly or indirectly, of releases of hazardous substances from the site.

Rogers Delinted Cottonseed Company operated from 1965 to 1984, when it was abandoned. The site may be divided into three separate areas: 1) the processing area in the northwest corner of the property (approximately 20 acres); 2) irrigation fields located south and east of the processing area (approximately 30 acres); and 3) remaining undeveloped land located along the eastern portion of the site. Arsenic compounds were used to defoliate the cotton plants. The facility then delinted the cottonseeds by washing them with 5% sulfuric acid to chemically remove husks, lints, fibers, and other suspended particulate matter. The process also included the use of a fungicide to protect the delinted cottonseeds. The spent acid solution from the process area was collected in two surface impoundments. The surface impoundments were used as settling ponds to separate the suspended solids from the acid solution. Upon determination that the site did not qualify for the National Priorities List, the site was proposed to the state Superfund registry. The remedial investigation and removal actions were performed at the site. Actions also included decontamination of the process and storage buildings, the treatment and discharge of low pH water, stabilization and backfill of the surface impoundments, and removal of metal and polychlorinated biphenyl (PCB) contaminated soils. The removal actions resulted in the soils being restored to commercial/industrial use.

The site is inappropriate for residential use according to protective concentration levels under the Texas Risk Reduction Program standards.

A deed notice has been filed with the Collin County real property records pursuant to Texas Risk Reduction Program rules to indicate that the site is restricted to commercial/industrial use only. The site no longer poses an imminent and substantial endangerment to public health and safety or the environment due to a release or threatened release of hazardous substances into the environment. As a result, the fence used to restrict access to the site during the investigation and clean up activities has been removed.

In accordance with 30 TAC §335.344(b), the commission held a public meeting to receive comments on the intended deletion of the site on March 30, 2006, at the Farmersville City Council Chambers. No comments regarding the proposed deletion were received at the public meeting. The complete public file, including a transcript of the public meeting, may be viewed during regular business hours at the commission's Records Management Center, Records Customer Service, Building E, First Floor, 12100 Park 35 Circle, MC 199, Austin, Texas 78753, (800) 633-9363 or (512) 239-2920. Fees are charged for photocopying file information.

Pursuant to 30 TAC §335.344(c), the executive director has determined that due to the remediation actions performed, the site no longer presents an imminent and substantial endangerment to public health and safety or the environment.

In accordance with Texas Health and Safety Code, §361.188(d), a notice will be filed in the real property records of Collin County, Texas stating that the site has been deleted from the state registry.

All inquiries regarding the deletion of the site should be directed to John Flores, Community Relations Coordinator, 1-800-633-9363.

TRD-200602747

Stephanie Bergeron Perdue
Acting Deputy Director, Office of Legal Services
Texas Commission on Environmental Quality
Filed: May 16, 2006



Notice of District Petition

Notice mailed May 12, 2006

TCEQ Internal Control No. 03282006-D03; Shale-114, L.P. (Petitioner) filed a petition for creation of North Fort Worth Water Control and Improvement District No.1 of Denton and Wise Counties (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 51 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 to be included in the proposed District; (2) there are two lienholders, LNW Real Estate L.P., and United Development Funding L.P., on the property to be included in the proposed District and by affidavit they have all consented to the petition; (3) the proposed District will contain approximately 251.75 acres located within Denton and Wise Counties, Texas; and (4) the proposed District is within the extraterritorial jurisdiction of the City of Fort Worth, Texas, and no portion of land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas. By Resolution No. 3158-01-2005, effective January 1, 2005, the City of Fort Worth, Texas, gave its consent to the creation of the proposed District. The petition further states that the proposed District will: (1) purchase, construct, acquire, improve, extend, maintain, and operate a waterworks and sanitary sewer system for residential and commercial purposes; (2) purchase, construct, acquire, improve, extend, maintain and operate works, improvements, facilities, plants, equipment and appliances helpful or necessary to provide more adequate drainage for the property in the proposed District; (3) control, abate and amend local storm waters; and (4) purchase, construct, acquire, improve, extend maintain, and operate additional facilities, systems, plants, and enterprises consistent with the purposes for which the District is created, all as more particularly described in an engineer's report filed simultaneously with the filing of the petition. 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 \$8,275,000.

INFORMATION SECTION

The TCEQ may grant a contested case hearing on a 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 a petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of the 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 1-512-239-4691. Si desea información en Español, puede llamar al 1-800-687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.state.tx.us.

TRD-200602787

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: May 17, 2006



Notice of Public Meeting on June 29, 2006, in Dayton, Texas, Concerning the Proposed Cox Road Dump State Superfund Site

The purpose of the meeting is to obtain public input and information concerning the commission's proposal to delete the site from the state Superfund registry because the site has been accepted into the Texas Commission on Environmental Quality Voluntary Cleanup Program.

The executive director (ED) of the Texas Commission on Environmental Quality (TCEQ or commission) is issuing this public notice of intent to delete the Cox Road Dump state Superfund site (site) from its proposed-for-listing status on the state Superfund registry. The state registry is the list of state Superfund sites which may constitute an imminent and substantial endangerment to public health and safety or the environment due to a release or threatened release of hazardous substances into the environment. The commission is proposing this deletion because the site has been accepted into the TCEQ Voluntary Cleanup Program. This notice was also published in the *Dayton News, Liberty Vindicator*, and *Cleveland Advocate* on May 24, 2006.

The site was proposed for listing on the state Superfund registry in the February 10, 2006, issue of the *Texas Register* (31 TexReg 907). The site, including all land, structures, appurtenances, and other improvements, is located one mile north of FM 1413 on the east side of County Road 491 (Cox Road), Dayton, Liberty County, Texas. The geographic coordinates of the site are 29 degrees 58 minutes 30.84 seconds North latitude, 94 degrees 56 seconds 12.83 minutes West longitude. The site also includes any areas where hazardous substances have come to be located as a result, either directly or indirectly, of releases of hazardous substances from the site.

The site has been accepted into the TCEQ Voluntary Cleanup Program and is therefore eligible for deletion from the state registry as provided by 30 TAC §335.344(c).

The commission will hold a public meeting to receive comment on the proposed deletion of the site. This public meeting is not a contested case hearing under Texas Government Code, Chapter 2001. The public meeting is scheduled for 7:00 p.m. on Thursday, June 29, 2006, at the Dayton High School cafeteria, 3200 North Cleveland in Dayton, Texas.

All persons desiring to make comments may do so prior to or at the public meeting. All comments submitted *prior* to the public meeting must be received by 5:00 p.m. on June 28, 2006, and should be sent in writing to Geoffrey E. Meyer, Senior Project Manager, Texas Commission

on Environmental Quality, Remediation Division, MC 143, P.O. Box 13087, Austin, Texas 78711-3087 or by facsimile to (512) 239-2450. The public comment period for this action will end at the close of the public meeting on June 29, 2006.

A portion of the record for this site is available for review during regular business hours at the Jones Public Library, 307 West Houston Street in Dayton, Texas, telephone (936) 258-7060. Copies of the complete public record file may be obtained during regular business hours at the commission's Records Management Center, Building E, First Floor, Records Customer Service, 12100 Park 35 Circle, Austin, Texas 78753, telephone (512) 239-2920. Photocopying of file information is subject to payment of a fee. Parking for persons with disabilities is available on the east side of Building D, convenient to access ramps that are between Buildings D and E.

Persons who have special communication or other accommodation needs who are planning to attend the meeting should contact the agency at (800) 633-9363. Requests should be made as far in advance as possible.

For further information regarding this meeting, please call Bruce McAnally, TCEQ Community Relations, at (800) 633-9363, extension 2141.

TRD-200602748

Stephanie Bergeron Perdue

Acting Deputy Director, Office of Legal Services

Texas Commission on Environmental Quality

Filed: May 16, 2006



Notice of Water Quality Applications

The following notices were issued during the period of May 11, 2006 through May 16, 2006

The following require the applicants to publish notice in the newspaper. The public comment period, 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 THIS NOTICE.

City of Carthage has applied for a renewal of TPDES Permit No. WQ0010074003, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 3,600,000 gallons per day. The facility is located east of the City of Carthage and south of Hoggs Bayou, approximately 1.5 miles east of the intersection of U.S. Highways 59 and 79 in Panola County, Texas.

City of Pittsburg has applied for a renewal of TPDES Permit No. 10250-001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,000,000 gallons per day. The facility is located on Sparks Branch between Farm-to-Market Road 557 and State Highway 11, approximately one and one quarter miles east of the intersection of State Highway Loop 271 and Farm-to-Market Road 557 in Camp County, Texas.

Combined Consumers Special Utility District has applied to the Texas Commission on Environmental Quality (TCEQ) for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014685001, to authorize the discharge of filter backwash effluent from a water treatment plant at a daily average flow not to exceed 25,000 gallons per day. The facility is located approximately 3.2 miles south from the intersection of State Highway 276 and Farm-to-Market Road 751, on the west side of Farm-to-Market Road 751 in Hunt County, Texas.

Gulflander Partners Group, L.P. has applied for a renewal of TPDES Permit No. 13488-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 10,000 gallons per day. The facility is located approximately 800 feet east of the intersection of State Highway 87 and State Highway 62, approximately 1/2 mile northwest of the state highway bridge over Cow Bayou in Orange County, Texas.

Shelbyville Independent School District has applied for a renewal of TPDES Permit No. 13370-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 11,250 gallons per day. The facility is located at 1,000 feet due south of the intersection of Farm-to-Market Road 417 and State Highway 87, on the west side of State Highway 87 in Shelby County, Texas.

Tenaska Gateway Partners, Ltd., which operates the Tenaska Gateway Generation Station, a combined cycle electric power generation plant, has applied for a renewal of TPDES Permit No. 04111, which authorizes the discharge of cooling tower blowdown and previously monitored effluents (i.e., demineralizer wastewater, neutralized wastewater, boiler blowdown, and storm water) at a daily average flow not to exceed 1,500,000 gallons per day via Outfall 001. The facility is located adjacent to State Highway 315, approximately 0.5 miles southwest of the intersection of State Highway 315 and State Highway 840, and approximately 7.5 miles northeast of the City of Mount Enterprise, Rusk County, Texas.

Texas Department of Transportation has applied for a new permit, Proposed Permit No. WQ0014647001, to authorize the disposal of treated domestic wastewater at a daily average flow not to exceed 15,000 gallons per day (December through February), 17,500 gallons per day (March through May and September through November) and 22,500 gallons per day (June through August) via evaporation. The facility and disposal site will be located on Interstate Highway 35 (Mile Marker 281/282), approximately 5 miles south of the City of Salado in Bell County, Texas. The facility and disposal site will be located in the drainage basin of an unnamed tributary of Salado Creek, in Segment No. 1243 of the Brazos River Basin.

Trans-Global Solutions, Inc., which proposes to operate the Rainbow Terminal Bulk Handling Facility, a marine cargo (petroleum coke) handling and storage facility, has applied for a renewal of TPDES Permit No. WQ0002613000, which authorizes the discharge of coke pile runoff, filter backwash water, wash water, and storm water at a daily average dry weather flow not to exceed 150,000 gallons per day via Outfall 001. The facility is located on the south bank of the Neches River, approximately 1.5 miles northwest of the intersection of State Highway 87 and Farm-to-Market Road 366, in the City of Port Arthur, Jefferson County, Texas.

TRD-200602788
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: May 17, 2006



Notice of Water Rights Application

Notice issued May 12, 2006:

APPLICATION NO. 5932; TXU Mining Company LP (TXU or Applicant), 1601 Bryan Street, Dallas, Texas 75201-3411, has applied for a Water Use Permit to construct and maintain a reservoir on Watson Branch, Sabine River Basin for domestic and livestock purposes after mining activity ceases, and to divert and use not to exceed 150 acre-feet of water per year from multiple tributaries of Gandia, Elijah, and Wat-

son Creeks, Sabine River Basin, for industrial (mining) purposes within the Martin Lake Lignite Mining Area in Panola County. The application and required fees were received on December 27, 2005, and additional information was received on February 17, 2006. The application was declared administratively complete and filed with the Office of the Chief Clerk on March 10, 2006. The Commission will review the application as submitted by the applicant and may or may not grant the application as requested. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

INFORMATION SECTION

To view the complete issued notices, view the notices on our web site at 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 application 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. Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-200602786
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: May 17, 2006



Golden Crescent Workforce Development Board

Public Notice

The Texas Workforce Solutions of the Golden Crescent announces the availability of their Draft Strategic Plan for Fiscal Year 2007-2008 for public comment beginning May 22 through June 20, 2006. The plan can be viewed at Texas Workforce Solutions at one of the following locations:

* <http://www.gcworkforce.org>

- *120 S. Main #501, Victoria, TX
- *1800 S. Highway 35 #H, Pt. Lavaca, TX
- *1137 N. Esplanade, Cuero, TX
- *329 W. Franklin, Goliad, TX
- *427 St. George #101, Gonzales, TX
- *903 S. Wells, Edna, TX
- *727 S. Promenade, Hallettsville, TX

Programs provided by the TWS are Career Center services for the general public, including at a minimum Wagner-Peyser Employment Services; Workforce Investment Act services for adults, dislocated workers, and youth; Temporary Assistance for Needy Families Choices Program; Food Stamp Employment & Training; Project Reintegration of Offenders; TAA/NAFTA/TAA; Child Care Services; Child Care Training, and Communities In Schools programs for an operation period of September 1, 2005, through August 31, 2006. Eligible program beneficiaries who reside in Calhoun, DeWitt, Goliad, Gonzales, Jackson, Lavaca, and Victoria Counties may be provided appropriate employment and educational services through these programs.

All persons wishing to comment on the Plan may do so at one of the addresses above or by fax to (361) 573-0225 no later than June 20, 2006. Corrections and changes to this notice and/or the Plan may be found on our website at <http://www.gcworkforce.org>.

The TWS is an equal opportunity organization.

Auxiliary aides or services are available upon request to those individuals with disabilities.

TRD-200602603
 Laura Sanders
 Executive Director
 Golden Crescent Workforce Development Board
 Filed: May 10, 2006

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Texas Health and Human Services Commission

Public Notice

The Texas Health and Human Services Commission (HHSC) announces its intent to submit Amendment 719, Transmittal Number TX 06-001, to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act.

The purpose of this amendment is to add language to the State plan in order to allow the State to implement a Medicaid buy-in (MBI) program. The MBI program is for working individuals with disabilities

who are ineligible for Medicaid (under the Federal Balance Budget Act of 1997) to purchase medical assistance through the Medicaid program. The effective date of the proposed amendment is September 1, 2006.

The proposed amendment is estimated to result in annual aggregate spending of approximately \$15,263,599 for state fiscal year (SFY) 2007, of which \$6,794,657 is federal expenditures, \$4,520,377 is state general revenue expenditures, and \$3,948,564 is cost-sharing funds collected from the clients. For SFY 2008, estimated expenditures are approximately \$29,760,770, with \$13,206,101 in federal expenditures, \$8,657,541 in state general revenue expenditures, and \$7,897,128 in cost-sharing funds collected from the clients.

To obtain copies of the proposed amendment, interested parties may contact Bonnie Winters, Policy Analyst, Medicaid/CHIP, Texas Health and Human Services Commission, by telephone at (512) 491-1744 or by e-mail at Bonnie.Winters@hhsc.state.tx.us. Copies of the proposal also will be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-200602613
 Wendy Pellow
 Assistant General Counsel
 Texas Health and Human Services Commission
 Filed: May 11, 2006

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Department of State Health Services

Correction of Effective Date for Rules Concerning the Children with Special Health Care Needs Services Program

The Department of State Health Services submitted a notice of adopted rulemaking for 25 TAC §§38.1 - 38.14 and 38.16 for publication in the May 19, 2006, issue of the *Texas Register* (31 TexReg 4200). The amended rules concern the Children with Special Health Care Needs Services Program that provides services to children with chronic physical or developmental conditions. The correct effective date of the adopted rule action is June 1, 2006, not May 28, 2006, as it appears at the end of the notice on page 4218, second column.

Please contact Kathy Griffis-Bailey at (512) 458-7111, Ext. 3069, or Kathy.GriffisBailey@dshs.state.tx.us if you have any questions.

TRD-200602784

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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
Denton	Daniel W. Caldwell MD PA	L05984	Denton	00	05/03/06
Throughout Tx	Syntec Engineering Group Inc	L05978	Dallas	00	05/09/06
Throughout Tx	Etech Environmental & Safety Solutions, Inc	L05957	Odessa	00	05/01/06

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Amarillo	Baptist St Anthony's Health System	L01259	Amarillo	82	05/03/06
Arlington	GE Healthcare	L05693	Arlington	03	05/04/06
Austin	Cedra Clinical Research LLC	L05723	Austin	02	05/10/06
Austin	Cedra Corporation	L04427	Austin	15	05/04/06
Austin	Simona Scumpia MD PA DBA Austin Thyroid & Endocrinology	L05579	Austin	03	05/10/06
Austin	St David's Healthcare Partnership LP LLP	L04910	Austin	58	04/28/06
Beaumont	Advanced Cardiovascular Specialists LLP	L05512	Beaumont	08	05/12/06
Beaumont	Gulf Coast Weld Spec	L05426	Beaumont	44	05/01/06
Bonham	Attentus Bonham LP DBA Red River Regional Hospital	L03331	Bonham	29	05/03/06
Bremond	Altura Power LP	L04280	Bremond	10	05/01/06
Cleveland	Cleveland Regional Medical Center LP	L02055	Cleveland	33	05/04/06
Conroe	CHCA Conroe LP DBA Conroe Regional Medical Center	L01769	Conroe	68	05/04/06
Corpus Christi	Flint Hills Resources LP	L00322	Corpus Christi	38	05/09/06
Dallas	Texas Hematology/Oncology Center PA DBA Patients Comprehensive Cancer Center	L05397	Dallas	15	05/01/06
Dallas	Texas Instruments Incorporated	L05048	Dallas	08	04/28/06
Dallas	Texas Oncology PA DBA Sammons Cancer Center	L04878	Dallas	31	04/28/06
Dallas	The University of Texas Southwestern Medical Center At Dallas	L00384	Dallas	92	05/05/06
Denton	Columbia Medical Center of Denton Sub. LP DBA Denton Regional Medical Center	L02764	Denton	59	05/04/06
Denton	Denton Cancer Center LLP	L05945	Denton	01	04/28/06
Eagle Pass	Fort Duncan Medical Center	L05640	Eagle Pass	04	05/01/06
El Paso	AMEC Earth & Environmental Inc	L03622	El Paso	19	05/04/06
Fort Worth	Oncology Hematology Consultants PA DBA The Center for Cancer and Blood Disorders	L05919	Fort Worth	04	05/08/06
Fort Worth	Radiology Associates	L03953	Fort Worth	38	05/02/06
Fredericksburg	Fredericksburg Imaging Center DBA Hill Country Memorial Hospital	L03516	Fredericksburg	30	04/28/06
Frisco	Tenet Hospital LTD DBA Centennial Medical Center	L05768	Frisco	04	05/04/06
Houston	American Diagnostic Tech LLC	L05514	Houston	24	05/10/06
Houston	Cardiovascular Clinic of Texas	L04963	Houston	05	05/01/06
Houston	Diagnostic Clinic of Houston Nuclear Medicine	L03452	Houston	34	04/28/06

AMENDMENTS TO EXISTING LICENSES ISSUED (CONTINUED):

Location	Name	License #	City	Amend- ment #	Date of Action
Houston	Gulf Coast MRI & Diagnostic	L05333	Houston	07	05/09/06
Houston	Memorial Hermann Hospital System DBA Memorial Hospital Southwest	L00439	Houston	112	04/28/06
Houston	Memorial Hermann Hospital System DBA Memorial Hospital Southwest	L00439	Houston	113	05/10/06
Houston	Memorial Hermann Hospital System Inc DBA Memorial Hermann Hospital	L00650	Houston	77	05/02/06
Houston	One Step Diagnostic Inc	L05990	Houston	01	04/28/06
Houston	River Oaks Imaging and Diagnostic LP DBA River Oaks Imaging and Diagnostic	L05493	Houston	07	04/28/06
Houston	Texas Children's Hospital Diagnostic Imaging 2-2521	L04612	Houston	38	04/28/06
Houston	Texas Nuclear Imaging Inc DBA Excel Diagnostics Imaging Clinic Medical Center	L05009	Houston	29	05/08/06
Houston	Tops Specialty Hospital LTD DBA Tops Surgical Specialty Hospital	L05441	Houston	05	04/28/06
Irving	Baylor Medical Center at Irving DBA Irving Healthcare System	L02444	Irving	62	05/08/06
Jasper	Numed Imaging Centers Inc	L05202	Jasper	08	04/28/06
Jourdanton	San Miguel Electric Cooperative	L02347	Jourdanton	24	05/04/06
Katy	Memorial Hermann Hospital System DBA Memorial Hermann Katy Hospital	L03052	Katy	44	04/28/06
Laredo	Laredo Regional Medical Center LP DBA Doctor's Hospital of Laredo	L02192	Laredo	34	05/10/06
Lewisville	Columbia Medical Center of Lewisville Sub LP DBA Medical Center of Lewisville	L02739	Lewisville	48	05/10/06
Longview	Longview Cancer Center	L05017	Longview	08	05/05/06
McAllen	Harish Koolwal MD PA Valley Heart Center	L05149	McAllen	09	05/01/06
McAllen	McAllen Hospitals LP DBA McAllen Medical Center	L01713	McAllen	75	05/04/06
Mexia	Parkview Regional Hospital Nuclear Medicine Department	L05144	Mexia	19	05/02/06
Mt Vernon	East Texas Medical Center Mt Vernon	L05954	Mt Vernon	01	04/28/06
Pampa	Signature Pampa Hospital LP DBA Pampa Regional Medical Center	L03123	Pampa	21	05/06/06
Paris	Turner Industries Group LLC DBA Pipe Fabrication Division Texas Operations	L05237	Paris	09	05/02/06
Plano	Baylor Regional Medical Center of Plano	L05844	Plano	02	05/01/06
Plano	Presbyterian Hospital of Plano	L04467	Plano	40	05/04/06
Richardson	Medical Edge Healthcare Group PA DBA PET/CT Center of Richardson	L05688	Richardson	04	05/04/06
San Angelo	Shannon Clinic	L04216	San Angelo	36	05/08/06
San Antonio	Christus Santa Rosa Health Care	L02237	San Antonio	89	05/04/06
Seguin	American Biological Technologies Inc	L04265	Seguin	05	05/02/06
Seguin	Structural Metals Inc	L02188	Seguin	18	05/05/06
Sherman	Texas Oncology PA DBA North Texas PET Imaging	L05502	Sherman	10	04/27/06
Texarkana	International Paper Company	L01686	Texarkana	30	05/04/06
Tyler	East Texas Medical Center	L00977	Tyler	132	05/03/06
Tyler	Sigal Heart Center	L05704	Tyler	02	05/05/06
Waxahachie	Baylor Medical Center at Waxahachie	L04536	Waxahachie	27	05/03/06

AMENDMENTS TO EXISTING LICENSES ISSUED (CONTINUED):

Location	Name	License #	City	Amendment #	Date of Action
Webster	River Oaks Imaging & Diagnostic LP DBA River Oaks Imaging and Diagnostic	L05476	Webster	05	05/02/06
Throughout Tx	Brazos Valley Inspection Services Inc	L02859	Bryan	51	05/09/06
Throughout Tx	Irisndt Inc	L04769	Deer Park	28	05/08/06
Throughout Tx	Terra-Mar Inc	L03157	Fort Worth	46	05/04/06
Throughout Tx	Weatherford US LP	L05291	Fort Worth	11	05/04/06
Throughout Tx	Arias & Associates Inc	L04964	Hollywood Park	22	05/03/06
Throughout Tx	AITEC USA Investments Inc DBA AITEC USA Inc & Weldsonix Inc	L05718	Houston	21	05/04/06
Throughout Tx	Aster Corporation	L04741	Houston	25	05/04/06
Throughout Tx	LFC Inc	L05970	Houston	01	05/03/06
Throughout Tx	Material Inspection Technology Inc	L05672	Houston	17	05/08/06
Throughout Tx	Remington Engineering & Testing LLC DBA Remington Engineering	L05642	Houston	08	05/04/06
Throughout Tx	Texas Genco II LP	L02063	Houston	64	05/10/06
Throughout Tx	Texas Genco II LP	L02063	Houston	65	05/11/06
Throughout Tx	Oceaneering International Inc Solus Schall Division	L04463	Ingleside	43	05/08/06
Throughout Tx	Granite Construction Company	L04923	Lewisville	10	05/10/06
Throughout Tx	TXI Operations LP	L01421	Midlothian	41	05/01/06
Throughout Tx	Desert Industrial X-Ray LP	L04590	Odessa	50	05/01/06
Throughout Tx	Conam Inspection & Engineering Inc	L05010	Pasadena	107	05/02/06
Throughout Tx	Midwest Inspection Services	L03120	Perryton	88	05/02/06
Throughout Tx	Schlumberger Technology Corporation	L00764	Sugar Land	95	05/04/06

RENEWAL OF LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Conroe	Drilling Specialties Company	L04825	Conroe	10	05/09/06
Corpus Christi	Associates in Heart Disease DBA The Heart Clinic of Corpus Christi	L05023	Corpus Christi	13	05/01/06
Corpus Christi	Equistar Chemicals LP Corpus Christi Plant	L02447	Corpus Christi	18	05/04/06
El Paso	Cardiology Care Consultants	L05045	El Paso	05	05/05/06
Houston	Medical Clinic of Houston LLP	L01315	Houston	32	05/09/06
San Antonio	Cancer Therapy & Research Center	L01922	San Antonio	84	05/05/06
Sugar Land	US Imaging Inc DBA Fort Bend Imaging	L04459	Sugar Land	30	05/03/06

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Dallas	Raytheon Company	L00946	Dallas	90	05/02/06
Throughout Tx	Onion Valley Enterprises Inc DBA Support Consultants	L05398	De Leon	03	05/04/06
Throughout Tx	Radiology Associates of Tarrant County PA DBA Tarrant PET Imaging LLC	L05387	Fort Worth	05	05/01/06

In issuing new licenses, amending and renewing existing licenses, or approving license exemptions, the Department of State Health Services (department), Radiation Safety Licensing Branch, has determined that the applicant has complied with the applicable provisions of Title 25 Texas Administrative Code (TAC), Chapter 289 regarding radiation control. In granting termination of licenses, the department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC, Chapter 289. In denying the application for a license, license renewal or license amendment, the department has determined that the applicant has not met the applicable requirements of 25 TAC, Chapter 289.

This notice affords the opportunity for a hearing on written request of a person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. A person affected may request a hearing by writing Richard A. Ratliff, Radiation Program Officer, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756-3189. For information call (512) 834-6688.

TRD-200602775
Cathy Campbell
General Counsel
Department of State Health Services
Filed: May 17, 2006

Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: May 12, 2006

◆ ◆ ◆
Texas Department of Insurance

Company Licensing

Application for incorporation to the State of Texas by SAFE AUTO INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Columbus, Ohio.

Application to change the name of TEXAS MEMORIAL ENTERPRISES, LLC to TEXAS MEMORIAL LIFE INSURANCE COMPANY, a domestic life, accident and/or health company. The home office is in Austin, Texas.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-200602783
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: May 17, 2006

◆ ◆ ◆
Third Party Administrator Application

The following third party administrator (TPA) application has been filed with the Texas Department of Insurance and is under consideration.

Application to change the name and home office of GALLAGHER BENEFIT ADMINISTRATORS, INC. to AMERICAN ADMINISTRATIVE GROUP, INC. (using the assumed name of AAG AMERICAN ADMINISTRATIVE GROUP, INC.), a foreign third party administrator. The home office is LISLE, ILLINOIS.

Any objections must be filed within 20 days after this notice is published in the *Texas Register*, addressed to the attention of Matt Ray, MC 107-1A, 333 Guadalupe, Austin, Texas 78701.

TRD-200602782
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: May 17, 2006

◆ ◆ ◆
Texas Department of Licensing and Regulation

Vacancy on Board of Boiler Rules

The Texas Department of Licensing and Regulation announces a vacancy on the Board of Boiler Rules established by Texas Health and Safety Code, Chapter 755. The pertinent rules may be found in 16 TAC §65.65. The purpose of the Board of Boiler Rules is to advise the Texas Commission of Licensing and Regulation in the adoption of definitions and rules relating to the safe construction, installation, inspection, operating limits, alteration, and repair of boilers and their appurtenances.

The Board is composed of nine members appointed by the presiding officer of the Commission, with the Commission's approval. The Board consists of three members representing persons who own or use boilers in this state; three members representing companies that insure boilers in this state; one member representing boiler manufacturers or installers; one member representing organizations that repair or alter boilers in this state; and one member representing a labor union. Members serve staggered six-year terms, with the terms of three members expiring January 31 of each odd-numbered year. This announcement is for one position of a person who owns or uses a boiler in this state.

Interested persons should request an application from the Texas Department of Licensing and Regulation by telephone (512) 475-4765, FAX (512) 475-2874 or Email jackie.revilla@license.state.tx.us. Applications may also be downloaded from the Department website at: www.license.state.tx.us.

Applicants may be asked to appear for an interview; however any required travel for an interview would be at the applicant's expense.

◆ ◆ ◆
Notice of Public Meeting

The Windstorm Building Code Advisory Committee on Specifications and Maintenance will hold a meeting of the advisory committee on July 12, 2006, at 1:00 p.m. in Room 102 of the William P. Hobby State Office Building, 333 Guadalupe Street in Austin, Texas. The topics to be discussed include the election of a chairman and vice-chairman of the advisory committee, proposed adoption of the 2006 edition of the International Residential Code and 2006 International Building Code, and any proposed revisions to the 2006 edition of the International Residential Code and 2006 International Building Code.

The Committee, appointed by the Commissioner of Insurance, operates pursuant to the Texas Insurance Code Article 21.49 §6C. The purpose of the Committee is to advise and make recommendations to the Commissioner on building requirements and maintenance in the plan of operation that are required for structures to be certified by the Department for insurability by the Texas Windstorm Insurance Association (TWIA). All interested parties, including members of the general public, are invited to attend. Persons interested in additional information may contact the Engineering Section of the Texas Department of Insurance at (512) 322-2212.

TRD-200602657

TRD-200602744
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Filed: May 15, 2006



Vacancy on Elevator Advisory Board

The Texas Department of Licensing and Regulation announces a vacancy on the Elevator Advisory Board established by Texas Health and Safety Code, Chapter 754. The pertinent rules may be found in 16 TAC §74.65. The purpose of the Elevator Advisory Board is to advise the Texas Commission of Licensing and Regulation on the adoption of appropriate standards for the installation, alteration, operation and inspection of equipment; the status of equipment used by the public in this state; sources of information relating to equipment safety; public awareness programs related to elevator safety, including programs for sellers and buyers of single-family dwellings with elevators, chairlifts, or platform lifts; and any other matter considered relevant by the Commission.

The Board is composed of nine members appointed by the presiding officer of the Commission, with the Commission's approval. The Board consists of a representative of the insurance industry or a certified elevator inspector; a representative of equipment constructors; a representative of owners or managers of a building having fewer than six stories and having equipment; a representative of owners or managers of a building having six stories or more and having equipment; a representative of independent equipment maintenance companies; a representative of equipment manufacturers; a licensed or registered engineer or architect; a public member; and a public member with a physical disability. Members serve at the will of the Commission. This announcement is for the position of a representative of the insurance industry or a certified elevator inspector.

Interested persons should request an application from the Texas Department of Licensing and Regulation by telephone (512) 475-4765, FAX (512) 475-2874 or Email jackie.revilla@license.state.tx.us. Applications may also be downloaded from the Department website at: www.license.state.tx.us. Applicants may be asked to appear for an interview, however any required travel for an interview would be at the applicant's expense.

TRD-200602745
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Filed: May 15, 2006



Texas Lottery Commission

Instant Game Number 675 "7-11-21"

1.0 Name and Style of Game.

A. The name of Instant Game No. 675 is "7-11-21". The play style is "add up with doubler".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 675 shall be \$1.00 per ticket.

1.2 Definitions in Instant Game No. 675.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 01, 02, 03, 04, 05, 06, 07, 08, 09, DOUBLE DOLLAR SYMBOL, STAR SYMBOL, \$1.00, \$2.00, \$3.00, \$5.00, \$10.00, \$20.00, \$30.00, \$100, \$250 or \$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. 675 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
07	SVN
08	EGT
09	NIN
\$\$ SYMBOL	DOUBLE
STAR SYMBOL	WIN ALL
\$1.00	ONE\$
\$2.00	TWO\$
\$3.00	THREE\$
\$5.00	FIVE\$
\$10.00	TEN\$
\$20.00	TWENTY
\$30.00	THIRTY
\$100	ONE HUN
\$250	TWO FTY
\$1,000	ONE THOU

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for val-

idation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 675 - 1.2E

CODE	PRIZE
ONE	\$1.00
TWO	\$2.00
THR	\$3.00
FOR	\$4.00
FIV	\$5.00
SIX	\$6.00
TEN	\$10.00
TWN	\$20.00

Low-tier winning tickets use the required codes listed in Figure 2. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) 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: 0000000000000.

G. Low-Tier Prize - A prize of \$1.00, \$2.00, \$3.00, \$4.00, \$5.00, \$6.00, \$10.00 or \$20.00.

H. Mid-Tier Prize - A prize of \$30.00, \$60.00, \$100 or \$250.

I. High-Tier Prize - A prize of \$1,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine

(9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (675), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 250 within each pack. The format will be: 675-0000001-001.

L. Pack - A pack of "7-11-21" Instant Game tickets contains 250 tickets, packed in plastic shrink-wrapping and fanfolded in pages of five (5). Ticket 001 to 005 will be on the top page; tickets 005 to 009 on the next page etc.; and tickets 246 to 250 will be on the last page. Tickets 001 and 250 will be folded down to expose the pack-ticket number through the shrink-wrap. Please note the books will be in an A - B configuration.

M. 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.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "7-11-21" Instant Game No. 675 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 "7-11-21" Instant Game is determined once the latex on the ticket is scratched off to expose 16 (sixteen) Play Symbols. The player adds up all three of YOUR NUMBERS for each GAME. If the total is 7, 11 or 21 in a single GAME, the player wins the PRIZE shown for that GAME. If the player reveals a "\$\$" symbol, the player wins DOUBLE the PRIZE shown for that GAME. If the player reveals a STAR SYMBOL, the player wins the PRIZES shown for all GAMES automatically. 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 within a book will not have identical patterns.

B. Players can win up to four (4) times per ticket.

C. No more than one (1) "\$\$" symbol will appear on a ticket.

D. No more than one (1) "STAR" symbol will appear on a ticket.

E. The "\$\$" symbol will win 2 times the prize amount shown and will win as per the prize structure.

F. When the "\$\$" symbol is used, the two remaining numbers will never equal 7, 11 or 21.

G. When the "STAR" symbol is used, none of the games will ever total 7, 11 or 21.

H. The "STAR" symbol will win all four (4) prizes shown and will win as per the prize structure.

I. On winning and non-winning tickets, all non-winning PRIZE AMOUNTS will be unique.

J. Non-winning tickets will never have a total of seven (7) or eleven (11) or twenty-one (21) within the same GAME.

K. No column or diagonal will ever total 7, 11 or 21.

L. No ticket will contain three identical numbers in any row, column or diagonal line (i.e. 06, 06, 06).

2.3 Procedure for Claiming Prizes.

A. To claim a "7-11-21" Instant Game prize of \$1.00, \$2.00, \$3.00, \$4.00, \$5.00, \$6.00, \$10.00, \$20.00, \$30.00, \$60.00, \$100 or \$250 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, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a \$30.00, \$60.00, \$100 or \$250 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 "7-11-21" 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 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 "7-11-21" 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 "7-11-21" 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 "7-11-21" 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 12,000,000 tickets in the Instant Game No. 675. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 675 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$1	1,080,000	11.11
\$2	648,000	18.52
\$3	360,000	33.33
\$4	144,000	83.33
\$5	72,000	166.67
\$6	48,000	250.00
\$10	60,000	200.00
\$20	24,000	500.00
\$30	13,000	923.08
\$60	2,750	4,363.64
\$100	3,000	4,000.00
\$250	2,000	6,000.00
\$1,000	85	141,176.47

*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 4.88. 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. 675 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. 675, 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-200602781
 Kimberly L. Kiplin
 General Counsel
 Texas Lottery Commission
 Filed: May 17, 2006



Instant Game Number 676 "Hot Texas Cash"

1.0 Name and Style of Game.

A. The name of Instant Game No. 676 is "HOT TEXAS CASH". The play style is "key number match".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 676 shall be \$5.00 per ticket.

1.2 Definitions in Instant Game No. 676.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, \$5.00, \$10.00, \$15.00, \$20.00, \$30.00, \$50.00, \$100, \$500, \$1,000, \$5,000 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. 676 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
07	SVN
08	EGT
09	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FON
15	FTN
16	SXT
17	SVT
18	EGN
19	NTN
20	TWY
21	TNE
22	TTW
23	TTH
24	TFR
25	TFV
26	TSX
27	TSV
28	TEI
29	TNI
30	THY
\$5.00	FIVE\$
\$10.00	TEN\$
\$15.00	FIFTEEN
\$20.00	TWENTY
\$30.00	THIRTY
\$50.00	FIFTY
\$100	ONE HUN
\$500	FIV HUN
\$1,000	ONE THOU
\$5,000	FIV THOU
\$50,000	50 THOU

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for val-

idation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 676 - 1.2E

CODE	PRIZE
FIV	\$5.00
TEN	\$10.00
FTN	\$15.00

Low-tier winning tickets use the required codes listed in Figure 2. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2 with the exception of Ø, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) 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: 0000000000000.

G. Low-Tier Prize - A prize of \$5.00, \$10.00, or \$15.00.

H. Mid-Tier Prize - A prize of \$30.00, \$50.00, \$100 or \$500.

I. High-Tier Prize- A prize of \$5,000 or \$50,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (676), 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: 676-0000001-001.

L. Pack - A pack of "HOT TEXAS CASH" Instant Game tickets contains 75 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket 001 will be shown on the front of the pack; the back of ticket 075 will be revealed on the back of the pack. All packs will be tightly shrink-wrapped. There will be no breaks between the tickets in a pack. Every other book will reverse i.e., reverse order will be: the back of ticket 001 will be shown on the front of the pack and the front of ticket 075 will be shown on the back of the pack.

M. 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.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "HOT TEXAS CASH" Instant Game No. 676 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 "HOT TEXAS CASH" Instant Game is determined

once the latex on the ticket is scratched off to expose 33 (thirty-three) Play Symbols. If a player matches any of YOUR NUMBERS to any of the WINNING NUMBERS, the player wins the prize shown for that number. 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 33 (thirty-three) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The ticket must be complete and not miscut, and have exactly 33 (thirty-three) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;
14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;
15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 33 (thirty-three) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 33 (thirty-three) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current 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 within a book will not have identical patterns.

B. Players can win up to fifteen (15) times in this play area.

C. No duplicate non-winning YOUR NUMBERS on a ticket.

D. Non-winning prize symbols will not match a winning prize symbol on a ticket.

E. Non-winning tickets and non-winning prizes on winning tickets will not contain more than two like prize amounts.

F. No duplicate WINNING NUMBERS will appear on a ticket.

G. YOUR NUMBERS will never equal the corresponding Prize symbol.

2.3 Procedure for Claiming Prizes.

A. To claim a "HOT TEXAS CASH" Instant Game prize of \$5.00, \$10.00, \$15.00, \$30.00, \$50.00, \$100 or \$500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a \$30.00, \$50.00, \$100 or \$500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "HOT TEXAS CASH" Instant Game prize of \$5,000 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 "HOT TEXAS CASH" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The 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 "HOT TEXAS CASH" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "HOT TEXAS CASH" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any 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. 676. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 676 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$5.00	722,400	6.98
\$10.00	504,000	10.00
\$15.00	184,800	27.27
\$30.00	88,200	57.14
\$50.00	10,206	493.83
\$100	5,250	960.00
\$500	3,360	1,500.00
\$5,000	30	168,000.00
\$50,000	4	1,260,000.00

*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 3.32. 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. 676 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. 676, 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-200602755
 Kimberly L. Kiplin
 General Counsel
 Texas Lottery Commission
 Filed: May 16, 2006

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Manufactured Housing Division

Notice of Public Hearing

Notice is hereby given of a public hearing to be held by the Manufactured Housing Division of the Texas Department of Housing and Community Affairs (the "Department") at 1:00 p.m. on Monday, June 26, 2006, at 221 E. 11th Street, Room 116, Austin, Texas 78701. The public hearing is to accept comments on amendments to §§80.11, 80.119, 80.208, 80.240 and 80.260 proposed rules to Title 10 Texas Administrative Code, Chapter 80. The proposed rules are published in the May 26, 2006, issue of the *Texas Register*.

All interested parties are invited to attend such public hearing to express their views with respect to the proposed amendments to the manufactured housing rules. Questions or requests for additional information may be directed to Sharon S. Choate at the Manufactured Housing Division of the Texas Department of Housing and Community Affairs, 221 E. 11th Street, Austin, Texas 78701, P.O. Box 12489, Austin, Texas

78711-2489, telephone (512) 475-2206, or email at sharon.choate@tdhca.state.tx.us.

Persons who intend to appear at the hearing and express their views are invited to contact Sharon S. Choate in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their comments in writing to Sharon S. Choate prior to the date scheduled for the hearing. Written comments may be sent to the Manufactured Housing Division of the Texas Department of Housing and Community Affairs, P.O. Box 12489, Austin, Texas 78711-2489, faxed to (512) 475-4250, or emailed to sharon.choate@tdhca.state.tx.us.

This notice is published and the above described hearing is to be held in satisfaction of the requirements of the Texas Manufactured Housing Standards Act, Occupations Code, Subtitle C, Chapter 1201 and Title 10 Texas Administrative Code.

Individuals who require auxiliary aids for this meeting should contact Gina Esteves, ADA Responsible Employee, at (512) 475-3943, or Relay Texas at 1 (800) 735-2989 at least two days prior to the meeting so that appropriate arrangements can be made.

TRD-200602651
Timothy K. Irvine
Executive Director
Manufactured Housing Division
Filed: May 12, 2006

Permian Basin Workforce Development Board

Public Notice

The Permian Basin Workforce Development Board (PBWDB) issues this public notice for its proposed Strategic and Operational Plan. PBWDB is responsible for the implementation of workforce development programs throughout the Permian Basin workforce development area, which includes the following Texas counties: Andrews, Borden, Crane, Dawson, Ector, Gaines, Glasscock, Howard, Loving, Martin, Midland, Pecos, Reeves, Terrell, Upton, Ward, and Winkler.

Available to the public is the PBWDB proposed Strategic and Operational Plan for Fiscal Years 2007-2008 (FY07-08), which covers a two-year period from October 1, 2006 to September 30, 2008. The public comment period begins Monday, May 22, 2006 and ends Monday, June 26, 2006. The public may attend the PBWDB open meeting, Wednesday, June 14, 2006, at 10:00 a.m. at the University of Texas of the Permian Basin Center for Energy and Economic Diversification located at 1400 North Farm Road 1788, Midland, Texas, to voice any public comments regarding the Plan.

The public may access the proposed plan Monday-Friday, 8 a.m.-12 p.m. and 1 p.m. to 5 p.m., at the PBWDB office located at 2911 La Force Blvd., Midland Texas or via the Internet at www.PBWDB.org. Written public comments may be delivered to the above physical address or mailed to:

FY07-08 Plan/Public Comment
PBWDB
P.O. Box 61947
Midland, Texas 79711
OR Fax comments to: (432) 561-8785

The deadline to receive comments is 5 p.m. on Monday, June 26, 2006. All public comments will be included in the PBWDB FY07-08 Strategic and Operational Plan.

PBWDB is an equal opportunity organization with Equal Opportunity programs. Auxiliary aids and services are available upon request with individuals with disabilities. TDD 1-800-735-2989 and TTY 1-800-735-2988

TRD-200602785
Willie Taylor
Executive Director
Permian Basin Workforce Development Board
Filed: May 17, 2006

Public Utility Commission of Texas

Amended Notice of Application for Designation as an Eligible Telecommunications Provider

Notice is given to the public of an application filed with the Public Utility Commission of Texas on May 2, 2006, for eligible telecommunications provider (ETP) designation in the Booker exchange served by Valor Telecommunications of Texas, LP, pursuant to P.U.C. Substantive Rule §26.417.

Docket Title and Number: Application of PTCI for an Amendment to its Designation as an Eligible Telecommunications Provider (ETP). Docket Number 32676.

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 June 15, 2006. 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 32676.

TRD-200602647
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 11, 2006

Announcement of Application for State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on May 9, 2006, for a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Project Title and Number: Application of Northland Cable Television, Incorporated for a State-Issued Certificate of Franchise Authority, Project Number 32696 before the Public Utility Commission of Texas.

Applicant intends to provide cable service. The requested CFA service area footprint is within the municipal boundaries of the City of Llano, 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 32696.

TRD-200602659

Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 12, 2006



Notice of Application for a Certificate to Provide Retail Electric Service

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on May 10, 2006, for retail electric provider (REP) certification, pursuant to §§39.101 - 39.109 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of Texpo Power, LP for Retail Electric Provider (REP) Certification, Docket Number 32698 before the Public Utility Commission of Texas.

Applicant's requested service area by geography includes the entire state of Texas.

Persons wishing 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 June 2, 2006. 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 32698.

TRD-200602660
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 12, 2006



Notice of Application for Designation as an Eligible Telecommunications Carrier and Eligible Telecommunications Provider

Notice is given to the public of an application filed with the Public Utility Commission of Texas on May 9, 2006, for designation as an eligible telecommunications carrier (ETC) pursuant to 47 U.S.C. §214(e) and P.U.C. Substantive Rule §26.418, and for designation as an eligible telecommunications provider (ETP) pursuant to P.U.C. Substantive Rule §26.417.

Docket Title and Number: Application of Grande Communications Networks, Incorporated for Designation as an Eligible Telecommunications Carrier and Designation as an Eligible Telecommunications Provider. Docket Number 32697.

The Application: The company is requesting ETC/ETP designation in order to be eligible to receive federal and state universal service funding to assist it in providing universal service in Texas. Pursuant to 47 U.S.C. §214(e), the commission, either upon its own motion or upon request, shall designate qualifying common carriers as ETCs and ETPs for service areas set forth by the commission. The company seeks ETC/ETP designation in the Buda, Carrollton, Denton, Irving, Lewisville, Plano and Stafford exchanges where Verizon is the incumbent provider; in the exchanges of Allen, Arlington, Austin, Bammel, Barker, Corpus Christi, Dallas, Deer Park, Euless, Fort Worth, Frisco, Houston, Houston Suburb, Lorena, Midland, Odessa, Richmond-Rosenberg, Roanoke, Rockwall, San Antonio, Spring, Terminal, and Waco where SBC is the incumbent provider, and in the Lake Dallas exchange where Century Tel is the incumbent provider and in

the exchange of Sugar Land where Alltel is the incumbent provider. The company holds Service Provider Certificate of Operating Authority Number 60341.

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 June 15, 2006. 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 32697.

TRD-200602661
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 12, 2006



Notice of Application for Waiver from Requirements

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on May 8, 2006, for waiver from the requirements in P.U.C. Substantive Rule §26.54(b)(3) and §26.54(b)(4)(C).

Docket Title and Number: Application and Proposed Timeline of Southwest Texas Telephone Company for an Extension of Waiver from Requirements in P.U.C. Substantive Rule §26.54(b)(3) and §26.54(b)(4)(C); Docket Number 32691

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. 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 32691.

TRD-200602646
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 11, 2006



Notice of Petition for Waiver of Denial of Request for Number Block

Notice is given to the public of the filing with the Public Utility Commission of Texas of a petition on May 11, 2006, for waiver of denial by the North American Numbering Plan Administration (NANPA) Pooling Administrator (PA) of Verizon Southwest's (Verizon) request for an additional NXX code to satisfy the business requirements of Scott and White Memorial Hospital in the Georgetown, Texas rate center.

Docket Title and Number: Petition of Verizon Southwest for Waiver of Denial of Numbering Resources. Docket Number 32704.

The Application: Scott and White Memorial Hospital requested a block of 10,000 sequential DID numbers from Verizon in order to provide service for a new medical office building and hospital opening in Round Rock but served out of the Verizon Georgetown, Texas rate center.

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 May 31, 2006. Hearing and speech-im-

paired 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 32704.

TRD-200602750
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 16, 2006



Public Notice of Application for Authority to Surcharge Fuel Under-Recoveries

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application filed on May 5, 2006, for authority to surcharge fuel under-recoveries.

Docket Style and Number: Application of Southwestern Public Service Company for Authority to Surcharge its Fuel Under-Recoveries. Docket Number 32685.

The Application: Southwestern Public Service Company (SPS), doing business as Xcel Energy, filed an application with the Public Utility Commission of Texas (commission) for authority to surcharge its actual fuel under-recovery, and related interest, for the period of October 2005 through March 2006. In accordance with the commission's Substantive Rule §25.237, SPS proposes to surcharge \$43,945,929.16 and related interest, over a 12-month period beginning August 2006. This will result in a surcharge of \$3.33 for a typical residential customer using 1,000 kWh per month. This would be an approximate net increase of 3.6% during the summer months and 3.8% in the winter months in his/her electric bill if the proposed surcharge factor is approved.

All classes of SPS's Texas retail customers will be affected by the proposed surcharge, which will become effective beginning August 2006 and remain in effect through July 2007. These charges will be subject to final review by the commission in a future fuel reconciliation proceeding.

Persons with questions or who want more information on this petition may contact Southwestern Public Service Company at 600 S. Tyler Street, Suite 2400, Amarillo, Texas 79101, or call 1-800-895-4999 during normal business hours. A complete copy of this petition is available for inspection at the address listed above or at the commission's central records division under Docket No. 32685. Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326 or call the commission's Office of Consumer Affairs at (512) 936-7120 or (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All correspondence should reference Docket Number 32685.

TRD-200602780
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 17, 2006



Texas Department of Transportation

Public Notice - Public Hearing for Proposed Acquisition of Abandoned Rail Facility

The Texas Department of Transportation (department) will conduct a public hearing to receive comments on the department's proposed acquisition of a 4.57 mile segment of rail line known as the "Waxahachie Industrial Lead" between milepost 798.03, near Waxahachie, and milepost 802.60, near Nena, in Ellis County, Texas.

The Union Pacific Railroad Company (UP) has filed a notice of exemption with the Surface Transportation Board (STB) for UP to abandon this rail line. The STB filed notice of the notice of exemption in the December 7, 2005 issue of the *Federal Register* (68 FR 27142), and is considering the UP filing under STB Docket No. AB-33 (Sub-No. 229X).

The department has been coordinating with the city of Waxahachie to determine whether the department should acquire the line and preserve it for future transportation uses. Upon receipt of notice of intent to abandon or discontinue rail service over a rail line, Transportation Code, Chapter 91 authorizes the department to acquire passenger or freight rail facilities and requires the department to coordinate with the governing body of a municipality, county, or rural rail transportation district in which all or a segment of the rail line is located.

The department has determined that there is a need to preserve this rail corridor for future transportation uses. The department will hold a public hearing on the date and time, and at the location indicated to receive public comments and assess the level of public support concerning the proposed acquisition of the rail line:

Tuesday, June 6, 2006, at 1:00 p.m.

Texas Department of Transportation

Waxahachie City Hall

Council Chambers

401 South Rogers

Waxahachie, Texas 75165

All interested persons are invited to attend the public hearing and to provide input. Comments are specifically requested on the need to preserve the rail line and the impact of the rail line on area transportation, economic development, and employment.

Those desiring to make official comments may register starting at 12:30 p.m. Verbal and written comments may be presented at the public hearing, and written comments may be submitted by mail. To be included in the official record of the public hearing, written comments must be received by 5:00 p.m. on June 16, 2006. Written comments should be mailed to: Wayne A. Dennis, P.E., Deputy Director, Transportation Planning and Programming Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483.

Persons with disabilities who plan to attend the public 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 Gilbert Wilson at (512) 486-5103 at least two business days prior to the hearing, so that appropriate arrangements can be made.

Please call Mr. Dennis at (512) 486-5004 for further information.

TRD-200602771
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: May 16, 2006



Request for Proposal - Outside Counsel

The Texas Department of Transportation (department) requests proposals from law firms interested in representing the department in tax law matters. This request for proposals (RFP) is issued for the purpose of identifying qualified law firms able to provide legal representation required by the department and the Texas Transportation Commission (commission) on legal matters affecting the department, and as more fully set out below. Selection of outside counsel will be made by the department's General Counsel. The Office of the Attorney General must approve the General Counsel's selection before the selected outside counsel may be employed.

Description: The department is a state agency with primary responsibility for the transportation system in Texas. This system is multimodal. The department has the responsibility for the development of tolled and nontolled highways, rail facilities, utility facilities, waterways, and certain aviation facilities. In particular, due to various changes in the state's laws, the development of toll projects and rail facilities through comprehensive development agreements and other public/private partnerships has become a primary focus of the department. The department must deal with taxation issues affecting these responsibilities and the innovative financing structures used in these projects. The primary tax issue relates to the tax consequences to both parties of business relationships between the department and public and private entities, including the federal income tax consequences of the business relationship and financing structure and state sales and property tax consequences, but also includes other tax and related ramifications relating to various modes of transportation, taxes and fees that affect transportation facilities and the customers of these facilities, and general tax matters related to the department's responsibilities as set out above. The department intends to engage outside counsel to represent the department in these matters. Accordingly, the department invites responses to this RFP from firms that are qualified to perform these legal services. Counsel must have considerable prior experience with, as well as extensive knowledge of, these subjects.

Responses: Responses to the RFP may be submitted by an individual law firm, attorney, or joint venture between two or more law firms and/or attorneys. Responses to the RFP should include at least the following information: (1) a description of the firm's qualifications for performing legal work in the matters described previously, the names, experience, education, and expertise of the attorneys who will be assigned to work on such matters, the availability of the lead attorney and other firm personnel who will be assigned to work on these matters, and appropriate information regarding efforts made by the firm to encourage and develop the participation of minorities and women in the provision of these legal services; (2) information relative to the capabilities, location(s), and resources of the firm's offices that might serve the department's requirements, and an organizational chart indicating the relevant areas of responsibility of each attorney assigned to work on these matters; (3) the submission of fee information (either in the form of hourly rates for each attorney and paralegal who will be assigned to perform services in relation to these matters, comprehensive flat fees, or other fee arrangements directly related to the achievement of specific goals and cost controls) and billable expenses; (4) an abstract of the firm's cost control procedures and how it charges for its services; (5) a comprehensive description of the procedures used by the firm to supervise the provision of legal services in a timely and cost effective manner; (6) disclosures of conflicts of interest (identifying each and every matter in which the firm has, within the past calendar year, represented any entity or individual with an interest adverse to the Texas Department of Transportation, or to the State of Texas or any of its boards, agencies, commissions, universities, or elected or appointed officials); and (7) confirmation of willingness to comply with the rules, policies, directives, and guidelines of the department, the commission, and the Attorney General of the state of Texas.

Note: The department is particularly concerned with issues of any conflict of interest. Respondents are admonished to make all practicable efforts to fully investigate, disclose, and address such conflicts.

Format and Person to Contact: Two copies of the proposal are requested. The proposal should be typed, preferably double spaced, on 8 1/2 by 11 inch paper with all pages sequentially numbered, and either stapled or bound together. It should be sent by mail or delivered in person, marked "Response to Request for Proposal" and addressed to Richard D. Monroe, General Counsel, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. For questions, telephone Richard Monroe, General Counsel at (512) 463-8630.

Deadline for Submission of Response: All proposals must be received by the Texas Department of Transportation at the previously stated address no later than 5:00 p.m., on June 26, 2006.

TRD-200602772

Richard D. Monroe

General Counsel

Texas Department of Transportation

Filed: May 16, 2006

University of North Texas Health Science Center

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

The University of North Texas System (UNT System) requests information from law firms interested in representing its component institution, the University of North Texas Health Science Center at Fort Worth (UNTHSC), in intellectual property matters. This RFI is issued to establish (for the time frame beginning September 1, 2006 to August 31, 2007) a referral list from which UNT System, by and through its Office of Vice Chancellor and General Counsel, will select appropriate counsel for representation on specific intellectual property matters as the need arises.

Description: The UNT System comprises one health institution and two academic institutions located in three cities in Texas. Research activities and other educational pursuits at UNTHSC produce intellectual property that is carefully evaluated for protection and licensing to commercial entities. Subject to approval by the Office of the Attorney General (OAG) for the State of Texas, UNTHSC will engage outside counsel to prepare, file, prosecute, and maintain patent applications in the United States and other countries; secure copyright protection for computer software; and prepare, file and prosecute applications to register trademarks and service marks in the United States and other countries. UNTHSC also will engage outside counsel from time to time to pursue litigation against infringers of these intellectual property rights and to handle other related matters. The UNT System invites responses to this RFI from qualified firms for the provision of such legal services under the direction and supervision of UNT System's Office of Vice Chancellor and General Counsel.

Responses; Qualifications: Responses to this RFI should include at least the following information: (1) a description of the firm's or attorney's qualifications for performing the legal services requested, including the firm's prior experience in intellectual property-related matters, and appropriate information regarding efforts made by the firm to encourage and develop the participation of minorities and women in the provision both of the firm's legal services generally and intellectual property matters in particular; (2) the names, experience, and scientific or technical expertise of the attorneys and patent agents who may be assigned to work on such matters; (3) the submission of fee information (either in the form of hourly rates for each attorney and patent agent

who may be assigned to perform services in relation to UNTHSC's intellectual property matters, flat fees, or other fee arrangements directly related to the achievement of specific goals and cost controls) and billable expenses; (4) disclosures of conflicts of interest (identifying each and every matter in which the firm has, within the past calendar year, represented any entity or individual with an interest adverse to the UNT System, UNTHSC, or to the State of Texas, or any of its boards, agencies, commissions, universities, or elected or appointed officials); and (5) confirmation of willingness to comply with policies, directives, and guidelines of the UNT System, UNTHSC, and the OAG for the State of Texas.

The law firm(s) or attorney(s) will be selected based on demonstrated knowledge and experience, quality of staff assigned to perform services under the contract, compatibility with the goals and objectives of UNTHSC, and reasonableness of proposed fees. The successful firm(s) or attorney(s) will be required to sign the Texas OAG's Outside Counsel Agreement, and execution of a contract with UNTHSC is subject to approval by the Texas OAG. UNTHSC reserves the right to accept or reject any or all responses submitted. UNTHSC is not responsible for and will not reimburse any costs incurred in developing and submitting a response.

Format and Person to Contact: Two copies of the response are requested. The response should be typed, preferably double spaced, on 8 1/2 x 11 inch paper with all pages sequentially numbered, and either stapled or bound together. They should be sent by mail, facsimile, or electronic mail, or delivered in person, marked "Response to Request for Information," and addressed to Jon McGough, JD, Associate General Counsel, Office of the Vice Chancellor and General Counsel, UNT System, c/o UNTHSC Legal Affairs, 3500 Camp Bowie Blvd., Fort Worth, TX, 76107-2699; or e-mail jmcgough@hsc.unt.edu; or fax to (817) 735-0433.

Deadline for Submission of Response: All responses must be received by UNTHSC Legal Affairs at the address set forth above no later than 5:00 p.m., June 30, 2006. Questions regarding this request may be directed to Mr. McGough at (817) 735-5028.

TRD-200602769

William S. LeMaistre, JD, MPH

Senior Associate General Counsel

University of North Texas Health Science Center

Filed: May 16, 2006



Request for Information (RFI) - Immigration Matters

The University of North Texas System (UNT System) requests information from law firms interested in representing its component institution the University of North Texas Health Science Center at Fort Worth (UNTHSC) in certain immigration matters. This RFI is issued for the purpose of establishing (for the time frame beginning September 1, 2006 to August 31, 2007) a referral list from which UNTHSC, by and through its Office of Vice Chancellor and General Counsel, will select appropriate counsel for representation on specific immigration matters as the need arises.

Description. The UNT System comprises one health institution and two academic institutions located in three cities in Texas. The UNTHSC comprises four schools: a medical school, a graduate school of biomedical sciences, a school of public health, and a school of health professions. UNTHSC institutions attract and employ faculty and staff from around the world in furtherance of their mission. There are circumstances when the hiring of foreign faculty and staff is impacted by U.S. immigration laws. Further, students from around the

world attend UNTHSC. There are circumstances when the attendance of foreign students at UNTHSC is impacted by immigration laws. Subject to approval by the Texas Attorney General, UNTHSC will engage outside legal counsel to provide legal counsel and advice to the UNTHSC on immigration law matters pertaining to the hiring and employment of aliens and immigration law matters pertaining to foreign students. This legal counsel and advice may include, but not be limited to, the following: matters regarding petitioning for nonimmigrant visas; petitioning for employer sponsored permanent residency; representation before the Department of Labor including labor condition applications, labor certifications, PERM; complying with SEVIS requirements; and providing counsel on the impact of homeland security issues on immigration law. This legal counsel will include interaction with and representation before applicable U.S. governmental agencies including the Department of Homeland Security and the Department of Labor. This legal counsel will include interaction with the UNT System Office of General Counsel and UNTHSC Human Resource Office. The law firm should be admitted to practice before Texas United States District Courts.

The UNT System invites responses to this RFI from qualified firms for the provision of such legal services under the direction and supervision of UNT System Office of Vice Chancellor and General Counsel.

Responses. Responses to this RFI should include at least the following information: (1) a description of the firm's or attorney's qualifications for performing the legal services, including the firm's prior experience in immigration law-related matters including experience handling such immigration issues specific to hiring foreign faculty, physicians and staff at a university, the names and experience of the attorneys who will be assigned to work on such matters, the availability of the lead attorney and others assigned to the project, and appropriate information regarding efforts made by the firm to encourage and develop the participation of minorities and women in the provision of legal services; (2) the submission of fee information (either in the form of hourly rates for each attorney who may be assigned to perform services in relation to UNTHSC's immigration law matters, comprehensive flat fees, or other fee arrangements directly related to the achievement of specific goals and cost controls) and billable expenses; (3) a comprehensive description of the procedures to be used by the firm to supervise the provision of legal services in a timely and cost-effective manner; (4) disclosures of conflicts of interest (identifying each and every matter in which the firm has, within the past calendar year, represented any entity or individual with an interest adverse to the UNTHSC or to the State of Texas, or any of its boards, agencies, commissions, universities, or elected or appointed officials); and (5) confirmation of willingness to comply with policies, directives and guidelines of the UNTHSC and the Attorney General of the State of Texas.

Format and Person to Contact. Responses should be sent by mail, facsimile, electronic mail, or delivered in person, marked "Response to Request for Information - Immigration Matters" and addressed to William S. LeMaistre, Office of General Counsel, The University of North Texas System, 3500 Camp Bowie Blvd., Fort Worth, Texas 76107-2699; (wlemaist@hsc.unt.edu); fax: (817) 735-0433; telephone (817) 735-2527 for questions). If responding by mail, two copies of the response are requested. The response should be typed, preferably double-spaced, on 8 1/2 x 11 inch paper with all pages sequentially numbered, and either stapled or bound together.

Deadline for Submission of Response. All responses must be received by the Office of Vice Chancellor General Counsel of the UNT System at the address set forth above not later than 5:00 p.m., June 30, 2006.

TRD-200602770

William S. LeMaistre, JD, MPH
Senior Associate General Counsel
University of North Texas Health Science Center
Filed: May 16, 2006



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).