TEXAS REGISTER

Volume 36 Number 30 *July 29, 2011* *Pages 4749 – 4862*

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

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

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

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

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

a section of the
Office of the Secretary of State
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IN THIS ISSUE

Texas Department of Transportation

Texas State University System

Upper Rio Grande Workforce Development Board

Texas Veterans Commission

Open Meetings

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

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

Members of the public also may view these notices during regular office hours from a computer terminal in the lobby of the James Earl Rudder Building, 1019 Brazos (corner of 11th Street and Brazos) Austin, Texas. To request a copy by telephone, please call 512-463-5561. Or request a copy by email: register@sos.state.tx.us

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

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

The Office of the Attorney General offers information about the open meetings law, including Frequently Asked Questions, the *Open Meetings Act Handbook*, and Open Meetings Opinions.
http://www.oag.state.tx.us/open/index.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.texas.gov

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

THE ATTORNEY GENERAL

The *Texas Register* publishes summaries of the following: Requests for Opinions, Opinions, Open Records Decisions.

An index to the full text of these documents is available from the Attorney General's Internet site http://www.oag.state.tx.us. Telephone: 512-936-1730. For information about pending requests for opinions, telephone 512-463-2110.

An Attorney General Opinion is a written interpretation of existing law. The Attorney General writes opinions as part of his responsibility to act as legal counsel for the State of Texas. Opinions are written only at the request of certain state officials. The Texas Government Code indicates to whom the Attorney General may provide a legal opinion. He may not write legal opinions for private individuals or for any officials other than those specified by statute. (Listing of authorized requestors: http://www.oag.state.tx.us/opinopen/opinhome.shtml.)

Requests for Opinions

RQ-0983-GA

Requestor:

The Honorable Jo Anne Bernal

El Paso County Attorney

500 East San Antonio, Room 503

El Paso, Texas 79901

Re: Authority of a county attorney to enforce a bail bond forfeiture judgment that is more than twelve years old (RQ-0983-GA)

Briefs requested by August 18, 2011

RQ-0984-GA

Requestor:

The Honorable Aaron Pena

Chair, Committee on Technology

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768

Re: Whether a member of the State Committee of Examiners in the Fitting and Dispensing of Hearing Aids may sell hearing instruments at retail as part of his practice of otolaryngology (RQ-0984-GA)

Briefs requested by August 18, 2011

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

TRD-201102752
Jay Dyer
Deputy Attorney General
Office of the Attorney General
Filed: July 20, 2011

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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 Requests

AOR-562. The Texas Ethics Commission has been asked to consider whether all proceeds from a lawsuit for which a person defrays expenses by using both political contributions and personal funds, are subject to the personal use restriction.

AOR-563. The Texas Ethics Commission has been asked to consider whether §253.1611(d) of the Election Code prohibits a judicial officeholder, during a calendar year in which the office held does not appear on the ballot, from using political contributions to make over $250 in political contributions to multiple political committees, provided that the total amount of political contributions made to any single political committee does not exceed $250.

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

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

TRD-201102750
Natalia Luna Ashley
General Counsel
Texas Ethics Commission
Filed: July 20, 2011

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PROPOSED RULES

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

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

TITLE 1. ADMINISTRATION

PART 4. OFFICE OF THE SECRETARY OF STATE

CHAPTER 81. ELECTIONS

SUBCHAPTER M. IMPLEMENTATION OF THE MILITARY AND OVERSEAS VOTER EMPOWERMENT ACT

1 TAC §81.420

The Office of the Secretary of State, Elections Division, proposes new §81.420, concerning the modification and adjustment of election dates and deadlines necessary to ensure compliance with the federal Military and Overseas Voter Empowerment ("MOVE") Act, Pub. L. No. 111-84, 123 Stat. 2190 (2009).

The Secretary of State has determined a number of issues require clarification under her authority as set out in the Act of May 31, 2011, 82nd Leg., R.S., S.B. 100, Chapter 1318, §50 ("Act").

First, the Act authorizes political subdivisions to change the date of their general elections from the May uniform election date in even-numbered years. As enacted, the change must be from the May uniform election date to the November uniform election date. The proposed rule would clarify that all political subdivisions have the ability to change their elections from the May uniform date in even-numbered years to the November uniform election date or the May uniform election date in odd-numbered years to avoid conflicts with the primary runoff election. This is consistent with legislative intent, which was to open a window for all political subdivisions to shift the date of their May general elections away from the period between the primary and primary runoff election dates.

The second issue concerns filing requirements in Chapters 181 and 182 of the Code relating to the nomination process for minor political parties using the convention method. While the Act shifted the primary candidate filing period and the primary runoff election date, the Act did not make corresponding adjustments to the candidate filing period for minor political parties. The proposed rule adjusts the filing period for minor political parties to correspond to the major party primary candidate filing period, as it existed prior to the Act becoming law.

Similarly, the proposed rule adjusts the deadline for minor parties to file ballot access petitions to the 30th day after the date of the primary runoff election. The change is necessary to preserve for the minor parties a reasonable amount of time to circulate their access petitions after the primary elections have concluded. Pursuant to §181.006(g) of the Texas Election Code, a voter cannot sign a minor party's petition if the voter participated in either the primary election or primary runoff election of another party during the voting year in which the petition was circulated, and furthermore, the voter is required to sign a statement attesting to that fact. The proposed rule is necessary because the primary runoff election would take place after the filing of the minor party's petition, and no voter would be able to make such a statement about an event which has not yet taken place.

There is a conflict in the deadline to withdraw from a primary between Senate Bill 100 and House Bill 2817, which both passed during the 82nd Legislative Session. Senate Bill 100 provides a primary withdrawal deadline as the 79th day before the primary election whereas House Bill 2817 provides a primary withdrawal deadline as the day after the primary filing deadline. Section 49 of Senate Bill 100 states that if there is a conflict with Senate Bill 100, Senate Bill 100 would prevail, regardless of the relative dates of enactment. The proposed rule is designed to minimize confusion to the public.

Lastly, the proposed rule adjusts the deadlines for a vacancy in an office of the state and county government to be placed on the primary ballot. Senate Bill 100 did not amend §202.004 of the Code, which governs the primary filing deadlines for vacancies in offices of the state and federal government. The proposed rule adjusts the vacancy deadline for the office to be placed on the primary ballot as the 5th day before the primary filing deadline. The deadline to file is shifted to the same day as the write-in deadline for party offices, which under §171.0231(d) of the Code is the 5th day after the filing deadline for a place on the ballot. The change in filing period preserves a reasonable amount of time for candidates to file for office and also allows parties and election officials to prepare ballots with enough time left for mailing to military and overseas voters on or before the 45th day before election as required under the MOVE Act.

Ann McGeehan, Director of Elections, has determined that for the first five-year period the proposed rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the new rule.

Ms. McGeehan also has determined that for the first five-year period the proposed rule is in effect, the public benefit anticipated as a result of enforcing the new rule will be to provide guidance for political subdivisions. There will be no direct adverse economic impact for small businesses or micro businesses. There will be no effect to individuals required to comply with the rule as proposed.

Request for Comments

Interested persons may submit written comments on the proposed rule to the Elections Division, Office of the Texas Secretary of State, P.O. Box 12060, Austin, Texas 78711-2060.

Comments may also be sent via e-mail to: elections@sos.state.tx.us. For comments submitted electronically, please include "Proposed Adoption of Rule §81.420" in the subject line. Comments must be received no later than thirty (30) days from the date of publication of the proposal in the *Texas Register.* Comments should be organized in a manner consistent with the organization of the proposed rule. Questions concerning the proposed rule may be directed to Elections Division, Office of the Texas Secretary of State, at (512) 463-5650.

The new rule is proposed under the Texas Election Code, §31.003, which provides the Office of the Secretary of State with the authority to obtain and maintain uniformity in the application, interpretation, and operation of provisions under the Texas Election Code and other election laws and Act of May 31, 2011, 82nd Leg., R.S., Chapter 1318, §50.

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

§81.420. Modifications of Election Dates and Procedures under Senate Bill 100 and the MOVE Act.

The Office of Secretary of State issues the following clarifications and adjustments to election procedures and deadlines pursuant to Act of May 31, 2011, 82nd Leg., R.S., Chapter 1318, §50:

(1) Notwithstanding any requirement under general or special law that the general election of a political subdivision shall be held on the May uniform election date in even-numbered years, §41.0052(a), Texas Election Code, authorizes the governing body of all political subdivisions holding general elections on the May uniform election date in even-numbered years to order a change in the date of the general election to another uniform election date under §41.001(a) of the Code as necessary to provide access to county election equipment and services.

(2) Notwithstanding §181.033(a) and §182.0041(b), Texas Election Code, §172.023, Texas Election Code, applies to candidate nomination applications in political parties organized under Chapters 181 and 182 of the Texas Election Code.

(3) Notwithstanding §181.005(a) and §182.003, Texas Election Code, the deadline for political parties organized under Chapters 181 and 182 of the Texas Election Code to file ballot access petitions is the 30th day after the date of the primary runoff election.

(4) The primary withdrawal deadline for the 2012 election year is the 79th day before the general primary election day. The primary withdrawal deadline enacted in §34 of House Bill 2817, Chapter 1164, 82nd Legislature, 2011, §34, directly conflicts with the deadline enacted in §35 of Senate Bill 100, Chapter 1318, 82nd Legislature, 2011. Per §49 of Senate Bill 100, provisions contained in Senate Bill 100 enacted at the same session prevail to the extent of any conflict.

(5) Notwithstanding §§202.004(a)(2), 202.004(b), and 202.004(c), Texas Election Code, if a vacancy in an office of the state or county government occurs on or before the 5th day before the date of the regular primary filing deadline, the filing deadline for a place on the general primary ballot for the office is the 5th day after the regular primary filing deadline.

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

Filed with the Office of the Secretary of State on July 15, 2011.

TRD-201102682

John Sepehri
General Counsel
Office of the Secretary of State
Earliest possible date of adoption: August 28, 2011
For further information, please call: (512) 463-5650

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PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 360. MEDICAID BUY-IN PROGRAM

1 TAC §360.117

The Texas Health and Human Services Commission (HHSC) proposes to amend §360.117, concerning cost sharing in the Medicaid Buy-In (MBI) program.

Background and Justification

MBI was established to provide Medicaid services to persons with a disability who are working in Texas and who meet the income guidelines. This program for working Texans with a disability is a separate program from the Medicaid Buy-In for Children (MBIC) program, which serves persons under age 19 with a disability who meet the program eligibility requirements.

The proposed amendment exempts adults enrolled in MBI who reside in a federally declared disaster area from being required to pay premiums for up to three months beginning with the month in which the disaster is declared. An adult MBI recipient residing in a federally declared disaster area will only be exempt from cost sharing once per disaster. This amendment will align the cost sharing policy in the MBI program for adults with the cost sharing policy in MBIC as it relates to persons residing in federally declared disaster areas.

Section-by-Section Summary

Proposed subsection (a) adds language explaining that persons enrolled in MBI may be exempt from paying monthly premiums as described in subsection (h).

Proposed subsection (h) exempts MBI recipients residing in a federally declared disaster area from paying premiums for three months beginning with the month in which the disaster is declared.

Fiscal Note

Greta Rymal, Deputy Commissioner for Financial Services, has determined that during the first five-year period the amended rule is in effect there will be no fiscal impact to state government. The proposed rule will not result in any fiscal implications for local health and human services agencies. Local governments will not incur additional costs.

Small and Micro-business Impact Analysis

Ms. Rymal has also determined that there will be no effect on small businesses or micro businesses to comply with the amendment as they will not be required to alter their business practices as a result of the amendment. There are no anticipated economic costs to persons who are required to comply with the amendment. There is no anticipated negative impact on local employment.

Public Benefit

Mr. Billy Millwee, Associate Commissioner for Medicaid and CHIP, has determined that for each year of the first five years the amendment is in effect, the public will benefit from the adoption of the amendment. The anticipated public benefit, as a result of enforcing the amendment, will be appropriate application of cost sharing exemptions for certain individuals in the MBI program.

Regulatory Analysis

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

Takings Impact Assessment

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

Public Comment

Written comments on the proposal may be submitted to Michelle Erwin, Senior Policy Analyst, Texas Health and Human Services Commission, Medicaid and CHIP Division MC H310, 11209 Metric Blvd., Austin, TX 78758; by fax to (512) 491-1953; or by e-mail to michelle.erwin@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register.*

Statutory Authority

The amendment is proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

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

§360.117. Cost Sharing.

(a) Monthly premiums. As a condition of establishing initial MBI eligibility and to remain eligible, a person must pay monthly premiums, as explained in this section, based on the amount of the person's countable earned and countable unearned income. A person may be exempt from paying monthly premiums as described in subsection (h) of this section.

(b) Countable earned income. For purposes of this section, countable earned income is as defined in 20 CFR §416.1110 and §416.1111, minus:

(1) earned income that is excluded by federal law, as explained in 20 CFR §416.1112(b); and

(2) mandatory payroll deductions for federal income tax, FICA, and retirement withholding.

(c) Countable unearned income. For purposes of this section, countable unearned income means unearned income, as defined in 20 CFR §§416.1120 - 416.1123, minus the exclusions and exemptions explained in 20 CFR §416.1124.

(d) Calculation of monthly premium. The monthly premium amount equals the amount of a person's countable unearned income for the month that exceeds the Supplemental Security Income (SSI) federal benefit rate for an individual, plus:

(1) $20 when monthly countable earned income is above 150% of the federal poverty level (FPL) up to and including 185% of the FPL;

(2) $25 when monthly countable earned income is above 185% of the FPL up to and including 200% of the FPL;

(3) $30 when monthly countable earned income is above 200% of the FPL up to and including 250% of the FPL; or

(4) $40 when monthly countable earned income is above 250% of the FPL.

(e) Upper limit on monthly premiums. The upper limit for the total monthly premium per person is $500. If the unearned income premium amount plus the earned income premium amount equals or exceeds $500, then the total monthly premium remains at $500.

(f) Payment of monthly premiums to establish initial eligibility. If the calculation explained in subsection (d) of this section results in an amount greater than $0, HHSC sends the person a written notice of the person's potential eligibility as described in this subsection. The initial eligibility period begins with the earliest benefit month and continues through the end of the latest benefit month identified on the written notice of the person's potential eligibility. This subsection explains the procedures that are followed and the requirements the person must meet to establish eligibility under this section for any or all of the months within the initial eligibility period. The steps are as follows:

(1) HHSC determines that the person is potentially eligible if the person meets all eligibility requirements for MBI other than the requirements of this section.

(2) HHSC sends the person a written notice (the notice) of the person's potential eligibility. The notice identifies the earliest month of potential eligibility and the amount of the monthly premiums due for each month in the initial eligibility period.

(3) The notice also includes:

(A) the total amount in monthly premiums that must be paid to obtain MBI coverage for the entire initial eligibility period; and

(B) the deadline by which payment must be submitted.

(4) The person chooses whether to pay the monthly premiums for either the entire initial eligibility period or for only a portion of the initial eligibility period (according to the months during which the person desires MBI coverage).

(5) The person submits to HHSC, by the deadline stated in the notice, either the total amount due as explained in the notice or a lesser amount if the person is not seeking coverage for the entire initial eligibility period.

(6) If the person submits payment of less than the total amount due to obtain MBI coverage for the entire initial eligibility period, HHSC applies the amount submitted first to satisfy the monthly premium for the month following the month of the notice, then to each prior month of potential eligibility, in reverse chronological order. After this, if any amount remaining is less than the premium for a full month's coverage, HHSC refunds that amount to the person.

(7) HHSC notifies the person of MBI eligibility and of the beginning date of MBI coverage, based on the amount submitted by the person under paragraph (5) of this subsection.

(8) If no amount is submitted by the deadline stated in the notice, or if the amount submitted is less than one month's premium such that it is refunded to the person as explained in paragraph (6) of this subsection, HHSC denies the person MBI eligibility. A person denied under this paragraph must file a new application for MBI before eligibility can be established.

(g) Payment of monthly premiums after initial eligibility. Monthly premiums after a person establishes initial eligibility under subsection (f) of this section are due and payable to HHSC no later than the last calendar day of each month, and are applied to the following month's eligibility and coverage of MBI benefits. If a monthly premium payment that is due is not received by HHSC by the end of the month, after written notice, HHSC may terminate the person's MBI eligibility.

(h) An MBI recipient residing in a federally declared disaster area is exempt from paying monthly premiums for up to three months beginning with the month in which the disaster is declared. A recipient will only be exempt from paying monthly premiums once per disaster.

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

Filed with the Office of the Secretary of State on July 18, 2011.

TRD-201102688
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: August 28, 2011
For further information, please call: (512) 424-6900

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TITLE 13. CULTURAL RESOURCES

PART 8. TEXAS FILM COMMISSION

CHAPTER 122. TEMPORARY USE OF STATE BUILDINGS AND GROUNDS BY TELEVISION OR FILM PRODUCTION COMPANIES

13 TAC §122.2

The Texas Film Commission proposes an amendment to Title 13, Part 8, Chapter 122, §122.2.

The proposed amendment to §122.2 provides specific insurance coverage requirements.

Evan E. Fitzmaurice, Director of the Texas Film Commission, has determined that for the first five-year period, there will be no fiscal implications for state or to local governments as a result of enforcing or administering the proposed amendment.

Mr. Fitzmaurice has also determined that the public benefit anticipated as a result of the proposed amendment is greater certainty concerning the type of insurance coverage requirements and information concerning waivers of subrogation. No economic costs are anticipated to persons who are required to comply with the proposed amendment. There will be no impact on small businesses or micro-businesses.

Written comments on the proposed amendment may be hand delivered to the Office of the Governor, General Counsel Division, 1100 San Jacinto, Austin, Texas 78701, mailed to P.O. Box 12428, Austin, Texas 78711-2428, or faxed to (512) 463-1932 and should be addressed to the attention of Michael Bryant, Assistant General Counsel. Comments must be received within 30 days of publication of the proposed amendment in the *Texas Register.*

The amendment is proposed pursuant to the Texas Government Code, §485.022, which directs the Texas Film Commission to develop a procedure for the submission of grant applications and the awarding of grants, and Texas Government Code, Chapter 2001, Subchapter B, which prescribes the standards for rulemaking by state agencies.

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

§122.2. Definitions.

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

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

(3) Certificate of liability insurance--The paper record showing that the Production Company has purchased insurance, the amount insured for, and who is insured under the policy. Each Certificate of liability insurance furnished by a Production Company pursuant to this chapter shall reflect the coverage amounts required by the desired location, but such coverage amounts shall in no event be lower than the following: $1 million in Commercial General Liability, including bodily injury and property damage with $5,000,000 of umbrella coverage, $1 million Automobile Liability including bodily injury and property damage, plus Workers' Compensation coverage in accordance with statutory limits and employers' liability with limits of $100,000 bodily injury for each accident, $100,000 bodily injury by disease and $500,000 policy limit covering all personnel who provide services. In the event that the Production Company is self-insured for Workers' Compensation coverage, it can provide written documentation of this fact on its letterhead, signed by an officer. Each policy must include a waiver of subrogation, unless waived in writing by the Texas Film Commission.

(4) - (21) (No change.)

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

Filed with the Office of the Secretary of State on July 13, 2011.

TRD-201102662
Evan E. Fitzmaurice
Director
Texas Film Commission
Earliest possible date of adoption: August 28, 2011
For further information, please call: (512) 463-9200

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TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

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

SUBCHAPTER R. REVIEW OF LOW-PRODUCING DEGREE PROGRAMS

19 TAC §4.287, §4.291

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to §4.287 and §4.291, concerning the Review of Low-Producing Degree Programs. Specifically, these amendments, except the one to §4.291(b)(3), add a definition of small classes, include a reference to the use of small classes in the evaluation process of temporary exemption requests of low-producing programs, and eliminate the need for institutions to report the number of declared majors and the number of students per section when requesting a temporary exemption for a low-producing program. The definition of small class is derived from 19 TAC §5.23, concerning Definitions, and Texas Education Code, Chapter 51, Subchapter H, §51.403. Senate Bill 1179, passed by the 82nd Legislature, repealed §51.403(d) (Reports of Student Enrollment and Academic Performance) of the Texas Education Code, which required institutions to file a small class report, defined "small classes", authorized governing boards to allow exemptions for institutions to offer small classes, and authorized the Coordinating Board to develop exemption guidelines. Small class references are under consideration for removal from Board rules, Chapter 5, Subchapter B. The number of declared majors and small class size determination will be derived from CBM 001 - Student Report and CBM 004 - Class Report. The amendment to Chapter 4, Subchapter R, §4.291(b)(3) removes reference to the Uniform Recruitment and Retention Strategy (URRS). Senate Bill 5, passed by the 82nd Legislature, repealed §61.086 (Uniform Recruitment and Retention Strategy) of the Texas Education Code, which required institutions to implement and report on a uniform strategy to identify, attract, retain, and enroll students that reflect the population of this state.

Dr. MacGregor M. Stephenson, Assistant Commissioner for Academic Affairs and Research, has determined that for the first five years there will be no fiscal implications for state or local governments as a result of amending the sections.

Dr. Stephenson has also determined that for the first five years the amendments are in effect, the public benefit anticipated as a result of administering the sections will be a streamlining of the collection of information relating to low-producing programs. 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 proposed amendments may be submitted by mail to Dr. MacGregor M. Stephenson, Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711; or via email at macgregor.stephenson@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 Texas Education Code, Chapter 61, which gives the Coordinating Board the authority to regulate the awarding or offering of degrees, credit towards degrees, and the use of certain terms.

The amendments affect the Texas Education Code, Chapter 61, Subchapter C, §61.051(e) and Chapter 51, Subchapter H, §51.403.

§4.287. Definitions.

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

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

(8) Small class--Sections of a course offered by an institution that meets the following criteria:

(A) Undergraduate classes with fewer than 10 registrants; or

(B) Graduate classes with fewer than five graduate registrants; and

(C) The primary type of instruction is reported as lecture, laboratory, or seminar in CBM 004 - Class Report.

§4.291. Process for Requesting a Temporary Exemption.

(a) A low-producing degree program is eligible for a temporary exemption if:

(1) The Coordinating Board staff determines the necessity for a temporary exemption because:

(A) The institution demonstrates evidence that the low-producing degree program contributes to meeting Closing the Gaps initiatives or other Coordinating Board priorities [~~policies~~] including workforce needs in specific industries; and

(B) Institutional efforts are being made to increase enrollments, limit cost inefficiencies, limit the number of small classes, and improve program success. The period of time for the exemption will be established by Coordinating Board staff after discussions with the institution; or

(2) (No change.)

(b) To request a temporary exemption provide the following information:

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

(3) An action plan for the low-producing degree program. The action plan should include a detailed strategy for increasing enrollment, graduation output, and graduation rates. In addition [~~accordance with the institution's Uniform Recruitment and Retention Strategy~~], the action plan should include specific strategies to recruit, retain, and graduate students from underrepresented groups [~~for the program~~]; and

(4) The rubric and number of all required courses in the major, excluding core curriculum, minor requirements, and free electives.

[~~(4) The following data on the degree program for the last two years:~~]

[~~(A) Number of declared majors; and~~]

[~~(B) Number of students per class section.~~]

(c) (No change.)

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

Filed with the Office of the Secretary of State on July 18, 2011.

TRD-201102695
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: October 27, 2011
For further information, please call: (512) 427-6114

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CHAPTER 5. RULES APPLYING TO PUBLIC UNIVERSITIES AND HEALTH-RELATED INSTITUTIONS OF HIGHER EDUCATION IN TEXAS

SUBCHAPTER B. ROLE AND MISSION, TABLES OF PROGRAMS, COURSE INVENTORIES

19 TAC §5.23

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to §5.23, concerning Definitions. Senate Bill 1179, passed by the 82nd Legislature, repealed §51.403(d) (Reports of Student Enrollment and Academic Performance) of the Texas Education Code, which required institutions to file a small class report, defined "small classes," authorized governing boards to allow exemptions for institutions to offer small classes, and authorized the Coordinating Board to develop exemption guidelines. The repeal of Texas Education Code, §51.403(d) necessitated an amendment to this section in order to be in compliance with Senate Bill 1179. Specifically, the amendment will eliminate the definition of "small classes" in paragraph (8). The definition of "small classes" and use of the information is under consideration for addition to Chapter 4, Subchapter R of Board rules. The information gathered from CBM 004 - Class Report will be used to determine "small classes" for use in the review of low-producing programs. Governing boards will continue to have the authority to allow small classes to be offered. However, the Coordinating Board does not have the authority to determine those exemptions with the repeal of Texas Education Code, §51.403(d).

Dr. MacGregor M. Stephenson, Assistant Commissioner for Academic Affairs and Research, and Susan Brown, Assistant Commissioner of Planning and Accountability, have determined that for the first five years the section is in effect there will be no fiscal implications for state or local governments as a result of amending the rule as proposed.

Dr. Stephenson and Ms. Brown have also determined that the public benefit anticipated as a result of administering the section will be a clarification of the reporting requirements. 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 anticipated impact on local employment.

Comments on the proposed amendments may be submitted by mail to Dr. MacGregor M. Stephenson, Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711; or via email at macgregor.stephenson@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 Texas Education Code, §§61.002(a) and (b), 61.051(d) and (e), and 130.0012 which authorize the Coordinating Board to adopt rules Applying to Public Universities and Health-Related Institutions of Higher Education in Texas.

The amendments affect Texas Education Code, Chapter 51, Subchapter H, §51.403.

§5.23. Definitions.

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

(1) Preliminary Authority--Permission from the State of Texas to propose new degree programs in a given disciplinary area at a given level of instruction. The Table of Programs, defined in paragraph (8) [~~(9)~~] of this section, prescribes the academic areas and levels that are approved by the Board as being appropriate for an institution's existing role and mission.

(2) - (7) (No change.)

~~[(8) Small classes--Undergraduate level classes with less than 10 registrations, and graduate level classes with less than five registrations.]~~

(8) [~~(9)~~] Table of Programs--A table that describes the range of degree and certificate programs currently authorized for an institution using the Texas-CIP classification system. For each category and degree program level, authorization shall be designated by a code. The codes shall indicate whether or not degree programs in a particular subject matter category have been approved for the institution and whether or not they fall within its approved mission.

(9) [~~(10)~~] Texas CIP Classification System--The Texas adaptation of the Classification of Instructional Programs taxonomy developed by the National Center for Education Statistics and used nationally to classify instructional programs and report educational data.

(10) [~~(11)~~] Selected Public Colleges--Those public colleges authorized to offer baccalaureate degrees in Texas.

(11) [~~(12)~~] Statutory mission description--A statement of an institution's mission or purpose that is established directly in statute.

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

Filed with the Office of the Secretary of State on July 18, 2011.

TRD-201102696
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: October 27, 2011
For further information, please call: (512) 427-6114

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19 TAC §5.26

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

The Texas Higher Education Coordinating Board (Coordinating Board) proposes the repeal of §5.26, concerning Offering of Small Classes by Public Universities. Senate Bill 1179, passed by the 82nd Legislature, repealed §51.403(d) (Reports of Student Enrollment and Academic Performance) of the Texas Education Code, which required institutions to file a small class report, defined "small classes," authorized governing boards to allow exemptions for institutions to offer small classes, and authorized the Coordinating Board to develop exemption guidelines. The repeal of Texas Education Code, §51.403(d)

necessitated the Coordinating Board to repeal §5.26 in order to be in compliance with Senate Bill 1179. The information gathered from CBM 004 - Class Report will be used to determine "small classes" for use in the review of low-producing programs. Governing boards will continue to have the authority to allow small classes to be offered. However, the Coordinating Board does not have the authority to determine those exemptions with the repeal of Texas Education Code, §51.403(d).

Dr. MacGregor M. Stephenson, Assistant Commissioner for Academic Affairs and Research, and Susan Brown, Assistant Commissioner of Planning and Accountability, have determined that for the first five years the repeal of the section is in effect there will be no fiscal implications for state or local governments as a result of repealing the rule.

Dr. Stephenson and Ms. Brown have also determined that the public benefit anticipated as a result of repealing the section will be a clarification of the reporting requirements. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the repeal of the section as proposed. There is no anticipated impact on local employment.

Comments on the proposed repeal may be submitted by mail to Dr. MacGregor M. Stephenson, Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711; or via email at macgregor.stephenson@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The repeal is proposed under Texas Education Code, §§61.002(a) and (b), 61.051(d) and (e), and 130.0012 which authorize the Coordinating Board to adopt rules Applying to Public Universities and Health-Related Institutions of Higher Education in Texas.

The repeal affects Texas Education Code, Chapter 51, Subchapter H, §51.403.

§5.26. Offering of Small Classes by Public Universities.

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

Filed with the Office of the Secretary of State on July 18, 2011.

TRD-201102697
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: October 27, 2011
For further information, please call: (512) 427-6114

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SUBCHAPTER C. APPROVAL OF NEW ACADEMIC PROGRAMS AND ADMINISTRATIVE CHANGES AT PUBLIC UNIVERSITIES, HEALTH-RELATED INSTITUTIONS, AND REVIEW OF EXISTING DEGREE PROGRAMS

19 TAC §5.55

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new §5.55, concerning Revisions to Approved Programs. Specifically, this new section will create the requirements for institutions of higher education to submit requests to the Board for revisions to programs already on their approved program inventories.

Dr. MacGregor M. Stephenson, Assistant Commissioner for Academic Affairs and Research, has determined that for the first five years there will be no fiscal implications for state or local governments as a result of the new rule.

Dr. Stephenson has also determined that the public benefit anticipated as a result of administering the section will be an increase in the consistency of degree programs at public institutions of higher education. 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 proposed new section may be submitted by mail to Dr. MacGregor M. Stephenson, Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711; or via email at macgregor.stephenson@thecb.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 Texas Education Code, §61.051(e), which authorizes the Coordinating Board to adopt policies and rules for the review of all degree and certificate programs offered by the public institutions of higher education to assure that they meet the present and future needs of the state.

The new section affects Texas Education Code §61.051(e).

§5.55. Revisions to Approved Programs.

Degree programs on the approved program inventory of a public university or health-related institution may be revised under the following conditions:

(1) Revisions to degree program curricula that result in a reduction in the overall number of semester credit hours required for the program are automatically approved and require Board notification through a letter from the provost or chief academic officer. Such revisions may not reduce the number of required hours below the minimum requirements of the Southern Association of Colleges and Schools, program accreditors, and licensing bodies, if applicable.

(2) Revisions to degree program curricula that result in an increase in the overall number of semester credit hours required for the program must be reviewed and approved by Board staff prior to implementation by the institution. The institution must provide detailed written documentation describing the compelling academic reason for the increase in the number of required hours. The Coordinating Board will review the documentation provided and make a determination to approve or deny the request.

(3) Revisions to degree program curricula that do not result in a change in the overall number of semester credit hours required for the program do not require Board approval or notification.

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

Filed with the Office of the Secretary of State on July 18, 2011.

TRD-201102698

Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: October 27, 2011
For further information, please call: (512) 427-6114

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CHAPTER 6. HEALTH EDUCATION, TRAINING, AND RESEARCH FUNDS SUBCHAPTER C. TOBACCO LAWSUIT SETTLEMENT FUNDS

19 TAC §6.73

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to §6.73, concerning Nursing, Allied Health and Other Health-Related Education Grant Program. The intent of the amendment to this section is to extend the time period for using Program funds exclusively for nursing education. Senate Bill 794 of the 82nd Texas Legislature directed the Coordinating Board to use Program funds exclusively for nursing education through August 31, 2015. The intent of deleting §6.73(h)(3) is to use definitions found in §6.73(a) - (g) for awarding grants under §6.73(h)(1)(A).

Dr. MacGregor M. Stephenson, Assistant Commissioner for Academic Affairs and Research, has determined that for each year of the first five years there will be no fiscal implications for state or local governments as a result of amending the rule.

Dr. Stephenson has also determined that for each year of the first five years the amendments are in effect, the public benefits anticipated as a result of administering the section will be to allow eligible institutions to expand recruitment and retention activities that have been shown to be successful under the grant program. 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 proposed amendments may be submitted to Dr. MacGregor M. Stephenson, Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711; or via email at macgregor.stephenson@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, Chapter 63, Subchapter C, §63.202, which provides the Coordinating Board with the authority to administer the permanent fund for higher education nursing, allied health, and other health-related programs and to adopt rules relating to the award of grants under Chapter 63, Subchapter C of the Texas Education Code.

The amendments affect the Texas Education Code, Chapter 63, Subchapter C, §63.202.

§6.73. Nursing, Allied Health and Other Health-Related Education Grant Program.

(a) - (g) (No change.)

(h) This subsection pertains to the 2012-2013 and 2014-2015 [~~2008-09 and 2010-11~~] biennia only (rules are effective only from September 1, 2011 [~~2007~~] to August 31, 2015 [~~2011~~]).

(1) Funds available to the program for the 2012-2013 and 2014-2015 [~~2008-09 and 2010-11~~] biennia will be distributed as grants in proportions determined by the Board through one or more programs that are based on:

(A) a competitive, peer- or staff-reviewed process for eligible institutions proposing to address the shortage of registered nurses and nursing faculty, as described in subsections (a) - (g) of this section unless amended in paragraph (2) of this subsection [~~subsections (h)(2) and (h)(3) of this section~~];

(B) a staff-reviewed process for eligible institutions, as amended in paragraph (2) of this subsection [~~subsection (h)(2) of this section~~]; or

(C) a criteria-based, funding formula for eligible institutions, as amended in paragraph (2) of this subsection [~~subsection (h)(2) of this section~~].

(2) In subsection (a)(4)[~~,~~] of this section, eligible institutions, as they pertain to paragraph (1) of this subsection [~~subsection (h)(1) of this section~~], are public institutions of higher education, private or independent institutions of higher education and hospitals that offer nursing programs that prepare students for initial licensure as registered nurses or that prepare qualified faculty for such nursing programs.

[~~(3) In subsections (a)(5), (a)(8), (a)(9), (a)(10) and (b)(4), of this section, the following pertain to subsection (h)(1)(A) of this section:~~]

[~~(A) Eligible programs--Nursing initiatives that propose to address the shortage of registered nurses by developing new or existing activities and projects that will promote innovation in the education, recruitment and retention of nursing students and qualified faculty.~~]

[~~(B) Minimum award--Minimum award is $10,000 per award in any fiscal year for a two-year or three-year grant.~~]

[~~(C) Maximum award--Maximum award is $150,000 per award in any fiscal year for a two-year grant and $750,000 per award in any fiscal year for a three-year grant.~~]

[~~(D) Maximum award length--A program is eligible to receive funding for up to three years, contingent upon evaluation of the progress and effectiveness of the program after one year of funding.~~]

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

Filed with the Office of the Secretary of State on July 18, 2011.

TRD-201102699
Bill Franz
General Counsel
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Proposed date of adoption: October 27, 2011
For further information, please call: (512) 427-6114

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CHAPTER 9. PROGRAM DEVELOPMENT IN PUBLIC TWO-YEAR COLLEGES SUBCHAPTER A. DEFINITIONS

19 TAC §9.1

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to §9.1, concerning Definitions.

Specifically, the amendment to §9.1(30) will revise the definition for "unique need academic course."

Dr. MacGregor M. Stephenson, Assistant Commissioner for Academic Affairs and Research, has determined that for the first five years there will not be any fiscal implications for state or local governments as a result of enforcing or administering the rule.

Dr. Stephenson has also determined that the public benefit anticipated as a result of administering the section will be a clarification of the definition of a unique need academic course. 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 proposed amendments may be submitted by mail to Dr. MacGregor M. Stephenson, Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711; or via email at macgregor.stephenson@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 Texas Education Code, §§61.051(g), 61.053, 61.054, 61.060, 61.061, 61.062, 130.001(b)(3) - (4), and 130.003, which authorize the Coordinating Board to adopt policies, enact regulations, and establish rules for the coordination of transferable academic courses eligible for state appropriations.

The amendments affect Texas Education Code, §§61.051(g), 61.053, 61.054, 61.060, 61.061, 61.062, 130.001(b)(3) - (4), and 130.003(e)(3).

§9.1. Definitions.

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

(1) - (29) (No change.)

(30) Unique need academic course--An academic course created by a two-year college to meet a specific lower-division requirement of a baccalaureate degree program that cannot be met by an existing course in the Lower Division Academic Course Guide Manual [~~satisfy a unique need and designed to transfer into a baccalaureate program~~].

(31) - (33) (No change.)

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

Filed with the Office of the Secretary of State on July 18, 2011.

TRD-201102700
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: October 27, 2011
For further information, please call: (512) 427-6114

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SUBCHAPTER D. TRANSFERABLE ACADEMIC COURSES

19 TAC §§9.73, 9.74, 9.77

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to §§9.73, 9.74 and 9.77, concerning Transferable Academic Courses. Specifically, these amendments will revise the requirements for submitting requests for courses to be added to the Lower Division Academic Course Guide Manual and for submitting unique need requests.

Dr. MacGregor M. Stephenson, Assistant Commissioner for Academic Affairs and Research, has determined that for the first five years there will be an increase in the efficiency of formula funding as a result of amending the rules. There will be no fiscal implications for state or local governments as a result of amending the rules.

Dr. Stephenson has also determined the public benefit anticipated as a result of administering the sections will be an increase in the transferability of academic courses. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposed amendments may be submitted by mail to Dr. MacGregor M. Stephenson, Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711; or via email at macgregor.stephenson@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 Texas Education Code, §§61.051(g), 61.053, 61.054, 61.060, 61.061, 61.062, 130.001(b)(3) - (4), and 130.003, which authorize the Coordinating Board to adopt policies, enact regulations, and establish rules for the coordination of transferable academic courses eligible for state appropriations.

The amendments affect Texas Education Code, §§61.051(g), 61.053, 61.054, 61.060, 61.061, 61.062, 130.001(b)(3) - (4), and 130.003(e)(3).

§9.73. General Provisions.

(a) State funding shall be provided for lower-division [~~level general~~] academic courses at [~~in~~] public community colleges, public technical colleges, or public state colleges [~~and other appropriate public institutions offering lower-division general academic courses~~] if such courses:

(1) are approved for inclusion [~~listed~~] in the Lower-Division Academic Course Guide Manual (ACGM); [~~or~~]

(2) have been reviewed [~~by the Board staff~~] and [~~have been~~] approved by Board staff in accordance with the criteria for unique need courses [~~provision~~]; and

(3) are consistent with the Texas Common Course Numbering System (TCCNS).

(b) A standing advisory committee composed of representatives from public two-year and four-year institutions [~~community colleges and other appropriate public institutions~~] offering lower-division [~~general~~] academic courses shall [~~will~~] meet at least annually to recommend to the Coordinating Board staff appropriate courses to be added to, revised, or deleted from the ACGM [~~Lower-Division Academic Course Guide Manual~~], as well as their proper assignment of Texas common course numbers [~~Common Course Numbers~~]. The Coordinating Board staff shall provide the committee with information [~~data~~] regarding course enrollments, frequency of offerings, [~~and~~] transferability, and other relevant information for the purpose of considering revisions to the ACGM [~~Lower-Division Academic Course Guide Manual~~].

(c) Procedures for revising, [~~Criteria used to revise~~] the ACGM [~~Lower-Division Academic Course Guide Manual shall include the following:~~].

(1) Addition of courses. A new course may be approved by Board staff for inclusion in the ACGM if there is sufficient documented need for the course. In order to make recommendations to Board staff on course additions, the ACGM advisory committee may consider the following information:

(A) Unique need approval history. The unique need course has been offered frequently for three or more years with adequate enrollments;

(B) A course to be added to the ACGM must either satisfy a discipline-specific requirement in the major, or satisfy a prerequisite requirement of the major, of a baccalaureate program at five or more Texas public universities;

(C) Frequency of similar course offerings at the lower-division level at Texas public universities;

(D) Letters of support from five or more community colleges, public technical colleges, or public state colleges indicating those colleges would utilize the course if it was added to the ACGM;

(E) Course descriptions and learning outcomes;

(F) Application to the TCCNS. Approval may be contingent upon the assignment of a common course number;

(G) Information provided from appropriate academic, professional, credentialing or accrediting organizations; and

(H) Other information provided by Coordinating Board Staff.

(2) [~~(1)~~] Deletion of courses. Courses offered by three or fewer community colleges, public technical colleges, or public state colleges [~~and other appropriate institutions offering lower-division general academic courses~~] during the previous academic year, or courses which have been rendered obsolete by changes in the discipline, will be reviewed by the committee for deletion unless other factors indicate a need to retain such courses.

[~~(2) Unique need courses which have been offered at several public community colleges and other appropriate institutions offering lower-division general academic courses in different geographic regions of the state may be recommended for addition to the Lower-Division Academic Course Guide Manual upon request of a sponsoring institution.~~]

(3) Revisions to courses in the ACGM [~~in course content~~] may be considered upon request of a sponsoring institution; by information provided from appropriate academic, professional, credentialing or accrediting organizations; or by Board staff.

[~~(4) Courses included in the lower-division portion of an academic core curriculum at any public institution of higher education may be considered by the committee for inclusion in the Lower-Division Academic Course Guide Manual.~~]

(4) [~~(5)~~] Courses in a Board-approved field of study curriculum as outlined under §4.32 of this title [~~Board rules~~] (relating to Field of Study Curricula), or a statewide transfer compact shall automatically be added to the ACGM [~~Lower-Division Academic Course Guide Manual~~].

§9.74. Unique Need Courses.

(a) An academic course may be approved for unique need if it meets the following criteria:

(1) The course must have college-level rigor. A course designed to meet a community service, leisure, career/technical [~~vocational~~], or avocational need is inappropriate for unique need approval [~~and state appropriations~~].

(2) The course must be freshman or sophomore level. Upper-division courses shall not be approved for unique need. For purposes of this subchapter, a course may be considered to be lower-division if a majority of the public universities in Texas offering an equivalent course classify it as lower-division in their catalogs.

(3) [~~(2)~~] The course must be acceptable for transfer and apply toward a baccalaureate degree[~~. In order to satisfy this requirement, the course must meet at least one of the following~~] requirements at a minimum of three Texas public universities. If a university's degree program requirements could be satisfied by an existing course in the ACGM, then that university cannot count as one of the required three.[~~:~~]

[~~(A) The course has a documented course equivalent at a minimum of two Texas and/or regional universities; or~~]

[~~(B) The course will be accepted in satisfaction of either general education or degree program requirements at a minimum of two regional universities.~~]

(4) [~~(3)~~] An exception [~~Exceptions~~] may be granted for a unique need course [~~courses~~] that transfers [~~transfer~~] to a single [~~regional~~] university if the college documents that [~~a large number of~~] its students transfer to that university on a yearly basis into a discipline-specific major of which the course is a required component, [~~institution~~] and the course is part of a current, documented articulation agreement between the two-year college and the [~~regional~~] university. The articulation agreement documentation must demonstrate that the course is a degree program requirement and not merely an option or elective.

(b) Procedures for unique need approval.

(1) The application for each unique need course submitted must be accompanied by a statement of need for the course and a syllabus which includes a course description, detailed course outline, and objectives. Except as specified in subsection (a)(4) [~~(3)~~] of this section, the application must be accompanied by documentation [~~letters~~] from [~~regional~~] universities that clearly indicate the basis for transferability of the course [~~(~~]as a degree program requirement [~~course equivalent, general education course, or academic major course)~~].

(2) Once approved, a unique need course shall be placed on the college inventory for three years. Colleges must reapply for approval of unique need courses every three years.

(3) If an institution is seeking re-approval of a course previously approved for unique need, the institution must submit, in addition to the requirements listed in paragraph (1) of this subsection, the number of students who transferred in the last three years to the specific baccalaureate program(s) for which the unique need permission was requested.

(c) Courses listed in the ACGM [~~Lower-Division Academic Course Guide Manual~~] but offered for a greater number of contact hours or semester credit hours than specified must be submitted for unique need approval.

(d) Unique need courses which have been offered at public community colleges, public technical colleges, or public state colleges in different geographic regions of the state may be recommended for addition to the ACGM upon request of a sponsoring institution.

(e) Unique need courses may not be included in an institution's core curriculum.

[(d) Courses approved as continuing unique need courses prior to September 1, 2004 shall expire five years from the date of approval.]

§9.77. Notification to Students of Possible Lower-Division Transfer Limitations.

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

[(f) Each college shall develop a plan to implement this section no later than January 1, 2005 and shall begin notifying affected students no later than September 1,2005.]

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

Filed with the Office of the Secretary of State on July 18, 2011.

TRD-201102701
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: October 27, 2011
For further information, please call: (512) 427-6114

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SUBCHAPTER K. TECH-PREP PROGRAMS AND CONSORTIA

19 TAC §§9.203, 9.204, 9.206

The Texas Higher Education Coordinating Board proposes amendments to §§9.203, 9.204, and 9.206, concerning Tech-Prep Programs and Consortia. The 82nd Texas Legislature, Regular Session, amended §61.858 of the Texas Education Code to specify that the Coordinating Board conduct annual evaluations of the tech-prep consortia with an on-site evaluation at least once every four years. The amended section also specifies the elements of the written report, which shall be provided to each tech-prep consortium no later than November 1 of each year.

Dr. MacGregor M. Stephenson, Assistant Commissioner for Academic Affairs and Research, has determined that for the first five years there will be no fiscal implications for state or local governments as a result of amending the rules.

Dr. Stephenson has determined that there will be no public benefit, as no funding is available for the tech-prep consortia. If funding were provided to support the tech-prep consortia in the future, the public benefit would include streamlined evaluation and feedback provided from the Board staff to the consortia. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There will be no impact on local employment.

Comments on the proposed amendments may be submitted by mail to Dr. MacGregor M. Stephenson, Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711; or via email at macgregor.stephenson@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, Chapter 61, §61.858, which provides the Coordinating Board with the authority to evaluate tech-prep consortia, and §61.051, which describes the Board's role in coordinating higher education in Texas.

The amendments affect the Texas Education Code, Chapter 61, Subchapter T.

§9.203. General Provisions.

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

(c) An entity established after January 1, 2005, may not be a Tech-Prep consortium unless the entity is established or otherwise formed after that date as a result of an action taken under §9.206(g) [(f)] of this title (relating to Evaluation of the Tech-Prep Programs and Consortia).

§9.204. State Administration of Tech-Prep.

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

(c) To be eligible for an award, an eligible consortium shall submit an application and all supporting documentation on an annual basis and in a manner and time frame determined by Board staff that documents and ensures the progress of local consortium activities addressing the requirements of the Act and the Code and enables the state to meet state goals, objectives, and performance measures [criteria].

(d) Board staff shall evaluate local consortia according to the established federal performance measures and standards outlined under §9.206 of this title (relating to Evaluation of the Tech-Prep Programs and Consortia). Board staff shall provide technical assistance to consortia that do not meet evaluation standards or upon request by a consortium.

(e) (No change.)

§9.206. Evaluation of the Tech-Prep Programs and Consortia.

(a) Board staff shall evaluate each Tech-Prep consortium to determine the success of the consortium's Tech-Prep programs and activities. The evaluation must include:

(1) an assessment of the consortium's performance measures during the past year in comparison to the goals and objectives stated in the five-year plan contained in the consortium's grant application to the board;

(2) an identification of any concerns the board has regarding the consortium's performance;

(3) recommendations for improvement by the consortium in the next year; and

(4) an assessment of compliance with §9.205 of this title (relating to Consortium Responsibilities).

[(b) The required goals and performance measures by which each consortium shall be evaluated include the following:]

[(1) Goal 1: Increase the number of secondary Tech-Prep graduates enrolled in postsecondary institutions. Measure 1: Perkins IV Tech-Prep Indicator 1STP1: The number and percent of secondary education Tech-Prep students enrolled in the Tech-Prep program who enroll in postsecondary education;]

[(2) Goal 2: Increase the number of secondary Tech-Prep graduates enrolled in the same field or major at postsecondary institutions. Measure 2: Perkins IV Tech-Prep Indicator 1STP2: The number and percent of secondary education Tech-Prep students enrolled in the Tech-Prep program who enroll in postsecondary education in the same field or major as the secondary education Tech-Prep students were enrolled at the secondary level;]

[(3) Goal 3: Increase the number of secondary Tech-Prep graduates that complete a State or industry-recognized certification or

licensure. Measure 3: Perkins IV Tech-Prep Indicator 1STP3: The number and percent of secondary education Tech-Prep students enrolled in the Tech-Prep program who complete a State or industry-recognized certification or licensure;]

[(4) Goal 4: Increase the number of secondary Tech-Prep graduates with postsecondary credits. Measure 4: Perkins IV Tech-Prep Indicator 1STP4: The number and percent of secondary education Tech-Prep students enrolled in the Tech-Prep program who successfully complete, as a secondary school student, courses that award postsecondary credit at the secondary level;]

[(5) Goal 5: Reduce the number of secondary Tech-Prep graduates enrolled in remedial mathematics, writing, or reading courses upon entering postsecondary education. Measure 5: Perkins IV Tech-Prep Indicator 1STP5: The number and percent of secondary education Tech-Prep students enrolled in the Tech-Prep program who enroll in remedial mathematics, writing, or reading courses upon entering postsecondary education;]

[(6) Goal 6: Increase the number of postsecondary Tech-Prep graduates placed in a related field of employment. Measure 6: Perkins IV Tech-Prep Indicator 1PTP1: The number and percent of postsecondary education Tech-Prep students who are placed in a related field of employment not later than 12 months after graduation from the tech-prep program;]

[(7) Goal 7: Increase the number of postsecondary Tech-Prep students that complete a State or industry-recognized certification or licensure. Measure 7: Perkins IV Tech-Prep Indicator 1PTP2: The number and percent of postsecondary education Tech-Prep students who complete a State or industry-recognized certification or licensure;]

[(8) Goal 8: Increase the number of postsecondary Tech-Prep students that complete a 2-year degree or certificate program. Measure 8: Perkins IV Tech-Prep Indicator 1PTP3: The number and percent of postsecondary education Tech-Prep students who complete a 2-year degree or certificate program within the normal time for completion of such program; and]

[(9) Goal 9: Increase the number of postsecondary Tech-Prep students that complete a baccalaureate degree program. Measure 9: Perkins IV Tech-Prep Indicator 1PTP4: The number and percent of postsecondary education Tech-Prep students who complete a baccalaureate degree program within the normal time for completion of such program.]

[(c) The appropriate and timely expenditure of Tech Prep funds: The consortium shall have spent at least 95 percent of its allocated funds during the previous year and not had any findings during the fiscal desk review process.]

[(d) Maintenance of detailed time distribution records for staff paid from multiple sources of funds: Time distribution records shall be completed for each consortium employee paid from multiple funds on at least a monthly basis, and be an accurate reflection of the time-on-task for consortium activities related to Tech-Prep. Monthly time sheets must be on file at the consortium office for a minimum of three years.]

[(e) Timely submission of accurate quarterly reports to the Coordinating Board: Quarterly reports shall be submitted by Coordinating Board due dates and include a response for each goal and objective listed in that report.]

(b) [(f)] Board staff shall provide each consortium with a written report on the results of the evaluation. A consortium shall respond to any finding in a manner determined by Board staff [of the failure to meet performance measures] within thirty (30) days of the receipt of the report.

(c) The board shall evaluate each tech prep consortium annually. At least once every four years, or more frequently as indicated in subsection (e) of this section, the annual evaluation shall be conducted on-site.

(d) Not later than November 1 of each year, the Board staff shall provide a written report to each Tech-Prep consortium with the results of all evaluations and follow-up actions. The report must:

(1) contain the findings, concerns, and recommendations resulting from the evaluation required under subsection (a) of this section;

(2) communicate to the consortium the results of the board's evaluation, specifically including the elements required by subsection (a) of this section;

(3) include those areas in which the consortium has made improvement in meeting the federal performance measures, or steps which the consortium should take to improve its performance;

(4) identify best practices of the Tech-prep consortia; and

(5) include any actions taken by Board staff.

(e) [(g)] If a consortium fails to meet two or more of the performance measures in their evaluation [established in this provision], Board staff may [shall] conduct a technical site visit. As part of the technical site visit, the consortium shall provide to Board staff any additional documentation needed for a review of the following activities:

(1) Increasing secondary and/or postsecondary participation rates;

(2) Past and present marketing efforts to increase participation rates;

(3) Opportunities for professional development for teachers, counselors, and administrators;

(4) Career exploration activities for students;

(5) Current articulation agreements between and among public schools and institutions;

(6) Current Strategic Continuous Improvement Plan as described in §9.205(1) of this title [(relating to Consortium Responsibilities)];

(7) Use of funds;

(8) Support and opportunities for participation by member institutions and public schools; and

(9) Operation of the consortium within all the bylaws of the organization. Compliance with all by-laws shall by certified by the consortium governing board chair as part of the annual application to the Coordinating Board.

(f) [(h)] Within thirty (30) days of the technical site visit, Board staff shall provide a final evaluation of the consortium's programs and activities. If a consortium fails to meet the performance measures set out in subsection (a) [(b)] of this section, Board staff shall provide assistance to the consortium governing board in developing a revised Strategic Continuous Improvement Plan. The revised Plan shall set requirements with reasonable deadlines for the purpose of assisting the consortium in meeting [required] performance measures [established in this provision].

(g) [(i)] Board staff shall monitor the consortium's performance of the revised Plan for six (6) months. If the consortium fails to

comply with the requirements of the revised Plan, the Commissioner may determine that a consortium shall be reorganized, consolidated, or abolished as follows:

(1) If the consortium fails to improve its performance relating to participation rates, the Commissioner may require the consortium to reorganize or require the consolidation of the consortium with an existing, high-performing consortium;

(2) If the consortium fails to improve its performance for appropriate and timely expenditure of Tech-Prep funds and maintenance of accurate time distribution records, the Commissioner may require the consortium to be abolished and a new consortium, or consortia, be established to serve the area; and

(3) If the consortium fails to improve its performance for operation within the organization's established bylaws, the Commissioner may require the consortium to be abolished and a new consortium, or consortia, be established to serve the area.

~~[(j) Not later than October 1 of each even-numbered year, the Board staff shall report to each Tech-Prep consortium the results of all evaluations and follow-up actions during the previous two years. The report shall include the following:]~~

~~[(1) Any failure of the consortium to meet the performance measures established in this provision;]~~

~~[(2) The activities and achievements of the consortium in meeting the performance measures established in this provision;]~~

~~[(3) Those areas in which the consortium has made improvement in meeting the performance measures established in this provision; and]~~

~~[(4) Any actions taken by Board staff.]~~

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

Filed with the Office of the Secretary of State on July 18, 2011.

TRD-201102702
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: October 27, 2011
For further information, please call: (512) 427-6114

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TITLE 22. EXAMINING BOARDS

PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

CHAPTER 501. RULES OF PROFESSIONAL CONDUCT

SUBCHAPTER A. GENERAL PROVISIONS

22 TAC §501.52

The Texas State Board of Public Accountancy (Board) proposes an amendment to §501.52, concerning Definitions.

The amendment to §501.52 will define: 1) principal office as it applies to the licensing of a firm providing audit and prospective financial information services; and 2) add a definition for Rules of Professional Conduct.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be to clarify what constitutes the designation of principal office.

The probable economic cost to persons required to comply with the amendment will be insignificant.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the rule amendment affects only Board structure and does not affect the activities of the public. Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on August 29, 2011. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

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

§501.52. Definitions.

The following words and terms, when used in Title 22, Part 22 [~~title 22, part 22~~] of the Texas Administrative Code relating to the Texas

State Board of Public Accountancy, shall have the following meanings, unless the context clearly indicates otherwise. The masculine shall be construed to include the feminine or neuter and vice versa, and the singular shall be construed to include the plural and vice versa.

(1) "Act" means the Public Accountancy Act, Chapter 901, Occupations Code.[;]

(2) "Advertisement" means a message which is transmitted to persons by, or at the direction of, a person and which has reference to the availability of the person to perform Professional Accounting Services.[;]

(3) "Affiliated entity" means an entity controlling or being controlled by or under common control with another entity, directly or indirectly, through one or more intermediaries.[;]

(4) "Attest Service" means:

(A) an audit or other engagement required by the board to be performed in accordance with the auditing standards adopted by the AICPA, PCAOB, or another national or international accountancy organization recognized by the board;

(B) a review, compilation or other engagement required by the board to be performed in accordance with standards for accounting and review services adopted by the AICPA or another national or international accountancy organization recognized by the board;

(C) an engagement required by the board to be performed in accordance with standards for attestation engagements adopted by the AICPA or another national or international accountancy organization recognized by the board; or

(D) any other assurance service required by the board to be performed in accordance with professional standards adopted by the AICPA or another national or international accountancy organization recognized by the board.[;]

(5) "Board" means the Texas State Board of Public Accountancy.[;]

(6) "Charitable Organization" means an organization which has been granted tax-exempt status under the Internal Revenue Code of 1986, §501(c), as amended.[;]

(7) "Client" means a party who enters into an agreement with a license holder or a license holder's employer to receive a professional accounting service or professional accounting work.[;]

(8) "Client Practice of Public Accountancy" is the offer to perform or the performance by a person for a client or a potential client of professional accounting services or professional accounting work, and also includes:

(A) the advice or recommendations in connection with the sale or offer for sale of products (including the design and implementation of computer software), when the advice or recommendations routinely require or imply the possession of accounting or auditing skills or expert knowledge in auditing or accounting; and

(B) the performance of litigation support services.[;]

(9) "Commission" means compensation for recommending or referring any product or service to be supplied by another party.[;]

(10) "Contingent fee" means a fee for any service where no fee will be charged unless a specified finding or result is attained, or in which the amount of the fee is otherwise dependent upon the finding or result of such service. However, a person's non-Contingent fees may vary depending, for example, on the complexity of the services rendered. Fees are not contingent if they are fixed by courts or governmental entities acting in a judicial or regulatory capacity, or in tax matters if determined based on the results of judicial proceedings or the findings of governmental agencies acting in a judicial or regulatory capacity, or if there is a reasonable expectation of substantive review by a taxing authority.[;]

(11) "Financial Statements" means a presentation of financial data, including accompanying notes, derived from accounting records and intended to communicate an entity's economic resources or obligations at a point in time, or the changes therein for a period of time, in accordance with generally accepted accounting principles or other comprehensive basis of accounting. Incidental financial data to support recommendations to a client or in documents for which the reporting is governed by Statements or Standards for Attestation Engagements and tax returns and supporting schedules do not constitute financial statements for the purposes of this definition.[;]

(12) "Firm" means a sole proprietorship, partnership, limited liability partnership, limited liability company, corporation or other legally recognized business entity engaged in the practice of public accountancy.[;]

(13) "Good standing" means compliance by a licensee with the board's licensing rules, including the mandatory continuing education requirements and payment of the annual license fee, and any penalties and other costs attached thereto. In the case of board-imposed disciplinary or administrative sanctions, the person must be in compliance with all the provisions of the board order to be considered in good standing.[;]

(14) "Licensee" means the holder of a license issued by the board to a person pursuant to the Act, or pursuant to provisions of a prior Act.[;]

(15) "Out of state practitioner and out of state firm" means a person licensed in another jurisdiction practicing in Texas pursuant to a practice privilege as provided for in §901.461 and §901.462 of the Act (relating to Practice by Certain Out-of-State Firms and Practice by Out-of-State Practitioner with Substantially Equivalent Qualifications).[;]

(16) "Peer review", "Quality Review" or "Compliance Assurance" means the study, appraisal, or review of the professional accounting work of a public accountancy firm that performs attest services by a certificate holder who is not affiliated with the firm.[;]

(17) "Person" means an individual, sole proprietorship, partnership, limited liability partnership, limited liability company, corporation or other legally recognized business entity that provides or offers to provide professional accounting services or professional accounting work as defined in paragraph (21) of this section.[;]

(18) "Principal office" means the location specified by the client as the address to which a service described in §517.1(a)(2) of this title (relating to Practice by Certain Out of State Firms) is directed unless the client designates a specific location in any filings with any state or federal governmental entity in which case the client's designation controls. A filing with the Securities and Exchange Commission shall take precedent over all other client designations. (Principal office [~~and~~] is synonymous with Home Office where it appears in the Act.)[;]

(19) "Practice unit" means an office of a firm required to be licensed with the board for the purpose of the client practice of public accountancy.[;]

(20) "Practice privilege" means the privilege for an out-of-state person to provide certain Professional Accounting Services or Professional Accounting Work in Texas to the extent permitted under Chapter 517 of this title. [~~the board rules;~~]

(21) "Professional Accounting Services" or "professional accounting work" means services or work that requires the specialized knowledge or skills associated with certified public accountants, including:

(A) issuing reports on financial statement(s);

(B) providing management or financial advisory or consulting services;

(C) preparing tax returns;

(D) providing advice in tax matters;

(E) providing forensic accounting services; and

(F) providing internal auditing services.

(22) "Report" means an opinion, report, or other document, prepared in connection with an attest service that states or implies assurance as to the reliability of financial statement(s); and includes or is accompanied by a statement or implication that the person issuing the opinion, report, or other document has special knowledge or competence in accounting or auditing. A statement or implication of assurance as to the reliability of a financial statement or as to the special knowledge or competence of the person issuing the opinion, report, or other document includes any form of language that is conventionally understood to constitute such a statement or implication. A statement or implication of special knowledge or competence in accounting or auditing may arise from the use by the issuer of the opinion, report, or other document of a name or title indicating that the person is an accountant or auditor; or the language of the opinion, report, or other document itself.

(23) "Rules of Professional Conduct" means the rules found at Title 22, Part 22, Chapter 501 of the Texas Administrative Code.

(24) [~~(23)~~] Interpretive Comment: The practice of public accountancy is defined in §901.003 of the Act (relating to the Practice of Public Accountancy).

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

Filed with the Office of the Secretary of State on July 14, 2011.

TRD-201102677
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: August 28, 2011
For further information, please call: (512) 305-7842

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SUBCHAPTER E. RESPONSIBILITIES TO THE BOARD/PROFESSION

22 TAC §501.94

The Texas State Board of Public Accountancy (Board) proposes an amendment to §501.94, concerning Mandatory Continuing Professional Education.

The amendment to §501.94 will revise the current language to state that a license may be revoked after a licensee has failed to accrue the required CPE after three consecutive years, replace terms with acronyms and correct a rule reference.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be none.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be none.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be none.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be notice of the consequences of failing to maintain CPE for three years.

The probable economic cost to persons required to comply with the amendment will be insignificant.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the rule amendment affects only Board structure and does not affect the activities of the public. Mr. Treacy has determined that an Economic Impact Statement and a Regulatory Flexibility Analysis are not required because the proposed amendment will not adversely affect small or micro businesses.

The Board requests comments on the substance and effect of the proposed rule from any interested person. Comments must be received at the Board no later than noon on August 29, 2011. Comments should be addressed to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

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

§501.94. Mandatory Continuing Professional Education.

Each certificate or registration holder shall comply with the mandatory CPE [~~continuing professional education~~] reporting and the mandatory CPE [~~continuing professional education~~] attendance requirements of Chapter 523 of this title (relating to [~~Mandatory~~] Continuing Profes-

sional Education [~~Program~~]. Once an individual's license has been suspended for three consecutive years [~~a third time~~] by the board for failing to complete the 120 hours of CPE [~~continuing professional education~~] required by §523.112 [~~§523.63~~] of this title (relating to Mandatory CPE Attendance), the individual's certificate shall be subject to revocation and may not be reinstated for at least 12 months from the date of the revocation.

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

Filed with the Office of the Secretary of State on July 14, 2011.

TRD-201102678
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: August 28, 2011
For further information, please call: (512) 305-7842

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TITLE 28. INSURANCE

PART 2. TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION

CHAPTER 133. GENERAL MEDICAL PROVISIONS

The Texas Department of Insurance (Department), Division of Workers' Compensation (Division) proposes amendments to §§133.2, 133.240, 133.250, 133.270, and 133.305, concerning medical billing and processing and the dispute of medical bills. These amendments are necessary to: (1) harmonize these rules with the Department's proposed amendments to 28 Texas Administrative Code (TAC) §§19.2001 - 19.2017 and 19.2019 - 19.2021 (relating to Utilization Reviews for Health Care Provided Under Workers' Compensation Coverage), published in the July 8, 2011, issue of the *Texas Register* and (2) make other changes necessary to clarify the implementation and application of these sections. The Division proposes these amendments in conjunction with its proposed amendments to 28 TAC §134.600 (relating to Preauthorization, Concurrent Review, and Voluntary Certification of Health Care) published elsewhere in this issue of the *Texas Register.*

On July 8, 2011, the Department proposed amendments to 28 TAC §§19.2001 - 19.2017 and 19.2019 - 19.2021 (Subchapter U), concerning utilization reviews for health care provided under workers' compensation coverage, both to (1) implement House Bill 4290, 81st Legislature, Regular Session, effective September 1, 2009 (HB 4290), which effectively revises the definitions of "adverse determination" and "utilization review" in the Insurance Code Chapter 4201 to include retrospective reviews and determinations regarding the experimental or investigational nature of a service and (2) to make other changes necessary for clarity and effective implementation and enforcement of the Insurance Code Chapter 4201. Because these amendments to Subchapter U, in part, apply to retrospective utilization review and requests for reconsideration under the Texas Workers' Compensation Act (the Act), the Division proposes these necessary amendments to Chapter 133 to harmonize these provisions with the Department's proposed amendments to Subchapter U. Primarily, the Division's proposed amendments clarify that (1) retrospective review of the medical necessity of a health care service is utilization review; (2) before insurance carriers issue an adverse determination on a health care service after retrospective utilization review of a health care service or after a request for reconsideration of an adverse determination on a health care service, the insurance carrier must provide the requesting health care provider a reasonable opportunity to discuss the pending adverse determination; and (3) all utilization review under Chapter 133 must be performed by a utilization review agent that is certified by the Department to perform utilization review in accordance with Insurance Code, Chapter 4201 and Subchapter U or by an insurance carrier registered with the Department to perform utilization review in accordance with Insurance Code, Chapter 4201 and Subchapter U. The Division has also proposed other amendments to procedural requirements and definitions contained in these sections to correspond to similar amendments to Subchapter U proposed by the Department.

An informal draft of this proposal was posted on the Division's website from November 10, 2010 to December 1, 2010, and the Division received 11 informal comments in response to that draft. Subsequent changes were made to the draft based on the informal comments that are reflected in this proposal as noted below. Lastly, the Division has proposed nonsubstantive changes to these sections to conform to current nomenclature, reformatting, consistency, clarity, and to correct typographical and/or grammatical errors.

Proposed amended §133.2. The proposed amendment to §133.2(1) defines "adverse determination" as a "determination by a utilization review agent made on behalf of any payor that the health care services provided or proposed to be provided to an injured employee are not medically necessary or appropriate. The term does not include a denial of health care services due to the lack of prospective or concurrent utilization review. For the purposes of this subchapter, an adverse determination does not include a determination that health care services are experimental or investigational." This definition corresponds with the Department's definition of that term in its proposed amendment to §19.2003(2) of this title (relating to Definitions), however, this definition does deviate from the statutory definition of "adverse determination" in Insurance Code §4201.003(2). The Division must exclude "experimental or investigational services" from the definition of "adverse determination," because Labor Code §408.021 entitles an injured employee subject to either network coverage or non-network coverage to all medically necessary health care services, including experimental and investigational health care services, and, pursuant to Insurance Code §4201.054, Title 5, Labor Code prevails if it conflicts with Insurance Code, Chapter 4201. The Division also notes that experimental or investigational health care services for injured employees subject to non-network coverage must be preauthorized pursuant to Labor Code §413.014.

Proposed amendment to §133.2(2) defines "agent" as a "person with whom a system participant utilizes or contracts with for the purpose of providing claims service or fulfilling duties under Labor Code, Title 5 and rules. The system participant who utilizes or contracts with the agent may also be responsible for the administrative violations of that agent." This definition is necessary to correspond with the definition of "agent" in §180.1 of this title (relating to Definitions) and to harmonize the definitions of "health care provider agent" and "insurance carrier agent" that are proposed as deleted from this section. This amendment also

clarifies that "[t]his definition does not apply to 'agent' as used in the term 'pharmacy processing agent.'" This amendment is necessary because "pharmacy processing agent" is a statutorily defined term under Labor Code §413.0111.

Proposed amendments to §133.2(8) define "retrospective utilization review" as a "form of utilization review for health care services that have been provided to an injured employee." This definition corresponds with the Department's definition of that term in its proposed amendment to §19.2003(35).

Proposed amendments to §133.2(8) also clarify that "retrospective utilization review" does not include "review of services for which prospective or concurrent utilization reviews were previously conducted or should have been conducted." This clarification corresponds with the same clarification the Department proposed in §19.2003(35) and is necessary to clearly exclude administrative denials for failure to obtain preauthorization from the definition of retrospective utilization review and utilization review.

The proposed amendment to §133.2(9) defines "utilization review" as a "system for prospective, concurrent, or retrospective review of the medical necessity and appropriateness of health care services and a system for prospective, concurrent, or retrospective review to determine the experimental or investigational nature of health care services. Utilization review does not include elective requests for clarification of coverage." This definition corresponds with the Department's definition of that term in its proposed amendment to §19.2003(40).

Lastly, the proposed amendment to §133.2(10) defines "utilization review agent" as an "entity that conducts utilization review for" either "an employer with employees in this state who are covered under a health benefit plan or health insurance policy"; "a payor"; or "an administrator holding a certificate of authority under the Insurance Code Chapter 4151." This definition corresponds with the Department's definition of the same term in its proposed amendment to §19.2003(41).

Proposed amended §133.240. The proposed amendment to §133.240(b) clarifies that for "pharmaceutical services provided to any injured employee, the insurance carrier must not deny reimbursement based on medical necessity for pharmaceutical services preauthorized or agreed to under Chapter 134, Subchapter F of this title." The clarification harmonizes §133.240 with the Division's amendments to Chapter 134, Subchapter F of this title (relating to Pharmaceutical Benefits). Specifically, it clarifies that pharmaceutical services provided to injured employees, through either network or non-network workers' compensation coverage, cannot be denied based on medical necessity if those services were preauthorized or agreed to under §134.510(c) - (d) of this title (relating to Transition to the Use of the Closed Formulary for Claims with Dates of Injury Prior to September 1, 2011).

The proposed amendment to §133.240(e) requires insurance carriers to "send an explanation of benefits in accordance with the elements required by §133.500 of this title (relating to Electronic Formats for Electronic Medical Bill Processing) if the insurance carrier submits the explanation of benefits in the form of an electronic remittance. The insurance carrier must send an explanation of benefits in accordance with subsection (f) of this section if the insurance carrier submits the explanation of benefits in paper form." This amendment is necessary to harmonize subsection (e) with §133.500, which will become effective on August 1, 2011, and with new subsection (f) that prescribes the required elements for explanations of benefits submitted in paper form by an insurance carrier.

Proposed amendments to §133.240(e)(1) - (2) clarify to which parties insurance carriers must send an explanation of benefits. Specifically, the proposed amendment to §133.240(e)(1) clarifies that in all cases insurance carriers must provide an explanation of benefits to the health care provider who submitted the bill. This clarification is necessary to distinguish the general and currently existing reporting requirement of §133.240(e)(1) with the proposed amendment to §133.240(e)(2), which requires insurance carriers that deny a medical bill based on an adverse determination to send an explanation of benefits to the prescribing doctor, if any, as well as the health care provider who submitted the bill. For pharmaceutical services, this requirement provides consistency with §134.502 of this title (relating to Pharmaceutical Services). This amendment to §133.240(e)(2) is necessary to ensure that the prescribing doctor who initially determined the denied health care service to be medically necessary is aware that the insurance carrier is disputing that doctor's determination. The Division anticipates that this provision will be most applicable to retrospective denials of pharmaceutical services under its newly adopted pharmacy formulary but notes that this provision could apply in other contexts as well, such as physical therapy services.

The proposed amendment to §133.240(e)(3)(A) replaces existing text regarding denials for the reasons of medical necessity or appropriateness and replaces it with "an adverse determination was issued." This amendment corresponds with the Division's proposed addition of the definition of "adverse determination" to §133.2(1) and provides consistency with proposed §134.600 of this title (relating to Preauthorization, Concurrent Review, and Voluntary Certification of Health Care) published elsewhere in this issue of the *Texas Register.*

The proposed amendment to §133.240(e)(3)(B)(iv) clarifies that this condition applies when the doctor is performing a designated doctor examination under Labor Code §408.0041 not simply 28 TAC §130.6 (relating to Designated Doctor Examinations for Maximum Medical Improvement and/or Impairment Ratings). This amendment is necessary because it updates this provision to reflect the variety of examinations, other than maximum medical improvement and impairment rating examinations, that a designated doctor may perform under Labor Code §408.0041.

The proposed amendment to §133.240(f) lists the required elements of an explanation of benefits sent by an insurance carrier under §133.240(e), §133.250 of this title (relating to Reconsideration of Payment for Medical Bills) and §133.260 of this title (relating to Refunds). These amendments primarily incorporate the elements of the Division's current form DWC-062, and, therefore, provide increased clarity for insurance carriers who must comply with these requirements. Additionally, these proposed amendments also add new requirements to these explanations of benefits. Specifically, proposed amended subsection (f) now requires insurance carriers to include the name of certified workers' compensation health care network through which the care was provided (if applicable) and the name of any informal or voluntary network through which payment was made (if applicable). Proposed amended subsection (f) also requires insurance carriers to include only the last four digits of an injured employee's social security number. Finally, proposed amended subsection (f) permits insurance carriers to use a health care provider's national provider identifier instead of the health care provider federal tax ID number if the health care provider's federal tax ID

number is the same as the health care provider's social security number. These new elements are necessary to ensure injured employee and health care provider confidentiality and to provide full disclosure of all network affiliations related to the claim.

The proposed amendment to §133.240(g) provides that "when denying payment due to an adverse determination, the insurance carrier must comply with the requirements of §19.2011 and §19.2015 of this title (relating to Requirements Prior to Adverse Determination and Notice of Determination Made in Retrospective Review)." This amendment is necessary to harmonize these amendments with the Department's proposed amendments to Subchapter U and to, in particular, remind insurance carriers that they must provide health care providers a reasonable opportunity to discuss their determination before issuing an adverse determination.

The proposed amendment to §133.240(j) provides that if "a health care provider is requesting reconsideration of an adverse determination, the request for reconsideration constitutes an appeal for the purposes of §19.2012 of this title (relating to Appeal of Adverse Determination) and must also comply with the requirements of that section." This amendment is necessary to clarify the application of the Department's proposed amendments to §19.2012 to these proposed amendments.

Lastly, the proposed amendment to §133.240(q) provides that "[for] the purposes of this section, all utilization review must be performed by an insurance carrier that is registered with or a utilization review agent that is certified by the Texas Department of Insurance to perform utilization review in accordance with Insurance Code, Chapter 4201 and Chapter 19, Subchapter U of this title (relating to Utilization Reviews for Health Care Provided Under Workers' Compensation Insurance Coverage)." This amendment is necessary to clarify the application of the Department's proposed amendments to Subchapter U to this proposal.

Proposed amended §133.250. The proposed amendment to §133.250(a) clarifies that "[if] the health care provider is requesting reconsideration of a bill denied based on an adverse determination...the request for reconsideration constitutes an appeal for the purposes of §19.2012 of this title (relating to Appeal of Adverse Determination), may be submitted orally or in writing, and must also comply with the requirements of that section." This amendment is necessary to harmonize proposed amended §133.250 with the Department's proposed amendments to §19.2012 of this title and to clarify the application of those amendments to this section. This amendment also harmonizes with Insurance Code §4201.354, which permits an appeal of an adverse determination to be submitted orally.

The proposed amendment to §133.250(f) provides that an insurance carrier must provide an explanation of benefits that meets the requirements of §133.240(e) - (f) of this title (relating to Medical Bill Payments and Denials) for each item in a reconsideration request. This amendment is necessary to correspond with the amendments made to §133.240(e) - (f).

The proposed amendment to §133.250(g) provides that, in accordance with the Department's proposed amendments to §19.2011 and §19.2012 of this title (relating to Requirements Prior to Adverse Determination and Appeal of Adverse Determination), if an insurance carrier questions "the medical necessity or appropriateness of the health care services, prior to issuance of an adverse determination on the request for reconsideration, the insurance carrier must afford the health care provider a reasonable opportunity to discuss the billed health care with a doctor or, in cases of a dental plan or chiropractic services, with a dentist or chiropractor respectively. The discussion is required to include, at a minimum, the clinical basis for the insurance carrier's decision." This amendment is necessary to clarify that the reasonable opportunity to discuss a pending adverse determination required by proposed amended §19.2011 applies to the issuance of adverse determinations on requests for reconsideration. Additionally, the Division clarifies that, in order to comply with the requirements of Labor Code §408.0044 and §408.0045, insurance carriers must offer health care providers the opportunity to discuss the proposed health care with a dentist or chiropractor, if applicable.

Lastly, the proposed amendment to §133.250(j) provides that "[for] the purposes of this section, all utilization review must be performed by an insurance carrier that is registered with or a utilization review agent that is certified by the Texas Department of Insurance to perform utilization review in accordance with Insurance Code, Chapter 4201 and Chapter 19, Subchapter U of this title (relating to Utilization Reviews for Health Care Provided Under Workers' Compensation Insurance Coverage)." This amendment is necessary to clarify the application of the Department's proposed amendments to Subchapter U to this proposal.

Proposed amended §133.270. The proposed amendment to §133.270(f) provides that an injured employee may request reconsideration of a denied medical bill in accordance with "the provisions of Chapter 133, Subchapter D of this title (relating to Dispute of Medical Bills)." This amendment updates this citation to correspond with other changes the Division has made to Subchapter D of Chapter 133.

Proposed amended §133.305. The proposed amendment to §133.305(a)(1) deletes the previous definition of "adverse determination." The deletion is necessary because of the proposed amendment to §133.2 that adds a new definition of "adverse determination" that will apply to all of Chapter 133. Proposed amended §133.305 also defines "first responder" and "serious bodily injury" as those terms are defined by Labor Code §504.055(a) and Section 1.07, Penal Code respectively. The Division has added these definitions in anticipation of future rulemaking regarding medical dispute resolution.

Mr. Matthew Zurek, Executive Deputy Commissioner of Health Care Management, has determined that for each year of the first five years the proposed rules will be in effect there will be minimal fiscal implications to state or local government as a result of enforcing or administering the proposed sections. There also will be no measurable effect on local employment or the local economy as a result of the proposed rules.

Mr. Zurek has determined that the proposed rules will have minimal impact on the cost of the Division's monitoring duties regarding utilization review or dispute resolution, because the proposed rules primarily implement statutory requirements and definitions or clarify the existing application of Department rules to utilization review performed under the Act.

There will be no fiscal implication to local governments as a result of enforcing or administering the proposed amendments.

Local government and state government as a covered entity will be impacted in the same manner as persons required to comply with the proposed amendments as described later in the preamble.

Mr. Zurek has determined that for each year of the first five years the sections are in effect, the public benefit as a result of the pro-

posed new rules will be the updating of Division rules to comply with HB 4290. This update will establish a coordinated regulatory framework between the Department and the Division that harmonizes the application of these proposed rules with the Department's proposed amendments to Chapter 19, Subchapter U of this title (relating to Utilization Reviews for Health Care Provided Under Workers' Compensation Coverage) to assist system participants in applying both Division and Department requirements. This harmonizing will result in a clearer, more consistent regulatory framework and, therefore, in better and more efficient compliance by system participants with these new requirements.

Additionally, consistency of terminology throughout these proposed rules, and with Department proposed rules concerning utilization reviews for health care provided under workers' compensation coverage; and, the inclusion of references and citations of Department proposed rules will ease understanding and readability of these rules.

Furthermore, Mr. Zurek has determined that the costs of compliance associated with these proposed rules primarily result from existing requirements in Insurance Code, Chapter 4201 and the Department's proposed amendments to Subchapter U. For information on the possible costs of compliance with the Department's proposed amendments to Subchapter U, system participants should refer to the Cost Analysis for those proposed amendments published in the July 8, 2011, issue of the *Texas Register.* Mr. Zurek has determined, however, that certain amendments to §133.240(e) may result in additional costs to system participants who must comply with these proposed requirements. Specifically, the proposed amendment to §133.240(e) that would require insurance carriers to send an explanation of benefits to a prescribing doctor, if any, will, for every explanation of benefits sent to a prescribing doctor, impose an additional cost upon insurance carriers equal to the cost of producing an additional copy of the explanation of benefits and mailing it to the prescribing doctor. The Division cannot, however, accurately assign a specific monetary value to the total cost, because of the number of circumstantial variables affecting this cost, including how often insurance carriers deny a medical bill based on an adverse determination and how often the health care provider who submitted the bill will be different from the prescribing doctor.

Additionally, Mr. Zurek has determined that the new elements required to be included in an explanation of benefits under §133.240(f) may result in automation costs to insurance carriers who use such processes to produce their explanations of benefits. Based on $34.93 as the average hourly wage for a computer programmer working in an insurance related industry in Texas (for more information see the Texas Workforce Commission OES Report available at: http://www.texasindustryprofiles.com/apps/win/eds.php?geocode=4801000048&indclass=8&indcode=5242&occcode=15-1021&compare=2), Mr. Zurek estimates that these requirements will take approximately 15 to 30 hours to implement and that, therefore, insurance carriers will incur a cost of $523.95 to $1,047.90 in order to comply with these requirements.

As required by the Government Code §2006.002(c), the Division has determined that the proposal may have an adverse economic effect on the small and micro-businesses that may be required to comply with the proposed new sections, because the Division estimates that 30 insurance carriers required to comply with this proposal may qualify as small or micro-businesses for the purposes of Government §2006.001. The cost of compliance with the proposal will not vary between large businesses and small or micro-businesses, however, and the Division's cost analysis and resulting estimated costs in the Public Benefit/Cost Note portion of this proposal is equally applicable to small or micro-businesses. Small and micro-business insurance carriers, therefore, will, as a result of these proposed amendments, be subject to the cost of providing an explanation of benefits to a prescribing doctor when applicable under §133.240(e) and to the possible cost of automation required by the new elements for explanations of benefits required under §133.240(f).

Because of these costs, the Division did consider as a regulatory alternative exempting small or micro-businesses from this requirement or offering an informal means through which a small or micro-business insurance carrier could contact a prescribing doctor after denying a medical bill based on an adverse determination. Additionally, the Division considered possibly exempting small or micro-business insurance carriers from some or all of the new proposed required elements of explanations of benefits under §133.240(f). Ultimately, the Division determined, however, that none of these alternatives was acceptable, because they would inhibit health care providers' ability to request reconsideration of the denied health care service(s), because either the prescribing doctor would not be aware of the denied health care services or because the health care provider would fail to receive necessary information on the explanation of benefits when a service is denied. These exemptions or alternatives would, therefore, potentially limit injured employees' access to all medically necessary and appropriate health care.

The Division has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. CST on September 27, 2011. Comments may be submitted via the internet through the Division's internet website at http://www.tdi.state.tx.state.tx.us/wc/rules/proposedrules/index.html, by email at rulecomments@tdi.state.tx.us or by mailing or delivering your comments to Maria Jimenez, Texas Department of Insurance, Division of Workers' Compensation, Workers' Compensation Counsel, MS-4D, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744-1645.

A public hearing on this proposal will be held on September 15, 2011 at 9:30 a.m. in the Tippy Foster Conference Room of the Texas Department of Insurance, Division of Workers' Compensation, 7551 Metro Center Drive, Austin, Texas 78744-1645. Those persons interested in attending the public hearing should contact the Texas Department of Insurance, Division of Workers' Compensation, Workers' Compensation Counsel, (512) 804-4703, to confirm the date, time, and location of the public hearing for this proposal. The Division offers reasonable accommodations for persons attending meetings, hearings, or educational events, as required by the Americans with Disabilities Act. If you require special accommodations, contact Idalia Salazar at (512)804-4403 at least two days prior to the hearing date. The public hearing schedule will also be available on the Division's website at http://www.tdi.state.tx.state.tx.us/wc/rules/proposedrules/index.html.

SUBCHAPTER A. GENERAL RULES FOR MEDICAL BILLING AND PROCESSING

28 TAC §133.2

The amendments are proposed under the Labor Code §408.021 and §408.027 and Insurance Code §4201.054 and under the general authority of §402.00128 and §402.061. Labor Code §408.021 provides, in relevant part, that an employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the injury as and when needed and is specifically entitled to health care that (1) cures or relieves the effects naturally resulting from the compensable injury; (2) promotes recovery; or (3) enhances the ability of the employee to return to or maintain employment. Labor Code §408.027, concerning payment of health care provider, provides that the Commissioner shall adopt rules as necessary to implement §408.027. Insurance Code §4201.054 provides that the requirements of Chapter 4201 apply to utilization review of a health care services provided to a person eligible for workers' compensation medical benefits under Title 5, Labor Code. Insurance Code §4201.054 also provides that Title 5, Labor Code, prevails in the event of a conflict between Chapter 4201, Insurance Code, and Title 5, Labor Code.

Section 402.00128 lists the general powers of the Commissioner, including the power to hold hearings. Section 402.061 provides that the Commissioner shall adopt rules as necessary for the implementation and enforcement of this subtitle. The following sections are affected by this proposal: §133.2--Labor Code §408.021 and §408.027; and Insurance Code §4201.054.

§133.2. Definitions.

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

(1) Adverse determination--A determination by a utilization review agent made on behalf of any payor that the health care services provided or proposed to be provided to an injured employee are not medically necessary or appropriate. The term does not include a denial of health care services due to the lack of prospective or concurrent utilization review. For the purposes of this subchapter, an adverse determination does not include a determination that health care services are experimental or investigational.

(2) Agent--A person with whom a system participant utilizes or contracts with for the purpose of providing claims service or fulfilling duties under Labor Code, Title 5 and applicable division and department rules. The system participant who utilizes or contracts with the agent may also be responsible for the administrative violations of that agent. This definition does not apply to "agent" as used in the term "pharmacy processing agent."

(3) [~~(1)~~] Bill review--Review of any aspect of a medical bill, including retrospective review, in accordance with the Labor Code, the Insurance Code, Division or Department rules, and the appropriate fee and treatment guidelines.

(4) [~~(2)~~] Complete medical bill--A medical bill that contains all required fields as set forth in the billing instructions for the appropriate form specified in §133.10 of this chapter (relating to Required Billing Forms/Formats), or as specified for electronic medical bills in §133.500 of this chapter (relating to Electronic Formats for Electronic Medical Bill Processing).

(5) [~~(3)~~] Emergency--Either a medical or mental health emergency as follows:

(A) a medical emergency is the sudden onset of a medical condition manifested by acute symptoms of sufficient severity, including severe pain, that the absence of immediate medical attention could reasonably be expected to result in:

(i) placing the patient's health or bodily functions in serious jeopardy, or

(ii) serious dysfunction of any body organ or part;

(B) a mental health emergency is a condition that could reasonably be expected to present danger to the individual [~~person~~] experiencing the mental health condition or another individual [~~person~~].

(6) [~~(4)~~] Final action on a medical bill--

(A) sending a payment that makes the total reimbursement for that bill a fair and reasonable reimbursement in accordance with §134.1 of this title (relating to Medical Reimbursement); and/or

(B) denying a charge on the medical bill.

[~~(5) Health care provider agent--A person or entity that the health care provider contracts with or utilizes for the purpose of fulfilling the health care provider's obligations for medical bill processing under the Labor Code or Division rules.~~]

[~~(6) Insurance carrier agent--A person or entity that the insurance carrier contracts with or utilizes for the purpose of providing claims services, including fulfilling the insurance carrier's obligations for medical bill processing under the Labor Code, the Insurance Code, Division or Department rules.~~]

(7) Pharmacy processing agent--A person [~~or entity~~] that contracts with a pharmacy in accordance with Labor Code §413.0111, establishing an agent or assignee relationship, to process claims and act on behalf of the pharmacy under the terms and conditions of a contract related to services being billed. Such contracts may permit the agent or assignee to submit billings, request reconsideration, receive reimbursement, and seek medical dispute resolution for the pharmacy services billed.

(8) Retrospective utilization review--A form of utilization review for health care services that have been provided to an injured employee. Retrospective utilization review does not include review of services for which prospective or concurrent utilization reviews were previously conducted or should have been conducted. [~~The process of reviewing the medical necessity and reasonableness of health care that has been provided to an injured employee.~~]

(9) Utilization review--A system for prospective, concurrent, or retrospective review of the medical necessity and appropriateness of health care services and a system for prospective, concurrent, or retrospective review to determine the experimental or investigational nature of health care services. Utilization review does not include elective requests for clarification of coverage.

(10) Utilization review agent--An entity that conducts utilization review for:

(A) an employer with employees in this state who are covered under a health benefit plan or health insurance policy;

(B) a payor; or

(C) an administrator holding a certificate of authority under the Insurance Code Chapter 4151.

(11) [~~(9)~~] In this chapter, the following terms have the meanings assigned by Labor Code §413.0115:

(A) Voluntary networks; and

(B) Informal networks.

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

Filed with the Office of the Secretary of State on July 18, 2011.

TRD-201102693
Dirk Johnson
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Proposed date of adoption: September 28, 2011
For further information, please call: (512) 804-4703

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SUBCHAPTER C. MEDICAL BILL PROCESSING/AUDIT BY INSURANCE CARRIER

28 TAC §§133.240, 133.250, 133.270

The amendments are proposed under the Labor Code §§408.0043, 408.0044, 408.0045, 408.027, and 413.031 and Insurance Code §4201.054 and under the general authority of §402.00128 and §402.061. In relevant part, §408.0043 requires doctors performing utilization review, other than dentists and chiropractors, to meet certain professional specialty requirements. In relevant part, §408.0044 provides that a doctor performing utilization review who is a dentist and reviews a dental service in conjunction with a specific workers' compensation case must be licensed to practice dentistry. Section 408.0045 provides, in relevant part, that a doctor performing utilization who reviews a chiropractic service in conjunction with a specific workers' compensation case must be license to engage in the practice of chiropractic. Labor Code §408.027, concerning payment of health care provider, provides that the Commissioner shall adopt rules as necessary to implement §408.027. Labor Code §413.031 provides that the commissioner by rule shall specify the appropriate dispute resolution process for disputes in which a claimant has paid for medical services and seeks reimbursement. Insurance Code §4201.054 provides that the requirements of Chapter 4201 apply to utilization review of a health care services provided to a person eligible for workers' compensation medical benefits under Title 5, Labor Code. Insurance Code §4201.054 also provides that Title 5, Labor Code, prevails in the event of a conflict between Chapter 4201, Insurance Code, and Title 5, Labor Code.

Section 402.00128 lists the general powers of the Commissioner, including the power to hold hearings. Section 402.061 provides that the Commissioner shall adopt rules as necessary for the implementation and enforcement of this subtitle.

The following sections are affected by this proposal: §133.240--Labor Code §408.027 and Insurance Code §§4201.054; §133.250--Labor Code §§408.0043, 408.0044, 408.0045, 408.027; Insurance Code §4201.054; and §133.270--Labor Code §413.031.

§133.240. Medical Payment and Denials.

(a) An insurance carrier must [~~shall~~] take final action after conducting bill review on a complete medical bill, or determine to audit the medical bill in accordance with §133.230 of this title [~~chapter~~] (relating to Insurance Carrier Audit of a Medical Bill), not later than the 45th day after the date the insurance carrier received a complete medical bill. An insurance carrier's deadline to make or deny payment on a bill is not extended as a result of a pending request for additional documentation.

(b) For health care provided to injured employees not subject to a workers' compensation health care network established under Insurance Code Chapter 1305, the insurance carrier must [~~shall~~] not deny reimbursement based on medical necessity for health care preauthorized or voluntarily certified under Chapter 134 of this title (relating to Benefits--Guidelines for Medical Services, Charges, and Payments). For pharmaceutical services provided to any injured employee, the insurance carrier must not deny reimbursement based on medical necessity for pharmaceutical services preauthorized or agreed to under Chapter 134, Subchapter F, of this title (relating to Pharmaceutical Benefits).

(c) The insurance carrier must [~~shall~~] not change a billing code on a medical bill or reimburse health care at another billing code's value.

(d) The insurance carrier may request additional documentation, in accordance with §133.210 of this title [~~chapter~~] (relating to Medical Documentation), not later than the 45th day after receipt of the medical bill to clarify the health care provider's charges.

(e) The insurance carrier must [~~shall~~] send an [~~the~~] explanation of benefits in accordance with the elements required by §133.500 and §133.501 of this title (relating to Electronic Formats for Electronic Medical Bill Processing and Electronic Medical Bill Processing respectively) if the insurance carrier submits the explanation of benefits in the form of an electronic remittance. The insurance carrier must send an explanation of benefits in accordance with subsection (f) of this section if the insurance carrier submits the explanation of benefits in paper form [~~the form and manner prescribed by the Division and indicate any interest amount paid, and the number of days on which interest was calculated~~]. The explanation of benefits must [~~shall~~] be sent to:

(1) the health care provider who submitted the medical bill when the insurance carrier makes payment or denies payment on a medical bill; [~~and~~]

(2) the prescribing doctor, if any, when payment is denied in accordance with paragraph (3)(A) of this subsection; and

(3) [~~(2)~~] the injured employee when payment is denied because [~~the health care was~~]:

(A) an adverse determination was issued [~~determined to be unreasonable and/or unnecessary~~];

(B) the health care was provided by a health care provider other than:

(i) the treating doctor selected in accordance with Labor Code §408.022 [~~of the Texas Labor Code,~~];

(ii) a health care provider that the treating doctor has chosen as a consulting or referral health care provider;[~~,~~]

(iii) a doctor performing a required medical examination in accordance with §126.5 of this title (relating to Entitlement and Procedure for Requesting Required Medical Examinations) and §126.6 of this title (relating to [~~Order for~~] Required Medical Examination);[~~, or~~]

(iv) a doctor performing a designated doctor examination in accordance with Labor Code §408.0041 [~~§130.6 of this title (relating to Designated Doctor Examinations for Maximum Medical Improvement and/or Impairment Ratings)~~]; or

(C) the health care was unrelated to the compensable injury, in accordance with §124.2 of this title (relating to Carrier Reporting and Notification Requirements).

(f) The paper form of an explanation of benefits under subsection (e) of this section, §133.250 of this title (relating to Reconsideration of Payment for Medical Bills), or §133.260 of this title (relating to Refunds) must include the following elements:

(1) division claim number, if known;

(2) carrier claim number;

(3) injured employee's name;

(4) last four digits of injured employee's social security number;

(5) date of injury;

(6) health care provider's name and address;

(7) health care provider's federal tax ID or national provider identifier if the health care provider's federal tax ID is the same as the health care provider's social security number;

(8) patient control number if included on the submitted medical bill;

(9) insurance carrier's name and address;

(10) payer control number;

(11) date of bill review/refund request;

(12) diagnosis code(s);

(13) name and address of company performing bill review;

(14) name and telephone number of bill review contact;

(15) workers' compensation health care network name (if applicable);

(16) pharmacy informal or voluntary network name (if applicable);

(17) health care service information for each billed health care service, to include:

(A) date of service;

(B) the CPT, HCPCS, NDC, or other applicable product or service code;

(C) CPT, HCPCS, NDC, or other applicable product or service code description;

(D) amount charged;

(E) unit(s) of service;

(F) amount paid;

(G) adjustment reason code that conforms to the standards described in §133.500 and §133.501 of this title if total amount paid does not equal total amount charged;

(H) explanation of reason for reduction/denial if adjustment reason code was included under subparagraph (G) of this paragraph and if applicable;

(18) a statement that contains the following text: "Health care providers must not bill any unpaid amounts to the injured employee or the employer, or make any attempt to collect the unpaid amount from the injured employee or the employer unless the injury is finally adjudicated not to be compensable, or the insurance carrier is relieved of the liability under Texas Labor Code §408.024. However, pursuant to §133.250 of this title the health care provider may file an appeal with the insurance carrier if the health care provider disagrees with the insurance carrier's determination";

(19) if the insurance carrier is requesting a refund, the refund amount being requested and an explanation of why the refund is being requested; and

(20) if the insurance carrier is paying interest in accordance with §134.130 of this title (relating to Interest for Late Payment on Medical Bills and Refunds), the interest amount paid through use of an unspecified product or service code and the number of days on which interest was calculated by using a unit per day.

(g) When denying payment due to an adverse determination, the insurance carrier must comply with the requirements of §19.2011 and §19.2015 of this title (relating to Requirements Prior to Adverse Determination and Notice of Determination Made in Retrospective Review respectively).

(h) [~~(f)~~] When the insurance carrier pays a health care provider for health care for which the division [~~Division~~] has not established a maximum allowable reimbursement, the insurance carrier must [~~shall~~] explain and document the method it used to calculate the payment in accordance with §134.1 of this title (relating to Medical Reimbursement).

(i) [~~(g)~~] An insurance carrier must [~~shall~~] have filed, or [~~shall~~] concurrently file, the applicable notice required by Labor Code §409.021, and §124.2 and §124.3 of this title (relating to Investigation of an Injury and Notice of Denial/Dispute) if the insurance carrier reduces or denies payment for health care provided based solely on the insurance carrier's belief that:

(1) the injury is not compensable;

(2) the insurance carrier is not liable for the injury due to lack of insurance coverage; or

(3) the condition for which the health care was provided was not related to the compensable injury.

(j) [~~(h)~~] If dissatisfied with the insurance carrier's final action, the health care provider may request reconsideration of the bill in accordance with §133.250 of this title [~~chapter (relating to Reconsideration for Payment of Medical Bills)~~]. If the health care provider is requesting reconsideration of an adverse determination, the request for reconsideration constitutes an appeal for the purposes of §19.2012 of this title (relating to Appeal of Adverse Determination) and must also comply with the requirements of that section.

(k) [~~(i)~~] If dissatisfied with the reconsideration outcome, the health care provider may request medical dispute resolution in accordance with the provisions of Chapter 133, Subchapter D of this title (relating to Dispute of Medical Bills) [~~§133.305 of this chapter (relating to Medical Dispute Resolution - General)~~].

(l) [~~(j)~~] Health care providers, injured employees, employers, attorneys, and other participants in the system must [~~shall~~] not resubmit medical bills to insurance carriers after the insurance carrier has taken final action on a complete medical bill and provided an explanation of benefits except as provided in §133.250 and Chapter 133, Subchapter D of this title [~~chapter~~].

(m) [~~(k)~~] All payments of medical bills that an insurance carrier makes on or after the 60th day after the date the insurance carrier originally received the complete medical bill is required to [~~shall~~] include interest calculated in accordance with §134.130 of this title (relating to Interest for Late Payment on Medical Bills and Refunds), without any action taken by the division [~~Division~~]. The interest payment is required to [~~shall~~] be paid at the same time as the medical bill payment.

(n) [~~(l)~~] When an insurance carrier remits payment to a health care provider agent, the agent must [~~shall~~] remit to the health care provider the full amount that the insurance carrier reimburses.

(o) [~~(m)~~] When an insurance carrier remits payment to a pharmacy processing agent, the pharmacy's reimbursement is required to [~~shall~~] be made in accordance with the terms of its contract with the pharmacy processing agent.

(p) [~~(n)~~] An insurance carrier commits an administrative violation if the insurance carrier fails to pay, reduce, deny, or notify the health care provider of the intent to audit a medical bill in accordance with Labor Code §408.027 and division [~~Division~~] rules.

(q) For the purposes of this section, all utilization review must be performed by an insurance carrier that is registered with or a utilization review agent that is certified by the Texas Department of Insurance to perform utilization review in accordance with Insurance Code, Chapter 4201 and Chapter 19, Subchapter U of this title (relating to Utilization Reviews for Health Care Provided Under Workers' Compensation Insurance Coverage).

§133.250. Reconsideration for Payment of Medical Bills.

(a) If the health care provider is dissatisfied with the insurance carrier's final action on a medical bill, the health care provider may request that the insurance carrier reconsider its action. If the health care provider is requesting reconsideration of a bill denied based on an adverse determination, the request for reconsideration constitutes an appeal for the purposes of §19.2012 of this title (relating to Appeal of Adverse Determination), may be submitted orally or in writing, and must also comply with the requirements of that section.

(b) The health care provider must [~~shall~~] submit the request for reconsideration no later than eleven months from the date of service.

(c) A health care provider must [~~shall~~] not submit a request for reconsideration until:

(1) the insurance carrier has taken final action on a medical bill; or

(2) the health care provider has not received an explanation of benefits within 50 days from submitting the medical bill to the insurance carrier.

(d) The request for reconsideration is required to [~~shall~~]:

(1) reference the original bill and include the same billing codes, date(s) of service, and dollar amounts as the original bill;

(2) include a copy of the original explanation of benefits, if received, or documentation that a request for an explanation of benefits was submitted to the insurance carrier;

(3) include any necessary and related documentation not submitted with the original medical bill to support the health care provider's position; and

(4) include a bill-specific, substantive explanation in accordance with §133.3 of this chapter (relating to Communication Between Health Care Providers and Insurance Carriers) that provides a rational basis to modify the previous denial or payment.

(e) An insurance carrier must [~~shall~~] review all reconsideration requests for completeness in accordance with subsection (d) of this section and may return an incomplete reconsideration request no later than seven days from the date of receipt. A health care provider may complete and resubmit its request to the insurance carrier.

(f) The insurance carrier must [~~shall~~] take final action on a reconsideration request within 21 days of receiving the request for reconsideration. The insurance carrier must [~~shall~~] provide an explanation of benefits that meets the requirements of §133.240(e) - (f) of this title (relating to Medical Payments and Denials) for all items included in a reconsideration request [~~in the form and format prescribed by the Division~~].

(g) In accordance with §19.2011 of this title (relating to Requirements Prior to Adverse Determination) and §19.2012 of this title, in any instance where the insurance carrier is questioning the medical necessity or appropriateness of the health care services, prior to issuance of an adverse determination on the request for reconsideration, the insurance carrier must afford the health care provider a reasonable opportunity to discuss the billed health care with a doctor or, in cases of a dental plan or chiropractic services, with a dentist or chiropractor respectively. The discussion is required to include, at a minimum, the clinical basis for the insurance carrier's decision.

(h) [~~(g)~~] A health care provider must [~~shall~~] not resubmit a request for reconsideration earlier than 26 days from the date the insurance carrier received the original request for reconsideration or after the insurance carrier has taken final action on the reconsideration request.

(i) [~~(h)~~] If the health care provider is dissatisfied with the insurance carrier's final action on a medical bill after reconsideration, the health care provider may request medical dispute resolution in accordance with the provisions of Chapter 133, Subchapter D of this title (relating to Dispute of Medical Bills) [~~§133.305 of this chapter (relating to Medical Dispute Resolution - General)~~].

(j) For the purposes of this section, all utilization review must be performed by an insurance carrier that is registered with or a utilization review agent that is certified by the Texas Department of Insurance to perform utilization review in accordance with Insurance Code, Chapter 4201 and Chapter 19, Subchapter U of this title (relating to Utilization Reviews for Health Care Provided Under Workers' Compensation Insurance Coverage).

§133.270. Injured Employee Reimbursement for Health Care Paid.

(a) An injured employee may request reimbursement from the insurance carrier when the injured employee has paid for health care provided for a compensable injury, unless the injured employee is liable for payment as specified in:

(1) Insurance Code §1305.451, or

(2) Section 134.504 [~~§134.504~~] of this title (relating to Pharmaceutical Expenses Incurred by the Injured Employee).

(b) The injured employee's request for reimbursement is required to [~~shall~~] be legible and [~~shall~~] include documentation or evidence (such as itemized receipts) of the amount the injured employee paid the health care provider.

(c) The insurance carrier must [~~shall~~] pay or deny the request for reimbursement within 45 days of the request. Reimbursement is required to [~~shall~~] be made in accordance with §134.1 of this title (relating to Medical Reimbursement).

(d) The injured employee may seek reimbursement for any payment made above the division fee guideline or contract amount from the health care provider who received the overpayment.

(e) Within 45 days of a request, the health care provider must [~~shall~~] reimburse the injured employee the amount paid above the applicable division [~~Division~~] fee guideline or contract amount.

(f) The injured employee may request, but is not required to request, reconsideration prior to requesting medical dispute resolution in accordance with the provisions of Chapter 133, Subchapter D of this

title (relating to Dispute of Medical Bills) [§133.305 of this chapter (relating to Medical Dispute Resolution - General)].

(g) The insurance carrier must [shall] submit injured employee medical billing and payment data to the division [Division] in accordance with Chapter 134, Subchapter I of this title (relating to Medical Bill Reporting) [§134.802 of this title (relating to Insurance Carrier Medical Electronic Data Interchange to the 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.

Filed with the Office of the Secretary of State on July 18, 2011.

TRD-201102714
Dirk Johnson
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Proposed date of adoption: September 28, 2011
For further information, please call: (512) 804-4703

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SUBCHAPTER D. DISPUTE OF MEDICAL BILLS

28 TAC §133.305

The amendment is proposed under the general authority of Labor Code §402.00128 and §402.061. Section 402.00128 lists the general powers of the Commissioner, including the power to hold hearings. Section 402.061 provides that the Commissioner shall adopt rules as necessary for the implementation and enforcement of this subtitle.

The following sections are affected by this proposal: None.

§133.305. MDR--General.

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

(1) First responder--As defined in Labor Code §504.055(a).

[(1) Adverse determination--A determination by a utilization review agent that the health care services furnished or proposed to be furnished to a patient are not medically necessary, as defined in Insurance Code §4201.002.]

(2) Life-threatening--A disease or condition for which the likelihood of death is probable unless the course of the disease or condition is interrupted, as defined in Insurance Code §4201.002.

(3) Medical dispute resolution (MDR)--A process for resolution of one or more of the following disputes:

(A) a medical fee dispute; or

(B) a medical necessity dispute, which may be:

(i) a preauthorization or concurrent medical necessity dispute; or

(ii) a retrospective medical necessity dispute.

(4) Medical fee dispute--A dispute that involves an amount of payment for non-network health care rendered to an injured employee [(employee)] that has been determined to be medically necessary and appropriate for treatment of that injured employee's compensable injury. The dispute is resolved by the division [Division of Workers' Compensation (Division)] pursuant to division [Division] rules, including §133.307 of this title [subchapter] (relating to MDR of Fee Disputes). The following types of disputes can be a medical fee dispute:

(A) a health care provider [(provider)], or a qualified pharmacy processing agent as described in Labor Code §413.0111, dispute of an insurance carrier [(carrier)] reduction or denial of a medical bill;

(B) an injured employee dispute of reduction or denial of a refund request for health care charges paid by the injured employee; and

(C) a health care provider dispute regarding the results of a division [Division] or insurance carrier audit or review which requires the health care provider to refund an amount for health care services previously paid by the insurance carrier.

(5) Network health care--Health care delivered or arranged by a certified workers' compensation health care network, including authorized out-of-network care, as defined in Insurance Code Chapter 1305 and related rules.

(6) Non-network health care--Health care not delivered or arranged by a certified workers' compensation health care network as defined in Insurance Code Chapter 1305 and related rules. "Non-network health care" includes health care delivered pursuant to Labor Code §413.011(d-1) and §413.0115.

(7) Preauthorization or concurrent medical necessity dispute--A dispute that involves a review of adverse determination of network or non-network health care requiring preauthorization or concurrent review. The dispute is reviewed by an independent review organization (IRO) pursuant to the Insurance Code, the Labor Code and related rules, including §133.308 of this title [subchapter] (relating to MDR by Independent Review Organizations).

(8) Requestor--The party that timely files a request for medical dispute resolution with the division [Division]; the party seeking relief in medical dispute resolution.

(9) Respondent--The party against whom relief is sought.

(10) Retrospective medical necessity dispute--A dispute that involves a review of the medical necessity of health care already provided. The dispute is reviewed by an IRO pursuant to the Insurance Code, Labor Code and related rules, including §133.308 of this title [subchapter].

(11) Serious bodily injury--As defined by §1.07, Penal Code.

(b) Dispute Sequence. If a dispute regarding compensability, extent of injury, liability, or medical necessity exists for the same service for which there is a medical fee dispute, the disputes regarding compensability, extent of injury, liability, or medical necessity is required to [shall] be resolved prior to the submission of a medical fee dispute for the same services in accordance with Labor Code §413.031 and §408.021.

(c) Division Administrative Fee. The division [Division] may assess a fee, as published on the division's [Division's] website, in accordance with Labor Code §413.020 when resolving disputes pursuant to §133.307 and §133.308 of this title [subchapter] if the decision indicates the following:

(1) the health care provider billed an amount in conflict with division [Division] rules, including billing rules, fee guidelines or treatment guidelines;

(2) the insurance carrier denied or reduced payment in conflict with division [~~Division~~] rules, including reimbursement or audit rules, fee guidelines or treatment guidelines;

(3) the insurance carrier has reduced the payment based on a contracted discount rate with the health care provider but has not made the contract available upon the division's [~~Division's~~] request;

(4) the insurance carrier has reduced or denied payment based on a contract that indicates the direction or management of health care through a health care provider arrangement that has not been certified as a workers' compensation network, in accordance with Insurance Code Chapter 1305; or

(5) the insurance carrier or health care provider did not comply with a provision of the Insurance Code, Labor Code or related rules.

(d) Confidentiality. Any documentation exchanged by the parties during MDR that contains information regarding a patient other than the injured employee for that claim must be redacted by the party submitting the documentation to remove any information that identifies that patient.

(e) Severability. If a court of competent jurisdiction holds that any provision of §§133.305, 133.307, or [~~and~~] 133.308 of this title is [~~subchapter are~~] inconsistent with any statutes of this state, [~~are~~] unconstitutional, or [~~are~~] invalid for any reason, the remaining provisions of these sections [~~shall~~] remain in full effect.

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

Filed with the Office of the Secretary of State on July 18, 2011.

TRD-201102715
Dirk Johnson
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Proposed date of adoption: September 28, 2011
For further information, please call: (512) 804-4703

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CHAPTER 134. BENEFITS--GUIDELINES FOR MEDICAL SERVICES, CHARGES, AND PAYMENTS

SUBCHAPTER G. PROSPECTIVE AND CONCURRENT REVIEW OF HEALTH CARE

28 TAC §134.600

The Texas Department of Insurance (Department), Division of Workers' Compensation (Division) proposes amendments to §134.600, concerning preauthorization, concurrent utilization review, and voluntary certification of health care. These amendments are necessary to: (1) harmonize this rule with the Department's proposed amendments to 28 Texas Administrative Code (TAC) §§19.2001 - 19.2017 and 19.2019 - 19.2021 (relating to Utilization Reviews for Health Care Provided Under Workers' Compensation Insurance Coverage) published in the July 8, 2011, issue of the *Texas Register* (36 TexReg 4255) and (2) to make other changes necessary to clarify the implementation and application of this section. The Division proposes these amendments in conjunction with its proposed amendments to 28 TAC Chapter 133 (relating to General Medical Provisions) published elsewhere in this issue of the *Texas Register.*

On July 8, 2011, the Department proposed amendments to 28 TAC §§19.2001 - 19.2017 and 19.2019 - 19.2021 (relating to Utilization Reviews for Health Care Provided Under Workers' Compensation Insurance Coverage) (Subchapter U) both to (1) implement House Bill 4290, 81st Legislature, Regular Session, effective September 1, 2009 (HB 4290), which effectively revises the definitions of "adverse determination" and "utilization review" in the Insurance Code Chapter 4201 to include retrospective reviews and determinations regarding the experimental or investigational nature of a service and (2) to make other changes necessary for clarity and effective implementation and enforcement of the Insurance Code Chapter 4201. Because these amendments to Subchapter U, in part, apply to prospective and concurrent utilization review and requests for reconsideration under the Texas Workers' Compensation Act (the Act), the Division proposes these necessary amendments to §134.600 to harmonize §134.600 with the Department's proposed amendments to Subchapter U. Primarily, the Division's proposed amendments: (1) clarify that before insurance carriers issue an adverse determination on a health care service after prospective or concurrent utilization review of a health care service or after a request for reconsideration of an adverse determination on a health care service, the insurance carrier must provide the requesting health care provider a reasonable opportunity to discuss the pending adverse determination and (2) provide that all utilization review under Chapter 134 must be performed by a utilization review agent that is certified by the Department to perform utilization review in accordance with Insurance Code, Chapter 4201 and Subchapter U or by an insurance carrier registered with the Department to perform utilization in accordance with Insurance Code, Chapter 4201 and Subchapter U. The Division has also proposed other amendments to procedural requirements and definitions contained in these sections to correspond to similar amendments to Subchapter U proposed by the Department. These changes are detailed below.

In addition to the amendments made in order to conform with Subchapter U, the Division has proposed amendments to §134.600 that: (1) harmonize its preauthorization requirements with the preauthorization requirements of the Division's recently adopted amendments to Subchapter F of this chapter (relating to Pharmaceutical Benefits) and (2) clarify the application of the Division's treatment guidelines to Division exempted programs under §134.600(a)(5).

An informal draft of this proposal was posted on the Division's website from November 10, 2010 to December 1, 2010, and the Division received 11 informal comments in response to the posting. Subsequent changes were made to the draft based on the informal comments that are reflected in this proposal as noted below. Lastly, the Division has proposed nonsubstantive changes to these sections to conform to current nomenclature, reformatting, consistency, clarity, and to correct typographical and/or grammatical errors.

Proposed amended §134.600(a). The proposed amendment to §134.600(a)(1) defines "adverse determination" as a "determination by a utilization review agent made on behalf of any payor that the health care services provided or proposed to be provided to an injured employee are not medically necessary or appropriate. The term does not include a denial of health care services due to the lack of prospective or concurrent utilization review.

For the purposes of this subchapter, an adverse determination does not include a determination that health care services are experimental or investigational." This definition corresponds with the Department's definition of that term in its proposed amendment to §19.2003(2) of this title (relating to Definitions), however, this definition does deviate from the statutory definition of "adverse determination" in Insurance Code §4201.003(2). The Division must exclude "experimental and investigational services" from the definition of "adverse determination," because Labor Code §408.021 entitles an injured employee under both network coverage and non-network coverage to all medically necessary health care services, including experimental and investigational health care services, and, pursuant to Insurance Code §4201.054, Title 5, Labor Code prevails if it conflicts with Insurance Code, Chapter 4201. The Division also notes that experimental and investigational health care services for injured employees subject to non-network coverage must be preauthorized pursuant to Labor Code §413.014.

The proposed amendment to §134.600(a)(3) changes the term "concurrent review" to "concurrent utilization review" and defines that term as "a form of utilization review for ongoing health care listed in subsection (r) of this section for an extension of treatment beyond previously approved health care listed in subsection (q) of this section." This definition corresponds with the Department's definition of that term in its proposed amendment to §19.2003(7).

The proposed amendment to §134.600(a)(5) clarifies that exempted work hardening or work conditioning programs must obtain preauthorization for health care services if the services will exceed or are not addressed by the Division's treatment guidelines as described in §134.600(q)(12). This amendment is necessary to clarify that the Division's exemption for these programs only extends to work hardening or work conditioning program services if those services are consistent with the Division's treatment guidelines.

The proposed amendment to §134.600(a)(8) defines "preauthorization" as "a form of prospective utilization review by a payor or its utilization review agent on health care services proposed to be provided to an injured employee." This definition corresponds with the Department's definition of that term in its proposed amendment to §19.2003(32).

The proposed amendment to §134.600(a)(10) defines "utilization review" as a "system for prospective, concurrent, or retrospective review of the medical necessity and appropriateness of health care services and a system for prospective, concurrent, or retrospective review to determine the experimental or investigational nature of health care services. Utilization review does not include elective requests for clarification of coverage." This definition corresponds with the Department's definition of that term in its proposed amendment to §19.2003(40).

The proposed amendment to §134.600(a)(11) defines "utilization review agent" as "An entity that conducts utilization review for...an employer with employees in this state who are covered under a health benefit plan or health insurance policy; a payor; or an administrator holding a certificate of authority under the Insurance Code Chapter 4151." This definition corresponds with the Department's definition of that term in its proposed amendment to §19.2003(41).

Proposed amended §134.600(e). The proposed amendment to §134.600(e) provides that insurance carriers must also "comply with any additional requirements of §19.2013 of this title (relating to Utilization Review Agent's Telephone Access)." This amendment is necessary to clarify the combined application of §134.600(e) and §19.2013 to insurance carriers and utilization review agents.

Proposed amended §134.600(f). The proposed amendment to §134.600(f) provides that requests for preauthorization must now also include the name of the injured employee; the name of the requestor and requestor's professional license number or national provider identifier, or injured employee's name if the injured employee is requesting the preauthorization; the name and professional license number or national provider identifier of the ordering or prescribing doctor if different than the requestor; the name and professional license number or national provider identifier of the health care provider who will render the health care if different than the requestor and the ordering or prescribing health care provider and if known; and the facility name and the facility's national provider identifier, if applicable. These amendments are necessary for proper identification of all parties to the request and to ensure the appropriate review of the request. Additionally, the amendment regarding the prescribing doctor is necessary to align with the preauthorization requirements of the Division's recently adopted amendments to Subchapter F of this chapter (relating to Pharmaceutical Benefits) and facilitate appropriate coordination of these rules and the resulting processes.

Proposed amended §134.600(g). Proposed amendments to §134.600(g) replace references to denials based on "medical necessity" with references to "adverse determinations." These amendments are necessary to harmonize with the proposed definition of "adverse determination" in proposed amended §134.600(a) and do not create a substantive change to the requirements of the rule.

Proposed amended §134.600(h). Proposed amendments to §134.600(h) replace references to denials based on "medical necessity" with references to "adverse determinations." These amendments are necessary to harmonize with the proposed definition of "adverse determination" in proposed amended §134.600(a) and do not create a substantive change to the requirements of the rule.

Proposed amended §134.600(i). The proposed amendment to §134.600(i) clarifies when insurance carriers must contact requestors or injured employees after approving a preauthorization request, issuing an adverse determination on a request, or denying a request under §134.600(g) because it relates to an unrelated injury/diagnosis. This amendment is necessary only to update the terminology used in §134.600(i) and is not intended to create a substantive change in the effect of the rule.

Proposed amended §134.600(j). Proposed amendments to §134.600(j) update the section's terminology by replacing "denial" with "adverse determination on a request, or denial of the request under subsection (g) of this section because it relates to an unrelated injury/diagnosis." This amendment is necessary to harmonize with the proposed definition of "adverse determination" in proposed amended §134.600(a) and does not create a substantive change to the requirements of the rule. Proposed amendments to §134.600(j) also add the requirement that insurance carriers send notification under this section to the ordering or prescribing provider if this provider is different from the requesting provider.

Proposed amended §134.600(l). The proposed amendment to §134.600(l) requires insurance carriers to include the insurance

carrier's preauthorization approval number in its approval of a preauthorization request. Furthermore, the amendment provides that the preauthorization approval number must conform to the standards described in §19.2010(b)(2) of this title (relating to Notice of Determinations Made by Utilization Review Agents). This amendment is necessary to align the requirements of this proposed rule with the medical billing requirements of recently adopted Division rules in Chapter 133 of this title, Subchapters B and G (relating to Health Care Provider Billing Procedures and Electronic Medical Billing, Reimbursement, and Documentation), which require the inclusion of a preauthorization number on medical bills, if applicable.

Proposed amended §134.600(m). Proposed amendments to §134.600(m) require insurance carriers to, in accordance with §19.2011 of this title (relating to Requirements Prior to Adverse Determinations), provide requestors a reasonable opportunity to discuss an adverse determination on a preauthorization request prior to issuing the adverse determination. The proposed amendments further clarify that for the purposes of §134.600(m), "reasonable opportunity" means at least one documented good faith attempt to contact the provider of record requesting the services no less than one working day prior to issuing an adverse determination. These amendments are necessary to harmonize with the Departments proposed amendments to §19.2011.

Proposed amended §134.600(n). The proposed amendment to §134.600(n) provides that all notices of adverse determination must meet the requirements of §19.2010 of this title. This amendment is necessary to harmonize with the Department's amendments to that section.

Proposed amended §134.600(p). Proposed amended §134.600(p) provides that if a requestor or injured employee receives an adverse determination after a preauthorization request or after concurrent utilization review, the requestor or injured employee may request reconsideration orally or in writing. Proposed amended §134.600(p) also provides that a request for reconsideration constitutes an appeal for the purposes of §19.2012 of this title (relating to Appeal of Adverse Determination of Utilization Review Agents) and is required to be requested in accordance with this section and §19.2012 of this title. Lastly, proposed amended §134.600(p) provides that, in accordance with §19.2011 and §19.2012 of this title, in any instance where the insurance carrier is questioning the medical necessity or appropriateness prior to issuance of an adverse determination on the request for reconsideration, the insurance carrier must afford the requestor a reasonable opportunity to discuss the proposed health care with a doctor or, in cases of a dental plan or chiropractic services, with a dentist or chiropractor respectively. The discussion must include, at a minimum, the clinical basis for the insurance carrier's decision. Additionally, the proposed amendments clarify that "reasonable opportunity" has the same meaning assigned to the term in §134.600(m). These amendments to proposed §134.600(p) are necessary to harmonize §134.600 with the Department's proposed amendments to §19.2011 and §19.2012 of this title and with Insurance Code §4201.354, which permits an appeal of an adverse determination to be submitted orally.

The proposed amendment to §134.600(p)(1) extends the deadline for a requestor to submit a request for reconsideration after receiving an adverse determination on a preauthorization request from 15 working days to 30 days. This amendment is necessary to harmonize this requirement with the parallel requirement for network claims under Insurance Code §1305.354, which provides requestors 30 days to submit a request for reconsideration.

The proposed amendment to §134.600(p)(2) extends the deadline for an insurance carrier to respond to a request for reconsideration of an adverse determination on a preauthorization request. The deadline is extended from "within 5 working days of receipt of the request" to "as soon as practicable but not later than the 30th day after receiving a request for reconsideration." This amendment is necessary to harmonize this requirement with the parallel requirement for network claims under Insurance Code §1305.354, which provides insurance carriers the same amount of time to respond to a request for reconsideration. This requirement also corresponds with Insurance Code §4201.359, which provides that a utilization review agent's procedures must provide that it will respond to an appeal of an adverse determination "as soon as practicable but not later than the 30th day after receiving a request for reconsideration."

The proposed amendment to §134.600(p)(3) provides that "[i]n addition to the requirements in this section and §19.2012 of this title, the insurance carrier's reconsideration procedures must include a provision that the period during which the reconsideration is to be completed must be based on the medical or clinical immediacy of the condition, procedure, or treatment, but may not exceed one calendar day from the date of receipt of all information necessary to complete the reconsideration." This amendment is necessary to harmonize §134.600 with §10.103(b)(3) of this title (relating to Reconsideration of Adverse Determination) and to help ensure timely processing of reconsideration requests.

Proposed amended §134.600(q). Proposed amended §134.600(q)(4) provides that preauthorization is required for all exempted work hardening or work conditioning programs if the services will exceed or are not addressed by the Division's treatment guidelines as described in §134.600(q)(12). This amendment is necessary to clarify that the exemption provided by §134.600(a)(5) only extends to work hardening or work conditioning program services insofar as those services are consistent with the Division's treatment guidelines. Proposed amended §134.600(q) also provides that the preauthorization requirement of paragraph (12) of this subsection does not apply to drugs prescribed for claims under §§134.506, 134.530 or 134.540 of this title. This amendment is necessary to harmonize §134.600 with the Division's recent amendments to §134.506 and newly adopted §134.530 and §134.540, which provide that drugs prescribed under either the Division's open or closed formulary only require preauthorization as provided by those sections.

Proposed amended §134.600(r). The proposed amendment to §134.600(r) provides that concurrent review is required for all exempted work hardening or work conditioning programs if the services will exceed or are not addressed by the Division's treatment guidelines. This amendment is necessary to clarify that the exemption provided by §134.600(a)(5) only extends to work hardening or work conditioning program services insofar as those services are consistent with the Division's treatment guidelines.

Proposed amended §134.600(u). Proposed amendments to §134.600(u) provide that an insurance carrier must maintain accurate records to reflect information regarding requests for reconsideration and requests for medical dispute resolution, in addition to information regarding requests for preauthorization or concurrent utilization, review approval/adverse determination decisions, and appeals. These amendments are necessary to

assist the Division in complying with its duties of monitoring, compilation and maintenance of statistical data, review of insurance carrier records, maintenance of an investigation unit, and medical review as required by Labor Code §§414.002, 414.003, 414.004, 414.005, and 414.007.

Proposed amended §134.600(v). The proposed amendment to §134.600(v) provides that "[for] the purposes of this section, all utilization review must be performed by an insurance carrier that is registered with or a utilization review agent that is certified by the Texas Department of Insurance to perform utilization review in accordance with Insurance Code, Chapter 4201 and Chapter 19, Subchapter U of this title (relating to Utilization Reviews for Health Care Provided Under Workers' Compensation Insurance Coverage)." This amendment is necessary to clarify the application of the Department's proposed amendments to Subchapter U to this proposal.

Mr. Matthew Zurek, Executive Deputy Commissioner of Health Care Management, has determined that for each year of the first five years the proposed rule will be in effect there will be minimal fiscal implications to state or local government as a result of enforcing or administering the section. There also will be no measurable effect on local employment or the local economy as a result of the proposed rule.

Mr. Zurek has determined that the proposed rule will have no or minimal impact on the cost of the Division's monitoring duties regarding utilization review or dispute resolution, because the proposed rule primarily implements statutory requirements and definitions or clarify the existing application of Department rules to utilization review performed under the Act.

There will be no fiscal implication to local governments as a result of enforcing or administering the proposed amendments.

Local government and state government as a covered entity will be impacted in the same manner as persons required to comply with the proposed amendments as described later in the preamble.

Mr. Zurek has also determined that for each year of the first five years the section is in effect, the public benefit as a result of the proposed section will be the updating of Division rules to comply with HB 4290. This update will establish a coordinated regulatory framework between the Department and the Division that harmonizes the application of the proposed rule with both the Department's proposed amendments to Chapter 19, Subchapter U (relating to Utilization Reviews for Health Care Provided Under Workers' Compensation Insurance Coverage) and Chapters 1305 and 4201, Insurance Code. This harmonizing will result in a clearer, more consistent regulatory framework and, therefore, in better and more efficient compliance by system participants with these new requirements. Additionally, these amendments also clarify current Division policies regarding its treatment guidelines and exempted work hardening and work conditioning programs. This increased clarity should also result in better and more efficient compliance.

Furthermore, Mr. Zurek has determined that the costs of compliance associated with the proposal primarily result from existing requirements in Insurance Code, Chapter 4201 and the Department's proposed amendments to Subchapter U. For information on the possible costs of compliance with the Department's proposed amendments to Subchapter U, system participants should refer to the Cost Analysis for those proposed amendments published in the July 8, 2011, issue of the *Texas Register* (36 TexReg 4255). Mr. Zurek has also determined that any costs associated with the clarification that preauthorization is required for all exempted work hardening or work conditioning programs if the services will exceed or are not addressed by the Division's treatment guidelines in §134.600(a)(5) and §134.600(q)(4) primarily result from the Division's current reimbursement policies for these services and §137.100 of this title (relating to Treatment Guidelines).

Mr. Zurek has also determined, however, that the proposed amendments to §134.600(f)(7) and §134.600(j)(4) may result in additional costs to system participants who must comply with these proposed requirements. The proposed amendment to §134.600(f)(7), which requires requestors to include in a preauthorization request either the professional license number or the national provider identifier of the ordering or prescribing doctor if different from the requestor, will impose an additional cost upon requestors approximately equal to the amount of paid time the requestors must expend to acquire this information. These costs should be minimized by the requirements of §133.10 of this title (relating to Required Billing Forms/Formats), however, because it also requires health care providers to include either the professional license number or the national provider identifier of the ordering or prescribing doctor on all submitted medical bills. The Division, therefore, cannot accurately assign a specific monetary value to the total cost, because of the number of circumstantial variables affecting this cost, including the means through which a requestor elects to acquire this information and the extent to which requestors have already established procedures to acquire the information or previously acquired the applicable information pursuant to the requirements of §133.10 of this title.

Additionally, the proposed amendment to §134.600(j)(4), which requires insurance carriers to send an explanation of benefits to a prescribing doctor, if any, will impose an additional cost upon insurance carriers equal to cost of producing an additional copy of the explanation of benefits and mailing it to the prescribing doctor for every explanation of benefits sent to a prescribing doctor. The Division cannot, however, accurately assign a specific monetary value to the total cost, because of the number of circumstantial variables affecting this cost, including how often insurance carriers deny a medical bill based on an adverse determination and how often the health care provider who submitted the bill will be different from the prescribing doctor.

As required by the Government Code §2006.002(c), the Division has determined that the proposal may have an adverse economic effect on the small and micro-businesses that may be required to comply with the proposed amendments, because the Division estimate that 30 of the insurance carriers and 6,355 of the health care provider employers required to comply with this proposal may qualify as small or micro-businesses for the purposes of Government Code §2006.001. The cost of compliance with the proposal will not vary between large businesses and small or micro-businesses, however, and the Division's cost analysis and resulting estimated costs in the Public Benefit/Cost Note portion of this proposal is equally applicable to small or micro-businesses. Small and micro-business insurance carriers, therefore, will, as a result of these proposed amendments, be subject to the cost of providing an explanation of benefits to a prescribing doctor when applicable under §134.600(j)(4).

Because of this cost, the Division did consider as a regulatory alternative exempting small or micro-businesses from this requirement or offering an informal means through which a small or micro-business insurance carrier could contact a prescribing doctor

after denying a medical bill based on an adverse determination. Ultimately, the Division determined that neither of these alternatives was acceptable, because they would inhibit prescribing doctor's ability to request reconsideration of the denied health care service(s) and, therefore, potentially limit injured employees' access to all medically necessary and appropriate health care.

Furthermore, the Division considered exempting small or micro-business health care providers who are requesting preauthorization from the requirement that they include in a preauthorization request either the professional license number or the national provider identifier of the ordering or prescribing doctor if different from the requestor. The Division also considered permitting small or micro-business health care providers to use alternative identifying information in place of the prescribing doctor's professional license number or national provider identifier that would possibly be more readily available than that information. Ultimately, the Division determined that neither of these alternatives was acceptable, because they would first be incongruous with the billing requirements of §133.10 of this title that already requires all health care providers to submit this information when submitting medical bills. Second, neither of these alternatives would provide insurance carriers with the sufficient identifying information to ensure that an insurance carrier would be able to send an explanation of benefits to the prescribing doctor as required by §134.600(j)(4), and any limitation on insurance carriers' ability to comply with that section would inhibit a prescribing doctor's ability to request reconsideration of the denied health care service(s).

The Division has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. CST on September 27, 2011. Comments may be submitted via the internet through the Division's internet website at http://www.tdi.state.tx.state.tx.us/wc/rules/proposedrules/index.html, by email at rulecomments@tdi.state.tx.us or by mailing or delivering your comments to Maria Jimenez, Texas Department of Insurance, Division of Workers' Compensation, Workers' Compensation Counsel, MS-4D, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744-1645.

A public hearing on this proposal will be held on September 15, 2011 at 9:30 a.m. in the Tippy Foster Conference Room of the Texas Department of Insurance, Division of Workers' Compensation, 7551 Metro Center Drive, Austin, Texas 78744-1645. Those persons interested in attending the public hearing should contact the Texas Department of Insurance, Division of Workers' Compensation, Workers' Compensation Counsel, (512) 804-4703, to confirm the date, time, and location of the public hearing for this proposal. The Division offers reasonable accommodations for persons attending meetings, hearings, or educational events, as required by the Americans with Disabilities Act. If you require special accommodations, contact Idalia Salazar at (512) 804-4403 at least two days prior to the hearing date. The public hearing schedule will also be available on the Division's website at http://www.tdi.state.tx.state.tx.us/wc/rules/proposedrules/index.html.

The amendments are proposed under the Labor Code §§408.0043, 408.0044, 408.0045, 408.021, and 413.014 and Insurance Code §4201.054 and under the general authority of §402.00128 and §402.061. In relevant part, §408.0043 requires doctors performing utilization review, other than dentists and chiropractors, to meet certain professional specialty requirements. In relevant part, §408.0044 provides that a doctor performing utilization review who is a dentist and reviews a dental service in conjunction with a specific workers' compensation case must be licensed to practice dentistry. Section 408.0045 provides, in relevant part, that a doctor performing utilization who reviews a chiropractic service in conjunction with a specific workers' compensation case must be license to engage in the practice of chiropractic. Labor Code §408.021 provides, in relevant part, that an employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the injury as and when needed and is specifically entitled to health care that: (1) cures or relieves the effects naturally resulting from the compensable injury; (2) promotes recovery; or (3) enhances the ability of the employee to return to or maintain employment. Labor Code §413.014 provides that the commissioner by rule shall specify which health care treatments and services require express preauthorization or concurrent review by the insurance carrier. Insurance Code §4201.054 provides that the requirements of Chapter 4201 apply to utilization review of a health care services provided to a person eligible for workers' compensation medical benefits under Title 5, Labor Code. Insurance Code §4201.054 also provides that Title 5, Labor Code, prevails in the event of a conflict between Chapter 4201, Insurance Code, and Title 5, Labor Code.

Section 402.00128 lists the general powers of the Commissioner, including the power to hold hearings. Section 402.061 provides that the Commissioner shall adopt rules as necessary for the implementation and enforcement of this subtitle.

The following sections are affected by this proposal: §134.600--Labor Code §§408.0043, 408.0044, 408.0045, 408.021, and 413.014; Insurance Code §4201.054.

§134.600. Preauthorization, Concurrent Utilization Review, and Voluntary Certification of Health Care.

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

(1) Adverse determination: A determination by a utilization review agent made on behalf of any payor that the health care services provided or proposed to be provided to an injured employee are not medically necessary or appropriate. The term does not include a denial of health care services due to the lack of prospective or concurrent utilization review. For the purposes of this subchapter, an adverse determination does not include a determination that health care services are experimental or investigational.

(2) [~~(1)~~] Ambulatory surgical services: surgical services provided in a facility that operates primarily to provide surgical services to patients who do not require overnight hospital care.

(3) [~~(2)~~] Concurrent utilization review: a form of utilization review for [~~of~~] on-going health care listed in subsection (r) [~~(q)~~] of this section for an extension of treatment beyond previously approved health care listed in subsection (q) [~~(p)~~] of this section.

(4) [~~(3)~~] Diagnostic study: any test used to help establish or exclude the presence of disease/injury in symptomatic individuals [~~persons~~]. The test may help determine the diagnosis, screen for specific

disease/injury, guide the management of an established disease/injury, and formulate a prognosis.

(5) [~~(4)~~] Division exempted program: a Commission on Accreditation of Rehabilitation Facilities (CARF) accredited work conditioning or work hardening program that has requested and been granted an exemption by the division [~~Division~~] from preauthorization and concurrent utilization review requirements only for services that are consistent with the division's treatment guidelines.

(6) [~~(5)~~] Final adjudication: the commissioner [~~Commissioner~~] has issued a final decision or order that is no longer subject to appeal by either party.

(7) [~~(6)~~] Outpatient surgical services: surgical services provided in a freestanding surgical center or a hospital outpatient department to patients who do not require overnight hospital care.

(8) [~~(7)~~] Preauthorization: a form of prospective utilization review by a payor or its utilization review agent on health care services proposed to be provided to an injured employee. [~~prospective approval obtained from the insurance carrier (carrier) by the requestor or injured employee (employee) prior to providing the health care treatment or services (health care).~~]

(9) [~~(8)~~] Requestor: the health care provider or designated representative, including office staff or a referral health care provider/health care facility that requests preauthorization, concurrent utilization review, or voluntary certification.

(10) Utilization review: A system for prospective, concurrent, or retrospective review of the medical necessity and appropriateness of health care services and a system for prospective, concurrent, or retrospective review to determine the experimental or investigational nature of health care services. Utilization review does not include elective requests for clarification of coverage.

(11) Utilization review agent: An entity that conducts utilization review for:

(A) an employer with employees in this state who are covered under a health benefit plan or health insurance policy;

(B) a payor; or

(C) an administrator holding a certificate of authority under the Insurance Code Chapter 4151.

(12) [~~(9)~~] Work conditioning and work hardening: return to work rehabilitation programs as defined in Chapter 134 of this title (relating to Benefits--Guidelines for Medical Services [~~Service~~], Charges and Payments).

(b) When division-adopted [~~Division-adopted~~] treatment guidelines conflict with this section, this section prevails.

(c) The insurance carrier is liable for all reasonable and necessary medical costs relating to the health care:

(1) listed in subsection (q) [~~(p)~~] or (r) [~~(q)~~] of this section only when the following situations occur:

(A) an emergency, as defined in Chapter 133 of this title (relating to General Medical Provisions);

(B) preauthorization of any health care listed in subsection (q) [~~(p)~~] of this section that was approved prior to providing the health care;

(C) concurrent utilization review of any health care listed in subsection (r) [~~(q)~~] of this section that was approved prior to providing the health care; or

(D) when ordered by the commissioner [~~Commissioner~~]; or

(2) per subsection (s) [~~(r)~~] of this section when voluntary certification was requested and payment agreed upon prior to providing the health care for any health care not listed in subsection (q) [~~(p)~~] of this section.

(d) The insurance carrier is not liable under subsection (c)(1)(B) or (C), or (c)(2) of this section if there has been a final adjudication that the injury is not compensable or that the health care was provided for a condition unrelated to the compensable injury.

(e) The insurance carrier must [~~shall~~] designate accessible direct telephone and facsimile numbers and may designate an electronic transmission address for use by the requestor or injured employee to request preauthorization or concurrent utilization review during normal business hours. The direct number is required to [~~shall~~] be answered or the facsimile or electronic transmission address responded to by the utilization review agent [~~carrier~~] within the time limits established in subsection (i) of this section. The insurance carrier is also required to comply with any additional requirements of §19.2013 of this title (relating to Utilization Review Agent's Telephone Access).

(f) The requestor or injured employee must [~~shall~~] request and obtain preauthorization from the insurance carrier prior to providing or receiving health care listed in subsection (q) [~~(p)~~] of this section. Concurrent utilization review is required to [~~shall~~] be requested prior to the conclusion of the specific number of treatments or period of time preauthorized and approval must be obtained prior to extending the health care listed in subsection (r) [~~(q)~~] of this section. The request for preauthorization or concurrent utilization review is required to [~~shall~~] be sent to the insurance carrier by telephone, facsimile, or electronic transmission and, include the:

(1) name of the injured employee;

(2) [~~(1)~~] specific health care listed in subsection (q) [~~(p)~~] or (r) [~~(q)~~] of this section;

(3) [~~(2)~~] number of specific health care treatments and the specific period of time requested to complete the treatments;

(4) [~~(3)~~] information to substantiate the medical necessity of the health care requested;

(5) [~~(4)~~] accessible telephone and facsimile numbers and may designate an electronic transmission address for use by the insurance carrier;

(6) [~~(5)~~] name of the requestor and requestor's professional license number or national provider identifier, or injured employee's name if the injured employee is requesting the preauthorization; [~~provider performing the health care; and~~]

(7) name and professional license number or national provider identifier of the ordering or prescribing doctor if different than the requestor;

(8) name, professional license number or national provider identifier of the health care provider who will render the health care if different than paragraph (6) or (7) of this subsection and if known;

(9) [~~(6)~~] facility name, and the facility's national provider identifier if the proposed health care is to be rendered in a facility; and [~~and estimated date of proposed health care.~~]

(10) estimated date of proposed health care.

(g) A health care provider may submit a request for health care to treat an injury or diagnosis that is not accepted by the insurance carrier in accordance with Labor Code §408.0042.

(1) The request is required to [~~shall~~] be in the form of a treatment plan for a 60 day timeframe.

(2) The insurance carrier must [~~shall~~] review requests submitted in accordance with this subsection for both medical necessity and relatedness.

(3) If denying the request, the insurance carrier must [~~shall~~] indicate whether the denial is based on an adverse determination [~~medical necessity~~] and/or unrelated injury/diagnosis in accordance with subsection (n) of this section [~~(m)~~].

(4) The requestor or injured employee may file an extent of injury dispute upon receipt of an insurance [~~a~~] carrier's response which includes a denial due to unrelated injury/diagnosis, regardless of whether the denial is also based on an adverse determination [~~the issue of medical necessity~~].

(5) Requests which include a denial due to unrelated injury/diagnosis may not proceed to medical dispute resolution based on the denial of unrelatedness. However, requests which include a denial based on an adverse determination [~~medical necessity~~] may proceed to medical dispute resolution for the issue of medical necessity in accordance with subsection (p) of this section [~~(o)~~].

(h) Except for requests submitted in accordance with subsection (g) of this section, the insurance carrier must either [~~shall~~] approve or issue an adverse determination on each request received by the insurance carrier [~~deny requests based solely upon the medical necessity of the health care required to treat the injury~~], regardless of:

(1) unresolved issues of compensability, extent of or relatedness to the compensable injury;

(2) the insurance carrier's liability for the injury; or

(3) the fact that the injured employee has reached maximum medical improvement.

(i) The insurance carrier must [~~shall~~] contact the requestor or injured employee by telephone, facsimile, or electronic transmission with the decision to approve [~~or deny~~] the request; issue an adverse determination on a request; or deny a request under subsection (g) of this section because it relates to an unrelated injury/diagnosis as follows:

(1) within three working days of receipt of a request for preauthorization; or

(2) within three working days of receipt of a request for concurrent utilization review, except for health care listed in subsection (r)[~~(q)~~](1) of this section, which is due within one working day of the receipt of the request.

(j) The insurance carrier must [~~shall~~] send written notification of the approval of the request; adverse determination on [~~or denial of~~] the request; or denial of the request under subsection (g) of this section because it relates to an unrelated injury/diagnosis within one working day of the decision to the:

(1) injured employee;

(2) injured employee's representative; [~~and~~]

(3) requestor, if not previously sent by facsimile or electronic transmission; and[~~.~~]

(4) ordering or prescribing doctor, if different than the requestor.

(k) The insurance carrier's failure to comply with any timeframe requirements of this section results [~~shall result~~] in an administrative violation.

(l) The insurance carrier must [~~shall~~] not withdraw a preauthorization or concurrent utilization review approval once issued. The approval is required to [~~shall~~] include:

(1) the specific health care;

(2) the approved number of health care treatments and specific period of time to complete the treatments; [~~and~~]

(3) a notice of any unresolved dispute regarding the denial of compensability or liability or an unresolved dispute of extent of or relatedness to the compensable injury; and[~~.~~]

(4) the insurance carrier's preauthorization approval number that conforms to the standards described in §19.2010(b)(2) of this title (relating to Notice of Determinations Made in Prospective and Concurrent Utilization Review).

(m) In accordance with §19.2011 of this title (relating to Requirements Prior to Issuing Adverse Determination), the insurance [~~The~~] carrier must [~~shall~~] afford the requestor a reasonable opportunity to discuss the clinical basis for the adverse determination prior to issuing the adverse determination. For the purposes of this subsection, "reasonable opportunity" means at least one documented good faith attempt to contact the requestor no less than one working day prior to issuing an adverse determination. [~~a denial with the appropriate doctor or health care provider performing the review prior to the issuance of a preauthorization or concurrent review denial. The denial shall include:~~]

[~~(1) the clinical basis for the denial;~~]

[~~(2) a description or the source of the screening criteria that were utilized as guidelines in making the denial;~~]

[~~(3) the principle reasons for the denial, if applicable;~~]

(n) The notice of adverse determination must comply with the requirements of §19.2010 of this title. In addition, the notice is required to include

[~~(4)~~] a plain language description of the complaint and appeal processes, and if the denial was based on Labor Code §408.0042, include notification to the injured employee and health care provider of entitlement to file an extent of injury dispute in accordance with Chapter 141 of this title (relating to Dispute Resolution--Benefit Review Conference).[~~; and~~]

[~~(5) after reconsideration of a denial, the notification of the availability of an independent review.~~]

(o) [~~(n)~~] The insurance carrier must [~~shall~~] not condition an approval or change any elements of the request as listed in subsection (f) of this section, unless the condition or change is mutually agreed to by the health care provider and insurance carrier and is documented.

(p) [~~(o)~~] If the initial response is an adverse determination [~~a denial~~] of preauthorization or concurrent utilization review, the requestor or injured employee may request reconsideration orally or in writing. A request for reconsideration under this section constitutes an appeal for the purposes of §19.2012 of this title (relating to Appeal of Adverse Determination) and is required to be requested in accordance with this section and §19.2012 of this title. [~~If the initial response is a denial of concurrent review, the requestor may request reconsideration.~~]

(1) The requestor or injured employee may within 30 days [~~15 working days~~] of receipt of a written adverse determination [~~initial denial~~] request the insurance carrier to reconsider the adverse determination [~~denial~~] and must [~~shall~~] document the reconsideration request.

(2) The insurance carrier must [~~shall~~] respond to the request for reconsideration of the adverse determination [~~denial~~]:

(A) as soon as practicable but not later than the 30th day after receiving [~~within five working days of receipt of~~] a request for reconsideration of an adverse determination of [~~denied~~] preauthorization; or

(B) within three working days of receipt of a request for reconsideration of an adverse determination of [~~denied~~] concurrent utilization review, except for health care listed in subsection (r)[~~(q)~~](1) of this section, which is due within one working day of the receipt of the request;

(3) In addition to the requirements in this section and §19.2012 of this title, the insurance carrier's reconsideration procedures must include a provision that the period during which the reconsideration is to be completed must be based on the medical or clinical immediacy of the condition, procedure, or treatment, but may not exceed one calendar day from the date of receipt of all information necessary to complete the reconsideration.

(4) In accordance with §19.2011 and §19.2012 of this title, in any instance where the insurance carrier is questioning the medical necessity or appropriateness prior to issuance of an adverse determination on the request for reconsideration, the insurance carrier must afford the requestor a reasonable opportunity to discuss the proposed health care with a doctor or, in cases of a dental plan or chiropractic services, with a dentist or chiropractor respectively. The discussion is required to include, at a minimum, the clinical basis for the insurance carrier's decision. For the purposes of this subsection, "reasonable opportunity" has the same meaning assigned to the term in subsection (m) of this section.

(5) [~~(3)~~] The requestor or injured employee may appeal the denial of a reconsideration request regarding an adverse determination [~~medical necessity~~] by filing a dispute in accordance with Labor Code §413.031 and related division [~~Division~~] rules.

(6) [~~(4)~~] A request for preauthorization for the same health care may [~~shall~~] only be resubmitted when the requestor provides objective clinical documentation to support a substantial change in the injured employee's medical condition. The insurance carrier must [~~shall~~] review the documentation and determine if a substantial change in the injured employee's medical condition has occurred.

(q) [~~(p)~~] Non-emergency health care requiring preauthorization includes:

(1) inpatient hospital admissions, including the principal scheduled procedure(s) and the length of stay;

(2) outpatient surgical or ambulatory surgical services as defined in subsection (a) of this section;

(3) spinal surgery;

(4) all non-exempted work hardening or non-exempted work conditioning programs and all exempted work hardening or work conditioning programs if the proposed services exceed or are not addressed by the division's treatment guidelines as described in paragraph (12) of this subsection;

(5) physical and occupational therapy services, which includes those services listed in the Healthcare Common Procedure Coding System (HCPCS) at the following levels:

(A) Level I code range for Physical Medicine and Rehabilitation, but limited to:

(i) Modalities, both supervised and constant attendance;

(ii) Therapeutic procedures, excluding work hardening and work conditioning;

(iii) Orthotics/Prosthetics Management;

(iv) Other procedures, limited to the unlisted physical medicine and rehabilitation procedure code; and

(B) Level II temporary code(s) for physical and occupational therapy services provided in a home setting;

(C) except for the first six visits of physical or occupational therapy following the evaluation when such treatment is rendered within the first two weeks immediately following:

(i) the date of injury, or

(ii) a surgical intervention previously preauthorized by the insurance carrier;

(6) any investigational or experimental service or device for which there is early, developing scientific or clinical evidence demonstrating the potential efficacy of the treatment, service, or device but that is not yet broadly accepted as the prevailing standard of care;

(7) all psychological testing and psychotherapy, repeat interviews, and biofeedback, except when any service is part of a preauthorized or division [~~Division~~] exempted return-to-work rehabilitation program;

(8) unless otherwise specified in this subsection, a repeat individual diagnostic study:

(A) with a reimbursement rate of greater than $350 as established in the current Medical Fee Guideline, or

(B) without a reimbursement rate established in the current Medical Fee Guideline;

(9) all durable medical equipment (DME) in excess of $500 billed charges per item (either purchase or expected cumulative rental);

(10) chronic pain management/interdisciplinary pain rehabilitation;

(11) drugs not included in the applicable division [~~Division's~~] formulary;

(12) treatments and services that exceed or are not addressed by the commissioner's [~~Commissioner's~~] adopted treatment guidelines or protocols and are not contained in a treatment plan preauthorized by the carrier. This requirement does not apply to drugs prescribed for claims under §§134.506, 134.530 or 134.540 of this title (relating to Pharmaceutical Benefits);

(13) required treatment plans; and

(14) any treatment for an injury or diagnosis that is not accepted by the insurance carrier pursuant to Labor Code §408.0042 and §126.14 of this title (relating to Treating Doctor Examination to Define the Compensable Injury).

(r) [~~(q)~~] The health care requiring concurrent utilization review for an extension for previously approved services includes:

(1) inpatient length of stay;

(2) all non-exempted work hardening or non-exempted work conditioning programs and all exempted work hardening or work conditioning programs if the proposed services exceed or are not addressed by the division's treatment guidelines;

(3) physical and occupational therapy services as referenced in subsection (q)[~~(p)~~](5) of this section;

(4) investigational or experimental services or use of devices;

(5) chronic pain management/interdisciplinary pain rehabilitation; and

(6) required treatment plans.

(s) [~~(r)~~] The requestor and insurance carrier may voluntarily discuss health care that does not require preauthorization or concurrent utilization review under subsections (q) [~~(p)~~] and (r) [~~(q)~~] of this section respectively.

(1) Denial of a request for voluntary certification is not subject to dispute resolution for prospective review of medical necessity.

(2) The insurance carrier may certify health care requested. The insurance carrier and requestor are required to [~~shall~~] document the agreement. Health care provided as a result of the agreement is not subject to retrospective utilization review of medical necessity.

(3) If there is no agreement between the insurance carrier and requestor, health care provided is subject to retrospective utilization review of medical necessity.

(t) [~~(s)~~] An increase or decrease in review and preauthorization controls may be applied to individual doctors or individual workers' compensation claims[~~,~~] by the division [~~Division~~] in accordance with Labor Code §408.0231(b)(4) and other sections of this title.

(u) [~~(t)~~] The insurance carrier must [~~shall~~] maintain accurate records to reflect information regarding requests for preauthorization[~~,~~] or concurrent utilization, review approval/adverse determination [~~denial~~] decisions, and appeals, including requests for reconsideration and requests for medical dispute resolution, if any. The insurance carrier must [~~shall~~] also maintain accurate records to reflect information regarding requests for voluntary certification approval/denial decisions. Upon request of the division [~~Division~~], the insurance carrier must [~~shall~~] submit such information in the form and manner prescribed by the division [~~Division~~].

(v) For the purposes of this section, all utilization review must be performed by an insurance carrier's utilization review agent that is certified or registered by the Department to perform utilization review in accordance with Insurance Code, Chapter 4201 and Chapter 19, Subchapter U of this title (relating to Utilization Reviews for Health Care Provided Under Workers' Compensation Insurance Coverage).

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

Filed with the Office of the Secretary of State on July 18, 2011.

TRD-201102694
Dirk Johnson
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Proposed date of adoption: September 28, 2011
For further information, please call: (512) 804-4703

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 37. PUBLIC SAFETY AND CORRECTIONS

PART 7. TEXAS COMMISSION ON LAW ENFORCEMENT OFFICER STANDARDS AND EDUCATION

CHAPTER 223. ENFORCEMENT

37 TAC §223.15

The Texas Commission on Law Enforcement Officer Standards and Education withdraws the proposed amendments to §223.15 which appeared in the February 4, 2011, issue of the *Texas Register* (36 TexReg 537).

Filed with the Office of the Secretary of State on July 13, 2011.

TRD-201102667

Timothy A. Braaten

Executive Director

Texas Commission on Law Enforcement Officer Standards and Education

Effective date: July 13, 2011

For further information, please call: (512) 936-7713

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ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 355. REIMBURSEMENT RATES

SUBCHAPTER A. COST DETERMINATION PROCESS

1 TAC §§355.101 - 355.103, 355.105 - 355.107, 355.110

The Texas Health and Human Services Commission (HHSC) adopts amendments to §355.101, concerning Introduction; §355.102, concerning General Principles of Allowable and Unallowable Costs; §355.103, concerning Specifications for Allowable and Unallowable Costs; §355.105, concerning General Reporting and Documentation Requirements, Methods, and Procedures; §355.106, concerning Basic Objectives and Criteria for Audit and Desk Review of Cost Reports; §355.107, concerning Notification of Exclusions and Adjustments; and §355.110, concerning Informal Reviews and Formal Appeals, in its Reimbursement Rates chapter, without changes to the proposed text as published in the April 22, 2011, issue of the *Texas Register* (36 TexReg 2551) and will not be republished.

Background and Justification

Sections 355.101 - 355.111 in Subchapter A detail the cost determination process for nursing facilities, intermediate care facilities for persons with mental retardation and community-based programs where HHSC is responsible for calculating recommended reimbursements. HHSC, under its authority and responsibility to administer and implement rates, is updating Subchapter A to: 1) incorporate the School Health and Related Services program; 2) accommodate the utilization of a web-based cost reporting system; 3) formalize certain existing practices; 4) standardize the cost at which a purchase must be depreciated; 5) allow for the reporting of certain costs associated with workers' compensation; and 6) specify the repercussions of submitting an incomplete request for an informal review.

Comments

The 30-day comment period ended May 23, 2011. During this period, HHSC received no comments regarding the proposed amendments to these rules.

The amendments are adopted under the Human Resources Code, §32.021, which provides HHSC with the authority to adopt rules necessary to administer the federal medical assistance (Medicaid) program in Texas; Texas Government Code, §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out the commission's duties; and the Texas Government Code §531.021(a), which authorizes the Executive Commissioner to adopt rules for the operation and provision of health and human services by the health and human services agencies and to adopt or approve rates of payment required by law to be adopted or approved by a health and human services agency.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 11, 2011.

TRD-201102632
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Effective date: September 1, 2011
Proposal publication date: April 22, 2011
For further information, please call: (512) 424-6900

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TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 12. WEIGHTS AND MEASURES

SUBCHAPTER B. DEVICES

4 TAC §12.11

The Texas Department of Agriculture (department) adopts amendments to §12.11 concerning registration requirements for devices with changes to the proposal published in the May 6, 2011, issue of the *Texas Register* (36 TexReg 2809). The amendments to §12.11 are adopted to improve the accuracy of information available to consumers, clarify registration requirements and procedures for commercial weighing and measuring devices, and establish requirements for consumer information stickers. By law, a person who operates a weighing or measuring device used in commercial transactions shall register with the department according to procedures provided in §12.11 and remit required registration fees. The department issues a registration certificate that must be displayed to the public, tests these commercial weighing and measuring devices for accuracy, and makes information regarding test results available to the public. As a means of providing increased information to consumers about the registration requirements for and inspections conducted at the location, the department is adopting requirements for a consumer information sticker that will direct consumers to the most accurate information about the device and that must be placed on each weighing or measuring

device used in commercial transactions, except meters located on transport vehicles. The intent of the department is to discontinue placing inspection seals on devices since the consumer information stickers will direct the public to the most current available information regarding registration and inspection of weighing and measuring devices at the location. Amended §12.11(a) clarifies registration requirements for commercial weighing and measuring devices. Amended §12.11(b) - (h) clarifies procedures for registration and renewal of registration for commercial weighing and measuring devices. Amended §12.11(i) provides requirements for public notice of required registration for commercial weighing and measuring devices, including requirements for a consumer information sticker to be placed on devices.

Comments on the proposal were received from the Texas Petroleum Marketers and Convenience Store Association (TPCA) on the proposal. Comments were generally in support of changes in §12.11. Also in its comments, TPCA encouraged the department to consider whether the consumer information sticker should be required to be placed on devices not accessed by the public. TPCA pointed out that tank trucks which transport and dispense fuel for bulk sale to other businesses use meters located on these vehicles to dispense fuel from the vehicle's cargo tank. The comment further indicated that these devices are accessed by the operator of the tank truck and not a consumer. TPCA suggested that the amendment to §12.11 be clarified to exempt meters located on transport vehicles utilized for the bulk sale of fuels to commercial end users. The department accepts the comment and adopts as a change to the proposal an amendment to §12.11(i)(2)(A), which exempts a meter on a transport vehicle from the requirement to display a consumer information sticker. The department also adopts with changes to the proposal amendments to §12.11(i)(1)(A) and (B), clarifying that a certificate of registration issued by the department shall be prominently displayed so as to, during regular business hours, be in plain sight of, legible to, and physically accessible to the average consumer of weighed or measured products sold or offered for sale at the registered location. Section 12.11(i)(2)(E) is also adopted with a change from July 1 to September 1 of the date on which the consumer information stickers will be issued, to correspond with the effective date of §12.11.

The amended section is adopted under the Texas Agriculture Code (the Code), §13.021, which provides the department with the authority to adopt rules to establish standard weights and measures and bring about uniformity between the standards established under Chapter 13, and the standards established by federal law; and the Code, §13.1011, which provides the department with the authority to adopt rules related to registration of a person who operates a weighing or measuring device for a commercial transactions.

§12.11. Registration of Commercial Weighing and Measuring Devices.

(a) Registration Required. Except as provided by §12.13 of this chapter (relating to Devices Subject to Registration and Inspection; Exemptions), a person who intends to operate one or more devices for commercial transactions at a particular location shall, prior to using the devices for commercial transactions:

(1) register the location where the devices are to be operated; and

(2) provide the public notice of registration required by subsection (i) of this section.

(b) Registration by Owner. Notwithstanding subsection (a) of this section, the owner of a device operated by another person may register, under the owner's name, the location where the device is operated, provided that all devices of the same type at that location are covered by the same registration. Both the person registering the location and the operator of the devices at that location are responsible for ensuring that the devices and their operation comply with the requirements of this chapter and Chapter 13 of the Texas Agriculture Code.

(c) Procedure for Registration. The registration required by this section shall be obtained by:

(1) submitting to the department a complete and accurate application form prescribed by the department, using the most recent version of the application form and declaring the number of devices to be operated at the location; and

(2) remitting to the department the total fee for all devices to be operated at the location using the fee schedule in §12.12 of this chapter (relating to Fee Schedule for Commercial Weighing and Measuring Devices and Consumer Information Stickers).

(d) Annual Registration Renewal Required. The registration required by this section shall be renewed annually by:

(1) submitting to the department a complete and accurate registration renewal form, using the most current version of the form and declaring any increase or decrease in the number of devices installed if not previously reported under subsection (e) of this section;

(2) remitting to the department the total fee for all devices to be operated at the location, including any additional devices not previously reported, using the fee schedule in §12.12 of this chapter; and

(3) including within the total remitted fee any late fee adjustments required by §12.024 of the Texas Agriculture Code.

(e) Changes in the Number of Declared Devices at a Registered Location.

(1) Increase in the Number of Devices. If the number of devices of the same type being operated at a currently registered location changes, such that the number of devices to be operated at that location is greater than the number of devices previously declared for that location, the person who registered that location shall, prior to using the additional devices for commercial transactions:

(A) submit to the department a complete and accurate change of device form prescribed by the department, using the most recent version of the form and declaring the number of additional devices to be operated at that location; and

(B) remit to the department the total fee for all additional devices to be operated using the fee schedule in §12.12 of this chapter.

(2) Decrease in the Number of Installed Devices. If the number of devices of same type being operated at a currently registered location changes, such that the number of devices to be operated at that location is less than the number of devices previously declared for that location, the person who registered that location shall within 10 business days after any such device is removed submit to the department either a complete and accurate change of device form prescribed by the department or a registration renewal form, using the most recent version of either form and declaring the number of devices removed from that location. Fees previously remitted for registering a device subsequently removed will not be refunded, either in whole or in part.

(f) Expiration of Registration. Registrations obtained under this section expire on the date printed on the certificate of registration. A registration that has been expired for less than one year may be re-

newed using the procedure provided in subsection (d) of this section. A registration that has been expired for one year or longer cannot be renewed and a new registration must be obtained using the procedure provided in subsection (c) of this section.

(g) Registration Non-Transferable. A registration cannot be transferred to another person. If the person registering a location ceases to own or operate the devices at that location, the new owner or operator must register the location using the procedure in subsection (c) of this section.

(h) Change of Business Identity. For purposes of this section, a change in the registrant's franchise tax identification number, taxpayer identification number, legal name, or dba name constitutes a change of owner or operator and a prohibited attempt to transfer a registration.

(i) Public Notice of Registration Required. A person registering a location under this section shall prominently display at the location both the person's Weights and Measures Certificate of Registration and the required number of consumer information stickers in the manner provided by this subsection.

(1) Weights and Measures Certificate of Registration.

(A) Display of Original Certificate. The original certificate of registration issued by the department shall be prominently displayed within the main building, structure, or site at the registered location shown on the face of the certificate so as to, during regular business hours, be in plain sight of, legible to, and physically accessible to the average consumer of weighed or measured products sold or offered for sale at the registered location.

(B) Display of Certificate Copy at Satellite Location. If the registered location contains a site for consumer transactions that is not directly attached to and a part of the main building or structure, a copy of the original certificate of registration shall be displayed at each such separate site so as to, during regular business hours, be in plain sight of, legible to, and physically accessible to the average consumer of weighed or measured products sold or offered for sale at the separate site.

(C) Damaged, Destroyed, Lost, or Illegible Original Certificate or Copy. If an original or copy certificate becomes damaged, destroyed, lost, or otherwise illegible so that any part of the information on the certificate is no longer legible to the average consumer of weighed or measured products sold or offered for sale at the registered location, the original or copy shall be replaced as follows:

(i) Replacement of Original. The person registering the location shall within 10 days, after the original certificate requires replacement as provided by this subsection or upon written notice from the department that a replacement is required, contact the department for a replacement certificate at phone number (877) 542-2474 or email address: Licenseinquiry@TexasAgriculture.gov.

(ii) Replacement of Copy. The person registering the location shall within 24 hours after a certificate copy requires replacement as provided by this subsection, or immediately upon written notice from the department that a replacement is required, replace the copy with another copy of the original.

(2) Consumer Information Sticker. A person registering a location under this section shall prominently display a consumer information sticker at the location as follows:

(A) Motor Fuel Dispensing Devices. Except for meters on transport vehicles, a single consumer information sticker shall be affixed to each face of each dispensing unit, regardless of the number of devices incorporated into the unit, so as to be in plain sight of and legible to the average consumer accessing the unit for any purpose. A meter on a transport vehicle is exempt from the requirement to display a consumer information sticker.

(B) Other Devices. A single consumer information sticker shall be placed on or near each device so as to be in plain sight of and legible to the average consumer accessing the device for any purpose or for whom transactions are to be conducted by the operator using the device.

(C) Damaged, Destroyed, Lost, or Illegible Consumer Information Sticker. If a consumer information sticker becomes damaged, destroyed, lost, or otherwise illegible so that any part of the information on the sticker is no longer fully legible and in compliance with the requirements of this section, the sticker shall be replaced using the procedure in subparagraph (E) of this paragraph.

(D) Obstruction of Device Operation Prohibited. A consumer information sticker shall not be placed directly on a device if such placement does, will, or may affect the accuracy, readability, or lawful operation of the device.

(E) Obtaining Consumer Information Stickers. For devices registered with the department prior to September 1, 2011, consumer information stickers will be issued by the department via mail separate from the registration certificate, sufficient for the number of dispensing units (motor fuel dispensing devices) or devices (other devices) in operation at the registered location. For devices registered with the department on or after September 1, 2011, consumer information stickers will be issued via mail with the registration certificate, sufficient for the number of dispensing units (motor fuel dispensing devices) or devices (other devices) in operation at the registered location.

(F) Obtaining Replacement Consumer Information Stickers. Replacement consumer information stickers necessary to comply with subparagraph (C) of this paragraph shall be obtained from the department in quantities of eight stickers per page by:

(i) submitting to the department a complete and accurate replacement consumer information sticker request form prescribed by the department, using the most recent version of the form; and

(ii) remitting to the department the total fee using the fee schedule in §12.12 of this chapter.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 12, 2011.

TRD-201102639
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Effective date: September 1, 2011
Proposal publication date: May 6, 2011
For further information, please call: (512) 463-4075

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4 TAC §12.13, §12.14

The Texas Department of Agriculture (department) adopts new §12.13 and §12.14 concerning registration, inspection, and testing requirements for devices without changes to the proposal published in the May 6, 2011, issue of the *Texas Register* (36 TexReg 2809). New §12.13 is adopted to specify devices subject to registration and inspection by the department. New §12.14

is adopted to establish inspection and testing requirements for hopper scales operated in this state for commercial transactions. Adopted §12.13 specifies which commercial weighing and measuring devices must be registered with the department. The devices listed in new §12.13 for registration reflect the same devices that are currently registered with the department. All other devices are exempt from registration requirements. The devices adopted in new §12.13 for inspection by the department reflect the same devices that are currently inspected by the department. All other devices are exempt from inspection requirements, except hopper scales. A hopper scale is a type of scale used for weighing commodities in bulk, such as grain. New §12.14 specifies that each hopper scale shall be inspected for accuracy by a Texas-licensed private service company at least once every four years and provides other requirements for notice and reporting to the department. This new requirement is to enhance the accuracy assurance of the devices.

No comments were received on the adoption of the new sections.

The new sections are adopted under the Texas Agriculture Code (the Code), §13.021, which provides the department with the authority to adopt rules to establish standard weights and measures and bring about uniformity between the standards established under Chapter 13 and the standards established by federal law; the Code, §13.1011, which provides the department with the authority to adopt rules related to registration of a person who operates a weighing or measuring device for a commercial transactions; and the Code, §13.029, which provides the department with the authority to adopt rules exempting a weighing or measuring device from a requirement established under Chapter 13.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 12, 2011.

TRD-201102640
Dolores Alvarado Hibbs
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Texas Department of Agriculture
Effective date: August 1, 2011
Proposal publication date: May 6, 2011
For further information, please call: (512) 463-4075

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TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 83. COSMETOLOGISTS

16 TAC §83.108

The Texas Commission of Licensing and Regulation ("Commission") adopts amendments to an existing rule at 16 Texas Administrative Code (TAC), Chapter 83, §83.108, regarding the cosmetology program, without changes to the proposed text as published in the March 18, 2011, issue of the *Texas Register* (36 TexReg 1790), and will not be republished. The adoption takes effect August 1, 2011.

The amendments are necessary to define and create guidelines for the use of non-whirlpool foot basins, disposable spa liners, and portable whirlpool jets when providing manicure and pedicure services to cosmetology clients. The rule changes were recommended by the Cosmetology Advisory Board at its meeting on February 28, 2011.

Section 83.108 is amended by adding new subsections (f) - (l) which set out the definitions of non-whirlpool foot basins, disposable spa liners, and portable whirlpool jets. The subsections also list the sequential requirements for cleaning, disinfecting, and documenting the cleaning and disinfecting procedures along with requirements for retaining inspection records for a minimum of 60 days.

New subsection (f), which establishes procedures for the use of non-whirlpool foot basins, facilitates the business model of licensees who use basins, tubs, sinks, or bowls that hold non-circulating water when providing spa services.

Also, new subsections (h) - (j), which define and allow disposable spa liners and portable whirlpool jets, are designed to provide cost-efficient alternatives to salon owners who wish to reduce the operating costs that are incurred with the purchase of chemical cleaning solutions. Disposable spa liners, which must be discarded after use, eliminate the need to daily clean and disinfect spa basins and screens and also eliminate bi-weekly cleaning and disinfecting which will reduce time and costs.

The proposed amendments were published in the March 18, 2011, issue of the *Texas Register* (36 TexReg 1790). The 30-day public comment period closed on April 18, 2011. The Department received public comments from four interested parties: Total Transformation Institute of Cosmetology; Exposito School of Hair Design; a nail technician; and a salon owner. The following is a summary of the public comments received during the 30-day public comment period and the Department's responses to those public comments.

Comment: One commenter stated that disposable spa liners should not have to be cleaned, sanitized and logged the same as whirlpool spas.

Department Response: Section 83.108(j)(1) and (2) does not require that spa liners be cleaned and sanitized after use but instead requires that the spa liners be discarded.

Comment: Another commenter felt that there should be some way to ensure that disposable tub liners are actually discarded or decommissioned after use.

Department Response: Section 83.108(h) defines disposable spa liner as a plastic spa liner with a single non-adhesive heat-sealed drain tab which is discarded after a single use. Because the tab is heat sealed and non-adhesive, it cannot be re-used.

Comment: A third commenter was concerned that the rule needed clarification about who will be responsible for making and keeping the cleaning records for disposable spa liners.

Department Response: The rule makes no change to the current requirement that records be maintained by the salon.

Comment: The fourth commenter stated that the new requirement to maintain cleaning records for non-whirlpool foot spas is an unnecessary requirement because cleaning a basin is part of regular client sanitation.

Department Response: While §83.102(a) does require all cosmetology establishments to utilize clean and disinfected

equipment, the addition of specific cleaning procedures for non-whirlpool spas will add clarification to the rules regarding how non-whirlpool foot spas should be cleaned and disinfected. Uniformity of cleaning and disinfecting standards will ensure greater consumer safety to prospective clients who will also be able to check cleaning records to determine whether or not cleaning procedures have been followed.

The amendments are adopted under Texas Occupations Code, Chapters 51, 1602, and 1603, which authorize the Department's governing body, the Commission, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51, 1601, 1602 and 1603. 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 July 11, 2011.

TRD-201102631
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Effective date: August 1, 2011
Proposal publication date: March 18, 2011
For further information, please call: (512) 463-7348

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 97. PLANNING AND ACCOUNTABILITY

SUBCHAPTER AA. ACCOUNTABILITY AND PERFORMANCE MONITORING

19 TAC §97.1004

The Texas Education Agency adopts an amendment to §97.1004, concerning adequate yearly progress (AYP). The amendment is adopted without changes to the proposed text as published in the June 3, 2011, issue of the *Texas Register* (36 TexReg 3380) and will not be republished. The section establishes provisions related to AYP and sets forth the process for evaluating campus and district AYP status. The section also adopts the most recently published AYP guide. The amendment adopts applicable excerpts, *Sections II-V,* of the *2011 Adequate Yearly Progress Guide.* Earlier versions of the guide will remain in effect with respect to the school years for which they were developed.

Under the accountability provisions in the federal No Child Left Behind Act, all public school campuses, school districts, and the state are evaluated for AYP. Districts, campuses, and the state are required to meet AYP criteria on three measures: reading/English language arts, mathematics, and either graduation rate (for high schools and districts) or attendance rate (for elementary and middle/junior high schools). If a campus, district, or state receiving Title I, Part A, funds fails to meet AYP for two consecutive years, that campus, district, or state is subject to certain requirements such as offering supplemental educational services, offering school choice, or taking corrective actions. To implement these requirements, the agency developed the AYP guide.

Agency legal counsel has determined that the commissioner of education should take formal rulemaking action to place into the *Texas Administrative Code* procedures related to AYP. Through 19 TAC §97.1004, adopted effective July 14, 2005, the commissioner exercised rulemaking authority to establish provisions related to AYP and set forth the process for evaluating campus and district AYP status. Portions of each AYP guide have been adopted beginning with the 2004 AYP Guide, and the intent is to annually update 19 TAC §97.1004 to refer to the most recently published AYP guide.

The adopted amendment to 19 TAC §97.1004 updates the rule to adopt applicable excerpts, *Sections II-V,* of the *2011 Adequate Yearly Progress Guide.* These excerpted sections describe specific features of the system, AYP measures and standards, and appeals. In 2011, the U.S. Department of Education approved changes to specific components of the AYP system, including the areas addressed in the applicable excerpts of the 2011 AYP Guide. Examples of approved changes include the expansion of the current campus pairing application to identify campus performance results for pre-kindergarten and kindergarten campuses in order to issue an AYP evaluation and the continued use of 2010 graduation rate targets for 2011 AYP. In addition to these changes, the Texas Projection Measure has been discontinued for use in 2011 AYP evaluations as stated in the commissioner of education's final decision documents that were released on April 22, 2011.

In addition, subsection (d) was modified to specify that the AYP guide adopted for the school years prior to 2011-2012 will remain in effect with respect to those school years.

The adopted amendment establishes in rule the specific AYP procedures for 2011. Applicable procedures are to be adopted each year as annual versions of the AYP guide are published. The adopted amendment has no locally maintained paperwork requirements.

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

The public comment period on the proposal began June 3, 2011, and ended July 5, 2011. Following is a summary of the public comment received and the corresponding agency response regarding proposed amendment to 19 TAC §97.1004.

Comment: The Texas Charter Schools Association (TCSA) requested that the alternative graduation rate methodology currently allowed only by appeal be adopted as the default AYP graduation rate calculation for registered Alternative Education Accountability (AEA) campuses. The TCSA proposed that the current appeal option for AEA campuses continue to remain an opportunity for campuses that are eligible, but not registered, for AEA procedures. The TCSA also requested that an exception be added to the AYP graduation rate requirements for AEA campuses to ensure that no AEA campus, whether a traditional public school campus or a charter public school campus, is prohibited from meeting AYP solely for not achieving the graduation rate standard.

Agency Response: The agency disagrees and maintains language as published as proposed for 2011. Federal regulations (34 Code of Federal Regulations, §200.14 and §200.19 et seq.) originally published after passage of the No Child Left Behind Act of 2001 require each state to include the graduation rate as a component of AYP for high schools and, therefore, calculate a graduation rate for all public high schools in the state. Regulations published on October 29, 2008, establish a uniform measure of calculating high school graduation rate that is comparable across states. These final regulations outline specific criteria for calculating an adjusted cohort graduation rate and options for states to propose "extended-year adjusted cohort graduation rates" for use in AYP. Federal regulations do not currently offer states the flexibility to apply differentiated graduation rate calculations for campuses that serve a high number of students considered to be at risk of dropping out of school. Final federal regulations published on October 29, 2008, are available on the U.S. Department of Education website at http://www2.ed.gov/policy/elsec/reg/title1/index.html.

The agency has determined that implementing the suggestions offered by the TCSA would violate current federal regulations as published on October 29, 2008. The agency will continue to provide AEA eligible campuses an opportunity to appeal for the application of the alternative graduation rate methodology.

The amendment is adopted under the Texas Education Code (TEC), §7.055(b)(32), which authorizes the commissioner to perform duties in connection with the public school accountability system as prescribed by TEC, Chapter 39; TEC, §39.073, as this section existed before amendment by House Bill 3, 81st Texas Legislature, 2009, which authorizes the commissioner to determine how all indicators adopted under TEC, §39.051(b), may be used to determine accountability ratings; and TEC, §39.075(a)(4), as this section existed before amendment by House Bill 3, 81st Texas Legislature, 2009, which authorizes the commissioner to conduct special accreditation investigations in response to state and federal program requirements.

The amendment implements the TEC, §§7.055(b)(32), 39.073, and 39.075(a)(4).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 13, 2011.

TRD-201102673
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Effective date: August 2, 2011
Proposal publication date: June 3, 2011
For further information, please call: (512) 475-1497

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SUBCHAPTER EE. ACCREDITATION STATUS, STANDARDS, AND SANCTIONS

19 TAC §97.1072

The Texas Education Agency (TEA) adopts an amendment to §97.1072, concerning residential facility monitoring. The amendment is adopted without changes to the proposed text as published in the June 3, 2011, issue of the *Texas Register* (36 TexReg 3381) and will not be republished. The section implements the requirements of the Texas Education Code (TEC), the Individuals with Disabilities Education Improvement Act (IDEA 2004) Amendments of 2004, and 34 Code of Federal Regulations (CFR), which require the agency to adopt and implement a comprehensive system for monitoring school district compliance with federal and state laws relating to special education. The adoption revises procedures for the administration of residential facility (RF) monitoring for public school districts and open-enrollment charter schools related to programs provided to students with disabilities residing in RFs. Specifically, the rule action adopts revisions to the Residential Facility Monitoring (RFM) Manual, dated August 2011, which describe updated methods and strategies for implementing the RF monitoring system.

On April 15, 2004, the United States District Court issued a decision in the *Angel G. v. Texas Education Agency* lawsuit and found that the TEA must develop a new monitoring system to ensure that students with disabilities residing in RFs received a free, appropriate public education (FAPE). On May 17, 2004, the TEA filed a Notice of Appeal in the United States Court of Appeals for the Fifth Circuit. During the pendency of the appeal, the parties agreed to the entry of a consent decree to resolve the disputes and to achieve a common goal of developing and implementing an effective monitoring system. The consent decree was filed with the District Court on August 8, 2005, and automatically expired on December 31, 2010, given that neither party requested that the District Court extend the term of the consent decree. During the term of the consent decree, the TEA developed and implemented the monitoring system required under the decree.

Although the *Angel G.* consent decree expired on December 31, 2010, the TEA identified an ongoing need to oversee and monitor the programs provided to students with disabilities who reside in RFs. Therefore, in December 2010, the commissioner adopted in rule a system of RF monitoring to be implemented after the expiration of the consent decree. Adopted new 19 TAC §97.1072, Residential Facility Monitoring; Determinations, Investigations, and Sanctions, established a residential facility monitoring (RFM) system through which the TEA would meet its federal and state special education monitoring obligations for the RF population.

The TEA implemented the newly adopted RF monitoring rule throughout the 2010-2011 school year but, through this rule adoption, revises the RFM system in response to identified needs and feedback from RFM stakeholders, including representatives of school districts, charter schools, education service centers, and advocacy organizations. Specifically, the adopted amendment to 19 TAC §97.1072 amends the rule to adopt the RFM Manual, dated August 2011, describing graduated monitoring activities and related interventions and/or sanctions, including specific criteria, standards, and procedures for implementation. The RFM system continues to evolve from the compliance-based, on-site RFM model prescribed under the consent decree to a system that allows for a continuum of intervention activities, including local reviews, desk analyses, and on-site visits, based on the results of agency data analyses. The revisions more closely align the RFM system with other monitoring systems implemented by the agency and allow for an expanded focus on program effectiveness and continuous improvement.

The rule adoption also establishes that the specific criteria, standards, and procedures used in the RFM manual adopted for use prior to 2011 remain in effect for all purposes with respect to the applicable period of adoption.

Consistent with current procedures, districts subject to the RFM system have a continuing obligation to submit data regarding RF students with disabilities to the TEA. The rule adoption also implements graduated stages of intervention, some of which involve local data analysis, desk reviews, and improvement and corrective action planning, the results of which may be required to be submitted to the TEA. Districts and campuses have continued reporting obligations related to required interventions and sanctions under this action. However, the TEA will continue to seek to reduce, to the extent possible, the data reporting obligations previously associated with the requirements of the consent decree. The adopted rule action has no new locally maintained paperwork requirements. Districts will continue to be required to maintain documentation related to completion of required RFM intervention activities and/or implementation of any required RFM sanctions.

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

The public comment period on the proposal began June 3, 2011, and ended July 5, 2011. No public comments were received.

The amendment is adopted under the Texas Education Code, §29.010, which authorizes the agency to adopt and implement a comprehensive system for monitoring school district compliance with federal and state laws relating to special education; Title 34 Code of Federal Regulations (CFR) §300.149, which requires the agency to have in effect policies and procedures to ensure that it meets its general supervision responsibilities related to the education of children with disabilities and complies with monitoring and enforcement requirements under Part B of the Individuals with Disabilities Education Act (IDEA) and implementing regulations; and Title 34 CFR §300.600, which requires the agency to monitor the implementation and enforce the requirements of IDEA, Part B, including monitoring of local education agencies to improve educational results and functional outcomes for children with disabilities and ensure that program requirements are met.

The amendment implements the Texas Education Code, §29.010, and Title 34 CFR §300.149 and §300.600.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 13, 2011.

TRD-201102674
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Effective date: August 2, 2011
Proposal publication date: June 3, 2011
For further information, please call: (512) 475-1497

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 65. WILDLIFE

SUBCHAPTER N. MIGRATORY GAME BIRD PROCLAMATION

31 TAC §65.315, §65.319

The Texas Parks and Wildlife Commission adopts amendments to §65.315 and §65.319, concerning the Migratory Game Bird Proclamation. Section 65.315, concerning Open Seasons and Bag and Possession Limits--Early Season, is adopted with changes to the proposed text as published in the May 27, 2011, issue of the *Texas Register* (36 TexReg 3265). Section 65.319, concerning Extended Falconry Season--Early Season Species, is adopted without changes and will not be republished. The proposed text as published in the May 27, 2011, issue of the *Texas Register* also included amendments to §§65.318, 65.320, and 65.321. The proposed amendments to §§65.318, 65.320, and 65.321 will be considered for adoption by the Texas Parks and Wildlife Commission (commission) on August 25, 2011. After consideration of the remaining sections by the Commission, a separate notice of adoption will be published. Because of the timing of the seasons and bag limits established in §65.315 and §65.319, these amendments have been adopted by order of the department's executive director as authorized by Parks and Wildlife Code, §64.022, and 31 TAC §65.313(d).

The change to §65.315, concerning Open Seasons and Bag and Possession Limits--Early Season, adds the season dates for the early-season take of Canada geese.

The amendment to §65.315, concerning Open Seasons and Bag and Possession Limits--Early Season, retains the season structure and bag limits from last year and adjusts the season dates for early-season species of migratory game birds to account for calendar shift (i.e., to ensure that seasons open on the desired day of the week, since dates from a previous year do not fall on the same days in following years).

The United States Fish and Wildlife Service (Service) issues annual frameworks for the hunting of migratory game birds. Regulations adopted by individual states may be more restrictive than the federal frameworks, but may not be less restrictive. Prior to 2009, September 20 was the earliest day that the South Zone dove season could be opened under frameworks issued by the Service, except the four days of half-day hunting in the Special White-winged Dove Area (SWWDA). Since hunter and landowner preference historically has been for the season to open on the earliest date possible, irrespective of where that day falls during the week, this structure resulted in the periodic occurrence of opening day on days other than a Friday, the preferred choice of hunters and landowners for opening the season. In 2009, the Service authorized the department to open the South Zone on the Friday nearest September 20, but no earlier than September 17. The intent was to insure that the season always opened on the Friday closest to September 20. However, this formulation results in the periodic occurrence (including 2011) of the Friday closest to September 20 falling on September 23. To address this anomaly the department requested Service approval to set the opening day for the South Zone dove season on the Friday before the third Saturday in September. In this fashion, the season would always open on a Friday and would never open later than September 20. The Service did not ap-

prove the requested change and the season will therefore open on September 23, as proposed.

The amendment to §65.315 also implements a 16-day statewide teal season to run from September 10 - 25, 2011, which is the maximum allowable time under the federal frameworks.

The amendment to §65.315 also implements a 16-day early season for Canada geese. Populations of non-migratory Canada geese have been growing in northeast Texas, primarily in and along the Red River valley. Non-migratory geese are geese that do not exhibit the characteristically long north-south seasonal migration flights, instead remaining resident in a single general area on a year-round basis. In other parts of the country, particularly in the Atlantic Flyway, populations of non-migratory geese have rapidly expanded, causing nuisance damage, navigation hazards, crop depredation, and other undesirable effects. Although Canada goose populations in Texas are not at levels similar to those in the Atlantic Flyway, they have become numerous enough to justify a 16-day September Canada goose season in the East Goose Zone, to run concurrently with September teal season. The intent of the new season is to manage Canada geese while creating additional hunting opportunity. The season was proposed as an amendment to §65.318, concerning Open Seasons and Bag and Possession Limits--Late Season, which was also published in the May 27, 2011, issue of the *Texas Register* (36 TexReg 1265). The season is being adopted as part of §65.315 because if it were to be adopted along with the rest of the provisions affecting late-season species in late August, it could not take effect in time to take advantage of the dates offered under the federal frameworks.

The amendment to §65.319, concerning Extended Falconry Season--Early Season Species, adjusts season dates to consolidate, where possible, seasons for woodcock, gallinules, rails, and moorhens with the extended falconry season for ducks. The amendment adjusts falconry seasons for dove to reflect calendar shift.

The amendments are generally necessary to implement commission policy to provide the greatest hunter opportunity possible, consistent with hunter and landowner preference for starting dates and segment lengths, under frameworks issued by the Service.

The department received 13 comments opposing adoption of the portion of proposed §65.315 that establishes season dates and bag limits for doves in the North Zone. Six commenters articulated a specific reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

One commenter opposed adoption and stated that a split season is unnecessary because there are not enough birds to hunt. The department disagrees with the comment and responds that hunter surveys indicate a preference for a split season and that there is no biological evidence that dove populations are at a status that prevents sustainability. No changes were made as a result of the comment.

Three commenters opposed adoption and stated that the first segment should run to October 31. The department disagrees with the comments and responds that season structures have historically been set in such a fashion as to allow greater hunting opportunity during the Christmas holiday break, when more people, especially youth, are able to take advantage of opportunity, and that hunter preference is to have a late segment that is roughly 15 days in length. The department also notes that removing a week from the winter segment would reduce holiday hunting opportunity. No changes were made as a result of the comments.

One commenter opposed adoption and stated that the season should open sooner. The department disagrees with the comment and responds that the season opens on the earliest day allowable under federal frameworks. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the winter segment should open on December 26 rather than December 23. The department disagrees with the comment and responds that season structures have historically been set in such a fashion as to allow greater hunting opportunity during the Christmas break, when more people, especially youth, are able to take advantage of opportunity, and that hunter preference is to have a late segment that is roughly 15 days in length. No changes were made as a result of the comment.

The department received 57 comments supporting adoption of the proposed amendment.

The department received 12 comments opposing adoption of the portion of proposed §65.315 that establishes season dates and bag limits for doves in the Central Zone. Nine commenters articulated a specific reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

Three commenters opposed adoption and stated that the first segment should run until October 31. The department disagrees with the comments and responds that season structures have historically been set in such a fashion as to allow greater hunting opportunity during the Christmas holiday break, when more people, especially youth, are able to take advantage of opportunity, and that hunter preference is to have a late segment that is roughly 15 days in length. The department also notes that removing a week from the winter segment would reduce holiday hunting opportunity. No changes were made as a result of the comments.

One commenter opposed adoption and stated that the dates should be the same as in 2009. The department assumes the comment is intended to oppose the opening of the winter split before Christmas (in 2009, the winter segment opened the day after Christmas, otherwise there is no difference between the 2009 and 2011 seasons, other than calendar shift). The department disagrees with the comments and responds that season structures have historically been set in such a fashion as to allow greater hunting opportunity during the Christmas holiday break, when more people, especially youth, are able to take advantage of opportunity, and that hunter preference is to have a late segment that is roughly 15 days in length. The department also notes that removing a week from the winter segment would reduce holiday hunting opportunity. No changes were made as a result of the comments.

Two commenters opposed adoption and stated that the winter segment should open on December 26 rather than December 23. The department disagrees with the comments and responds that season structures have historically been set in such a fashion as to allow greater hunting opportunity during the Christmas break, when more people, especially youth, are able to take advantage of opportunity, and that hunter preference is to have a late segment that is roughly 15 days in length. No changes were made as a result of the comments.

One commenter opposed adoption and stated that the season should open sooner. The department disagrees with the comment and responds that the season opens on the earliest day allowable under federal frameworks. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the opening day should be later because there are no birds on September 1. The department disagrees with the comment and responds that hunter and landowner preference is for the season to open on the earliest day possible under the federal frameworks. The department also notes that because the migratory behavior of doves is partially the result of reaction to highly variable environmental factors, there is no way to select an opening date, in advance, that will result in perceived favorable hunting opportunity. No changes were made as a result of the comment.

One commenter opposed adoption and stated that both segments of the split season are too short and should be lengthened. The department disagrees with the comment and responds that the season as adopted represents the maximum number of days that the federal frameworks allow for dove hunting in Texas. No changes were made as a result of the comment.

The department received 61 comments supporting adoption of the proposed amendment.

The department received 29 comments opposing adoption of the portion of proposed §65.315 that establishes season dates and bag limits for doves in the Central Zone. Twenty-three commenters articulated a specific reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

Eleven commenters opposed adoption and stated that the season should begin on September 16. The department agrees with the comments but responds that the earliest opening date allowed under the federal frameworks is September 23. No changes were made as a result of the comments.

One commenter opposed adoption and stated that the season should open on September 17. The department disagrees with the comment and responds that the earliest opening date allowed under the federal frameworks is September 23. No changes were made as a result of the comments.

Four commenters opposed adoption and stated that the opening segment should be longer, even if it means making the winter segment shorter. The department disagrees with the comments and responds that season structures have historically been set in such a fashion as to allow greater hunting opportunity during the Christmas break, when more people, especially youth, are able to take advantage of opportunity, and that hunter preference is to have a late segment that is roughly 15 days in length. The department also notes that removing a week from the winter segment would reduce holiday hunting opportunity. No changes were made as a result of the comments.

Two commenters opposed adoption and stated that the season should open earlier. The department agrees with the comment but responds that the earliest opening date allowed under the federal frameworks is September 23. No changes were made as a result to the comment.

One commenter opposed adoption and stated that the season should begin on the first day that hunting is allowed under the federal frameworks. The department agrees with the comment and responds that this year, the earliest day that hunting is allowed under the federal frameworks is September 23. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the season should open on a Friday closer to the middle of the month. The department agrees with the comment but responds that the earliest date allowed under the federal frameworks is September 23.

One commenter opposed adoption and stated that the season should begin September 30. The department disagrees with the comment and responds that hunter and landowner preference is for the earliest opening date possible under the federal frameworks.

One commenter opposed adoption and stated that the season should open September 1. The department disagrees with the comment and responds that under the federal frameworks, the earliest day that the season can open in the South Zone is September 23.

The department received 52 comments supporting adoption of the proposed amendment.

The department received four comments opposing adoption of the portion of proposed §65.315 that establishes season dates and bag limits for doves in the Special White-Winged Dove Area. Two commenters articulated a specific reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

One commenter opposed adoption and stated that dove season should be open in all counties. The department agrees with the comment and responds that there is a dove season in every county in Texas. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the season in the Special White-winged Dove Area should be the same as the rest of the South Zone. The department disagrees with the comment and responds that hunter and landowner preference in South Texas favors the special white-winged dove season, which is a longstanding tradition in that part of the state. No changes were made as a result of the comment.

The department received 39 comments supporting adoption of the proposed amendment.

The department received 15 comments opposing adoption of the portion of proposed §65.315 that establishes season dates and bag limits for teal. Nine commenters articulated a specific reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

One commenter opposed adoption and stated that the teal season should be eliminated and the 16 days added to the end of duck season. The department disagrees with the comment and responds that hunter preference favors an early teal season and the 16 days of teal season cannot be added to the end of the duck season because duck seasons in Texas are already at the maximum number of days allowed under the federal frameworks. No changes were made as a result of the comment.

Nine commenters opposed adoption and stated that a nine-day season is preferable to a 16-day season if the seven days are applied to the regular duck season. The department disagrees with the comments and responds that hunter preference favors a 16-day season (if offered by the Service) and teal season opportunity cannot be added to the end of the duck season because duck seasons in Texas are already at the maximum number of

days allowed under the federal frameworks. No changes were made as a result of the comments.

One commenter opposed adoption and stated that tree ducks and whistling ducks should be added to the bag limit. The department disagrees with the comment and responds that under the federal frameworks, the only species that can be hunted during the early teal season are teal ducks. No changes were made as a result of the comment.

Two commenters opposed adoption and stated that teal season days should not lead to a reduction in the length of the regular duck season. The department disagrees with the comments and responds that hunting opportunity for teal in Texas does not affect the number of days offered for duck hunting under the federal frameworks. No changes were made as a result of the comments.

One commenter opposed adoption and stated that teal season should be in early October, there should be a six-bird daily bag limit, and that whistling ducks should be part of the bag composition. The department disagrees with the comment and responds that under the federal frameworks, the early teal season cannot run past September 30, the bag limit cannot exceed four birds, and the season must be for teal ducks only. No changes were made as a result of the comment.

The department received 72 comments supporting adoption of the proposed amendment.

The department received four comments opposing adoption of the portion of proposed §65.315 that establishes season dates and bag limits for doves in the Central Zone. Nine commenters articulated a specific reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

One commenter opposed adoption and stated that rail seasons should be concurrent with duck season.

One commenter opposed adoption and stated that snipe season should be concurrent with early teal season.

The department received 29 comments supporting adoption of the proposed amendment.

The department received one comment opposing adoption of the portion of proposed §65.315 that establishes season dates and bag limits for the take of early-season species by means of the falconry; however, the commenter did not offer a specific reason or rationale for opposing adoption.

The department received 10 comments supporting adoption of the proposed amendment.

The department received one comment opposing adoption of the early Canada goose season; however, the commenter did not offer a specific reason or rationale for opposing adoption.

The department received six comments supporting adoption of the early Canada goose season.

The amendments are adopted under Parks and Wildlife Code, Chapter 64, which authorizes the Commission and the Executive Director to provide the open season and means, methods, and devices for the hunting and possessing of migratory game birds.

§65.315. Open Seasons and Bag and Possession Limits--Early Season.

(a) Rails.

(1) Dates: September 10 - 25, 2011 and November 5 - December 28, 2011.

(2) Daily bag and possession limits:

(A) king and clapper rails: 15 in the aggregate per day; 30 in the aggregate in possession.

(B) sora and Virginia rails: 25 in the aggregate per day; 25 in the aggregate in possession.

(b) Dove seasons.

(1) North Zone.

(A) Dates: September 1 - October 23, 2011 and December 23, 2011 - January 8, 2012.

(B) Daily bag limit: 15 mourning doves, white-winged doves, and white-tipped (white-fronted) doves in the aggregate, including no more than two white-tipped doves per day.

(C) Possession limit: 30 mourning doves, white-winged doves, and white-tipped doves in the aggregate, including no more than four white-tipped doves in possession.

(2) Central Zone.

(A) Dates: September 1 - October 23, 2011 and December 23, 2011 - January 8, 2012.

(B) Daily bag limit: 15 mourning doves, white-winged doves, and white-tipped (white-fronted) doves in the aggregate, including no more than two white-tipped doves per day.

(C) Possession limit: 30 mourning doves, white-winged doves, and white-tipped doves in the aggregate, including no more than four white-tipped doves in possession.

(3) South Zone.

(A) Dates: Except in the special white-winged dove area as defined in §65.314 of this title (relating to Zones and Boundaries for Early Season Species), September 23 - October 30, 2011 and December 23, 2011 - January 23, 2012.

(B) Daily bag limit: 15 mourning doves, white-winged doves, and white-tipped (white-fronted) doves in the aggregate, including no more than two white-tipped doves per day.

(C) Possession limit: 30 mourning doves, white-winged doves, and white-tipped doves in the aggregate, including no more than four white-tipped doves in possession.

(4) Special white-winged dove area.

(A) Dates: September 3, 4, 10, and 11, 2011.

(i) Daily bag limit: 15 white-winged doves, mourning doves, and white-tipped (white-fronted) doves, in the aggregate to include no more than four mourning doves and two white-tipped doves per day.

(ii) Possession limit: 30 white-winged doves, mourning doves, and white-tipped doves in the aggregate to include no more than eight mourning doves and four white-tipped doves in possession.

(B) Dates: September 23 - October 30, 2011 and December 23, 2011 - January 19, 2012.

(i) Daily bag limit: 15 white-winged doves, mourning doves, and white-tipped (white-fronted) doves, in the aggregate to include no more than two white-tipped doves per day;

(ii) Possession limit: 30 white-winged doves, mourning doves, and white-tipped doves in the aggregate to include no more than four white-tipped doves in possession.

(c) Gallinules.

(1) Dates: September 10 - 25, 2011 and November 5 - December 28, 2011.

(2) Daily bag and possession limits: 15 in the aggregate per day; 30 in the aggregate in possession.

(d) September teal-only season.

(1) Dates: September 10 - 25, 2011.

(2) Daily bag and possession limits: four in the aggregate per day; eight in the aggregate in possession.

(e) Red-billed pigeons, and band-tailed pigeons. No open season.

(f) Shorebirds. No open season.

(g) Woodcock: December 18, 2011 - January 31, 2012. The daily bag limit is three. The possession limit is six.

(h) Wilson's snipe (Common snipe): November 5, 2011 - February 19, 2012. The daily bag limit is eight. The possession limit is 16.

(i) Canada geese: September 10 - 25, 2011 in the Eastern Goose Zone as defined in §65.317(b) of this title (relating to Zones and Boundaries for Late Season Species). The daily bag limit is three. The possession limit is six.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 12, 2011.

TRD-201102638
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Effective date: August 1, 2011
Proposal publication date: May 27, 2011
For further information, please call: (512) 389-4775

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION

SUBCHAPTER B. NATURAL GAS

34 TAC §3.24

The Comptroller of Public Accounts adopts new §3.24, concerning exemption of gas incidentally produced in association with the production of geothermal energy, without changes to the proposed text as published in the May 27, 2011, issue of the *Texas Register* (36 TexReg 3266). The new section provides a description of the tax credit for gas incidentally produced in association with the production of geothermal energy and the process for filing an application for approval of the credit. This section is being adopted pursuant to House Bill 4433, 81st Legislature, 2009.

No comments were received regarding adoption of the new section.

This new rule is adopted under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The new rule implements Tax Code, §201.060.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 13, 2011.

TRD-201102656
Ashley Harden
General Counsel
Comptroller of Public Accounts
Effective date: August 2, 2011
Proposal publication date: May 27, 2011
For further information, please call: (512) 475-0387

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SUBCHAPTER C. CRUDE OIL PRODUCTION TAX

34 TAC §3.32

The Comptroller of Public Accounts adopts new §3.32, concerning exemption of oil incidentally produced in association with the production of geothermal energy, without changes to the proposed text as published in the May 27, 2011, issue of the *Texas Register* (36 TexReg 3267). The new section provides a description of the tax credit for crude oil incidentally produced in association with the production of geothermal energy and the process for filing an application for approval of the credit. This section is being adopted pursuant to House Bill 4433, 81st Legislature, 2009.

No comments were received regarding adoption of the new section.

This new rule is adopted under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The new rule implements Tax Code, §202.063.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 13, 2011.

TRD-201102657
Ashley Harden
General Counsel
Comptroller of Public Accounts
Effective date: August 2, 2011
Proposal publication date: May 27, 2011
For further information, please call: (512) 475-0387

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SUBCHAPTER S. MOTOR FUEL TAX

34 TAC §3.443

The Comptroller of Public Accounts adopts an amendment to §3.443, concerning diesel fuel tax exemption for water, fuel ethanol, biodiesel, renewable diesel, and biodiesel and renewable diesel mixtures, with non-substantive changes to the proposed text as published in the May 13, 2011, issue of the *Texas Register* (36 TexReg 3070).

This amendment incorporates a change in agency policy regarding the percentage of the volume of water, fuel ethanol, biodiesel, and renewable diesel blended with petroleum diesel fuel that must be disclosed on an invoice, storage tank, and retail pump. The percentage of the volume of water, fuel ethanol, biodiesel, and renewable diesel blended with petroleum diesel fuel may be rounded to the nearest whole percent. Subsections (d), (e), and (g) are amended to replace "to the nearest tenth of one percent" with "to the nearest whole percentage" and provide an example of rounding to the nearest whole percent.

Comments supporting the adoption of the amendment were received from the National Biodiesel Board, Renewable Energy Group, Valero Energy Corporation, and the Texas Petroleum Marketers and Convenience Store Association. The Texas Petroleum Marketers and Convenience Store Association also made a comment regarding the intent the tax exemption provided for biodiesel and renewable diesel and the volume of water, fuel grade ethanol, biodiesel or renewable diesel that is blended with taxable petroleum based diesel fuel. A non-substantive change to the proposed text was made in subsection (c) to clarify that the intent of the tax exemption is for the ultimate consumer or user of the diesel fuel, not the seller. The Texas Petroleum Marketers and Convenience Store Association also made a comment regarding subsection (f) suggesting that the invoice and labeling alternative provided to dealers should also be made available to operators of bulk storage facilities or bulk plants. The comptroller declines to amend the proposed text in subsection (f). Allowing a bulk plant operator the alternative to issue invoices under subsection (f) would then deny a dealer the ability to accurately label the diesel fuel product they are selling.

Subsection (d)(3)(C) is corrected to include the word percentage in "whole percentage" that was left off the original proposal.

The amendment is adopted under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of Tax Code, Title 2.

The amendment implements Tax Code, §162.204.

§3.443. Diesel Fuel Tax Exemption for Water, Fuel Ethanol, Biodiesel, Renewable Diesel, and Biodiesel and Renewable Diesel Mixtures.

(a) This rule applies only to motor fuel transactions that take place on or after January 1, 2004. Motor fuel transactions that occur prior to January 1, 2004, will be governed by sections in Texas Administrative Code, Title 34, Part 1, Chapter 3, Subchapter L.

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

(1) Water-based diesel fuel--a combination of water, petroleum diesel fuel, emulsifier, and seasonal additives (when necessary) into an emulsion that is suitable or used for the propulsion of a diesel-powered motor vehicle.

(2) Fuel grade ethanol--denatured ethanol meeting the requirements of ASTM D-4806 used for blending with motor fuel.

(3) Biodiesel--a fuel that:

(A) meets the registration requirements for fuel or fuel additives established by the United States Environmental Agency under Section 211 of the Federal Clean Air Act (42 U.S.C. Section 7545);

(B) is mono-alkyl esters of long chain fatty acids derived from vegetable oils and animal fats;

(C) meets the requirements of ASTM D-6751;

(D) is intended for use in engines that are designed to run on conventional, petroleum-derived diesel fuel; and

(E) is derived from agricultural products, vegetable oils, recycled greases, biomass, or animal fats or the wastes of those products or fats.

(4) Biodiesel blend--a blend of biodiesel meeting the requirements of paragraph (3) of this subsection, with petroleum based diesel fuel.

(5) Renewable diesel--a fuel that:

(A) meets the registration requirements for fuel or fuel additives established by the United States Environmental Agency under Section 211 of the Federal Clean Air Act (42 U.S.C. Section 7545);

(B) is a hydrocarbon;

(C) meets the requirements of ASTM D-975;

(D) is intended for use in engines that are designed to run on conventional, petroleum-derived diesel fuel; and

(E) is derived from agricultural products, vegetable oils, recycled greases, biomass, or animal fats or the wastes of those products or fats.

(6) Renewable diesel blend--a blend of renewable diesel fuel meeting the requirements of paragraph (5) of this subsection, with petroleum based diesel fuel. A renewable diesel blend may also be identified as a biomass-based diesel blend.

(c) Diesel fuel tax exception. The tax imposed on diesel fuel pursuant to Tax Code, §162.201, does not apply to biodiesel, renewable diesel or to the volume of water, fuel grade ethanol, biodiesel or renewable diesel that is blended with taxable petroleum based diesel fuel when the finished product meets the certification requirements of subsection (g) of this section and is clearly identified on the sales invoice, storage tank, and retail pump, as required by subsections (d), (e) or (f) of this section. The tax imposed pursuant to Tax Code, §162.201, applies to the petroleum-based component of a renewable diesel blend that is the result of co-processing a renewable diesel feedstock with a petroleum-based feedstock in the same facility or refinery processing unit. The portion of the resulting co-processed product that is exempt from the tax imposed pursuant to Tax Code, §162.201, as a renewable diesel is equal to the volume of renewable diesel used as a feedstock. The tax exemption on biodiesel, renewable diesel or to the volume of water, fuel grade ethanol, biodiesel or renewable diesel that is blended with taxable petroleum based diesel fuel provided by Tax Code, §162.204, should be documented in each transaction so that the exemption is passed to the person ultimately using or consuming the diesel fuel.

(d) Invoice documentation.

(1) The volume of biodiesel or renewable diesel must be identified on the sales invoice on each sales transaction, and must con-

tinue to be identified on sales invoices until the product is sold to the ultimate consumer.

(2) The volume of water, fuel grade ethanol, biodiesel, or renewable diesel that is combined with taxable petroleum based diesel fuel must be identified on the sales invoice on each sales transaction after the water, fuel grade ethanol, biodiesel, or renewable diesel is first blended with taxable petroleum based diesel fuel, and must continue to be identified on sales invoices until the blended product is sold to the ultimate consumer.

(3) A sales invoice must:

(A) identify a water-based diesel fuel, ethanol blended diesel fuel, biodiesel, renewable diesel, biodiesel blend, or renewable diesel blend by a commonly accepted commercial or industry name for the product being sold. For example, B100 for biodiesel or B20 for a biodiesel blend containing 80% taxable petroleum diesel fuel and 20% biodiesel;

(B) list the volume in gallons (rounded to the nearest whole gallon) or the percentage (rounded to the nearest whole percentage; for example 1.4% becomes 1.0% and 1.5% becomes 2.0%) of the blended product that is water, fuel grade ethanol, biodiesel, or renewable diesel;

(C) list the volume in gallons (rounded to the nearest whole gallon) or the percentage (rounded to the nearest whole percentage) of the blended product that is taxable petroleum based diesel fuel. Taxable diesel fuel includes emulsifiers and additives, but not water, fuel grade ethanol, biodiesel, or renewable diesel; and

(D) list the basis of calculating the tax (if a taxable sale) as either $0.20 for each gallon of taxable petroleum based diesel fuel in the blended product or a ratable tax rate based on the percent of taxable petroleum based diesel in the blended product. For example, the invoice for the sale of 100 gallons that is a blend of 20% biodiesel and 80% taxable diesel fuel may list: state diesel fuel tax of $0.20 per gallon on 80 gallons taxable diesel fuel and no state tax on 20 gallons biodiesel, or state diesel fuel tax of $0.16 per gallon on 100 gallons of biodiesel blend.

(e) Notice required on storage tank and retail pump.

(1) A notice must be posted in a conspicuous location on each storage tank and retail pump from which biodiesel or renewable diesel is stored or sold. The notice must identify the product by the common industry or commercial name. For example, B100 for biodiesel.

(2) A notice must be posted in a conspicuous location on each storage tank located outside the bulk terminal/transfer system and retail pump from which a blend product is stored or sold from the time that the water, fuel grade ethanol, biodiesel, or renewable diesel is first blended with taxable petroleum based diesel fuel until the blended product is sold to the ultimate consumer. The notice must identify the blended product by the common industry or commercial name, and state the volume percentage (rounded to the nearest whole percentage) of water, fuel grade ethanol, biodiesel, or renewable diesel that is blended with petroleum diesel fuel. For example, "B5 - 5.0% Biodiesel", similar wording, for a 5.0% biodiesel blend.

(f) As an alternative to subsections (d) and (e) of this section, a dealer dispensing a biodiesel blend or renewable diesel blend at a retail location to the ultimate consumer may elect to identify on the storage tank, retail pump and sales invoice the blended product sold in the following manner:

(1) blends containing a total percentage of up to 5.0% biodiesel or renewable diesel by volume may be identified as "Contains Up To 5.0% Biodiesel or Renewable Diesel" or similar wording. Each component that is biodiesel or renewable diesel is added together to determine the total percentage. The sales invoice must list the basis for collecting the state tax as though the blended product sold is a 5.0% blend. For example, a blended product that contains 2.0% biodiesel and 2.0% renewable diesel has a total blend percentage of 4.0% and may be identified on the retail pump as "Contains Up To 5.0% Biodiesel or Renewable Diesel", or similar wording, and identified on the sales invoice with the statement "Contains up to 5.0% biodiesel or renewable diesel - state diesel tax $0.19 per gallon", or similar wording;

(2) blends containing a total percentage greater than 5.0% biodiesel or renewable diesel by volume but no more than 10% biodiesel or renewable diesel by volume may be identified as "Contains Up To 10% Biodiesel or Renewable Diesel" or similar wording. Each component that is biodiesel and renewable diesel is added together to determine the total percentage. The sales invoice must list the basis for collecting the state tax as though the blended product sold is a 10% blend. For example, a blend that contains 2.0% biodiesel and 5.0% renewable diesel has a total blend of 7.0% and may be identified on the retail pump as "Contains Up To 10% Biodiesel or Renewable Diesel", or similar wording, and identified on the sales invoice with the statement "Contains up to 10% biodiesel or renewable diesel - state diesel tax $0.18 per gallon", or similar wording;

(3) blends containing a total percentage greater than 10% biodiesel or renewable diesel by volume but no more than 15% biodiesel or renewable diesel by volume may be identified as "Contains Up To 15% Biodiesel or Renewable Diesel" or similar wording. Each component that is biodiesel and renewable diesel is added together to determine the total percentage. The sales invoice must list the basis for collecting the state tax as though the blended product sold is a 15% blend. For example, a blend that contains 5.0% biodiesel and 7.0% renewable diesel has a total blend of 12% and may be identified on the retail pump as "Contains Up To 15% Biodiesel or Renewable Diesel", or similar wording, and identified on the sales invoice with the statement "Contains up to 15% biodiesel or renewable diesel - state diesel tax $0.17 per gallon", or similar wording;

(4) blends containing a total percentage greater than 15% biodiesel or renewable diesel by volume but no more than 20% biodiesel or renewable diesel by volume may be identified as "Contains Up To 20% Biodiesel or Renewable Diesel" or similar wording. Each component that is biodiesel and renewable diesel is added together to determine the total percentage. The sales invoice must list the basis for collecting the state tax as though the blended product sold is a 20% blend. For example, a blend that contains 8.0% biodiesel and 8.0% renewable diesel has a total blend of 16% and may be identified on the retail pump as "Contains Up To 20% Biodiesel or Renewable Diesel", or similar wording, and identified on the sales invoice with the statement "Contains up to 20% biodiesel or renewable diesel - state diesel tax $0.16 per gallon", or similar wording;

(5) blends containing a total percentage greater than 20% biodiesel or renewable diesel by volume must follow the sales invoice, storage and retail pump requirements as described in subsections (d) and (e) of this section;

(6) a dealer who uses this subsection must pay state diesel fuel tax on their purchases of a biodiesel blend or renewable diesel blend based on the actual volume of the petroleum diesel in the blend;

(7) this subsection does not apply to wholesale sales of biodiesel or renewable diesel blends.

(g) Certification. The refiner, producer, importer, blender, or reseller of biodiesel, renewable diesel, biodiesel blend, or renewable

diesel blend must provide on each transfer to a person who is not the ultimate consumer a delivery ticket, certificate, letter, or other written statement (e.g.; invoice, bill of sale, bill of lading, or product transfer document) that contains the name of the seller, the name of the purchaser, date of transfer and the volume in gallons (rounded to the nearest whole gallon) or the percentage (rounded to the nearest whole percentage) of the biodiesel or renewable diesel component of the blend. Certifications records required by this subsection must be maintained for four years.

(h) Refund of diesel fuel tax paid. The ultimate consumer who has paid diesel fuel tax on biodiesel, renewable diesel, or on the percentage of water, fuel grade ethanol, biodiesel, or renewable diesel that is blended with taxable petroleum based diesel may file a claim for refund of taxes paid as provided by §3.432 of this title (relating to Refunds on Gasoline and Diesel Fuel Tax). The refund claim must be supported with purchase invoice(s) as described in subsection (d) of this section. The total volume of diesel fuel that is purchased is presumed to be taxable diesel fuel if the purchase invoice does not meet the requirements of subsection (d) of this section.

(i) Commercial motor vehicles licensed under the International Fuel Tax Agreement (IFTA).

(1) A water-based diesel fuel, ethanol blended diesel fuel, biodiesel, renewable diesel, biodiesel blend, or renewable diesel blend that is delivered into the fuel supply tank(s) of a motor vehicle that is licensed under the IFTA is presumed to be used in the jurisdiction in which it was purchased. This presumption may be overcome if it is shown that the total amount of water-based diesel fuel, ethanol blended diesel fuel, biodiesel, renewable diesel, biodiesel blend, or renewable diesel blend that is purchased in other IFTA jurisdictions is greater than the amount of total diesel fuel used in other IFTA jurisdictions by all diesel-powered motor vehicles that the IFTA licensee operates.

(2) In calculating the IFTA fleet average mile-per-gallon, the total gallons of diesel fuel that are consumed includes the total gallons of water-based diesel fuel, ethanol blended diesel fuel, biodiesel, renewable diesel, biodiesel blend, or renewable diesel blend.

(3) An IFTA licensee who overpays the tax on a water-based diesel fuel, ethanol blended diesel fuel, biodiesel, renewable diesel, biodiesel blend, or renewable diesel blend by way of an IFTA tax return may request a refund from the comptroller. A refund claim must be supported with purchase invoice(s) as described in subsection (d) of this section. The total volume of diesel fuel that is purchased is presumed to be taxable diesel fuel if the purchase invoice(s) do not meet the requirements of subsection (d) of this section.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 12, 2011.

TRD-201102648
Ashley Harden
General Counsel
Comptroller of Public Accounts
Effective date: August 1, 2011
Proposal publication date: May 13, 2011
For further information, please call: (512) 475-0387

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 11. TEXAS JUVENILE PROBATION COMMISSION

CHAPTER 341. TEXAS JUVENILE PROBATION COMMISSION STANDARDS

SUBCHAPTER F. REQUIREMENTS FOR JUVENILE PROBATION OFFICERS

37 TAC §341.28

The Texas Juvenile Probation Commission adopts amendments made to §341.28, concerning certification of staff. The rule is adopted with changes as published in the June 10, 2011, issue of the *Texas Register* (36 TexReg 3584) and will be republished. Non-substantive changes were made to subsection (a)(6) by making the term plural and subsection (c) by capitalizing "Officers" and adding "a" before "Juvenile Supervision Officer or Juvenile Probation Officer" in the last sentence.

TJPC adopts these amendments in an effort to clarify certification requirements and ensure consistency with other chapters of agency standards.

No public comment was received during the official public comment period.

These amendments are adopted under Texas Human Resources Code §141.042, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules that provide minimum standards for juvenile boards and that are necessary to provide adequate and effective probation services.

No other rule or standard is affected by the adopted rule.

§341.28. Certification of Staff.

(a) Individuals required to maintain an active certification as a condition of employment are:

(1) Chief administrative officers;

(2) Facility administrators;

(3) Supervisors in the direct chain of command over juvenile probation officers or juvenile supervision officers;

(4) Juvenile probation officers;

(5) Juvenile supervision officers;

(6) Youth activities supervisors; and

(7) Any staff, excluding certified physical education teachers, who participates in the administration of intensive physical activity in a Juvenile Justice Alternative Educational Program (JJAEP).

(b) Additional individuals who may maintain an active certification is limited to those whose primary responsibility and essential job function is:

(1) Quality assurance officer;

(2) Juvenile probation and supervision officer trainer; and

(3) Staff member responsible for supervision of youth in a Juvenile Justice Alternative Educational Program (JJAEP).

(c) Juvenile Supervision Officers and Juvenile Probation Officers may be dually certified as both Juvenile Supervision Officers and Juvenile Probation Officers if they meet all criteria required for certification and employment for both positions and their job description is

consistent with either a Juvenile Supervision Officer or Juvenile Probation Officer as defined in §344.100 of this title.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 18, 2011.

TRD-201102689
Lisa A. Capers
Deputy Executive Director and General Counsel
Texas Juvenile Probation Commission
Effective date: September 1, 2011
Proposal publication date: June 10, 2011
For further information, please call: (512) 424-6710

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SUBCHAPTER I. ELECTRONIC DATA INTERCHANGE SPECIFICATIONS

37 TAC §341.60

The Texas Juvenile Probation Commission adopts amendments made to §341.60, concerning the Commission's electronic data interchange specifications. The rule is adopted without changes as published in the June 10, 2011, issue of the *Texas Register* (36 TexReg 3585) and will not be republished.

TJPC adopts these amendments in an effort to enable departments to continue entering data to track juveniles on the program table while allowing the Commission to isolate community versus non-community programs, programs from program components and juvenile participation from parent participation.

No public comment was received during the official public comment period.

These amendments are adopted under Texas Human Resources Code §141.042, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules that provide minimum standards for juvenile boards and that are necessary to provide adequate and effective probation services.

No other rule or standard is affected by the adopted rule.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 18, 2011.

TRD-201102690
Lisa A. Capers
Deputy Executive Director and General Counsel
Texas Juvenile Probation Commission
Effective date: September 1, 2011
Proposal publication date: June 10, 2011
For further information, please call: (512) 424-6710

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 19. NURSING FACILITY REQUIREMENTS FOR LICENSURE AND MEDICAID CERTIFICATION

SUBCHAPTER I. RESIDENT ASSESSMENT

40 TAC §19.805

The Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS), adopts an amendment to §19.805, concerning permanency planning for a resident under 22 years of age, in Chapter 19, Nursing Facility Requirements for Licensure and Medicaid Certification, without changes to the proposed text published in the April 1, 2011, issue of the *Texas Register* (36 TexReg 2088).

The amendment makes several changes to §19.805. References to a pediatric nurse specialist have been deleted because DADS no longer employs such a specialist. In addition, the requirement to notify DADS when a child in a nursing facility has a significant change in condition has been deleted. A requirement regarding maintenance of preadmission screening and resident review documentation has also been added. Finally, the phone number to obtain a listing of early childhood intervention programs and the phone number to notify DADS that a child's legally authorized representative cannot be located have been updated.

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 242, which authorizes DADS to license and regulate 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.

Filed with the Office of the Secretary of State on July 14, 2011.

TRD-201102679
Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Effective date: August 3, 2011
Proposal publication date: April 1, 2011
For further information, please call: (512) 438-3734

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CHAPTER 80. STATE AGING PLAN

40 TAC §80.3

The Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS), adopts the repeal of §80.3, concerning area agency on aging funding allocation formula for Older Americans Act programs, in Chapter 80, State Aging Plan, without changes to the proposal as published in the April 1, 2011, issue of the *Texas Register* (36 TexReg 2091).

The repeal is adopted because a new section that contains the funding allocation formula for area agencies on aging is adopted elsewhere in this issue of the *Texas Register.* Therefore, §80.3 is no longer needed.

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.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 18, 2011.

TRD-201102703
Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Effective date: September 1, 2011
Proposal publication date: April 1, 2011
For further information, please call: (512) 438-3734

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CHAPTER 81. OPERATION OF THE AREA AGENCIES ON AGING

40 TAC §81.17, §81.21

The Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS), adopts the repeal of §81.17, concerning appeal procedures for subcontractors, vendors, and service provider applicants, and §81.21, concerning Americans with Disabilities Act (ADA) grievance procedures for participants in Older Americans Act programs, in Chapter 81, Operation of the Area Agencies on Aging, without changes to the proposal as published in the April 1, 2011, issue of the *Texas Register* (36 TexReg 2091).

The repeal is adopted to remove the rule regarding the process by which a person contracting with an area agency on aging (AAA), a subcontractor, appeals an adverse action taken by the AAA against the subcontractor. This rule is not necessary because a AAA is required, through its contract with DADS, to develop and implement appeal procedures for actions taken against a subcontractor and to include the process in the contractual agreement with the subcontractor.

The repeal also removes the rule regarding the process by which a program participant files a complaint regarding a AAA's compliance with the Americans with Disabilities Act and how the AAA handles the complaint. This rule is not necessary because 40 TAC §81.19 and §85.201(j) require a AAA to have a process by which a program participant files a grievance regarding services received from the AAA, including a complaint regarding compliance with the ADA.

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.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 18, 2011.

TRD-201102704
Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Effective date: September 1, 2011
Proposal publication date: April 1, 2011
For further information, please call: (512) 438-3734

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CHAPTER 82. STATE DELIVERY SYSTEMS

40 TAC §82.39

The Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS), adopts the repeal of §82.39, concerning funding allocation formula for Retired Senior Volunteer Program projects, in Chapter 82, State Delivery Systems, without changes to the proposal as published in the April 1, 2011, issue of the *Texas Register* (36 TexReg 2092).

The repeal is adopted because a new section that contains the guidelines to determine the proportion of state money distributed to entities that operate a program under the National Senior Services Corps is adopted elsewhere in this issue of the *Texas Register.* Therefore, §82.39 is no longer needed.

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.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 18, 2011.

TRD-201102705
Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Effective date: September 1, 2011
Proposal publication date: April 1, 2011
For further information, please call: (512) 438-3734

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CHAPTER 83. AREA AGENCY ON AGING ADMINISTRATIVE REQUIREMENTS

40 TAC §83.15, §83.17

The Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS), adopts the repeal of §83.15, concerning criteria for administering carryover of unexpended funds, and §83.17, concerning approval of direct services applications from Area Agencies on Aging, in Chapter 83, Area Agency on Aging Administrative Requirements, without changes to the proposal as published in the April 1, 2011, issue of the *Texas Register* (36 TexReg 2093).

The repeal is adopted because a new section that describes how award funds not spent by an area agency on aging (AAA) are handled and a new section that describes the process for a AAA to request approval to directly provide a service are adopted elsewhere in this issue of the *Texas Register.* Therefore, §83.15 and §83.17 are no longer needed.

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.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 18, 2011.

TRD-201102706
Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Effective date: September 1, 2011
Proposal publication date: April 1, 2011
For further information, please call: (512) 438-3734

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CHAPTER 85. IMPLEMENTATION OF THE OLDER AMERICANS ACT

The Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS), adopts an amendment to §85.2, concerning definitions; new §85.206, concerning process for AAA to request approval to directly provide a service; and new Subchapter F, Management and Oversight, consisting of new §85.501, concerning AAA funding allocation formula for Older Americans Act programs, and new §85.502, concerning unspent award funds, in Chapter 85, Implementation of the Older Americans Act, without changes to the proposed text as published in the April 1, 2011, issue of the *Texas Register* (36 TexReg 2094).

The new sections and amendment prescribe administrative responsibilities of an area agency on aging (AAA) regarding the provision of services and describe the management and oversight functions of DADS regarding AAAs. The purpose of the new sections and amendment is to update rules to be consistent with agency practice, update terminology, and reorganize rules for clarity.

The new sections also remove a $125,000 limit placed on the amount of unspent award funds received in the first six months of a federal fiscal year that a AAA may spend in the next federal fiscal year. Removal of this limit allows all AAAs to spend up to five percent of their unspent award funds in the next fiscal year, resulting in a more equitable process for unspent funds. Amounts over five percent are placed in the statewide carryover pool.

DADS received no comments regarding adoption of the new sections and amendment.

SUBCHAPTER A. DEFINITIONS

40 TAC §85.2

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.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 18, 2011.

TRD-201102708
Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Effective date: September 1, 2011
Proposal publication date: April 1, 2011
For further information, please call: (512) 438-3734

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SUBCHAPTER C. AAA ADMINISTRATIVE REQUIREMENTS

40 TAC §85.206

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.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 18, 2011.

TRD-201102709
Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Effective date: September 1, 2011
Proposal publication date: April 1, 2011
For further information, please call: (512) 438-3734

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SUBCHAPTER F. MANAGEMENT AND OVERSIGHT

40 TAC §85.501, §85.502

The 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.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 18, 2011.

TRD-201102710
Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Effective date: September 1, 2011
Proposal publication date: April 1, 2011
For further information, please call: (512) 438-3734

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CHAPTER 86. NATIONAL SENIOR SERVICES CORPS PROGRAM

40 TAC §86.1

The Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS), adopts new §86.1, concerning guidelines to distribute funds to entities operating a National Senior Services Corps program, in new Chapter 86, National Senior Services Corps Program, without changes to the proposed text as published in the April 1, 2011, issue of the *Texas Register* (36 TexReg 2099).

The new section describes the guidelines used to determine the proportion of state money distributed to entities operating a program under the National Senior Services Corps, as required by Texas Human Resources Code, §101.024.

DADS received no comments regarding adoption of the new section.

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.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 18, 2011.

TRD-201102711
Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Effective date: September 1, 2011
Proposal publication date: April 1, 2011
For further information, please call: (512) 438-3734

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CHAPTER 100. MISCELLANEOUS SUBCHAPTER A. OPERATION OF THE TEXAS DEPARTMENT ON AGING

40 TAC §100.22

The Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS), adopts the repeal of §100.22, concerning public hearing procedures for the Texas Department on Aging, in Chapter 100, Miscellaneous, without changes to the proposal as published in the April 1, 2011, issue of the *Texas Register* (36 TexReg 2113).

The repeal is adopted to allow DADS the flexibility to develop procedures based on communication technology and other factors at the time a hearing is held. The procedures will be publicized by a means other than by rule.

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 pro-

vides 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.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 18, 2011.

TRD-201102707
Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Effective date: September 1, 2011
Proposal publication date: April 1, 2011
For further information, please call: (512) 438-3734

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TITLE 43. TRANSPORTATION

PART 10. TEXAS DEPARTMENT OF MOTOR VEHICLES

CHAPTER 217. VEHICLE TITLES AND REGISTRATION

SUBCHAPTER B. MOTOR VEHICLE REGISTRATION

43 TAC §217.28, §217.40

The Texas Department of Motor Vehicles (department) adopts amendments to §217.28, Specialty License Plates, Symbols, Tabs, and Other Devices, and §217.40, Marketing of Specialty License Plates through a Private Vendor, all concerning motor vehicle registration. The amendments to §217.28 and §217.40 are adopted without changes to the proposed text as published in the April 29, 2011, issue of the *Texas Register* (36 TexReg 2719) and will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS

Amendments are necessary to better utilize department resources in the gathering of public comment concerning new specialty plates.

Amendments to §217.28(i)(2)(B) remove the requirement for an applicant to provide a current document from the Internal Revenue Service (IRS) attesting to the non-profit status of the applicant. The IRS provides documentation only at the time the non-profit organization is founded. Amendments to §217.28(i)(6) allow the department more flexibility as to posting the department-created specialty plates for public comment on its website. Changing the time period of the posting to at least 25 days in advance of a Texas Department of Motor Vehicles board meeting and the requirement that comments be received at least ten days before the board meeting gives the staff more time to collate the comments and accommodates holiday schedules.

Amendments to §217.40(d)(2), regarding plates sold by the private vendor are identical to the amendments regarding posting time periods in §217.28 for department created plates. The amendments continue to limit the website posting period to ten days for private vendor plates in accordance with Transportation Code, §504.851(g-1).

COMMENTS

No comments were received.

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §1002.001, which provides the Texas Department of Motor Vehicles board with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

Transportation Code, §504.702 and §504.851.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 15, 2011.

TRD-201102685
Brett Bray
General Counsel
Texas Department of Motor Vehicles
Effective date: August 4, 2011
Proposal publication date: April 29, 2011
For further information, please call: (512) 467-3853

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CHAPTER 218. MOTOR CARRIERS

The Texas Department of Motor Vehicles (department) adopts amendments to §218.2, Definitions, and §218.11, Motor Carrier Registration, all concerning Motor Carriers. The amendments to §218.2 and §218.11 are adopted without changes to the proposed text as published in the March 25, 2011, issue of the *Texas Register* (36 TexReg 1964) and will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS

The department adopts amendments to §218.2 to delete an incorrect entry under the definition of a commercial motor vehicle. Transportation Code, §643.051 refers to Transportation Code, §548.001 for the definition of a commercial motor vehicle. Transportation Code, §548.001 does not include the following within the definition of a commercial motor vehicle: a vehicle transporting household goods for compensation. Therefore, this incorrect entry is deleted from §218.2(7)(A) regarding the definition of a commercial motor vehicle.

Also adopted are amendments to §218.11(a) and (b) to make the rule consistent with Transportation Code, §643.001(6) and §643.051 regarding the reference to a road or highway for both the motor carrier operating a commercial motor vehicle and the household goods carrier operating a vehicle.

Adopted amendments to §218.11 add subsection (c) to clarify the word "valid" as it relates to the United States Department of Transportation (USDOT) number required for motor carrier registration. A motor carrier may not operate a commercial motor vehicle upon the public roads or highways of this state without a valid USDOT number. A household goods carrier may not operate a vehicle upon the public roads or highways of this state without a valid USDOT number. The amendments clarify that the word "valid" means an active number issued by the USDOT.

COMMENTS

No comments were received on the proposed amendments.

SUBCHAPTER A. GENERAL PROVISIONS

43 TAC §218.2

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §1002.001, which provide the board of the Texas Department of Motor Vehicles with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

Transportation Code, §643.003 and §643.052.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 15, 2011.

TRD-201102684
Brett Bray
General Counsel
Texas Department of Motor Vehicles
Effective date: August 4, 2011
Proposal publication date: March 25, 2011
For further information, please call: (512) 467-3853

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SUBCHAPTER B. MOTOR CARRIER REGISTRATION

43 TAC §218.11

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §1002.001, which provide the board of the Texas Department of Motor Vehicles with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

Transportation Code, §643.003 and §643.052.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 15, 2011.

TRD-201102683
Brett Bray
General Counsel
Texas Department of Motor Vehicles
Effective date: August 4, 2011
Proposal publication date: March 25, 2011
For further information, please call: (512) 467-3853

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REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Texas Department of Insurance, Division of Workers' Compensation

Title 28, Part 2

The Texas Department of Insurance (Department), Division of Workers' Compensation (Division) will review and consider for readoption, revision, or repeal all sections of the following chapter of Title 28, Part 2 of the Texas Administrative Code, in accordance with the Government Code §2001.039: Chapter 112, Scope of Liability for Compensation.

Subchapter B. Application to General Contractor/Subcontractor and Motor Carrier/Owner Operator.

§112.101. Agreement Regarding Workers' Compensation Insurance Coverage Between General Contractors and Subcontractors.

§112.102. Agreements between Motor Carriers and Owner Operators.

Subchapter C. Application to Certain Building and Construction Workers.

§112.200. Definition of Residential Structures.

§112.201. Agreement to Establish Employer-Employee Relationship for Certain Building and Construction Workers.

§112.202. Joint Agreement to Affirm Independent Relationship for Certain Building and Construction Workers.

§112.203. Exception to Application of Agreement To Affirm Independent Relationship for Certain Building and Construction Workers.

Subchapter D. Application to Farm or Ranch Employees.

§112.301. Labor Agent's Notification of Coverage.

Subchapter E. Professional Athletes Election of Coverage

§112.401. Election of Coverage by Certain Professional Athletes.

§112.402. Determination of Equivalent Benefits for Professional Athletes.

The Division will consider whether the reasons for initially adopting these rules continue to exist and whether these rules should be repealed, readopted, or readopted with amendments. Any repeals or necessary amendments identified during the review of these rules will be proposed and published in the *Texas Register* in accordance with the Administrative Procedure Act, Government Code Chapter 2001.

To be considered, written comments relating to whether these rules should be repealed, readopted, or readopted with amendments must be submitted within 30 days following the publication of this notice in the *Texas Register.* Comments may be submitted by email at rulecomments@tdi.state.tx.us or by mailing or delivering your comments to Maria Jimenez, Legal Services, MS-4D, Texas Department of Insurance, Division of Workers' Compensation, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744-1645.

Comments should clearly specify the particular section of the rule to which they apply. Comments should include proposed alternative language as appropriate. General comments should be designated as such.

TRD-201102733
Dirk Johnson
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Filed: July 20, 2011

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The Texas Department of Insurance (Department), Division of Workers' Compensation (Division) will review and consider for readoption, revision, or repeal all sections of the following chapter of Title 28, Part 2 of the Texas Administrative Code, in accordance with the Texas Government Code §2001.039: Chapter 120, Compensation Procedure--Employers.

§120.1. Employer's Record of Injuries.

§120.2. Employer's First Report of Injury and Notice of Injured Employee Rights and Responsibilities.

§120.3. Employer's Supplemental Report of Injury.

§120.4. Employer's Wage Statement.

The Division will consider whether the reasons for initially adopting these rules continue to exist and whether these rules should be repealed, readopted, or readopted with amendments. Any repeals or necessary amendments identified during the review of these rules will be proposed and published in the *Texas Register* in accordance with the Administrative Procedure Act, Texas Government Code Chapter 2001.

To be considered, written comments relating to whether these rules should be repealed, readopted, or readopted with amendments must be submitted within 30 days following the publication of this notice in the *Texas Register.* Comments may be submitted by email at rulecomments@tdi.state.tx.us or by mailing or delivering your comments to Maria Jimenez, Legal Services, MS-4D, Texas Department of Insurance, Division of Workers' Compensation, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744-1645.

Comments should clearly specify the particular section of the rule to which they apply. Comments should include proposed alternative language as appropriate. General comments should be designated as such.

TRD-201102734
Dirk Johnson
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Filed: July 20, 2011

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The Texas Department of Insurance (Department), Division of Workers' Compensation (Division) will review and consider for readoption, revision, or repeal all sections of the following chapter of Title 28, Part 2 of the Texas Administrative Code, in accordance with the Texas Government Code §2001.039: Chapter 122, Compensation Procedure--Claimants.

Subchapter A. Claims Procedure for Injured Employees.

§122.1. Notice to Employer of Injury or Occupational Disease.

§122.2. Injured Employee's Claim for Compensation.

§122.3. Exposure to Communicable Diseases: Reporting and Testing Requirements for Emergency Responders.

§122.4. State Employees Exposed to Human Immunodeficiency Virus (HIV): Reporting and Testing Requirements.

§122.5. Employee's Multiple Employment Wage Statement.

Subchapter B. Claims Procedure for Beneficiaries of Injured Employees.

§122.100. Claim for Death Benefits.

The Division will consider whether the reasons for initially adopting these rules continue to exist and whether these rules should be repealed, readopted, or readopted with amendments. Any repeals or necessary amendments identified during the review of these rules will be proposed and published in the *Texas Register* in accordance with the Administrative Procedure Act, Texas Government Code Chapter 2001.

To be considered, written comments relating to whether these rules should be repealed, readopted, or readopted with amendments must be submitted within 30 days following the publication of this notice in the *Texas Register.* Comments may be submitted by email at rulecomments@tdi.state.tx.us or by mailing or delivering your comments to Maria Jimenez, Legal Services, MS-4D, Texas Department of Insurance, Division of Workers' Compensation, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744-1645.

Comments should clearly specify the particular section of the rule to which they apply. Comments should include proposed alternative language as appropriate. General comments should be designated as such.

TRD-201102735
Dirk Johnson
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Filed: July 20, 2011

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The Texas Department of Insurance (Department), Division of Workers' Compensation (Division) will review and consider for readoption, revision, or repeal all sections of the following chapter of Title 28, Part 2 of the Texas Administrative Code, in accordance with the Government Code §2001.039: Chapter 124, Carriers: Required Notices and Mode of Payment.

§124.1. Notice of Injury.

§124.2. Carrier Reporting and Notification Requirements.

§124.3. Investigation of an Injury and Notice of Denial/Dispute.

§124.5. Mode of Payment Made by Carriers.

§124.7. Initial Payment of Temporary Income Benefits.

The Division will consider whether the reasons for initially adopting these rules continue to exist and whether these rules should be repealed, readopted, or readopted with amendments. Any repeals or necessary amendments identified during the review of these rules will be proposed and published in the *Texas Register* in accordance with the Administrative Procedure Act, Government Code Chapter 2001.

To be considered, written comments relating to whether these rules should be repealed, readopted, or readopted with amendments must be submitted within 30 days following the publication of this notice in the *Texas Register.* Comments may be submitted by email at rulecomments@tdi.state.tx.us or by mailing or delivering your comments to Maria Jimenez, Legal Services, MS-4D, Texas Department of Insurance, Division of Workers' Compensation, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744-1645.

Comments should clearly specify the particular section of the rule to which they apply. Comments should include proposed alternative language as appropriate. General comments should be designated as such.

TRD-201102736
Dirk Johnson
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Filed: July 20, 2011

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The Texas Department of Insurance (Department), Division of Workers' Compensation (Division) will review and consider for readoption, revision, or repeal all sections of the following chapter of Title 28, Part 2 of the Texas Administrative Code, in accordance with the Texas Government Code §2001.039: Chapter 126, General Provisions Applicable to All Benefits.

§126.1. Definitions Applicable to All Benefits.

§126.2. Payment of Benefits to Minors.

§126.3. Payment of Benefits to Legally Incompetent Persons.

§126.4. Advance of Benefits Based on Financial Hardship.

§126.5. Entitlement and Procedure for Requesting Required Medical Examinations.

§126.6. Required Medical Examination.

§126.8. Commission Approved Doctor List.

§126.9. Choice of Treating Doctor and Liability for Payment.

§126.11. Extension of the Date of Maximum Medical Improvement for Spinal Surgery.

§126.12. Payment of Interest on Accrued but Unpaid Income Benefits.

§126.13. Employer Initiation of Benefits and Reimbursement.

§126.14. Treating Doctor Examination to Define the Compensable Injury.

The Division will consider whether the reasons for initially adopting these rules continue to exist and whether these rules should be repealed, readopted, or readopted with amendments. Any repeals or necessary amendments identified during the review of these rules will be proposed and published in the *Texas Register* in accordance with the Administrative Procedure Act, Texas Government Code Chapter 2001.

To be considered, written comments relating to whether these rules should be repealed, readopted, or readopted with amendments must be submitted within 30 days following the publication of this notice in the *Texas Register.* Comments may be submitted by email at rulecomments@tdi.state.tx.us or by mailing or delivering your comments to Maria Jimenez, Legal Services, MS-4D, Texas Department of Insurance, Division of Workers' Compensation, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744-1645.

Comments should clearly specify the particular section of the rule to which they apply. Comments should include proposed alternative language as appropriate. General comments should be designated as such.

TRD-201102737
Dirk Johnson
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Filed: July 20, 2011

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The Texas Department of Insurance (Department), Division of Workers' Compensation (Division) will review and consider for readoption, revision, or repeal all sections of the following chapter of Title 28, Part 2 of the Texas Administrative Code, in accordance with the Texas Government Code §2001.039: Chapter 128, Benefits--Calculation of Average Weekly Wage.

§128.1. Average Weekly Wage: General Provisions.

§128.2. Carrier Presumption of Employee's Average Weekly Wage.

§128.3. Average Weekly Wage Calculation for Full-Time Employees, and for Temporary Income Benefits for All Employees.

§128.4. Average Weekly Wage Calculation for Part-Time Employees.

§128.5. Average Weekly Wage Calculation for Seasonal Employees.

§128.6. Average Weekly Wage Adjustment for Certain Employees Who Are Also Minors, Apprentices, Trainees, or Students.

§128.7. Average Weekly Wage for School District Employees.

The Division will consider whether the reasons for initially adopting these rules continue to exist and whether these rules should be repealed, readopted, or readopted with amendments. Any repeals or necessary amendments identified during the review of these rules will be proposed and published in the *Texas Register* in accordance with the Administrative Procedure Act, Texas Government Code Chapter 2001.

To be considered, written comments relating to whether these rules should be repealed, readopted, or readopted with amendments must be submitted within 30 days following the publication of this notice in the *Texas Register.* Comments may be submitted by email at rulecomments@tdi.state.tx.us or by mailing or delivering your comments to Maria Jimenez, Legal Services, MS-4D, Texas Department of Insurance, Division of Workers' Compensation, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744-1645.

Comments should clearly specify the particular section of the rule to which they apply. Comments should include proposed alternative language as appropriate. General comments should be designated as such.

TRD-201102740
Dirk Johnson
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Filed: July 20, 2011

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The Texas Department of Insurance (Department), Division of Workers' Compensation (Division) will review and consider for readoption, revision, or repeal all sections of the following chapter of Title 28, Part 2 of the Texas Administrative Code, in accordance with the Texas Government Code §2001.039: Chapter 129, Income Benefits--Temporary Income Benefits.

§129.1. Definitions for Temporary Income Benefits.

§129.2. Entitlement to Temporary Income Benefits.

§129.3. Amount of Temporary Income Benefits.

§129.4. Adjustment of Temporary Income Benefit Amount.

§129.5. Work Status Reports.

§129.6. Bona Fide Offers of Employment.

§129.7. Non-Reimbursable Employer Payments.

§129.11. Agreement for Monthly Payment of Temporary Income Benefits.

The Division will consider whether the reasons for initially adopting these rules continue to exist and whether these rules should be repealed, readopted, or readopted with amendments. Any repeals or necessary amendments identified during the review of these rules will be proposed and published in the *Texas Register* in accordance with the Administrative Procedure Act, Texas Government Code Chapter 2001.

To be considered, written comments relating to whether these rules should be repealed, readopted, or readopted with amendments must be submitted within 30 days following the publication of this notice in the *Texas Register.* Comments may be submitted by email at rulecomments@tdi.state.tx.us or by mailing or delivering your comments to Maria Jimenez, Legal Services, MS-4D, Texas Department of Insurance, Division of Workers' Compensation, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744-1645.

Comments should clearly specify the particular section of the rule to which they apply. Comments should include proposed alternative language as appropriate. General comments should be designated as such.

TRD-201102739
Dirk Johnson
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Filed: July 20, 2011

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The Texas Department of Insurance (Department), Division of Workers' Compensation (Division) will review and consider for readoption, revision, or repeal all sections of the following chapter of Title 28, Part 2 of the Texas Administrative Code, in accordance with the Government Code §2001.039: Chapter 130, Impairment and Supplemental Income Benefits.

Subchapter A. Impairment Income Benefits.

§130.1. Certification of Maximum Medical Improvement and Evaluation of Permanent Impairment.

§130.2. Certification of Maximum Medical Improvement and Evaluation of Permanent Impairment by the Treating Doctor.

§130.3. Certification of Maximum Medical Improvement and Evaluation of Permanent Impairment by a Doctor other than the Treating Doctor.

§130.4. Presumption that Maximum Medical Improvement (MMI) has been Reached and Resolution when MMI has not been Certified.

§130.6. Designated Doctor Examinations for Maximum Medical Improvement and/or Impairment Ratings.

§130.7. Acceleration of Impairment Income Benefits.

§130.8. Initiating Payment of Impairment Income Benefits.

§130.10. Commission Review of Employment Status during the Impairment Income Benefits Period.

§130.11. Agreement for Monthly Payment of Impairment Income Benefits.

§130.12. Finality of the First Certification of Maximum Medical Improvement and/or First Assignment of Impairment Rating.

Subchapter B. Supplemental Income Benefits.

§130.100. Applicability.

§130.101. Definitions.

§130.102. Eligibility for Supplemental Income Benefits; Amount.

§130.103. Determination of Entitlement or Non-entitlement for the First Quarter.

§130.104. Determination of Entitlement or Non-entitlement for Subsequent Quarters.

§130.105. Failure to Timely File Application for Supplemental Income Benefits; Subsequent Quarters.

§130.106. Loss of Entitlement to Supplemental Income Benefits.

§130.107. Payment of Supplemental Income Benefits.

§130.108. Contesting Entitlement or Amount of Supplemental Income Benefits; Attorney Fees.

§130.109. Reinstatement of Entitlement if Discharged with Intent to Deprive of Supplemental Income Benefits.

The Division will consider whether the reasons for initially adopting these sections continue to exist and whether these sections should be repealed, readopted, or readopted with amendments. Any repeals or necessary amendments identified during the review of these sections will be proposed and published in the *Texas Register* in accordance with the Administrative Procedure Act, Government Code Chapter 2001.

To be considered, written comments relating to whether the sections should be repealed, readopted, or readopted with amendments must be submitted within 30 days following the publication of this notice in the *Texas Register.* Comments may be submitted by email at rulecomments@tdi.state.tx.us or by mailing or delivering your comments to Maria Jimenez, Legal Services, MS-4D, Texas Department of Insurance, Division of Workers' Compensation, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744-1645.

Comments should clearly specify the particular section of the rule to which they apply. Comments should include proposed alternative language as appropriate. General comments should be designated as such.

TRD-201102738
Dirk Johnson
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Filed: July 20, 2011

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The Texas Department of Insurance (Department), Division of Workers' Compensation (Division) will review and consider for readoption, revision, or repeal all sections of the following chapter of Title 28, Part 2 of the Texas Administrative Code, in accordance with the Texas Government Code §2001.039: Chapter 140, Dispute Resolution--General Provisions.

§140.1. Definitions.

§140.2. Special Accommodations.

§140.3. Expedited Proceedings.

§140.4. Conduct and Decorum.

§140.5. Correction of Clerical Error.

§140.6. Subclaimant Status: Establishment, Rights, and Procedures.

§140.7. Health Care Insurer Reimbursement under Labor Code §409.0091.

§140.8. Procedures for Health Care Insurers to Pursue Reimbursement of Medical Benefits under Labor Code §409.0091.

The Division will consider whether the reasons for initially adopting these rules continue to exist and whether these rules should be repealed, readopted, or readopted with amendments. Any repeals or necessary amendments identified during the review of these rules will be proposed and published in the *Texas Register* in accordance with the Administrative Procedure Act, Texas Government Code Chapter 2001.

To be considered, written comments relating to whether these rules should be repealed, readopted, or readopted with amendments must be submitted within 30 days following the publication of this notice in the *Texas Register.* Comments may be submitted by email at rulecomments@tdi.state.tx.us or by mailing or delivering your comments to Maria Jimenez, Legal Services, MS-4D, Texas Department of Insurance, Division of Workers' Compensation, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744-1645.

Comments should clearly specify the particular section of the rule to which they apply. Comments should include proposed alternative language as appropriate. General comments should be designated as such.

TRD-201102742
Dirk Johnson
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Filed: July 20, 2011

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The Texas Department of Insurance (Department), Division of Workers' Compensation (Division) will review and consider for readoption, revision, or repeal the following sections of chapter of Title 28, Part 2 of the Texas Administrative Code, in accordance with the Government Code §2001.039: Chapter 141, Dispute Resolution--Benefit Review Conference.

§141.1. Requesting and Setting a Benefit Review Conference.

§141.2. Canceling or Rescheduling a Benefit Review Conference.

§141.3. Failure to Attend a Benefit Review Conference.

§141.4. Sending and Exchanging Pertinent Information.

§141.5. Description of the Benefit Review Conference.

§141.7. Division Actions After a Benefit Review Conference.

The Division notes that amendments have been informally proposed to §141.1 and §141.3. In addition to the rule review of Chapter 141, there will be an opportunity to formally comment once the amendments are proposed and published in the *Texas Register.* This Rule Review of Chapter 141 is a separate process provided for in the Government Code. Please distinguish any comments relating to the rule review from com-

ments on amendments proposed for Chapter 141 by including "Rule Review" in the subject line of any comments relating to the rule review.

The Division will consider whether the reasons for initially adopting the sections under review continue to exist and whether the sections under review should be repealed, readopted, or readopted with amendments. Any repeals or necessary amendments identified during the review of the sections under review will be proposed and published in the *Texas Register* in accordance with the Administrative Procedure Act, Government Code Chapter 2001.

To be considered, written comments relating to whether the sections under review should be repealed, readopted, or readopted with amendments must be submitted within 30 days following the publication of this notice in the *Texas Register.* Please include "Rule Review" in the subject line of any comments relating to the rule review. Comments may be submitted by email at rulecomments@tdi.state.tx.us or by mailing or delivering your comments to Maria Jimenez, Legal Services, MS-4D, Texas Department of Insurance, Division of Workers' Compensation, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744-1645.

Comments should clearly specify the particular section of the rule to which they apply. Comments should include proposed alternative language as appropriate. General comments should be designated as such.

TRD-201102741
Dirk Johnson
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Filed: July 20, 2011

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Adopted Rule Reviews

Texas Department of Insurance, Division of Workers' Compensation

Title 28, Part 2

The Texas Department of Insurance (Department), Division of Workers' Compensation (Division) has completed its review required by the Texas Government Code §2001.039 of the following chapter of the Texas Administrative Code, Title 28, Part 2: Chapter 41, Practice and Procedure. The reviewed sections in this chapter are subsequently referred to collectively in this Notice of Adopted Review as "the sections."

The notice of proposed rule review was published in the April 15, 2011, issue of the *Texas Register* (36 TexReg 2467). As provided in this notice, the Division reviewed and considered the sections for readoption, revision, or repeal.

The Division considered whether the reasons for adoption of the sections continue to exist. The Division also considered whether the sections were obsolete or were consistent with current procedures and practices of the Division. The Division received no written comments regarding the review of its rule.

The Division has determined that the reasons for adopting the following sections continue to exist and the sections are retained in their present form. Any revisions in the future will be accomplished in accordance with the Administrative Procedure Act.

Subchapter A. Communications.

§41.1. Name Change.

§41.5. Compliance and Suspension of Rules.

§41.8. Contents of Rule-making Petitions.

§41.10. Definitions.

§41.15. Social Security Number.

§41.20. Adjuster Identification.

§41.25. Attorney Identification.

§41.27. Employer's Identification.

§41.30. Self-insureds.

§41.35. Designation of Insurance Carrier's Austin Representative.

§41.40. General Policy Concerning Communications.

§41.45. Communication to Claimants.

§41.55. Communication to Employers.

§41.60. Communication to Insurance Carriers.

§41.65. Communication to Health Care Provider.

§41.70. Filing of Instruments.

§41.75. Timely Filing.

§41.80. Filing Subsequent to Final Order or Award.

§41.85. Translation of Documents.

§41.90. Responsibility of Translators.

§41.95. Wage Information.

As a result of the review, the Division has determined that the reason for adoption of the following rules does not continue to exist and therefore these rules are not readopted. These rules will be repealed at a later date.

Subchapter A. Communications.

§41.50. Compliance and Suspension of Rules.

Subchapter B. Access to Board Records.

§41.101. Wage Information.

§41.105. Definitions.

§41.110. Availability.

§41.115. Inspection.

§41.120. Duplication and Related Services.

§41.125. Duplicating Charges.

§41.130. Certified Copies.

§41.135. Subpoenas for Confidential Records.

§41.140. Record Checks.

§41.150. Publications.

This concludes and completes the Division's review of Chapter 41; the chapter will be reviewed again in the future in accordance with Government Code §2001.039.

TRD-201102732
Dirk Johnson
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Filed: July 20, 2011

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Public Utility Commission of Texas

Title 16, Part 2

The Public Utility Commission of Texas (commission) initiated a review of Texas Administrative Code (TAC) Chapter 26, Substantive Rules Applicable to Telecommunications Service Providers, pursuant to the Texas Government Code, Administrative Procedure Act (APA), §2001.039, Agency Review of Existing Rules. The purpose of this review was to consider whether to re-adopt this Chapter. The notice of intention to review Chapter 26 was published in the September 17, 2010, issue of the *Texas Register* (35 TexReg 8512). Project Number 38552 is assigned to this proceeding. Having completed this review, the commission finds that the reasons for initially adopting Chapter 26 continue to exist and re-adopts Chapter 26.

The commission received comments from Southwestern Bell Telephone Company d/b/a AT&T Texas (AT&T), Texas Telephone Association (TTA), GTE Southwest Incorporated d/b/a Verizon Southwest (Verizon), TEXALTEL, and Texas Statewide Telephone Cooperative, Inc. (TSTCI).

The commission received written reply comments from Sprint Communications Company, LP (Sprint), TEXALTEL, and Time Warner Cable Information Services (Texas), LLC d/b/a Time Warner Cable (Time Warner).

General Comments

AT&T commented on several occasions that in the previous quadrennial review of Chapter 26, the commission stated that it agreed with the arguments of the parties concerning several sections and would "initiate a rulemaking proceeding to address these issues." AT&T noted, however, that the commission has not done so and AT&T urged the commission to initiate the promised rulemakings. Other commenters noted that several sections of the Chapter require amendment because they are obsolete due to their expiration of sections and changes in the Public Utility Regulatory Act (PURA) or the telecommunications industry.

Commission Response

The commission agrees that changes to Chapter 26 are required. Since the last quadrennial review, the commission has initiated numerous rule amendments but has not addressed many of the Chapter 26 rules in which commenters requested corrections or amendments. While the commission appreciates the importance of addressing some of the issues raised in the current and previous rules reviews, with limited resources and staffing, the commission must prioritize its activities so that it can best accomplish its mission of protecting the public interest. Many of the suggestions offered by the commenters, in this review and the previous review, have merit and will be considered in connection with future projects addressing modifications to Chapter 26 rules, as resources and priorities permit. In addition, the commission is currently evaluating the effects on Chapter 26 of several bills enacted during the 2011 legislative session. While the commission has not yet formulated a plan for addressing the 2011 legislation, it is likely that several rulemaking projects will have to be opened, either to address newly enacted law or developments within the industry. These proceedings may present an opportunity to address changes that interested parties have raised in this proceeding.

Section 26.5 - Definitions

AT&T stated that in the last quadrennial review of Chapter 26 that the commission stated that it would initiate a separate rulemaking project "at a future date" to conduct "an in-depth review of the definitions." However, the commission has not done so to date. AT&T reiterated its previously stated concerns regarding this rule and respectfully urged the commission to initiate the promised rulemaking.

Commission Response

AT&T's request may have merit and will be considered in connection with other projects to amend rules in Chapter 26, as resources and priorities permit. The commission is currently evaluating whether changes to this section may be required. Changes to other provisions of Chapter 26 may require modifications to definitions in this section. If a rulemaking project is opened for §26.5, parties interested in modifications to this section are encouraged to file comments in that project.

Section 26.27 - Bill Payment and Adjustments

AT&T commented that §26.27(a)(3)(B)(i) stated that there is no statute of limitations for dominant certificated telecommunications Utilities (DCTUs) for overbilling. AT&T Texas stated, in this competitive market, it is unfair and unnecessary to subject DCTUs to unlimited liability when all other businesses in Texas can rely on the statute of limitations set forth in the Texas Code of Civil Procedure. AT&T Texas urged that subsection (a)(3)(B)(i) be repealed or amended to state that the Texas statute of limitations applies in cases of customer overbilling.

Commission Response

AT&T's request may have merit and will be considered in connection with other projects to amend rules in Chapter 26, as resources and priorities permit. The commission notes that the language in §26.27(a)(3)(B)(i) applicable to DCTUs is identical to the language in §26.27(b)(3)(A)(i) applicable to non-dominant carriers.

Section 26.29 - Prepaid Local Telephone Service (PLTS)

AT&T commented that §26.29 should be repealed in its entirety. AT&T stated that there is no statutory basis for this rule. AT&T stated that the commission is relying on PURA §55.013 as the basis for the PLTS rule, and AT&T stated that it did not believe that §26.29 fulfills the pertinent part of §55.013, "to prevent customer abuse of the protections afforded by this section," because it does not afford any prevention of customer abuse. AT&T believed no legislative change is needed to order the repeal of §26.29. AT&T believed that in order for §26.29 to be valid, the legislature would need to order the DCTUs to provide PLTS. AT&T stated that the commission was supposed to be monitoring the PLTS rule on an ongoing basis to determine whether it should be revised or eliminated in the future. AT&T urged the commission to conclude that this rule is unnecessary and eliminate it. AT&T believed that continuation of this rule is unfair to DCTUs that are required to bear additional regulatory costs in a competitive environment. Finally, AT&T stated that due to the competitive alternatives for PLTS like prepaid wireless service, the need and popularity of PLTS has steadily declined. At least 15 different prepaid wireless services exist, making PLTS obsolete and unnecessary from a customer protection or competitive point of view. AT&T noted that the partial restrictions on entering into a customer-specific contact set forth in subsection (e)(2) of this rule have expired.

TTA stated that, for similar reasons, incumbent local exchange carriers (ILECs) should not continue to have an obligation to provide PLTS in today's competitive telecommunications market. TTA urged the commission to initiate a rulemaking to repeal §26.29.

Verizon Southwest agreed with the statements made by AT&T and TTA and urged the commission to repeal this rule.

Commission Response

As a result of recently enacted law, the commission may initiate a rulemaking to propose amendments to §26.29. Parties interested in modifications to this section are encouraged to file comments in that project.

Section 26.31 - Disclosures to Applicants and Customers

Section 26.31(b)(1)(A) requires DCTUs to inform applicants, prior to acceptance of service, "of the DCTU's lowest-priced alternatives, beginning with the least cost option...." AT&T stated that the subsection might have made sense at the beginning of competition when customers had no competitive alternatives for telecommunications, but it is unnecessary in today's competitive environment. AT&T pointed out that no such restriction applies to non-dominant CTUs. AT&T requested that §26.31(b)(1)(A) be repealed in its entirety or amended to exempt companies that have elected incentive regulation under Chapters 52, 58, 59, or 65.

TTA stated that the commission should streamline the periodic notice requirements throughout the Substantive Rules by opening a project to review all notice requirements for relevancy and applicability. TTA also expressed the view that it is not necessary to provide detailed customer disclosures to business customers with five or fewer access lines. TTA stated that "formal" notice should only be required for new customers or when the company makes a material change to the terms and conditions of its service offerings. The commission should consider allowing companies to periodically direct existing customers to a general location or website where notice required from all of the various rules is provided in a single source. Such changes would allow a company to fulfill notification requirements and eliminate periodic bill insert requirements, which are costly to companies and largely unrecognized by consumers.

Verizon stated that this rule imposes a host of disclosure requirements that apply to residential customers and to business customers with five or fewer lines. Verizon suggested that the commission should limit the disclosure requirements to residential customers only because of the competitive environment for business customers. Verizon also suggested that disclosure requirements be limited to initial customers and customers who experience material change to the terms and conditions of their service offerings. Like TTA, Verizon suggested that once the service is initiated, the providers should be allowed to direct customers to electronically posted notices.

Commission Response

The suggestions offered may have merit and will be considered in connection with other projects to amend rules in Chapter 26, as resources and priorities permit.

Section 26.53 - Inspections and Tests

TTA, TSTCI, and Verizon stated that this rule is outdated, is no longer necessary, and should be repealed. According to TTA and TSTCI, if the commission does not repeal this rule, it should at least amend subsection (c) so that it only requires providers to release test termination numbers to the commission upon request.

Verizon stated that DCTUs know how to run, test, and maintain their networks, and the competitive marketplace will assure that DCTUs do so in the most effective and efficient way. Verizon was unaware of any instance in the past decade where this rule was implicated in any proceeding. Verizon believed this rule is anticompetitive given that it applies only to DCTUs. According to Verizon, at the very least, this rule should be amended to apply only to those companies that remain under rate-of-return regulation.

Commission Response

The suggestions offered by TTA, TSTCI and Verizon may have merit and will be considered in connection with other projects to amend rules in Chapter 26, as resources and priorities permit.

Section 26.54 - Service Objectives and Performance Benchmarks

AT&T stated that §26.54(b)(2) deals with "open wire transmission media," which required compliance by December 31, 1998. TTA, Verizon, and TSTCI pointed out that the commission report to the legislature in Project Number 32460, the Open Wire Replacement Report, stated that subsection (b)(2) should be eliminated. According to AT&T and TTA this subsection should be repealed.

Verizon stated that there has been much advancement in telecommunications since the adoption of the service objectives and benchmarks. Verizon stated that in the current market service quality standards are no longer necessary for any service, especially competitive services, and should be eliminated. According to Verizon, at a minimum, "answer time measures" for toll, assisted operator calls, and directory assistance are no longer needed, since these are all competitive services. TSTCI also proposed deleting subsection (b)(3), which requires that all voice circuits allow transmission of at least 14,400 bits of data per second either through an industry standard modem or a facsimile machine. TSTCI contended this is an outdated obligation. Applying this standard to a facsimile machine poses measurement and enforcement problems because it is difficult to measure the speed of a facsimile machine and given the variations in facsimile equipment, it is virtually impossible to enforce this standard.

Commission Response

The commission agrees with AT&T, TTA, TSTCI, and Verizon that subsection (b)(2) should be repealed and will repeal the rule as resources and priorities permit.

Section 26.55 - Monitoring of Service

TTA stated that this rule should be repealed because the subject matter is better addressed under laws governing employees and employers. Verizon stated that there is no need for this rule and it should be repealed. The Texas Penal Code and Criminal Procedure Code govern the use of monitoring and recording, and the rule itself does nothing to ensure businesses follow the law. According to TTA, the rule is also vague regarding a customer's written agreement that employee calls on the business telephone lines may be monitored. TTA urged the commission to repeal this rule.

Commission Response

The recommendations offered by TTA and Verizon have merit and will be considered in connection with other projects to amend and repeal rules in Chapter 26, as resources and priorities permit.

Section 26.73 - Annual Earnings Reports

AT&T, TTA, and Verizon stated that there is no valid reason for this report to apply to Chapter 52, 58, 59, and/or 65 electing companies. This reporting requirement should only apply to rate of return regulated companies. AT&T, TTA, and Verizon urged the commission to initiate a rulemaking proceeding to revise this rule to reflect this change.

Commission Response

The commission acknowledges the comments of AT&T, TTA, and Verizon and will consider the merits of revising the rule as resources and priorities permit.

Section 26.78 - State Agency Utility Account Information

AT&T stated that in the previous quadrennial review, the commission stated that it would examine this section's requirements in a rulemaking following the 80th legislative session. AT&T pointed out that a proceeding has not yet been initiated. AT&T urged the commission to initiate the promised rulemaking proceeding at its earliest convenience.

TTA urged the commission to repeal the report requirement. TTA stated that this report no longer seems to serve a purpose. According to TTA and TSTCI, it is costly and time-consuming to prepare the information. TTA pointed out that the information can be accessed

through the state's own systems. According to TTA, the rule should be amended to simplify and streamline the reporting obligations. TTA and TSTCI stated that, at a minimum, the rule should be amended consistent with the commission's conclusions in Project Number 32460, Project to Review and Evaluate Telecommunications Carriers' Reporting Requirements and Provide Recommendations Pursuant to SB 408 Section 13, 79th Legislative Session.

Verizon stated that this rule should be repealed. Verizon noted that this rule requires all CTUs to retain certain information for state agency accounts for a period of four years. Given the widespread use of computer systems and e-billing records, and the fact that state agencies take service by contract, there is no justifiable need for CTUs to retain special records just for State Agencies. TSTCI believed an evaluation of the report is necessary to determine if the report can be modified and still meet the needs of the State of Texas, or possibly be eliminated.

Commission Response

In its report to the 79th Texas Legislature, the commission determined that the State Agency Utility Account Information Report is still useful and necessary to comply with Texas Government Code Chapter 2112, but should be streamlined. The suggestions to streamline the report have merit and will be considered in connection with other projects to amend rules in Chapter 26, as resources and priorities permit.

Section 26.87 - Infrastructure Reports

AT&T, TTA, and Verizon stated that in the previous quadrennial review of Chapter 26, the commission stated that it would establish a separate rulemaking project to examine the repeal and revision of infrastructure reports. AT&T noted that the commission has not done so. AT&T, TTA, and Verizon pointed out that the requirements in the rule related to commitments that were met years ago. AT&T respectfully urged the commission to initiate the promised rulemaking to examine the repeal and revision of the reports.

Commission Response

In Project Number 32460, Project to Review and Evaluate Telecommunications Carriers' Reporting Requirements and Provide Recommendations Pursuant to SB 40, 8 Section 13, 79th Legislative Session, the commission determined that the Infrastructure Report is unnecessary. The commission agreed to eliminate the requirement to file this report on an annual basis, but require this report to be produced on an as-needed basis. The suggestions to streamline the report have merit and will be considered in connection with other projects to amend rules in Chapter 26, as resources and priorities permit.

Sections 26.101, 26.102, 26.103, 26.107, 26.109, 26.111, 26.113, and 26.114 - Certification, Licensing, and Registrations

AT&T noted that it had previously commented on these rules in Project Number 35246. AT&T commented that §26.101(d)(3) requires all local exchange telephone services (LETS), basic local telecommunications services (BLTS), and switched access service provided under a certificate of convenience and necessity (CCN) be provided to consumers in the name under which the certificate is granted. AT&T stated that this approach is not realistic in today's environment and that an exception should be made for business customers with more than five access lines. AT&T stated that business customers often want to receive services provided by regulated and non-regulated affiliated telecommunications companies in a single bill. AT&T stated that the company that a customer receives service from may have a name different from the certificated name.

AT&T also commented that under subsection §26.101(d)(3) that Staff must review any name which an applicant proposes to use and must notify the applicant if a requested name may not be used. However, AT&T argued that this subsection denies the applicant an avenue for appeal. AT&T stated that if interim orders, including those dealing with standing and discovery rulings can be appealed to the commission, the denial of a requested name in an interim order should also be an issue that could be appealed.

TTA, Verizon, and TSTCI stated that in §26.101 the reference to "Construction Reports" should be eliminated because this report was recommended for elimination in Project Number 32460. TSTCI pointed out that §26.101(b)(2)(D) (Construction Reports) should be eliminated, since §26.82 was repealed. TTA and TSTCI stated that the commission should revise §26.102(d), requiring an annual re-registration, to allow for a letter to be filed that stated the information remains unchanged. TSTCI stated that re-registration information should then be filed within 30 days of the change. Verizon and TSTCI stated that re-filing the registration under §26.102(d) is unnecessary unless there are changes during the year. TTA and TSTCI stated that the providers are already required to keep company information current at all times under subsection §26.107(c), so that an annual obligation to notify the Commission of no changes under subsection (d) is unnecessary and should be eliminated. TTA and TSTCI suggested that in §26.109(f)(1), the affidavit requirement for certificate holders that have not used their certificates in a 12 month period be eliminated. TTA noted that competitive start-up operations often require longer than twelve months to initiate service to customers. TTA suggested that the wording in subsection (g)(1) and (2) be updated to reflect current annual report requirements. TTA stated that the same comments made concerning §26.109 apply to §26.111. TTA supported the criteria outlined in subsection (f)(2), and suggested that the language in subsection (g)(1) and (3) be amended to update language reflecting the new annual reporting format via the commission website and remove references to filing reports in Central Records. TTA's comments on §26.111 mirrored those for §26.109.

Commission Response

In Project Number 35246, Project to Review and Evaluate Telecommunications Carriers' Reporting Requirements and Provide Recommendations Pursuant to SB 408, Section 13, 79th Legislative Session, the commission addressed AT&T's, TTA's, Verizon's, and TSTCI's comments and repealed §§26.103, 26.109, 26.113, and 26.114 and revised §§26.101, 26.102, 26.107, and 26.111. In Project Number 32460, the commission noted that the Construction Report referenced as §26.101(b)(2)(D) is not used on a regular basis; therefore, it can be eliminated, except on an as-needed basis. The language in §26.101(d)(3) was revised in project 35246 to clarify that service provided under a CCN shall be provided in the names, or assumed names, under which certificate is granted. If the presiding officer determines that a name may not be used, an applicant has the right to an appeal of the decision. The commission disagrees with TTA, Verizon, and TSTCI concerning the annual re-registration of pay telephone service providers required by §26.102(d) (now §26.102(c)). The commission uses re-registration as an annual report to update contact information and pay telephone numbers. The commission does not think that the re-registration/annual report is burdensome because the company need only edit the existing registration at the commission's website with any updated information.

The commission disagrees with TTA and Verizon concerning the bi-annual re-registration of interexchange carriers (IXCs) required by §26.107(d) (now §26.107(c)). The commission uses the IXC re-registration/annual report to update contact information. The commission does not think that the report is burdensome. The commission disagrees with TTA concerning the annual affidavit required by §26.109(f) (consolidated into §26.111(j)), which addresses the non-use of a competitive local exchange carrier (CLEC) certification. The affidavit requirement for 12 months (§26.111(j)(1)) refers to com-

panies that have begun service and then discontinue providing service for longer than a 12-month period. Companies initiating service have 24 months under §26.111(j)(2) before they must be actively providing service and no affidavit is required. The 24-month allowance is ample time for a company to initiate service.

The commission recently updated the CLEC reporting requirements found under §26.111(k) (formerly §26.109(g) and §26.111(g)) in Project Number 35246, Rulemaking Regarding P.U.C Substantive Rules, Chapter 26, Subchapter E Certification, Licensing and Registration - Sections 26.101, 26.102, 26.103, 26.107, 26.109, 26.111, 26.113 and 26.114 and 26.89. As a result of recently enacted law, the commission will probably initiate a rulemaking to propose amendments to §26.101. Parties interested in modifications to this section are encouraged to file comments in that project.

Section 26.123 - Caller Identification Services

AT&T stated that in the previous quadrennial review of Chapter 26, the commission stated that it would initiate a rulemaking to remove references to the Caller ID Consumer Education Panel as recommended by JSI, TTA, and TSTCI. Commenters pointed out that the commission has not done so. AT&T respectfully urged the Commission to initiate the promised rulemaking to remove the references to the Caller ID Consumer Education Panel in subsection (b)(3) and (5) of this rule. TSTCI also believed that the requirement in §26.123(b)(5)(E)(ii) to file existing and future Caller ID material with the commission is not necessary and should be deleted from this rule.

Commission Response

These suggestions may have merit and will be considered in connection with other projects to amend rules in Chapter 26, as resources and priorities permit.

Section 26.125 - Automatic Dialing Announcing Devices (ADADs)

AT&T stated that in the previous quadrennial review of Chapter 26, the commission stated that it would initiate a rulemaking to address third-party ownership. AT&T pointed out that the commission has not done so. AT&T respectfully urged the commission to initiate the promised rulemaking to address third-party ownership.

Commission Response

The Commission currently has opened Project Number 38231 to amend §26.125. Parties interested in modifications to this section are encouraged to participate in that project once the commission solicits input.

Section 26.128 - Telephone Directories

TTA requested that §26.128 be revised to update definitions and agency references. TTA and TSTCI suggested that the requirements in §26.128(e)(5) for the publication of sample long distance rates are no longer useful and change too quickly to be reliable. TTA also recommended the deletion of subsection (e)(5). Verizon agreed with the comments and requests of TTA. Verizon also recommended that subsection (f)(4) and (5) be deleted since they refer to §26.122 and §26.126, which have both been repealed.

TSTCI believed that the requirement to include local and toll-free numbers of state agencies poses problems because of the number of agencies and the changes in telephone numbers. TSTCI stated that subsection (b)(2) and (3) should be revised or updated since they refer to rules that no longer exist. TSTCI agreed with the comments and requests of TTA and Verizon to delete subsection (f)(4) and (5). TSTCI was also concerned about the requirement for annual publication of telephone directories, which sometimes poses a problem for small ILECs since they may have difficulty finding a publisher willing and able to meet the rule's requirements, and/or the price is prohibitive for distribution in rural areas. TSTCI urged the commission to initiate a rulemaking to address these issues and explore possible alternatives to providing only hard copy white page directories to customers.

Commission Response

As a result of recently enacted law, which allows providers to publish telephone directories of listings on the internet, the commission may open a rulemaking to amend §26.128. Parties interested in making modifications to this section are encouraged to file comments in that project.

Section 26.133 - Business and Marketing Code of Conduct for Certificated Telecommunications Utilities (CTUs).

AT&T, TTA, and Verizon stated that subsection (f)(5) and (6) of this rule are obsolete and should be deleted. AT&T further commented that in today's highly competitive environment, this entire rule is unnecessary due to the numerous choices available to customers.

Commission Response

The comments have merit and will be considered in connection with other projects to amend rules in Chapter 26, as resources and priorities permit.

Section 26.141 - Distance Learning, Information Sharing Programs, and Interactive Multimedia Communications

TTA and TSTCI recommended that Chapter 23 citations be replaced with Chapter 26 citations where appropriate.

Commission Response

As a result of recently enacted law, the commission may initiate a rulemaking to propose amendments to §26.141. Parties interested in making modifications to this section are encouraged to file comments in that project.

Section 26.142 - Integrated Services Digital Network (ISDN)

AT&T, TTA, Verizon, and TSTCI commented that this rule should be repealed since (a) ISDN has been surpassed by other technologies since 1999 and (b) §26.143, regarding advanced services in rural areas, is better suited to address this issue. AT&T also noted that §55.014(c) of PURA and §26.143 require urban carriers to provide comparable services in rural areas on the basis of a bona fide request. AT&T noted that the commission stated in the last quadrennial review that based on technological changes, a re-evaluation of this section was due but that no such re-evaluation has been undertaken. AT&T stated that the growth in broadband service deployment during the intervening years has been extensive and that the time to revise or repeal the ISDN rule is overdue. AT&T urged the commission to initiate a rulemaking to address amendments to and possible repeal of the ISDN rule.

Commission Response

The suggestion may have merit and will be considered in connection with other projects to amend rules in Chapter 26, as resources and priorities permit.

Section 26.175 - Reclassification of Telecommunications Services for Electing Incumbent Local Exchange Companies (ILECs)

AT&T commented that the rule contains several outdated references to "discretionary services" and "competitive services" that should be updated and changed to the correct term, "non-basic services." This change in terminology was made by the Legislature in 1999 as part of Senate Bill 560.

Commission Response

The recommendation has merit and will be considered in connection with other projects to amend rules in Chapter 26, as resources and priorities permit.

Section 26.202 - Adjustment for House Bill 11

AT&T stated that the statute that required this adjustment (PURA §53.202) was repealed in the 81st Legislative Session (2009) pursuant to Senate Bill 3565. AT&T, TTA, Verizon, and TSTCI urged the commission to initiate a rulemaking to repeal this rule.

Commission Response

The commission agrees that the repeal of PURA §53.202 makes this section obsolete. The commission is addressing this comment in Project Number 38040, Rulemaking to Repeal P.U.C. Substantive Rule §26.202.

Section 26.206 - Depreciation Rates

AT&T commented that this rule has little, if any, relevance in today's competitive telecommunications marketplace and is antiquated for companies that have elected incentive regulation under Chapters 52, 58, 59, and/or 65. AT&T urged the Commission to initiate a rulemaking to repeal this rule or at least clarify that this rule does not apply to incentive-regulated companies.

Commission Response

The recommendation has merit and a clarification of which types of companies (Chapters 52, 58, 59, 65, etc.) these requirements apply to will be considered in connection with other projects to amend rules in Chapter 26, as resources and commission priorities permit.

Section 26.207 - Form and Filing of Tariffs

AT&T stated that in the previous quadrennial review of Chapter 26, the commission stated that it would initiate a rulemaking to make revisions to this section. AT&T stated that the commission has not done so. AT&T respectfully urged the commission to initiate the promised rulemaking to address arguments and recommendations expressed in this rule review or that were in the last quadrennial review of Chapter 26. AT&T specifically noted that issues such as electronic filings or tariffs could be discussed.

TTA and Verizon recommended modifying subsection (i) to include an additional sentence to clarify that the stated effective dates in the rule are not applicable to informational notices that may be filed pursuant to other effective substantive rules. TTA and Verizon also recommended the rule be modified to allow tariffs to be examined on-line.

Commission Response

The commission agrees that this section should be reviewed for appropriate revisions. As a result of recently enacted law, the commission may open a rulemaking to amend §26.207. Parties interested in making modifications to this section are encouraged to file comments in that project.

Section 26.208 - General Tariff Procedures

AT&T, TTA, and Verizon urged the commission to examine whether this rule should be amended to permit electing companies to withdraw or grandfather non-basic services by the standard informational notice, which is the same process that is used to make other service changes. In today's competitive telecommunications environment, companies should be allowed to withdraw and grandfather services based on their own business decision-making process, rather than through the regulatory process.

TTA stated that withdrawals of service should be handled through an information filing that is effective in one day or ten days, depending on whether or not the filing company is regulated under PURA Chapter 65.

Commission Response

As a result of recently enacted law, the commission may open a rulemaking to amend §26.208. Parties interested in making modifications to this section are encouraged to file comments in that project.

Section 26.209 - New and Experimental Services

AT&T stated that the commission should either repeal this rule or amend it so that it does not apply to companies that are regulated under Chapters 52, 58, 59, or 65. Such companies are permitted to introduce new services under rules that are completely different and considerably more streamlined than those found in §26.209. AT&T urged that this rule be repealed or amended so that it does not include Chapters 52, 58, 59, or 65 electing companies. TTA and Verizon supported the re-adoption of this rule with an amendment to delete subsection (g) regarding requirements of new or experimental service revenues. TTA believed reporting revenues for new or experimental services is unnecessary and burdensome and hinders the providers' willingness to offer new and experimental services.

Commission Response

The commission agrees that this section should be reviewed for appropriate revisions. The commission will address revisions to this section in connection with other projects to amend rules in Chapter 26, as resources and priorities permit.

Section 26.210 - Promotional Rates for Local Exchange Company Services

AT&T and Verizon stated that the commission should either repeal this rule or amend it so that it does not apply to companies that are regulated under Chapters 52, 58, 59, or 65. Such companies are permitted promotional rate flexibility under rules that are completely different and considerably more streamlined than §26.210.

TTA supported the re-adoption of this rule with an amendment to delete the requirement to report promotional revenues, demand, expenses, and investment, which is overly burdensome and unjustified considering the temporary nature of promotional offerings.

Commission Response

The commission agrees that this section should be reviewed for appropriate revisions. The commission may address revisions to this section in connection with other projects to amend rules in Chapter 26, as resources and priorities permit.

Section 26.211 - Rate-Setting Flexibility for Services Subject to Significant Competitive Challenges

AT&T stated that the commission should either repeal this rule or amend it so that it does not apply to companies that are regulated under Chapters 52, 58, 59, or 65, which are permitted rate-setting flexibility under different and considerably more streamlined rules. If the commission chooses to amend this rule, AT&T urged it to make clear that subsection (d), which concerns customer specific contacts, does not apply to Chapters 52, 58, 59, or 65 electing companies. AT&T stated that if the commission does not repeal this rule or clarify subsection (d), it should, at a minimum, eliminate subsection (d)(2)(D), which requires ILECs to secure affidavits from customers entering into customer-specific contracts. According to AT&T, today's customers who enter into customer-specific contracts are savvy enough to be aware of the possibility of purchasing service from alternative providers and are offended by this affidavit requirement.

Commission Response

As a result of recently enacted law, the commission may open a rulemaking to amend §26.211. Parties interested in making modifications to this section are encouraged to file comments in that project.

Section 26.215 - Long Run Incremental Cost Methodology for Dominant Certificated Telecommunications Utility (DCTU) Services

AT&T stated that it expressed concerns in the last quadrennial review of Chapter 26 relating to the filing and approval of cost studies for basic network functions (BNFs). AT&T recommended procedures to eliminate the filing and approval of cost studies for BNFs. The commission stated: "AT&T's concerns would require an extensive review in a separate proceeding" and the commission "may consider such a review at a later date." However, the commission has not done so. AT&T continues to have the same concerns and urged the commission to initiate a rulemaking to review whether the requirement for filing and approval of BNF cost studies should be amended or eliminated. In the alternative, AT&T urged the commission to consider whether AT&T and Verizon (the only two DCTUs that must comply with this rule) should be required to comply with the LRIC study requirements set forth in §26.214 like all other ILECs in Texas.

TTA and Verizon believed the dominant carrier cost rule is outdated. The BNF concept from this current cost rule should be eliminated since it predates amendments made to PURA in 1999 through 2005. Verizon stated that Verizon and AT&T are the only two companies that fall under §26.215, and they could migrate into the standards under §26.214, which applies to all other ILECs.

In reply, Sprint stated that the market power of these two companies (AT&T and Verizon) in their respective serving areas is strong enough that the development and filing of detailed LRIC materials is an appropriate and necessary safeguard to ensure that the statutory provisions that establish LRIC price floors are adhered to and to protect the market from abuse. Sprint believed that the commission cannot protect the market or competitors from unjust and unreasonable discrimination and practices if it lacks meaningful data and knowledge regarding the costs of these two dominant carriers. Sprint opposed the repeal of §26.215 and urged the commission not to initiate a rulemaking proceeding to consider such a repeal. Sprint believed that the minimal LRIC cost study requirements of §26.214 are wholly insufficient to enable the commission to fulfill its statutory obligations regarding the services offered by AT&T and Verizon.

TEXALTEL agreed with Sprint's comments. TEXALTEL did not believe a change in §26.215 is warranted. In the future, TEXALTEL may not oppose changes which could streamline or simplify the conduct and filing of studies on an item-by-item basis. Time Warner agreed with Sprint's reply comments. Time Warner did not believe a change in §26.215 is warranted and urged the commission not to initiate a rulemaking concerning this rule.

Commission Response

As a result of recently enacted law, the commission may open a rulemaking to amend §26.215. Parties interested in making modifications to this section are encouraged to file comments in that project.

Section 26.223 - Prohibition of Excessive COA/SPCOA Usage Sensitive Intrastate Switched Access Rates

AT&T stated this rule was established ten years ago to implement PURA §52.155. Subsection (f)(1)(A) requires COA/SPCOA holders who desire to charge an intrastate switched access rate higher than the incumbent's rate or the statewide composite rate to file an application that includes, at a minimum, "cost justification for each rate element." AT&T noted, however, that no part of §52.155 directs the commission to use "cost" as a basis for establishing the composite rate. AT&T stated that it has been ten years with numerous changes, including the fact that the Legislature has reduced intrastate switched access rates for the largest ILECs, in some cases quite significantly. AT&T requested that the commission delete subsection (f) of this rule as an unnecessary proof requirement of facts that, as a matter of public policy, do not provide any justification for higher switched access rates.

Commission Response

The suggestions offered by AT&T may have merit and will be considered in connection with other projects to amend rules in Chapter 26, as resources and priorities permit.

Section 26.224 - Requirements Applicable to Basic Network Services for Chapter 58 Electing Companies

AT&T stated that it recommended that this rule be amended in the last quadrennial review because the rate cap reference therein has expired for most, if not all, electing companies. According to AT&T, the commission stated that this section needs to be re-evaluated in a separate proceeding, at a later date. However, the commission has not done so. Also, AT&T stated that subsection (k) of this rule, which establishes an "additional notice requirement for an electing company serving more than five million access lines in this state," expired on September 1, 2003. AT&T urged the commission to initiate the promised rulemaking to revise this rule to eliminate the obsolete references to the Chapter 58 rate cap and delete subsection (k).

Commission Response

AT&T's suggestions may have merit and will be considered in connection with other projects to amend rules in Chapter 26, as resources and priorities permit.

Section 26.225 - Requirements Applicable to Nonbasic Services for Chapter 58 Electing Companies

AT&T stated that the temporary price ceilings set forth in subsection (d)(1)(A) of this rule have expired. AT&T urged the commission to initiate a rulemaking to delete subsection (d)(1)(A) because it has expired.

Commission Response

AT&T's recommendation has merit and will be considered in connection with other projects to amend rules in Chapter 26, as resources and priorities permit.

Section 26.226 - Requirements Applicable to Pricing Flexibility for Chapter 58 Electing Companies

AT&T stated that the partial restrictions on entering into a customer-specific contact set forth in subsection (e)(2) of this rule have expired. AT&T urged the commission to initiate a rulemaking to delete subsection (e)(2) because it has expired.

Commission Response

As a result of recently enacted law, the commission may open a rulemaking to amend §26.226. Parties interested in making modifications to this section are encouraged to file comments in that project.

Section 26.375 - Reclamation of Codes and Thousands-Blocks and Petitions for Extension of Code and Thousands Block Activation

TTA and Verizon supported the re-adoption of this rule with the following amendment: elimination of the reporting obligation found in subsection (g)(1). This rule requires code holders to report to the commission new code holder information whenever it requests the transfer of a code of thousands-blocks to a new code holder. This requirement is outdated and unnecessary. Codes and thousands-blocks are currently handled by the plan administrator. Companies turn over thousand blocks and the administrator determines who takes them at a later

date. According to TTA and Verizon, this code holder information is available from public sources. The commission is capable of obtaining code holder information from public sources such as www.nanpa.com and www.nationalpooling.com.

Commission Response

TTA's and Verizon's recommendation has merit and may be considered in connection with other projects to amend rules in Chapter 26, as resources and priorities permit.

Section 26.403 - Texas High Cost Universal Service Plan (THCUSP)

AT&T, TTA, and Verizon stated that the requirement to annually notify the TUSF Administrator of an eligible telecommunications provider's (ETP's) continued eligibility under subsection (f)(3) of this rule is unnecessary and should be eliminated. The commenters noted that ETPs are required to attest elsewhere to their eligibility (subsection (f)(2)) to receive THCUSP funding both monthly (via the monthly claims submission process) as well as annually (pursuant to §26.417(i)). AT&T, TTA, and Verizon urged the Commission to initiate a rulemaking to delete subsection (f)(3).

Commission Response

The commission agrees that this section should be reviewed for appropriate revisions. The commission may address revisions to this section in connection with other projects to amend rules in Chapter 26, as resources and priorities permit.

Section 26.404 - Small and Rural Incumbent Local Exchange Company (ILEC) Universal Service Plan

TTA recommended elimination of the annual reporting requirement that obligates ETPs to notify the Texas universal service fund (TUSF) administrator that it is qualified to participate in the Small and Rural ILEC Universal Service Plan under subsection (g)(2). TTA stated that each ETP is currently required to provide a monthly report to the TUSF administrator signifying its eligibility to receive Small and Rural ILEC Universal Service Plan support under subsection (g)(1). TTA also stated that ETPs are also required to annually file with the commission affidavits regarding their eligibility to continue receiving THCUSP under PURA §56.030 and §26.417(i).

Commission Response

As a result of recently enacted law, the commission may initiate a rulemaking to amend §26.404. Parties interested in making modifications to this section are encouraged to file comments in that project.

Section 26.417 - Designation of Eligible Telecommunications Providers to Receive Texas Universal Service Funds (TUSF)

AT&T stated that subsection (c)(2)(C) of this rule expired on August 31, 2007 and urged the commission to initiate a rulemaking to delete it.

TSTCI stated that this rule should be revised to allow a more realistic timeline for processing contested applications. In a contested case when an application for ETP designation is docketed, the effective date of the application is automatically suspended 120 days after the applicant has filed all of its direct testimony and exhibits, or 155 days after the proposed effective date, whichever is later. According to TSTCI, while this timeline seems reasonable, in recent contested ETP designation proceedings, parties have had a difficult time meeting the deadlines because ETPs have filed their direct testimony prior to permitting the State Office of Administrative Hearings (SOAH) an opportunity to conduct a prehearing conference and establish a procedural schedule. TSTCI stated that in these cases, SOAH, the commission staff, and intervenors (if any) are strained to complete a contested case and return a proposal for decision to the commission in time for the commissioners to consider. For these reasons, TSTCI urged the commission to extend the effective date of the docketed ETP designation cases to 180 days after the applicant has filed all of its direct testimony and exhibits, or 155 days after the proposed effective date, whichever is later.

Commission Response

The commission agrees that this section should be reviewed for appropriate revisions. The commission will address revisions to this section in connection with other projects to amend rules in Chapter 26, as resources and priorities permit.

Section 26.418 - Designation of Common Carriers as Eligible Telecommunications Carriers to Receive Federal Universal Service Funds

TSTCI stated that this rule should be revised to allow a more realistic timeline for processing contested applications. In a contested case when an application for eligible telecommunications carrier (ETC) designation is docketed, the effective date of the application is automatically suspended 120 days after the applicant has filed all of its direct testimony and exhibits, or 155 days after the proposed effective date, whichever is later. According to TSTCI, while this timeline seems reasonable, in recent contested ETC designation proceedings, parties have had a difficult time meeting the deadlines because ETCs have filed their direct testimony prior to permitting SOAH an opportunity to conduct a prehearing conference and establish a procedural schedule. TSTCI stated that in these cases, SOAH, the commission staff, and intervenors (in any) are strained to complete a contested case and return a proposal for decision to the commission in time for the commissioners to consider it. For these reasons, TSTCI urged the commission to extend the effective date of the docketed ETC designation cases to a date 180 days after the applicant has filed all of its direct testimony and exhibits, or 155 days after the proposed effective date, whichever is later.

Commission Response

The commission agrees that this section should be reviewed for appropriate revisions. The commission will address revisions to this section in connection with other projects to amend rules in Chapter 26, as resources and commission priorities permit.

The commission readopts Chapter 26 pursuant to the Public Utility Regulatory Act (PURA), Texas Utilities Code Annotated §14.002 (Vernon 2007, Supplement 2010), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and Texas Government Code §2001.039, which requires each state agency to review and readopt its rules every four years.

Cross Reference to Statutes: Texas Utilities Code Annotated, Title II, Public Utility Regulatory Act, Subtitles A and C; and Title IV, Chapter 162, Chapter 181, Subchapter E, Chapter 182 and Chapter 183.

TRD-201102675
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 13, 2011

♦ ♦ ♦

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.

Department of Aging and Disability Services

Notice - Procurement of Services by Area Agencies on Aging

The Department of Aging and Disability Services' Access and Intake Division - Area Agencies on Aging Section oversees the delivery of Older Americans Act services for individuals 60 years of age and older, their family members, and other caregivers through contracts with area agencies on aging located throughout the state. These 28 area agencies on aging are currently seeking qualified entities to provide services such as: Congregate Meals, Home Delivered Meals, Transportation, Personal Assistance, Homemaker, and Caregiver, as well as other related services. Parties interested in providing services must contact the area agency on aging operating within their service area to obtain information relating to vendor open enrollment, requests for proposals (RFP), the contracting process, the types of services being considered, and the actual funding available.

Identified in the comprehensive list are all area agencies on aging, contact information, addresses, telephone numbers, and service areas:

Area Agencies on Aging
7/14/2011

Area Agency on Aging of the Alamo Area
8700 Tesoro, Suite 700
San Antonio, Texas 78217-6228
Ph: 210-362-5561 **1-866-231-4922**
Fax: 210-225-5937

Director:
Ms. Gloria Vasquez, Director
gvasquez@aacog.com

Executive Director:
Alamo Area Council of Governments
Mr. Dean Danos, Executive Director
ddanos@aacog.com

Fiscal Director:	Contact:
Blanca Tapia	Andrew Perez
btapia@aacog.com	aperez@aacog.com

Counties Served: Atascoca, Bandera, Comal, Frio, Gillespie, Guadalupe; Karnes, Kendall, Kerr, Medina, Willson

Area Agency on Aging of Bexar County
8700 Tesoro, Suite 700
San Antonio, Texas 78217-6228
Ph: 210-362-5254 **1-800-960-5201**
Fax: 210-225-5937

Director:
Dr. Martha Spinks,Director
mspinks@aacog.com

Executive Director:
Alamo Area Council of Governments
Mr. Dean Danos, Executive Director
ddanos@aacog.com

Fiscal Director:	Contact:
Blanca Tapia	Andrew Perez
btapia@aacog.com	aperez@aacog.com

Counties Served: Bexar

Area Agency on Aging of Ark-Tex
P. O. Box 5307
Texarkana, Texas 75505-5307
Ph: 903-832-8636 **1-800-372-4464**
Fax: 903-832-3441

Director:
Ms. Diane McKinnon, Manager
dmckinnon@atcog.org

Executive Director:
Ark-Tex Council of Governments
Mr. L.D. Williamson, Executive Director
ldwilliamson@atcog.org

Fiscal Director:	Contact:
Brenda Davis	Debra Newton
bdavis@atcog.org	dnewton@atcog.org

Counties Served: Bowie, Cass, Delta, Franklin, Hopkins, Lamar, Morris, Red River, Titus

Area Agency on Aging of Brazos Valley
P. O. Box 4128
Bryan, Texas 77805-4128
Ph: 979-595-2806 **1-800-994-4000**
Fax: 979-595-2810

Director:
Mr. Ronnie Gipson, Director
rgipson@bvcog.org

Executive Director:
Brazos Valley Council of Governments
Mr. Tom M. Wilkinson, Jr., Executive Director
twilkinson@bvcog.org

Fiscal Director:	Contact:
Deborah Krusekopf	Kay Wilson
dkrusekopf@bvcog.org	kwilson@bvcog.org

Counties Served: Brazos, Burleson, Grimes, Leon, Madison, Robertson, Washington

Area Agencies on Aging
7/14/2011

Area Agency on Aging of the Capital Area
6800 Burleson Rd. Bldg. 310, STE 165
Austin, Texas 78744-2306
Ph: 512-916-6062 **1-888-622-9111**
Fax: 512-916-6042

Director:
Ms. Glenda Rogers, Director
grogers@capcog.org

Executive Director:
Capital Area Council of Governments
Ms. Betty Voights, Executive Director
bvoights@capcog.org

Fiscal Director: Contact:
James Mikolaichik Michael Weddell
jmikolaichik@capcog.org mjweddell@capcog.org

Counties Served: Bastrop, Blanco, Burnet, Caldwell, Fayette, Hays, Lee, Llano, Travis, Williamson

Area Agency on Aging of Central Texas
2180 North Main Street
Belton, Texas 76513-1919
Ph: 254-770-2330 **1-800-447-7169**
Fax: 254-770-2349

Director:
Mr. H. Richard McGhee, Director
richard.mcghee@ctcog.org

Executive Director:
Central Texas Council of Governments
Mr. Jim Reed, Executive Director
jreed@ctcog.org

Fiscal Director: Contact:
Michael Irvine Sharon Harrell
mirvine@ctcog.org

Counties Served: Bell, Coryell, Hamilton, Lampasas, Milam, Mills, San Saba

Area Agency on Aging of the Coastal Bend
P. O. Box 9909
Corpus Christi, Texas 78469
Ph: 361-883-3935 **1-800-817-5743**
Fax: 361-883-5749

Director:
Ms. Betty Lamb, Director
betty@cbcogaaa.org

Executive Director:
Coastal Bend Council of Governments
Mr. John P. Buckner, Executive Director
john@cbcog98.org

Fiscal Director: Contact:
Veronica Toomey
veronica@cbcog98.org

Counties Served: Aransas, Bee, Brooks, Duval, Jim Wells, Kenedy, Kleberg, Live Oak, McMullen, Nueces, Refugio, San Patricio

Area Agency on Aging of Concho Valley
2801 W. Loop 306, Suite A
San Angelo, Texas 76904-6502
Ph: 325-223-5704 **1-877-944-9666**
Fax: 325-223-8233

Director:
Terry Lockhart, Director
Terry.lockhart@cvcog.org

Executive Director:
Concho Valley Council of Governments
Mr. Jeffrey K. Sutton, Executive Director
jsutton@cvcog.org

Fiscal Director: Contact:
Nancy Pahira
Nancy@cvcog.org @cvcog.org

Counties Served: Coke, Concho, Crockett, Irion, Kimble, Mason, Mculloch, Menard, Reagan, Schleicher, Sterling, Sutton, Tom Green

Area Agencies on Aging
7/14/2011

Area Agency on Aging of Dallas County
1349 Empire Central, Ste. 400
Dallas, Texas 75247-4033
Ph: 214-871-5065 **1-800-548-1873**
Fax: 214-871-7442

Director:
Ms. Monita McGhee, Director
mmcghee@ccgd.org

Executive Director:
Community Council of Greater Dallas
Ms. Martha Blaine, Executive Director
mblaine@ccgd.org

Fiscal Director:	Contact:
Vicki White	Dena Boyd
vwhite@ccgd.org	dboyd@ccgd.org

Counties Served: Dallas

Area Agency on Aging of Deep East Texas
210 Premier Drive
Jasper, Texas 75951-7495
Ph: 409-384-7614 **1-800-435-3377**
Fax: 409-384-5390

Director:
Ms. Holly Anderson, Director
handerson@detcog.org

Executive Director:
Deep East Texas Council of Governments
Mr. Walter Diggles, Executive Director
wdiggles@detcog.org

Fiscal Director:	Contact:
Patricia DuBose	Holly Anderson
pdubose@detcog.org	

Counties Served: Angelina, Houston, Jasper, Nacogdoches, Newton, Polk, Sabine, San Augustine, San Jacinto, Shelby, Trinity, Tyler

Area Agency on Aging of East Texas
3800 Stone Road
Kilgore, Texas 75662-6927
Ph: 903-984-8641 **1-800-442-8845**
Fax: 903-984-4482

Director:
Mr. Claude I. Andrews, Director
Candrews@etcog.org

Executive Director:
East Texas Council of Governments
Mr. David Cleveland, Executive Director
David.cleveland@etcog.org

Fiscal Director:	Contact:
Judy Durland	Beverly Brown
Judy.durland@twc.state.tx.us	

Counties Served: Anderson, Camp, Cherokee,Gregg, Harrision, Henderson, Marion, Panola, Rains, Rusk, Smith, Upshur, VanZandt, Wood

Area Agency on Aging of the Golden Crescent Region
120 South Main St. STE 210
Victoria, Texas 77901
Ph: 361-578-1587 **1-800-574-9745**
Fax: 361-578-8865

Director:
Ms. Cindy Cornish, Director
cindyco@gcrpc.org

Executive Director:
Golden Crescent Regional Planning Commission
Mr. Joe E. Brannan, Executive Director
jbrannan@gcprc.org

Fiscal Director:	Contact:
Cynthia Skarpa	Cynthia Skarpa
cindys@gcrpc.org	

Counties Served: Calhoun, DeWitt, Goliad, Gonzales, Jackson, Lavaca, Victoria

Area Agencies on Aging
7/14/2011

Area Agency on Aging of Harris County
8000 North Stadium Drive, 3rd. Floor
Houston, Texas 77054-1823
Ph: 832-393-4301
Fax: 832-393-5214

Director:
Ms. Deborah A. Moore, Director
deborahA.moore@houstontx.gov

Executive Director:
Houston Dept. of Health & Human Services
Stephen Williams, Director
stephen.williams@houstontx.gov

Fiscal Director: Contact
Monica Mitchell Celina Ridge
monica.mitchell@houstontx.gov

Counties Served: Harris

Area Agency on Aging of the Heart of Texas
1514 S. New Rd.
Waco, Texas 76711-1316
Ph: 254-292-1800 **1-866-772-9600**
Fax: 254-756-0102

Director:
Mr. Gary Luft, Director
Gary.Luft@hot.cog.tx.us

Executive Director:
Heart of Texas Council of Governments
Mr. Ken Simons, Executive Director
ken.simons@hot.cog.tx.us

Fiscal Director: Contact:
John Minnix Donnis Cowan
John.minnix@hot.cog.tx.us

Counties Served: Bosque, Falls, Freestone, Hill, Limestone, McLennan

Area Agency on Aging of Houston-Galveston
P. O. Box 22777
Houston, Texas 77227-2777
Ph: 713-627-3200 **1-800-437-7396**
Fax: 713-993-4578

Director:
Mr. Curtis M. Cooper, Manager
curtis.cooper@h-gac.com

Executive Director:
Houston-Galveston Area Council
Mr. Jack Steele, Executive Director
jack.steele@H-GAC.com

Fiscal Director: Contact:
Nancy Haussler David Waller
Nancy.haussler@h-gac.com

Counties Served: Austin, Brazoria, Chambers, Colorado, Fort Bend, Galveston, Liberty, Matagorda, Montgomery, Walker, Waller, Wharton

Area Agency on Aging of the Lower Rio Grande Valley
311 N. 15th Street
McAllen, Texas 78501-4705
Ph: 956-682-3481 **1-800-365-6131**
Fax: 956-682-8852

Director:
Mr. Jose L. Gonzalez, Director
jgonzalez@lrgvdc.org

Executive Director:
Lower Rio Grande Valley Development Council
Mr. Kenneth N. Jones, Executive Director
knjones@lrgvdc.org

Fiscal Director: Contact:
Ann Lyles Crystal Balboa
lyles@acnet.net cbalboa@lrgvdc.org

Counties Served: Cameron, Hidalgo, Willacy

Area Agencies on Aging
7/14/2011

Area Agency on Aging of the Middle Rio Grande Area
P. O. Box 1199
Carrizo Springs, Texas 78834-3211
Ph: 830-876-3533 **1-800-224-4262**
Fax: 830-876-9415

Director:
Mr. Conrado Longoria, Jr. Director
conrado.longoria@mrgdc.org

Executive Director:
Middle Rio Grande Development Council
Mr. Leodoro Martinez, Executive Director
leodoro.martinez@mrgdc.org

Fiscal Director: Contact:
Joe D. Cruz, Jr. Pete Perez
Joe.cruz@mrgdc.org

Counties Served: Dimmit, Edwards, Kinney, LaSalle, Maverick, Real, Uvalde,Val Verde, Zavala

Area Agency on Aging of North Central TX
P. O. Box 5888
Arlington, Texas 76005-5888
Ph: 817-695-9194 **1-800-272-3921**
Fax: 817-695-9274

Director:
Ms. Doni Van Ryswyk, Manager
dvanryswyk@nctcog.org

Executive Director:
North Central Texas Council of Governments
Mr. Mike Eastland, Executive Director
meastland@nctcog.org

Fiscal Director: Contact:
Shannan Ramirez Mona Barbee
lamardones@nctcog.org

Counties Served: Collin, Denton, Ellis, Erath, Hood, Hunt, Johnson, Kaufman, Navarro, Palo Pinto, Parker, Rockwall, Somervell, Wise

Area Agency on Aging of North Texas
P. O. Box 5144
Wichita Falls, Texas 76307-5144
Ph: 940-322-5281 **1-800-460-2226**
Fax: 940-322-6743

Director:
Ms. Rhonda K. Pogue, Director
rpogue@nortexrpc.org

Executive Director:
Nortex Regional Planning Commission
Mr. Dennis Wilde, Executive Director
dwilde@nortexrpc.org

Fiscal Director: Contact:
James Springer Rhonda Pogue
jspringer@nortexrpc.org

Counties Served: Archer, Baylor, Clay, Cottle, Foard, Hardeman, Jack, Montague, Wichta, Wilbarger, Young

Area Agency on Aging of the Panhandle Area
P. O. Box 9257
Amarillo, Texas 79105-9257
Ph: 806-331-2227 **1-800-642-6008**
Fax: 806-373-3268

Director:
Ms. Melissa Carter, Director
mcarter@prpc.cog.tx.us

Executive Director:
Panhandle Regional Planning Commission
Mr. Gary Pitner, Executive Director
Gpitner@theprpc.org

Fiscal Director: Contact:
Cindy Boone Christy Henderson
cboone@theprpc.org

Counties Served: Armstrong, Briscoe, Carson, Castro, Childress, Collingsworth, Dallam, Deaf Smith, Donley, Gray, Hall, Hansford, Hartley, Hemphill, Hutchinson, Lipscomb, Moore, Ochiltree, Oldham, Parmer, Potter, Randall, Roberts, Sherman, Swisher, Wheeler

Area Agencies on Aging
7/14/2011

Area Agency on Aging of the Permian Basin
P.O. Box 60660
Midland, Texas 79711-0660
Ph: 432-563-1061 **1-800-491-4636**
Fax: 432-567-1011

Director:
Ms. Jeannie Raglin, Director
jraglin@aaapbcom

Executive Director:
Permian Basin Regional Planning Commission
Ms. Terri Moore, Executive Director
tmoore@pbrpc.org

Fiscal Director: Helen Grady
heleng@pbrpc.org

Contact: Jeannie Raglin

Counties Served: Andrews, Borden, Crane, Dawson, Ector, Gaines, Glasscock, Howard, Loving, Martin, Midland, Pecos, Reeves, Terrell, Upton, Ward, Winkler

Area Agency on Aging of the Rio Grande Area
1100 North Stanton, Suite 610
El Paso, Texas 79902-4155
Ph: 915-533-0998 **1-800-333-7082**
Fax: 915-544-5402

Director:
Ms. Yvette Lugo, Director
yvettel@riocog.org

Executive Director:
Rio Grande Council of Governments
Ms. Annette Gutierrez. Executive Director
anneteg@riocog.org

Fiscal Director: Hector F. Diaz
hectord@riocog.org

Contact: Lorena Estrada
lorenae@riocog.org

Counties Served: Brewster, Culberson, El Paso, Hudspeth, Jeff Davis, Presidio

Area Agency on Aging of Southeast TX
2210 Eastex Freeway
Beaumont, Texas 77703-4929
Ph: 409-924-3381 **1-800-395-5465**
Fax: 409-899-4829

Director:
Colleen Halliburton, Director
challiburton@setrpc.org

Executive Director:
South East Texas Regional Planning Commission
Mr. Shaun Davis, Executive Director
sdavis@setrpc.org

Fiscal Director: Jim Borel
jborel@setrpc.org

Contact: Teri Barnes
tbarnes@setrpc.org

Counties Served: Hardin, Jefferson, Orange

Area Agency on Aging of South Plains
P. O. Box 3730 / Freedom Station
Lubbock, Texas 79452
Ph: 806-687-0940 **1-888-418-6564**
Fax: 806-765-9544

Director:
Ms. Liz Castro, Director
lcastro@spag.org

Executive Director:
South Plains Association of Governments
Mr. Tim C. Pierce, Executive Director
tpierce@spag.org

Fiscal Director: Tim Schwartz
tschwartz@spag.org

Contact: Al Garcia

Counties Served: Bailey, Cochran, Crosby, Dickens, Floyd, Garza, Hale, Hockley, King, Lamb, Lubbock, Lynn, Motley, Terry, Yoakum

Area Agencies on Aging
7/14/2011

Area Agency on Aging of South Texas
P.O. Box 2187
Laredo, Texas 78044-2187
Ph: 956-722-3995 **1-800-292-5426**
Fax: 956-722-2670

Director:
Mr. Alberto Rivera, Jr., Aging Services Director
arivera@stdc.cog.tx.us

Executive Director:
South Texas Development Council
Mr. Amando Garza, Jr., Executive Director
agarzajr@stdc.cog.tx.us

Fiscal Director: Robert Mendiola
Contact: Nancy Rodriquez
mendiola@stdc.cog.tx.us

Counties Served: Jim Hogg, Starr, Webb, Zapata

Area Agency on Aging of Tarrant County
1500 N. Main St. Suite 200
Fort Worth, Texas 76164-0448
Ph: 817-258-8081 **1-877-886-4833**
Fax: 817-258-8074

Director:
Mr. Don Smith, Director
Don.smith@unitedwaytarrant.org

Executive Director:
United Way Metropolitan Tarrant County
Ms. Ann Rice, Sr. Vice President
ann.rice@unitedwaytarrant.org

Fiscal Director: Mitch Leach
Contact: Sarah Hummer
mitch.leach@unitedwaytarrant.org

Counties Served: Tarrant

Area Agency on Aging of Texoma
1117 Gallagher, Suite 200
Sherman, Texas 75090-3107
Ph: 903-813-3580 **1-800-677-8264**
Fax: 903-813-3573

Director:
Ms. Karen Bray, Director
kbray@texoma.cog.tx.us

Executive Director:
Texoma Council of Governments
Dr. Susan B. Thomas, Executive Director
sthomas@texoma.cog.tx.us

Fiscal Director: Terrell Culbertson
Contact: Rodrigo Moyshondt
tculbertson@texoma.cog.tx

Counties Served: Cooke, Fannin, Grayson

Area Agency on Aging of West Central TX
3702 Loop 322
Abilene, Texas 79602-7300
Ph: 325-672-8544 **1-800-928-2262**
Fax: 325-675-5214

Director:
Ms. Gail Kaiser, Director
gkaiser@wctcog.org

Executive Director:
West Central Texas Council of Governments
Mr. Tom K. Smith, Executive Director
tsmith@wctcog.org

Fiscal Director: Christy Marlar
Contact: Theresa Edwards
cmarlar@wctcog.org

Counties Served: Brown, Callahan, Coleman, Comanche, Eastland, Fisher, Haskell, Jones, Kent, Knox, Mitchell, Nolan, Runnels, Scurry, Shackelford, Stephens, Stonewall, Taylor, Throckmorton

Contact the Department of Aging and Disability Services, Access and Intake Division - Area Agencies on Aging Section, at (512) 438-4290 for questions about this general notice.

TRD-201102719
Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Filed: July 19, 2011

♦ ♦ ♦

Office of the Attorney General

Texas Health and Safety and Texas Water Code Settlement Notice

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Health and Safety Code and Texas Water Code. Before the State may settle a judicial enforcement action under the Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code.

Case Title and Court: *Harris County, Texas and the State of Texas v. Akzo Nobel Polymer Chemicals, L.L.C.;* Cause No. 2010-82264; in the 127th Judicial District Court, Harris County, Texas.

Nature of Defendant's Operations: Defendant operated a chemical manufacturing facility in La Porte, Texas. Defendant unlawfully emitted isobutylene, nitrogen oxides, and carbon monoxide from its facility.

Proposed Agreed Judgment: The Agreed Final Judgment orders the Defendant to collectively pay $12,500.00 in civil penalties to Harris County and the State of Texas along with attorney's fees.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment should be reviewed. Requests for copies of the judgment, and written comments on the proposed settlement, should be directed to Anthony W. Benedict, Assistant Attorney General, Environmental Protection and Administrative Law Division, Office of the Texas Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0911. Written comments must be received within 30 days of publication of this notice to be considered.

For information regarding this publication, contact Zindia Thomas, Agency Liaison, at (512) 936-9901.

TRD-201102743
Jay Dyer
Deputy Attorney General
Office of the Attorney General
Filed: July 20, 2011

♦ ♦ ♦

Cancer Prevention and Research Institute of Texas

Notice of Public Hearing and Opportunity to Comment on the Texas Cancer Plan

The Cancer Prevention and Research Institute of Texas (CPRIT) is soliciting public comments on the *Texas Cancer Plan* 2012 draft outline. CPRIT is responsible for promoting the development and coordination of effective and efficient statewide public and private policies, programs, and services related to cancer and by encouraging cooperative, comprehensive, and complementary planning among the public, private, and volunteer sectors involved in cancer prevention, detection, treatment, and research. Pursuant to Texas Health and Safety Code Chapter 102, §102.002(3), CPRIT is required to develop and implement the *Texas Cancer Plan.* The *Texas Cancer Plan* serves as a statewide blueprint for cancer prevention and control, identifying the challenges to addressing the impact of cancer in local communities and presenting a set of objectives, goals and strategies to help guide Texas in its fight against cancer.

The *Texas Cancer Plan* 2012 draft outline is currently available for viewing and comment via the *Texas Cancer Plan* revision online comment tool, located on the CPRIT website at www.cprit.state.tx.us/about-cprit/texas-cancer-plan/submit-public-comment. The final version of the *Texas Cancer Plan* 2012 is expected to be released January 2012.

CPRIT will host a public hearing on August 4, 2011 at 1:00 p.m. for input from interested members of the public. The public hearing will be held at the Texas Medical Association, Thompson Auditorium, 401 W. 15th St., Austin, Texas 78701. In addition, CPRIT will host two electronic webinars to solicit input. These webinars will be held from 1:00 - 3:00 p.m. on August 11 and August 16, 2011. More information about participating in the webinars is available on CPRIT's website at www.cprit.state.tx.us.

Comments may be submitted through the *Texas Cancer Plan* revision online comment tool, located at www.cprit.state.tx.us/about-cprit/texas-cancer-plan/submit-public-comment. Individuals without internet access may submit written comments or requests for copies of the *Texas Cancer Plan* 2012 draft outline to prevention@cprit.state.tx.us or mailed to:

The Cancer Prevention and Research Institute of Texas

Attn: Texas Cancer Plan

P.O. Box 12097

Austin, Texas 78711

Comments must be received by September 6, 2011.

TRD-201102727
William "Bill" Gimson
Executive Director
Cancer Prevention and Research Institute of Texas
Filed: July 19, 2011

♦ ♦ ♦

Comptroller of Public Accounts

Notice of Contract Amendments

The Comptroller of Public Accounts (Comptroller) has entered into amendments with several independent contractors to their respective original Professional Services Agreements for Independent Examining Services (Contracts) resulting from Comptroller's Request for Qualifications 197b (RFQ 197b). The Contracts were awarded as authorized by Chapter 111, Subchapter A, §111.0045 of the Texas Tax Code.

Notice of RFQ 197b was published in the April 30, 2010, issue of the *Texas Register* (35 TexReg 3345). Notice of Awards was published in the September 17, 2010, issue of the *Texas Register* (35 TexReg 8457).

Amendments No. 1 to their respective Contracts have been entered into with the following persons or firms:

Paul Hernandez, 1938 Crisfield Drive, Sugar Land, Texas 77479, is extended by Amendment No. 1.

Stites Pybus, LLC, 2925 Cuero Cove, Round Rock, Texas 78681, is extended by Amendment No. 1.

Brenda Maldonado, 2095 Savannah Trace, Beaumont, Texas 77706, is extended by Amendment No. 1.

Stephanie (Clark) Jackson, 2700 Blanchette Street, Beaumont, Texas 77701, is extended by Amendment No. 1.

William R. Smith, 5319 Cerro Vista, San Antonio, Texas 78233, is extended by Amendment No. 1.

Stephen T. Broad, 1218 Gordon Blvd., San Angelo, Texas 76905, is extended by Amendment No. 1.

Jean Chan, 6119 Jereme Trail, Dallas, Texas 75252, is extended by Amendment No. 1.

Art Koenings, Jr., CPA, 15712 Spillman Ranch Loop, Austin, Texas 78738, is extended by Amendment No. 1.

Homer Max Wiesen, CPA, 1009 Panhandle, Denton, Texas 76201, is extended by Amendment No. 1.

Paul D. Underwood, 6130 Coralridge Drive, Corpus Christi, Texas 78413, is extended by Amendment No. 1.

Terra Hillman, 2174 East Michael Square, Lake Charles, Louisiana 70611, is extended by Amendment No. 1.

Antonio V. Concepcion, 9227 Bristlebrook Drive, Houston, Texas 77083, is extended by Amendment No. 1.

Ruzicka-Reed Partnership, 1555 Glenhill Lane, Lewisville, Texas 75077, is extended by Amendment No. 1.

Max Dwain Martino, PC, 373 1/2 West 19th Street, Suite C-2, Houston, Texas 77008, is extended by Amendment No. 1.

Vernice Seriale, Jr., 11612 Cross Spring Drive, Pearland, Texas 77584, is extended by Amendment No. 1.

Dan A. Northern, 2201 Woodland Hills Lane, Weatherford, Texas 76087, is extended by Amendment No. 1.

Philip E. Tan, 8815 Crazy Horse Trail, Houston, Texas 77064, is extended by Amendment No. 1.

Jodie Moore, 2707 Bent Creek Drive, Pearland, Texas 77584, is extended by Amendment No. 1.

Dibrell P. Dobbs d/b/a State Tax Consulting Group, 2906 Timber Gardens Court, Arlington, Texas 76016, is extended by Amendment No. 1.

Donald E. Pearson, 4231 Torrey Creek Lane, Houston, Texas 77014, is extended by Amendment No. 1.

David Tran d/b/a Lone Star Sales Tax Consulting, 1144 N. Plano Road, Suite 133, Richardson, Texas 75081, is extended by Amendment No. 1.

Cherise D. Collins, 17011 Driver Lane, Sugar Land, Texas 77498, is extended by Amendment No. 1.

D. Smith Consulting, 418 Sonora Drive, Garland, Texas 75043, is extended by Amendment No. 1.

Amendment No. 2 to the original Contract has been entered into with:

Garrett State Tax Service, Inc., 1911 Broadway Blvd., Kilgore, Texas 75662, is extended by Amendment No. 2.

The original term of the Contracts was September 1, 2010 through August 31, 2011. Amendments No. 1 and 2, the subjects of this notice, extend the term of the Contracts through August 31, 2012, with one (1) remaining option to renew.

The total amount of each Contract is based on the size of contract tax examination packages awarded by the Comptroller's Project Manager during the term of each Contract.

TRD-201102753
William Clay Harris
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Filed: July 20, 2011

♦ ♦ ♦

Notice of Request for Proposals

Pursuant to §1201.027, Texas Government Code; and Chapter 2156, §2156.121, Texas Government Code; and Chapter 404, Subchapter H, Texas Government Code, the Comptroller of Public Accounts (Comptroller) announces its Request for Proposals (RFP #202c) from qualified, independent firms to serve as Commercial Paper Dealer to the Comptroller in connection with the marketing of certain Tax Exempt Commercial Paper Notes. The selected Commercial Paper Dealers, if any, selected under this RFP shall provide Commercial Paper Dealer Services to the Comptroller in connection with the anticipated issuance of Tax Exempt Commercial Paper Notes and to market such notes for the fiscal year beginning September 1, 2011, and ending August 31, 2012. The Commercial Paper Dealer(s) will be expected to begin performance of the contract on or about September 1, 2011, or as soon thereafter as practical.

Contact: Parties interested in submitting a proposal should contact Jette Withers, Assistant General Counsel, Contracts, Comptroller of Public Accounts, 111 E. 17th St., Room 201, Austin, Texas 78774 (Issuing Office), telephone number: (512) 305-8673, to obtain a copy of the RFP. The Comptroller will mail copies of the RFP only to those specifically requesting a copy. The RFP will be available for pick-up at the above-referenced address on Friday, July 29, 2011, after 10:00 a.m., Central Time (CT), and during normal business hours thereafter. The Comptroller will also make the RFP available electronically on the Electronic State Business Daily at: http://esbd.cpa.state.tx.us on Friday, July 29, 2011, after 10:00 a.m. CT.

Questions and Non-mandatory Letters of Intent: All written inquiries, questions, and Non-mandatory Letters of Intent to propose must be received at the above-referenced address not later than 2:00 p.m. CT on Monday, August 8, 2011. Prospective respondents are encouraged to fax or e-mail Non-mandatory Letters of Intent and Questions to (512) 463-3669 or contracts@cpa.state.tx.us to ensure timely receipt. The Letter of Intent must be addressed to Jette Withers, Assistant General Counsel, Contracts, and must contain the information as stated in the corresponding section of the RFP and be signed by an official of that entity. On or about Wednesday, August 10, 2011, the Comptroller expects to post responses to questions as a revision to the Electronic State Business Daily notice on the issuance of this RFP. Respondents are solely responsible for verifying timely receipt of Questions and Non-mandatory Letters of Intent in the Issuing Office by the deadline. Non-mandatory Letters of Intent and Questions received after this time and date will not be considered.

Closing Date: Proposals must be delivered to the Issuing Office, to the attention of the Assistant General Counsel, Contracts, no later than 2:00 p.m. CT, on Wednesday, August 17, 2011. Proposals received after this time and date will not be considered under any circumstances.

Respondents are solely responsible for submission of Non-mandatory Letters of Intent and Questions by the deadline.

Evaluation Criteria: Proposals will be evaluated under the evaluation criteria outlined in the RFP. The Comptroller shall make the final decision on any contract award or awards resulting from this RFP. The Comptroller reserves the right, in its sole discretion, to accept or reject any or all proposals submitted. The Comptroller is not obligated to award or execute any contracts on the basis of this notice or the distribution of any RFP. The Comptroller shall not pay for any costs incurred by any entity in responding to this notice or the RFP.

The anticipated schedule of events is as follows: Issuance of RFP - July 29, 2011, 10:00 a.m. CT; Non-mandatory Letter of Intent to Propose and Questions Due - August 8, 2011, 2:00 p.m. CT; Official Responses to Questions posted - August 10, 2011, or as soon thereafter as practical; Proposals Due - August 17, 2011, 2:00 p.m. CT, Contract Execution - September 1, 2011, or as soon thereafter as practical; and Commencement of Project Activities - September 1, 2011, or as soon thereafter as practical.

TRD-201102747
William Clay Harris
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Filed: July 20, 2011

♦ ♦ ♦

Public Notice of Court Costs and Fees

Government Code, §51.607, requires the comptroller to publish a list of all court costs and fees imposed or changed during the most recent regular session of the legislature. This section also provides that, notwithstanding the effective date of the law imposing or changing the amount of a court cost or fee, the change does not take effect until the January following the effective date of the law, unless the bill makes a specific exception. If the bill takes effect before August 1 or after January 1, then the court cost or fee takes effect upon the effective date of the bill.

The listing of court costs and fees to be identified and published as required by Government Code, §51.607 are as follows:

House Bill 627

Fee Collected by a District Clerk for Certain Certified Copies.

Effective immediately. House Bill 627, relates to a fee collected by a district clerk for certain certified copies.

The bill amends Government Code, §51.318(b), requiring a district clerk to collect a fee for a certified copy not to exceed $1.00 per page or for part of a page that would be retained by the county.

The bill amends Government Code, §101.0611, requiring a district clerk to collect a fee for a certified copy not to exceed $1.00 per page or for part of a page that would be retained by the county.

House Bill 1426

Collection Improvement Program

Effective immediately. House Bill 1426, relates to the collection of court costs, fees, fines, and other money by the commissioners courts of certain counties.

The bill amends Code of Criminal Procedure, §103.003, allowing the commissioners court of a county in which the collection improvement program has been implemented to collect money payable under this title or under other law.

House Bill 1994

First Offender Prostitution Prevention Program

Effective immediately. House Bill 1994, relates to the creation of a first offender prostitution prevention program.

The bill adds Health and Safety Code, by adding Chapter 169, creating a First Offender Prostitution Prevention Program. The bill allows a participant in the program to pay a nonrefundable program fee in a reasonable amount not to exceed $1,000; specifies the costs and amounts that must be paid from the program fee to cover costs provided by the program include a counseling and services fee in an amount necessary to cover the costs of the counseling and services; a victim services fee in an amount equal to 10% of the amount paid under subdivision (1), to be deposited to the credit of the general revenue fund to be appropriated only to cover costs associated with the grant program described by Government Code; §531.383, and a law enforcement training fee in an amount equal to five percent of the total amount paid under subdivision (1), to be deposited to the credit of the treasury of the county or municipality that established the program to cover costs associated with the provision of training to law enforcement personnel on domestic violence, prostitution, and the trafficking of persons. Fees collected may be paid on a periodic basis or on a deferred payment schedule at the discretion of the judge, magistrate, or program director and based on the participant's ability to pay.

The bill amends Government Code, Chapter 103, Subchapter B, by adding §103.0291, allowing a participant in the first offender prostitution program to pay a nonrefundable program fee in a reasonable amount not to exceed $1,000; including a counseling and services fee in the amount necessary to cover the costs of counseling and services provided by the program; a victim services fee in an amount equal to 10% of the total fee; and a law enforcement training fee in an amount equal to 5.0% of the total fee.

House Bill 2357

Fees Relating to Operation of Vehicle without License Plate

Effective January 1, 2012. House Bill 1489, relates to motor vehicles; providing penalties.

The bill amends, Transportation Code, Chapter 504 by adding Subchapter L, allowing a court to dismiss a charge brought under subsection (a)(1) if the defendant remedies the defect before the defendant's first court appearance; and (2) pays an administrative fee not to exceed $10.

House Bill 2496

Fees Relating to a Teen Dating Violence Court Program

Effective January 1, 2012. House Bill 2496, relates to creating a teen dating violence court program and the deferral of adjudication and dismissal of certain dating violence cases.

The bill amends, Family Code, Chapter 54 by adding §54.0325, allowing a court to require a child who participates in a teen dating violence court program to pay a fee not to exceed $10 that is set by the court to cover the cost of administrating the program to be deposited into the county treasury of the county where the court is located. In addition, the court could require a child who participates in a teen dating violence court program to pay a $10 fee to cover the cost of the teen dating violence court program for performing its duties under this section. The court shall pay the fee to the teen dating violence court program.

The bill amends, Government Code, Chapter 103 by adding §103.0210, requiring a child for whom adjudication proceedings are deferred under Family Code, §54.0325, to pay a fee not to exceed $20 to the court for the administration of the teen dating violence court program.

Senate Bill 1

Reimbursement of Jurors

Effective September 1, 2011. Senate Bill 1 relating to certain state fiscal matters; providing penalties. Article 40 relates to reimbursement of jurors and entitles a person who reports for jury service to receive reimbursement for travel and other expenses.

The bill amends Government Code, §61.001, by adding subsections (a-1) and (a-2), notwithstanding subsection (a), and except as provided by subsection (c), requiring a person who reports for jury service in response to the process of a court is entitled to receive as reimbursement for travel and other expenses an amount: (1) not less than $6.00 for the first day or fraction of the first day the person is in attendance in court in response to the process and discharges the person's duty for that day; and (2) not less than the amount provided in the General Appropriations Act for each day or fraction of each day the person is in attendance in court in response to the process after the first day and discharges the person's duty for that day.

Senate Bill 1

Failure to secure a Child Passenger in a Motor Vehicle

Effective September 1, 2011. Senate Bill 1 relating to certain state fiscal matters; providing penalties. Article 69 repeals a $0.15 state court cost associated with the offense of failing to secure a child passenger in a motor vehicle.

The bill repeals Transportation Code, §545.412, subsection (b-1), repealing a $0.15 as a court cost on conviction.

The bill repeals Government Code, §102.104, repealing a $0.15 court costs on conviction in justice courts.

The bill repeals Government Code, §102.122 repealing a $0.15 court costs on conviction in municipal court.

Senate Bill 543

Probate Fee Exemption

Effective January 1, 2014. Senate Bill 543, relates to a probate fee exemption for estates of certain law enforcement officers, firefighters, and others killed in the line of duty.

The bill amends Texas Probate Code, Chapter I, adding §11B, prohibiting the clerk of a court, notwithstanding any other law, from charging or collecting from, the estate of an eligible decedent any of the following fees if the decedent died as a result of a personal injury sustained in the line of duty in the individual's position as described by Government Code, §615.003 (Applicability); a fee for or associated with the filing of the decedent's will for probate; and a fee for any service rendered by the court regarding the administration of the decedent's estate.

The bill amends Estate Code, Chapter 53, Subchapter B, by adding §53.054, prohibiting the clerk of a court, notwithstanding any other law, from charging or collecting from, the estate of an eligible decedent any of the following fees if the decedent died as a result of a personal injury sustained in the line of duty in the individual's position as described by Government Code, §615.003 (Applicability); a fee for or associated with the filing of the decedent's will for probate; and a fee for any service rendered by the court regarding the administration of the decedent's estate.

Senate Bill 605

Eighth Court of Appeals District

Effective January 1, 2012. Senate Bill 605, relates to the creation of an appellate judicial system for the Eight Court of Appeals District.

The bill amends Government Code, Chapter 22, Subchapter C, by adding §22.2091, establishing an appellate judicial system in each of the counties in the Eighth Court of Appeals District to assist the appellate court in processing appeals. To fund the system, the commissioners court of each county shall set a court costs fee of $5.00 for each civil suit filed in a county courts, statutory county court, statutory probate court, or district court in the county. The fee would not apply to suits filed by a government entity or to a suit for delinquent taxes. The court costs fee shall be taxed, collected, and paid as other court costs in a suit. The clerk of the each court would collect the fee and pay it to the county officer who performs the county treasurer's function, who would then deposit it in a separate appellate judicial system fund for use by the Eight Court of Appeals.

The bill amends Government Code, Chapter 101, Subchapter D, by adding §101.06119, requiring the clerk of a district court in the Eighth Court of Appeals District to collect an appellate judicial system filing fee of $5.00 under Government Code, §22.2091.

The bill amends Government Code, Chapter 101, Subchapter E, by adding §101.08116, requiring the clerk of a statutory county court in the Eighth Court of Appeals District to collect an appellate judicial system filing fee of $5.00 under Government Code, §22.2091.

The bill amends Government Code, Chapter 101, Subchapter F, by adding §101.10115, requiring the clerk of a statutory probate court in the Eighth Court of Appeals District to collect an appellate judicial system filing fee of $5.00 under Government Code, §22.2091.

The bill amends Government Code, Chapter 101, Subchapter G, by adding §101.12125, requiring the clerk of a county court in a county in the Eighth Court of Appeals District to collect an appellate judicial system filing fee of $5.00 under Government Code, §22.2091.

Senate Bill 880

Community Supervision Programs

Effective September 1, 2011. Senate Bill 880, relates to the operation of pretrial intervention and certain other programs by a community supervision and corrections department.

The bill amends Government Code, §103.0211, requiring an accused or defendant, or a party to a civil suit, as applicable, to pay certain fees and cost under the Government Code, if ordered by the court or otherwise required, including administrative fee for participation in certain community supervision programs (Government Code, §76.015) of not less than $25 and not more than $60, rather than $40 per month.

Senate Bill 953

Occupational Driver's License

Effective January 1, 2012. Senate Bill 953, relates to the conditions for granting an occupational license to certain persons, the monitoring of those persons by a local community supervision and corrections department, and the fees associated with department services.

The bill amends Transportation Code, adding §521.2462, allowing the court granting an occupational license under this chapter to order the person receiving the license to pay a monthly administrative fee under Government Code, §76.015 (Administrative Fee).

The bill amends Government Code, §103.0211, requiring an accused or defendant, or a party to a civil suit, as applicable, to pay certain fees and cost under the Government Code, if ordered by the court or otherwise required, including administrative fee for participation in certain community supervision programs (Government Code, §76.015) of not less than $25 and not more than $60, rather than $40 per month.

Senate Bill 1233

Fee Collected by a District Court Clerk for Certain Certified Copies

Effective immediately. Senate Bill 1233, relates to the promotion of efficiencies in and the administration of certain district court and county services functions.

The bill amends Family Code, §203.005, requiring the district clerk to collect a fee for a certified copy of a record, judgment, order, pleading, or paper on file or of record in the district clerk's office, including certificate and seal, for each page or part of a page at an amount not to exceed $1.00.

The bill amends Government Code, §101.0611, requiring the district clerk to collect a fee for a certified copy of a record, judgment, order, pleading, or paper on file or of record in the district clerk's office, including certificate and seal, for each page or part of a page (Government Code, §51.318) not to exceed $1.00.

Senate Bill 1386

Refusal to Register Motor Vehicles

Effective January 1, 2012. Senate Bill 1386, relates to the refusal to register motor vehicles by a county assessor-collector or the Texas Department of Motor Vehicles.

The bill amends Transportation Code, §502.185, by amending subsections (a) and (f) and adding (f-1), authorizing a municipality that has a contract under subsection (b) may impose an additional $20 fee to a person who fails to pay a fine, fee, or tax to the county by the date on which the fine, fee, or tax is due or a person who fails to appear in connection with a complaint, citation, information, or indictment in a court in which a criminal proceeding is pending against the owner.

The bill amends Transportation Code, §702.003, authorizing a municipality that has a contract under subsection (b) may impose an additional $20 fee to a person who has an outstanding warrant from the municipality for failure to appear or failure to pay a fine on a complaint that involves the violation of a traffic law.

Senate Bill 1489

Fees Relating to a Failure to Attend School

Effective January 1, 2012. Senate Bill 1489, relates to education, juvenile justice, and criminal justice responses to truancy.

The bill amends, Code of Criminal Procedure, Article 45.054 by adding subsection (j), authorizing a county, justice, or municipal court to waive or reduce a fee or court cost imposed under this article if the court finds that payment of the fee or court cost would cause financial hardship.

The bill amends, Code of Criminal Procedure, Article 102.0174, subsection (b) requiring a municipality not to exceed the $5.00 fee for the juvenile case manager fee if the municipality employs a juvenile case manager.

The bill amends, Code of Criminal Procedure, Article 102.0174, subsection (c) requiring that a court only charge the not to exceed $5.00 fee for the juvenile case manager fee if a justice court, county court, or county court at law employs a juvenile case manager.

The bill amends, Government Code, §102.061, requiring the clerk of a statutory court to collect a fee not to exceed $5.00 for the juvenile case manager fee if the court employs a juvenile case manager.

The bill amends, Government Code, §102.081, requiring the clerk of a county court to collect a fee not to exceed $5.00 for the juvenile case manager fee if the court employs a juvenile case manager.

The bill amends, Government Code, §102.101, requiring the clerk of a justice court to collect a fee not to exceed $5.00 for the juvenile case manager fee if the court employs a juvenile case manager.

The bill amends, Government Code, §102.121 requiring the clerk of a municipal; court to collect a fee not to exceed $5.00 for the juvenile case manager fee if the court employs a juvenile case manager.

TRD-201102680
Ashley Harden
General Counsel
Comptroller of Public Accounts
Filed: July 15, 2011

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.009, and 304.003, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 07/25/11 - 07/31/11 is 18% for Consumer[1] /Agricultural/Commercial[2] credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 07/25/11 - 07/31/11 is 18% for Commercial over $250,000.

The judgment ceiling as prescribed by §304.003 for the period of 08/01/11 - 08/31/11 is 5.00% for Consumer/Agricultural/Commercial credit through $250,000.

The judgment ceiling as prescribed by §304.003 for the period of 08/01/11 - 08/31/11 is 5.00% for Commercial over $250,000.

[1] Credit for personal, family or household use.

[2] Credit for business, commercial, investment or other similar purpose.

TRD-201102718
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: July 19, 2011

♦ ♦ ♦

Court of Criminal Appeals

Order Amending Texas Rules of Appellate Procedure

IN THE COURT OF CRIMINAL APPEALS OF TEXAS

Misc. Docket No. 11-004

ORDER AMENDING TEXAS RULES OF APPELLATE PROCEDURE

It is hereby ordered that:

1. Pursuant to Texas Government Code §§22.108 and 22.109, the Texas Rules of Appellate Procedure are amended as noted in the attached documents. Rule 50, rule 68.2, 68.3, 68.7, 68.8, 68.9, 68.10, 68.11, 79.2.

2. These amended rules, including changes made after public comments, take effect on September 1, 2011.

3. This order supercedes Misc. Docket No. 11-002, which was signed April 14, 2011.

4. The Clerk is directed to:

a. file a copy of this order with the Secretary of State;

b. cause a copy of this order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal;*

c. submit a copy of this order for publication in the *Texas Register.*

SIGNED AND ENTERED this 12th of July, 2011.

Sharon Keller, Presiding Judge

Lawrence E. Meyers, Judge

Tom Price, Judge

Paul Womack, Judge

Cheryl Johnson, Judge

Michael Keasler, Judge

Barbara Hervey, Judge

Cathy Cochran, Judge

Elsa Alcala, Judge

AMENDMENTS TO THE RULES OF APPELLATE PROCEDURE

~~Rule 50. Reconsideration on Petition for Discretionary Review~~

~~Within 60 days after a petition for discretionary review is filed with the clerk of the court of appeals that delivered the decision, the justices who participated in the decision may, as provided by subsection (a), reconsider and correct or modify the court's opinion or judgment. Within the same period of time, any of the justices who participated in the decision may issue a concurring or dissenting opinion.~~

~~(a) If the court's original opinion or judgment is corrected or modified, that opinion or judgment is withdrawn and the modified or corrected opinion or judgment is substituted as the opinion or judgment of the court. No further opinions may be issued by the court of appeals. The original petition for discretionary review is not dismissed by operation of law, unless the filing party files a new petition in the court of appeals. In the alternative, the petitioning party shall submit to the court of appeals copies of the corrected or modified opinion or judgment as an amendment to the original petition.~~

~~(b) Any party may then file with the court of appeals a new petition for discretionary review seeking review of the corrected or modified opinion or judgment, including any dissents or concurrences, under Rule 68.2.~~

Notes and Comments

Comment to 2011 change: Rule 50 is abolished. Motions for rehearing serve the same purpose.

68.2. Time to File Petition

(a) *First Petition.* The petition must be filed within 30 days after either the day the court of appeals' judgment was rendered or the day the last timely motion for rehearing or timely motion for en banc reconsideration was overruled by the court of appeals.

Notes and Comments

Comment to 2011 change: The amendment to Rule 68.2(a) resolves timely filing questions concerning motions for en banc reconsideration by including those motions in calculating time to file.

68.3. Where to File Petition

(a) The petition and all copies of the petition must be filed ~~with the clerk of the court of appeals, but if the State's Prosecuting Attorney files a petition, the State's Prosecuting Attorney may file the copies of the petition -- but not the original --~~ with the clerk of the Court of Criminal Appeals. ~~instead of with the court of appeals clerk.~~

(b) *Petition Filed in Court of Appeals.* If a petition is mistakenly filed in the court of appeals, the petition is deemed to have been filed the same day with the clerk of the Court of Criminal Appeals, and the court of appeals clerk must immediately send the petition to the clerk of the Court of Criminal Appeals.

Notes and Comments

Comment to 2011 change: Rule 68.3 is changed to require petitions for discretionary review to be filed in the Court of Criminal Appeals rather than in the court of appeals. With the deletion of Rule 50, there is no reason to file petitions in the court of appeals. Rule 68.3(b) is added to address and prevent the untimely filing of petitions for discretionary review that are incorrectly filed in the court of appeals rather than in the Court of Criminal Appeals.

68.7. Court of Appeals Clerk's Duties

~~(a) *On Filing of the Petition.* Upon receiving the petition, the court of appeals clerk must file the original petition and note the filing on the docket.~~

~~(b) *Reply.* The opposing party has 30 days after the timely filing of the petition in the court of appeals to file a reply to the petition with the clerk of the court of appeals. Upon receiving a reply to the petition, the clerk for the court of appeals must file the reply and note the filing on the docket.~~

~~(c) *Sending Petition and Reply to Court of Criminal Appeals.* Unless a petition for discretionary review is dismissed under Rule 50,~~ Within 15 days of receiving notice of the filing of a petition for discretionary review from the clerk of the Court of Criminal Appeals, the clerk of the court of appeals must~~, within 60 days after the petition is filed,~~ send to the clerk of the Court of Criminal Appeals ~~the petition and any copies furnished by counsel, the reply, if any, and any copies furnished by counsel, together with~~ the record, ~~copies of the~~ any motions filed in the case, and copies of any judgments, opinions, and orders of the court of appeals. The clerk need not forward any nondocumentary exhibits unless ordered to do so by the Court of Criminal Appeals.

Notes and Comments

Comment to 2011 change: Rule 68.7(a) and (b) are deleted and (c) is amended to reflect changes consistent with filing the petition and reply in the Court of Criminal Appeals rather than in the court of appeals, and to order the record to be sent to the Court of Criminal Appeals. Additionally, Rule 68.7(c) is amended to delete reference to Rule 50, which is abolished.

68.8. Court of Criminal Appeals Clerk's Duties ~~on Receipt of Petition~~

Upon receipt of the record from the court of appeals, the clerk of the Court of Criminal Appeals will file the record and enter the filing on the docket. ~~The clerk of the Court of Criminal Appeals will receive a petition for discretionary review, file the petition and the accompanying record from the court of appeals, note the filing of the petition and record on the docket, and notify the parties by U.S. Mail of the filing.~~

~~The Court may dispense with notice and grant or refuse the petition immediately upon its filing.~~

Notes and Comments

Comment to 2011 change: Rule 68.8 is amended to reflect changes consistent with filing the petition in the Court of Criminal Appeals.

68.9. Reply

The opposing party has 15 days after the timely filing of the petition in the Court of Criminal Appeals to file a reply to the petition with the clerk of the Court of Criminal Appeals.

Notes and Comments

Comment to 2011 change: This Rule is added so that any reply will be filed in the Court of Criminal Appeals since the petition is also filed in the Court of Criminal Appeals.

68.10. Amendment

Upon motion ~~T~~the petition or a reply may be amended or supplemented ~~within 30 days after the original petition was filed in the court of appeals Court of Criminal Appeals or~~ at any time ~~when~~ justice requires. ~~The record may be amended in the Court of Criminal Appeals under the same circumstances and inthe same manner as in the court of appeals.~~

Notes and Comments

Comment to 2011 change: This Rule is changed to reflect the filing of the petition and any reply in the Court of Criminal Appeals. Thus, the rule is also changed to require a motion and to delete a time frame because the petition will be filed in the Court of Criminal Appeals.

68.11. Service on State Prosecuting Attorney

In addition to the service required by Rule 9.5, service of the petition, the reply, and any amendment or supplementation of a petition or reply must be made on the State Prosecuting Attorney~~, P.O. Box 12405, Austin, Texas 78711~~.

Notes and Comments

Comment to 2011 change: The address for the State Prosecuting Attorney is deleted because it is has changed and may change again.

79.2. Contents

(a) The motion must briefly and distinctly state the grounds and arguments relied on for rehearing.

(b) A motion for rehearing an order that grants discretionary review may not be filed.

(c) A motion for rehearing an order that refuses ~~or dismisses~~ a petition for discretionary review may be grounded only on substantial intervening circumstances or on other significant circumstances which are specified in the motion. Counsel must certify that the motion is so grounded and that the motion is made in good faith and not for delay.

(d) A motion for rehearing an order that denies habeas corpus relief under Code of Criminal Procedure, articles 11.07 or 11.071, may not be filed. The Court may on its own initiative reconsider the case.

Notes and Comments

Comment to 2011 change: Rule 79.2(c) is amended so that it applies only to petitions for discretionary review that are refused. Additionally, the certification requirement is changed to encompass a broader basis for rehearing.

VERIFICATION

This application must be verified or it will be dismissed for non-compliance. For verification purposes, an applicant is a person filing the application on his or her own behalf. A petitioner is a person filing the application on behalf of an applicant, for example, an applicant's attorney. An inmate is a person who is in custody.

The inmate applicant must sign either the "Oath Before a Notary Public" before a notary public or the "Inmate's Declaration" without a notary public. If the inmate is represented by a licensed attorney, the attorney may sign the "Oath Before a Notary Public" as petitioner and then complete "Petitioner's Information." A non-inmate applicant must sign the "Oath Before a Notary Public" before a notary public unless he is represented by a licensed attorney, in which case the attorney may sign the verification as petitioner.

A non-inmate non-attorney petitioner must sign the "Oath Before a Notary Public" before a notary public and must also complete "Petitioner's Information." An inmate petitioner must sign either the "Oath Before a Notary Public" before a notary public or the "Inmate's Declaration" without a notary public and must also complete the appropriate "Petitioner's Information."

OATH BEFORE A NOTARY PUBLIC

STATE OF TEXAS

COUNTY OF _____

_____, being duly sworn, under oath says: "I am the applicant / petitioner (circle one) in this action and know the contents of the above application for a writ of habeas corpus and, according to my belief, the facts stated in the application are true."

_____
Signature of Applicant / Petitioner (circle one)

SUBSCRIBED AND SWORN TO BEFORE ME THIS _____ DAY OF _____, 20___.

_____
Signature of Notary Public

PETITIONER'S INFORMATION

Petitioner's printed name:_____

State bar number, if applicable: _____

Address: _____

_____

_____

Telephone: _____

Fax: _____

INMATE'S DECLARATION

I, _____, am the applicant / petitioner (circle one) and being presently incarcerated in _____, declare under penalty of perjury that, according to my belief, the facts stated in the above application are true and correct.

Signed on _____, 20_____.

_____
Signature of Applicant / Petitioner (circle one)

PETITIONER'S INFORMATION

Petitioner's printed name:_____

Address: _____

_____

_____

Telephone: _____

Fax: _____

Signed on _____, 20_____.

_____
Signature of Petitioner

TRD-201102676

Louise Pearson
Clerk of the Court
Court of Criminal Appeals
Filed: July 13, 2011

♦ ♦ ♦

Credit Union Department

Application for a Merger or Consolidation

Notice is given that the following application has been filed with the Credit Union Department (Department) and is under consideration:

An application was received from Texas Dow Employees Credit Union (Lake Jackson) seeking approval to merge with Bluebonnet Credit Union (Houston), with Texas Dow Employees Credit Union being the surviving 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. 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 Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-201102730
Harold E. Feeney
Commissioner
Credit Union Department
Filed: July 20, 2011

♦ ♦ ♦

Application to Expand Field of Membership

Notice is given that the following applications have been filed with the Credit Union Department (Department) and are under consideration:

An application was received from Southside Credit Union, San Antonio, Texas to expand its field of membership. The proposal would permit members of Associated (called "Friends") of Los Compadres de San Antonio Missions National Historic Park, a non-profit organization headquartered at 6701 San Jose Drive, San Antonio, Texas 78214, to be eligible for membership in the credit union.

An application was received from Tarrant County Credit Union, Fort Worth, Texas to expand its field of membership. The proposal would permit employees of Elbit Systems of America who work in or are paid from Fort Worth, 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.tcud.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 Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-201102729
Harold E. Feeney
Commissioner
Credit Union Department
Filed: July 20, 2011

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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

Winkler County Credit Union, Kermit, Texas - See *Texas Register* issue dated November 27, 2009.

First Service Credit Union, Houston, Texas - See *Texas Register* issue dated May 27, 2011.

Application for a Merger or Consolidation - Approved

Dallas Cotton Belt Credit Union (Mesquite) and Corner Stone Credit Union (Lancaster) - See *Texas Register* issue dated January 7, 2011.

Sears Waco Credit Union (Waco) and First Central Credit Union (Waco) - See *Texas Register* issue dated February 25, 2011.

Articles of Incorporation - 50 Years to Perpetuity - Approved

VATAT Credit Union, Austin, Texas

TRD-201102731
Harold E. Feeney
Commissioner
Credit Union Department
Filed: July 20, 2011

♦ ♦ ♦

Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC) §7.075. TWC §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC §7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is August 29, 2011. TWC §7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on August 29, 2011.

Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC §7.075 provides that comments on the AOs shall be submitted to the commission in **writing.**

(1) COMPANY: Bentina Homes, Ltd.; DOCKET NUMBER: 2011-1091-WQ-E; IDENTIFIER: RN106093685; LOCATION: Killeen, Bell County; TYPE OF FACILITY: home construction; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a construction general permit; PENALTY: $700; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(2) COMPANY: C/B/K Dominion Development, Ltd.; DOCKET NUMBER: 2011-0661-EAQ-E; IDENTIFIER: RN105618383; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: land development; RULE VIOLATED: 30 TAC §213.23(a)(1) and Edwards Aquifer Plan Number 13-08090801, Standard Condition Number 5, by failing to obtain approval of a Contributing Zone Plan modification prior to conducting regulated activities over the Edwards Aquifer contributing zone; PENALTY: $750; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(3) COMPANY: CASCO HAULING AND EXCAVATING COMPANY dba Casco Hauling and Excavation Landfill; DOCKET NUMBER: 2010-1313-MSW-E; IDENTIFIER: RN103053062; LOCATION: Houston, Harris County; TYPE OF FACILITY: municipal solid waste Type IV landfill; RULE VIOLATED: 30 TAC §330.15(c), by failing to prevent the unauthorized disposal of municipal solid waste; 30 TAC §330.417(b)(5)(B), by failing to submit an explanation for the apparent increase in arsenic and by failing to provide a map depicting ground water flow direction to the agency; and 30 TAC §330.417(b)(6), by failing to submit a permit modification to monitor barium, arsenic, and lead for all wells on-site; PENALTY: $10,500; ENFORCEMENT COORDINATOR: Theresa Hagood, (512) 239-2540; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(4) COMPANY: City of Calvert; DOCKET NUMBER: 2011-0476-MWD-E; IDENTIFIER: RN102185972; LOCATION: Robertson County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: TWC §26.121(a), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010095001, Effluent Limitations and Monitoring Requirements Numbers 1, 2, and 6, by failing to comply with the permitted effluent limits; 30 TAC §305.125(17) and §319.7(d) and TPDES Permit Number WQ0010095001, Monitoring and Reporting Requirements Number 1, by failing to timely submit discharge monitoring reports; and 30 TAC §305.125(17) and TPDES Permit Number WQ0010095001, Sludge Provisions, by failing to timely submit the annual sludge report for the monitoring period ending July 31, 2010; PENALTY: $6,464; Supplemental Environmental Project offset amount of $6,464 applied to the Electronics and Used Tire Collection Event; ENFORCEMENT COORDINATOR: Samuel Short, (512) 239-5363; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(5) COMPANY: City of Coolidge; DOCKET NUMBER: 2011-0665-MWD-E; IDENTIFIER: RN101919025; LOCATION: Limestone County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1) and (17), and §319.7(d) and Texas Pollutant Discharge Elimination System Permit Number WQ0014751001, Monitoring and Reporting Requirements Number 1 and Sludge Provisions, by failing to timely submit the discharge monitoring reports for the monthly monitoring periods ending January 31, 2010 - December 31, 2010 and by failing to timely submit the annual sludge report for the monitoring period ending July 31, 2010; PENALTY: $1,820; ENFORCEMENT COORDINATOR: Merrilee Hupp, (512) 239-4490; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(6) COMPANY: City of Sonora; DOCKET NUMBER: 2010-1891-MWD-E; IDENTIFIER: RN102806411; LOCATION: Sutton County; TYPE OF FACILITY: municipal wastewater treatment; RULE VIOLATED: TWC §26.121(a), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010095001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with the permitted effluent limits; 30 TAC §305.125(1) and (9)(A), and TPDES Permit Number WQ0010545001, Monitoring and Reporting Requirements Number 7.a, by failing to submit a noncompliance notification to the TCEQ; 30 TAC §305.125(1) and TPDES Permit Number WQ0010545001, Sludge Provisions, Section III.F.1, by failing to maintain records of all liquid paint filter tests conducted on sewage sludge disposed of in municipal solid waste landfills; 30 TAC §305.125(1) and (17) and TPDES Permit Number WQ0010545001, Sludge Provisions, by failing to submit the annual sludge report for the annual reporting period ending July 31, 2009; 30 TAC §317.4(b)(4), by failing to provide containers with lids for the temporary storage of materials removed from the bar screen; 30 TAC §305.125(1) and §319.11(d) and TPDES Permit Number WQ0010545001, Monitoring and Reporting Requirements Number 5, by failing to calibrate the flow meter at least annually; 30 TAC §319.11(c) and TPDES Permit Number WQ0010545001, Monitoring and Reporting Requirements Number 2.a., by failing to analyze effluent according to specified test methods; and 30 TAC §319.11(b), by failing to comply with the preservation methods specified in 40 Code of Federal Regulations Part 136; PENALTY: $32,654; ENFORCEMENT COORDINATOR: JR Cao, (512) 239-2543; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (325) 655-9479.

(7) COMPANY: DIPERT TRAVEL AND TRANSPORTATION, LTD. dba Dipert Coaches; DOCKET NUMBER: 2011-0633-PST-E; IDENTIFIER: RN101560332; LOCATION: Arlington, Tarrant County; TYPE OF FACILITY: fleet refueling; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC §26.3475(a) and (c)(1), by failing to monitor the underground storage tank (UST) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and by failing to provide release detection for the piping associated with the UST; and 30 TAC §334.10(b), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; PENALTY: $3,529; ENFORCEMENT COORDINATOR: Cara Windle, (512) 239-2581; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(8) COMPANY: Heart Of Texas Council of the Boy Scouts of America dba Longhorn Council, Boy Scouts of America; DOCKET NUMBER: 2011-0651-PWS-E; IDENTIFIER: RN101260065; LOCATION: Bell County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.109(c)(2)(A)(i) and §290.122(c)(2)(B) and Texas Health and Safety Code, §341.033(d), by failing to collect routine distribution water samples for coliform analysis and by failing to provide notice to persons served by the facility regarding the failure to conduct routine coliform monitoring; 30 TAC §290.109(c)(3)(A)(ii) and §290.122(c)(2)(B), by failing to collect a set of four repeat distribution coliform samples within 24 hours of being notified of a total coliform-positive result on a routine sample and by failing to provide notice to persons served by the facility regarding the failure to collect

repeat samples; and 30 TAC §290.109(c)(2)(F) and §290.122(c)(2)(B), by failing to collect at least five routine distribution coliform samples the month following a total coliform-positive result and by failing to provide notice to persons served by the facility regarding the failure to conduct increased routine monitoring; PENALTY: $3,352; ENFORCEMENT COORDINATOR: Michaelle Sherlock, (210) 403-4076; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(9) COMPANY: IRKASA INCORPORATED dba Grapevine Market 1; DOCKET NUMBER: 2011-0652-PST-E; IDENTIFIER: RN101561561; LOCATION: Grapevine, Tarrant County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC §26.3475(c)(1), by failing to monitor underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $1,625; ENFORCEMENT COORDINATOR: Philip Aldridge, (512) 239-0855; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(10) COMPANY: Knife River Corporation South; DOCKET NUMBER: 2011-1094-WR-E; IDENTIFIER: RN106132228; LOCATION: Bryan, Kaufman County; TYPE OF FACILITY: construction; RULE VIOLATED: TWC §11.081 and §11.121, by failing to obtain a required permit before impounding, diverting, or using state water without a required permit; PENALTY: $875; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(11) COMPANY: Lee Ann Potter dba Lees Pit Stop; DOCKET NUMBER: 2011-0491-MSW-E; IDENTIFIER: RN105919740; LOCATION: Leander, Travis County; TYPE OF FACILITY: used tire sale and scrap tire storage and processing; RULE VIOLATED: 30 TAC §328.60(a), by failing to obtain a scrap tire storage site registration for the facility prior to storing more than 500 used or scrap tires on the ground or 2,000 used or scrap tires in enclosed and lockable containers; and 30 TAC §328.63(c), by failing to obtain a registration to process scrap tires; PENALTY: $5,250; ENFORCEMENT COORDINATOR: Cara Windle, (512) 239-2581; REGIONAL OFFICE: 2800 South IH 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929.

(12) COMPANY: R. K. Hall Construction, Ltd.; DOCKET NUMBER: 2011-1092-WR-E; IDENTIFIER: RN102885662; LOCATION: Denison, Grayson County; TYPE OF FACILITY: construction; RULE VIOLATED: TWC §11.081 and §11.121, by failing to obtain a required permit before impounding, diverting, or using state water; PENALTY: $350; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(13) COMPANY: Sequoia Improvement District; DOCKET NUMBER: 2011-0589-UTL-E; IDENTIFIER: RN101452274; LOCATION: Harris County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.39(o) and §291.162(a) and (j) and TWC §13.1395(b)(2), by failing to submit to the executive director for approval by the required deadline, an adoptable emergency preparedness plan that demonstrates the facility's ability to provide emergency operations; PENALTY: $577; ENFORCEMENT COORDINATOR: Michaelle Sherlock, (210) 403-4076; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(14) COMPANY: T.F.R. Enterprises, Incorporated; DOCKET NUMBER: 2011-0610-EAQ-E; IDENTIFIER: RN106043144; LOCATION: Williamson County; TYPE OF FACILITY: construction; RULE VIOLATED: 30 TAC §213.4(a)(1), by failing to obtain approval of a Contributing Zone Plan prior to beginning construction of a regulated activity at the site; PENALTY: $1,875; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5886; REGIONAL OFFICE: 2800 South IH 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929.

(15) COMPANY: Xtreme Collision Repair, L.P.; DOCKET NUMBER: 2011-0604-AIR-E; IDENTIFIER: RN100642529; LOCATION: Plano, Collin County; TYPE OF FACILITY: auto body repair and paint booth; RULE VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety Code §382.0518(a) and §382.085(b), by failing to obtain permit authorization for a source of air emissions or satisfy the conditions of a Permit by Rule prior to the commencement of operations of a facility which emits air contaminants; PENALTY: $2,000; ENFORCEMENT COORDINATOR: Todd Huddleson, (512) 239-2541; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-201102723
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: July 19, 2011

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Notice of Water Quality Applications

The following notices were issued on July 8, 2011 through July 15, 2011.

The following require the applicants to publish notice in a newspaper. Public comments, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THE NOTICE.

INFORMATION SECTION

THE WHITMORE MANUFACTURING COMPANY which operates a facility that produces specialty lubricating oils, greases and coatings, has applied for a renewal of TPDES Permit No. WQ0003099000, which authorizes the discharge of storm water and once through non-contact cooling water on an intermittent and flow variable basis via Outfall 001. The facility is located at 930 Whitmore Drive in the City of Rockwall, Rockwall County, Texas 75087.

CITY OF CHANDLER has applied for a renewal of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0011012001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 500,000 gallons per day. The facility is located on the eastside of Old Noonday Road south of the City of Chandler, approximately 1 mile southeast of the intersection of State Highway 31 and Farm-to-Market Road 315 in Henderson County, Texas 75758.

WEST HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO 4 has applied for a renewal of TPDES Permit No. WQ0012119001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 280,000 gallons per day. The facility is located at 4127 Westheimer Place on the south bank of Brays Bayou, approximately one mile east of the intersection of Farm-to-Market Road 1093 and Farm-to-Market Road 1464 in Harris County, Texas 77082.

CITY OF ENNIS has applied for a renewal of TPDES Permit No. WQ0010443002, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 3,100,000 gallons per day. The applicant has also applied to the TCEQ for approval of a substantial modification to its pretreatment program under the TPDES

program. The facility is located approximately 1.5 miles south of the intersection of State Highway 34 and Farm-to-Market Road 1183, and approximately 2.5 miles south of the intersection of Interstate Highway 45 and State Highway 34 in Ellis County, Texas 75119.

UPPER TRINITY REGIONAL WATER DISTRICT has applied for a renewal with changes to TPDES Permit No. WQ0010698001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 7,500,000 gallons per day. The change will add an interim II phase at an annual average flow not to exceed 5,500,000 gallons per day. The facility is located on North Lakeview Drive, adjacent to the west side of Lewisville Lake, approximately 1.5 miles east of Interstate Highway 35 in Denton County, Texas 75065.

SEIS LAGOS UTILITY DISTRICT AND NORTH TEXAS MUNICIPAL WATER DISTRICT have applied for a renewal of TPDES Permit No. WQ0011451001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 250,000 gallons per day. The facility is located at 1007 Riva Ridge in the Seis Lagos Development approximately 0.8 mile southeast of the intersection of Farm-to-Market Road 3286 and Farm-to-Market Road 1378 in Collin County, Texas 75098.

UPPER TRINITY REGIONAL WATER DISTRICT has applied for a major amendment to TPDES Permit No. WQ0014323001 to remove the temporary variance to the existing copper water quality standard for the existing tributary where it joins the Lewisville Lake in Segment No. 0823 of the Trinity River Basin. The existing permit includes a temporary variance to the existing copper water quality standard to allow the permittee a three-year period in which to determine a site-specific water-effect ratio (WER) for copper in the area of existing tributary where it joins the Lewisville Lake in Segment No. 0823 of the Trinity River Basin. The site-specific WER was determined to be 6.43, which supports changing the freshwater criteria for copper to less stringent criteria. In view of this result, the temporary variance to the existing copper water quality standard is discontinued. No effluent limitation for copper is necessary. The WER will be considered for adoption in the Texas Surface Water Quality Standards. The application also includes a request to authorize an interim phase for the discharge of treated domestic wastewater at an annual average flow not to exceed 1,500,000 gallons per day. The current permit 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 at 1130 Naylor Road, approximately 4,250 feet northeast of the intersection of Mar-Top Road and Naylor Road (Farm-to-Market Road 424) and approximately 6,300 feet southeast of the intersection of U.S. Highway 380 and Naylor Road (Farm-to-Market Road 424), (a site 500 feet east of Naylor Road) in Denton County, Texas 76227.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO 389 has applied for a renewal of TPDES Permit No. WQ0014441001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 300,000 gallons per day. The facility is located at 15519 Stable Park Drive, 2,640 feet west and 3,432 feet north of the intersection of Telge Road and Spring Cypress Road in Harris County, Texas 77429.

TEXAS DEPARTMENT OF TRANSPORTATION has applied for a renewal of TPDES Permit No. WQ0014790002, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 11,000 gallons per day. The facility is located on the southbound right-of-way of Interstate Highway 35 West, at Exit 33 Southbound, at a point approximately 3.9 miles south of Burleson in Johnson County, Texas 76028.

LCS CORRECTIONS SERVICES INC has applied to the TCEQ for a renewal of TPDES Permit No. WQ0014802001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 150,000 gallons per day. The facility is located at 4909 Farm-to-Market Road 2826, approximately 470 feet west of the centerline of County Road 81 in the southwest quadrant of the intersection of County Road 81 and Farm-to-Market Road 2826, southwest of the City of Robstown in Nueces County, Texas 78380.

The following do not require publication in a newspaper. Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, at the address provided in the information section above, WITHIN 30 DAYS OF THE ISSUED DATE OF THE NOTICE.

CITY OF MCALLEN has applied to the Texas Commission on Environmental Quality (TCEQ) for a minor amendment to the Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0010633004 to authorize the discharge of treated domestic wastewater at an annual average flow not to exceed 15,000,000 gallons per day. The existing permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 18,000,000 gallons per day. The facility is located on Sprague Road approximately 1.5 miles southwest of the intersection of Farm-to-Market Road 2061 and State Highway 107 in Hidalgo County, Texas 78503.

If you need more information about these permit applications or the permitting process, please call the TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at www.TCEQ.state.tx.us. Si desea información en español, puede llamar al 1-800-687-4040.

TRD-201102748
Melissa Chao
Acting Chief Clerk
Texas Commission on Environmental Quality
Filed: July 20, 2011

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Texas Health and Human Services Commission

Notice of Adopted Medicaid Provider Payment Rates

Adopted Rates. As the single state agency for the state Medicaid program, the Texas Health and Human Services Commission (HHSC) has adopted a new per diem payment rate for the Truman Smith Children's Care Center. This payment rate was determined in accordance with the rate setting methodology listed below under "Methodology and Justification." The public hearing notice and proposed rates were published in the June 10, 2011, issue of the *Texas Register* (36 TexReg 3640). The hearing was held on June 28, 2011 and there were no public comments.

The adopted payment rate, to be effective September 1, 2011, is $223.44.

Methodology and Justification. The adopted rate was determined in accordance with the rate setting methodology at Texas Administrative Code (TAC) Title 1, Chapter 355, Subchapter C, §355.307, Reimbursement Setting Methodology.

TRD-201102713
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: July 18, 2011

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Notice of Adopted Nursing Facility Payment Rates for State Veterans Homes

Adopted Rates. As the single state agency for the state Medicaid program, the Texas Health and Human Services Commission (HHSC) has adopted new per diem payment rates for state-owned veterans nursing facilities. These payment rates were determined in accordance with the rate setting methodology listed below under "Methodology and Justification." The public hearing notice and proposed rates were published in the June 10, 2011, issue of the *Texas Register* (36 TexReg 3641). The hearing was held on June 28, 2011 and there were no public comments.

The adopted payment rates, to be effective March 1, 2011, are as follows: Big Spring, $143.00; Bonham, $143.00; Floresville, $143.00; Temple, $143.00; McAllen, $143.00; El Paso, $143.00; and Amarillo, $143.00.

Methodology and Justification. The adopted rates were determined in accordance with the rate setting methodology at Texas Administrative Code (TAC) Title 1, Chapter 355, Subchapter C, §355.311, Medicaid Reimbursement Rates for State Veterans Homes.

TRD-201102712
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: July 18, 2011

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Public Notice

The Texas Health and Human Services Commission intends to submit to the Centers for Medicare and Medicaid Services a request for an amendment to the Medically Dependent Children Program waiver program, under the authority of §1915(c) of the Social Security Act. The Medically Dependent Children Program waiver program is currently approved for the five-year period beginning September 1, 2007, and ending August 31, 2012. The proposed effective date for the amendment is September 1, 2010.

The Medically Dependent Children Program provides home and community-based services to persons under age 21 who are medically fragile and qualify for nursing facility care. Respite and adjunct support services are delivered using both provider-managed and participant-directed service delivery methods.

As a result of a legislative direction from the 81st Legislature, the Health and Human Services Commission identified a cost savings plan to reduce nursing facility rates by one percent in September 2010 and by another two percent in February 2011. The individual cost limit for an individual in the Medically Dependent Children Program is a percentage of the rate that would be paid for that individual's care in a nursing facility. As such, the three percent rate reductions for nursing facilities lowered the Medically Dependent Children Program waiver individual cost limit by three percent, and individuals at or near the current cost ceiling may subsequently lose eligibility for the Medically Dependent Children Program waiver. To ensure no individuals lose their Medically Dependent Children Program eligibility, the Medically Dependent Children Program individual cost limit will be adjusted. This amendment will not impose a negative impact to the individuals in this waiver program.

The Health and Human Services Commission is requesting that the waiver amendment be approved for the period beginning September 1, 2010, through August 31, 2012. This amendment maintains cost neutrality for waiver years 2010 through 2012.

To obtain copies of the proposed waiver amendment, interested parties may contact Christine Longoria by mail at Texas Health and Human Services Commission, P.O. Box 85200, mail code H-370, Austin, Texas 78708-5200, phone (512) 491-1152, fax (512) 491-1957, or by email at Christine.Longoria@hhsc.state.tx.us.

TRD-201102722
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: July 19, 2011

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Department of State Health Services

Licensing Actions for Radioactive Materials

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 TX" 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	Amend-ment #	Date of Action
Houston	MH/USON Radiation Management Co., L.L.C.	L06408	Houston	00	06/29/11
San Antonio	C. H. Wilkinson Physician Network dba Christus Santa Rosa Medical Group Cardiovascular Associates	L06409	San Antonio	00	07/11/11

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Anderson	National Oilwell Varco, L.P.	L06094	Anderson	06	07/08/11
Austin	Seton Healthcare dba University Medical Center at Brackenridge	L00268	Austin	117	07/13/11
Austin	Austin Radiological Association	L00545	Austin	167	07/08/11
Austin	St. David's Healthcare Partnership, L.P., L.L.P. dba St. David's Medical Center	L00740	Austin	110	07/06/11
Austin	Seton Healthcare dba Seton Medical Center Austin	L02896	Austin	121	07/14/11
Austin	ARA Imaging	L05862	Austin	51	07/08/11
Bellaire	Texas Nuclear Imaging, Inc. dba Excel Diagnostics Imaging Clinic Medical Center	L05009	Bellaire	36	07/13/11
Bonham	Attentus Bonham, L.P. dba Red River Regional Hospital	L03331	Bonham	41	07/08/11
Channelview	Xxtreme Pipe Services, L.L.C.	L02576	Channelview	28	07/12/11
Conroe	CHCA Conroe, L.P. dba Conroe Regional Medical Center	L01769	Conroe	83	07/08/11
Crowley	AZZ, Incorporated dba Aztec Manufacturing Partnership, Ltd.	L06080	Crowley	01	07/05/11
Dallas	North Texas Cardiovascular Associates, P.A.	L05602	Dallas	11	07/13/11
Galveston	The University of Texas Medical Branch	L01299	Galveston	90	07/11/11
Haltom City	Ellerbee-Walczak, Inc.	L04440	Haltom City	15	07/11/11
Houston	The University of Texas M.D. Anderson Cancer Center	L00466	Houston	131	07/08/11
Houston	Methodist Health Centers dba Methodist Willowbrook Hospital	L05472	Houston	41	07/08/11
Houston	One Step Diagnostic, Inc.	L05990	Houston	10	07/08/11
Houston	Houston Northwest Operating Company, L.L.C. dba Houston Northwest Medical Center	L06190	Houston	11	07/05/11
Houston	The University of Texas M.D. Anderson Cancer Center	L06227	Houston	18	07/05/11
Irving	Baylor Medical Center at Irving dba Irving Healthcare System	L02444	Irving	86	07/01/11
Killeen	George S. Rebecca, M.D., FACC dba Texas Cardiovascular Medicine	L05099	Killeen	13	07/05/11
La Porte	Total Petrochemicals USA, Inc.	L04640	La Porte	26	07/12/11

AMENDMENTS TO EXISTING LICENSES ISSUED (Continued):

La Porte	Cardiorad, Inc.	L05755	La Porte	18	07/15/11
Midland	Midland County Hospital District dba Midland Memorial Hospital	L00728	Midland	100	07/15/11
Odessa	University of Texas of the Permian Basin	L02695	Odessa	16	07/15/11
Pasadena	Petrochem Inspection Services, Inc.	L04460	Pasadena	107	07/11/11
San Antonio	Methodist Healthcare System of San Antonio, Ltd., L.L.P.	L00594	San Antonio	290	06/30/11
San Antonio	The University of Texas Health Science Center at San Antonio	L01279	San Antonio	131	07/08/11
San Antonio	ACA S.A., Ltd. dba Sendero Imaging and Treatment Center	L05567	San Antonio	19	07/01/11
Seguin	Guadalupe Regional Medical Center	L02292	Seguin	40	06/29/11
Texarkana	New Hope Enterprises, Ltd. dba New Hope Cancer Institute	L05560	Texarkana	07	07/15/11
Texas City	BP Products North America, Inc.	L00254	Texas City	67	07/05/11
The Woodlands	St. Luke's Community Health Services dba St. Luke's The Woodlands Hospital	L06370	The Woodlands	02	07/07/11
Throughout TX	R&R Testing, Inc.	L06222	Channelview	03	07/11/11
Throughout TX	Terracon Consultants, Inc.	L05268	Dallas	36	07/12/11
Throughout TX	Licon Engineering Company, Inc.	L05530	El Paso	10	07/05/11
Throughout TX	Permian Nondestructive Testing, Inc.	L06001	Gardendale	12	07/01/11
Throughout TX	Aviles Engineering Corporation	L03016	Houston	28	06/29/11
Throughout TX	G.E. Oil & Gas Logging Services, Inc.	L05262	Houston	43	07/05/11
Throughout TX	Tracerco	L03096	Pasadena	78	07/05/11
Throughout TX	PSI Wireline, Inc.	L05911	San Angelo	06	07/11/11
Throughout TX	Ineos Styrenics, L.L.C.	L00354	Texas City	39	07/12/11
Tomball	Tomball Hospital Authority dba Tomball Regional Hospital	L02514	Tomball	53	07/15/11
Tomball	Northwest Houston Heart Center	L05958	Tomball	11	07/01/11
Wichita Falls	Clinics of North Texas, L.L.P.	L00523	Wichita Falls	55	07/07/11

RENEWAL OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Bay City	Equistar Chemicals, L.P.	L03938	Bay City	26	07/07/11
Benbrook	Weatherford International, Inc.	L00747	Benbrook	89	07/07/11
Jewett	Nucor Steel	L02504	Jewett	20	07/05/11

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Liberty	Master Industries, Inc.	L05872	Liberty	26	07/11/11
San Antonio	Hector R. Villasenor, M.D., P.A. dba Heart Institute of South Texas	L04377	San Antonio	28	07/08/11
Throughout TX	Acosta Engineering Corporation	L06243	San Antonio	02	07/12/11

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, Radiation Material Licensing - Mail Code 2835, P.O. Box 149347, Austin, Texas 78714-9347. For information call (512) 834-6688.

TRD-201102724
Lisa Hernandez
General Counsel
Department of State Health Services
Filed: July 19, 2011

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Texas Department of Housing and Community Affairs

Announcement of Public Hearing

The Texas Department of Housing and Community Affairs (the "Department") announces the public hearing for the proposed repeal 10 TAC Chapter 51, §§51.1 - 51.16 and new 10 TAC Chapter 51, §§51.1 - 51.11, the Housing Trust Fund (HTF) Rule.

The current Housing Trust Fund rules were adopted by TDHCA's Governing Board and became effective June 3, 2010. The proposed new sections remove redundant or unnecessary references to other federal or state statutes and include recommendations for necessary policy and administrative changes to further enhance and streamline operations of Housing Trust Fund programs. The proposed new sections were published in the July 15, 2011, issue of the *Texas Register* (36 TexReg 4522) and are available at: http://www.sos.state.tx.us/texreg/pdf/currview/0715prop.pdf.

The public comment period began on **Friday, July 15, 2011** and ends on **Friday, August 5, 2011.** Written comments may be submitted Texas Department of Housing and Community Affairs, ATTN: Housing Trust Fund Division, HTF Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by email to: tdhcarulecomments@tdhca.state.tx.us or by fax to (512) 475-1162.

The public hearing will be held **Friday, July 29, 2011 at 9:00 a.m.** in Room 1-111 of the Travis Building, located at 1701 North Congress Avenue, Austin, Texas. Parking is available at the Bob Bullock Texas History Museum parking garage on the opposite side of North Congress, a half block north of the Travis Building. The DPS security and information desk at the Travis Building can be contacted at (512) 463-3556.

More information regarding the Texas Housing Trust Fund may be found on the Department's Housing Trust Fund webpage at http://www.tdhca.state.tx.us/htf/index.htm.

TRD-201102728
Timothy K. Irvine
Acting Director
Texas Department of Housing and Community Affairs
Filed: July 19, 2011

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Texas Department of Insurance

Company Licensing

Application for admission to the State of Texas by WESTERN BONDING COMPANY, a foreign fire and/or casualty company. The home office is in Salt Lake City, Utah.

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-201102744
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: July 20, 2011

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Correction of Error

The Texas Department of Insurance (Department) proposed amendments to 28 TAC §§19.1701 - 19.1717, 19.1719 - 19.1721, 19.1723, and 19.1724, concerning Agents' Licensing. The notice was published in the July 8, 2011, issue of the *Texas Register* (36 TexReg 4255). The Department wishes to correct errors contained in the notice.

On page 4273, first column, last paragraph, "Existing §19.1721(d), (e), and (g) - (h) are redesignated as §19.1721(b)(1) - (5),..." should read as follows:

"Existing §19.1721(d), (e), and (g) - (i) are redesignated as §19.1721(b)(1) - (4),..."

On page 4321, in §19.1701(c), the new word "this" is omitted from the text. It should read as follows:

"(c) Purpose. The purpose of this subchapter [~~these rules~~] is to:"

On page 4326, §19.1704(g), the deleted paragraph reference "[~~(1)~~]" is incorrect and should be omitted. It should read as follows:

"(g) Contesting a Denial of an Application or Renewal. If an application...."

On page 4335, in §19.1716(b), the words "Review Agent's Reporting" should be omitted. It should read as follows:

"(b) Summary Report to the Department [~~Utilization review agent's reporting requirements to the department~~]."

On page 4340, in §19.1721(b)(1)(C), the words "contained in" should be omitted. It should read as follows:

"(C) The Form No. LHL009 must [~~notification and information shall~~] be submitted to the department via...."

The Department also proposed the repeal of 28 TAC §§19.1718, 19.1722, 19.2012, 19.2015, 19.2018, and 19.2021, concerning Agents' Licensing, in the July 8, 2011, issue of the *Texas Register* (36 TexReg 4367). The Department wishes to correct errors contained in the statutory authorities of both notices.

On page 4368, first column, third paragraph, under the heading "CROSS REFERENCE TO STATUTE", the words "Subchapter M" should have been omitted.

On page 4368, second column, second paragraph, under the heading "CROSS REFERENCE TO STATUTE", the words "Subchapter M" should have been omitted.

TRD-201102720

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Texas Lottery Commission

Instant Game Number 1336 "Veterans Cash"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1336 is "VETERANS CASH". The play style is "key number match with doubler".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1336 shall be $2.00 per ticket.

1.2 Definitions in Instant Game No. 1336.

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: $2.00, $4.00, $5.00, $10.00, $20.00, $50.00, $100, $1,000, $20,000, 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20 and STAR SYMBOL.

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. 1336 - 1.2D

PLAY SYMBOL	CAPTION
$2.00	TWO$
$4.00	FOUR$
$5.00	FIVE$
$10.00	TEN$
$20.00	TWENTY
$50.00	FIFTY
$100	ONE HUND
$1,000	ONE THOU
$20,000	20 THOU
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
STAR SYMBOL	STAR

E. Serial Number - A unique 14 (fourteen) 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 ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of $2.00, $4.00, $5.00, $10.00 or $20.00.

G. Mid-Tier Prize - A prize of $50.00 or $100.

H. High-Tier Prize - A prize of $1,000 or $20,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1336), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 125 within each pack. The format will be: 1336-0000001-001.

K. Pack - A pack of "VETERANS CASH" Instant Game tickets contains 125 tickets, packed in plastic shrink-wrapping and fanfolded in pages of two (2). One ticket will be folded over to expose a front and back of one ticket on each pack. Please note the books will be in an A, B, C and D configuration.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery

pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "VETERANS CASH" Instant Game No. 1336 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 "VETERANS CASH" Instant Game is determined once the latex on the ticket is scratched off to expose 23 (twenty-three) Play Symbols. If a player matches any of YOUR NUMBERS play symbols to any of the WINNING NUMBERS play symbols, the player wins the prize for that number. If a player reveals an "STAR" play symbol, the player wins DOUBLE the prize for that symbol. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 23 (twenty-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 23 (twenty-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 23 (twenty-three) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 23 (twenty-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. Players can win up to ten (10) times on a ticket in accordance with the approved prize structure.

B. Each ticket will contain three (3) unique "WINNING NUMBERS" play symbols.

C. The "STAR" play symbol will never appear in the "WINNING NUMBERS" play symbol spots.

D. The "STAR" play symbol will only appear as dictated by the prize structure.

E. Non-winning tickets will contain ten (10) different "YOUR NUMBERS" play symbols.

F. On winning tickets, non-winning "YOUR NUMBERS" play symbols will all be different.

G. No ticket will ever contain more than two (2) identical non-winning prize symbols.

H. Non-winning prize symbols will never be the same as the winning prize symbol(s).

I. The top prize symbol will appear on every ticket unless otherwise restricted.

J. No prize amount in a non-winning spot will correspond with the "YOUR NUMBERS" play symbol (i.e., 5 and $5).

2.3 Procedure for Claiming Prizes.

A. To claim a "VETERANS CASH" Instant Game prize of $2.00, $4.00, $5.00, $10.00, $20.00, $50.00 or $100, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $50.00 or $100 ticket. In the event the Texas Lottery Retailer cannot verify the claim,

the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "VETERANS CASH" Instant Game prize of $1,000 or $20,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "VETERANS 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 Texas Lottery is not responsible for tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. a sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "VETERANS 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 "VETERANS 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 rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 8,160,000 tickets in the Instant Game No. 1336. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1336 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$2	783,360	10.42
$4	783,360	10.42
$5	195,840	41.67
$10	97,920	83.33
$20	65,280	125.00
$50	36,040	226.42
$100	3,400	2,400.00
$1,000	102	80,000.00
$20,000	20	408,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.15. 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. 1336 without advance notice, at which point no further tickets in that game may be sold. The determination of the closing date and reasons for closing the game will be made in accordance with the instant game closing procedures and the Instant Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1336, 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-201102721
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: July 19, 2011

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Texas Parks and Wildlife Department

Notice of Proposed Real Estate Transaction

Purchase of Land - Big Bend Ranch State Park, Presidio County

In a meeting on August 25, 2011 the Texas Parks and Wildlife Commission (the Commission) will consider purchasing a private inholding of approximately 520 acres within Big Bend Ranch State Park in Presidio County. At this meeting, the public will have an opportunity to comment on the proposed transaction before the Commission takes action. The meeting will start at 9:00 a.m. at the Texas Parks and Wildlife Department Headquarters, 4200 Smith School Road, Austin, Texas 78744. Prior to the meeting, public comment may be submitted to Ted Hollingsworth, Land Conservation, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744 or by email at ted.hollingsworth@tpwd.state.tx.us or through the TPWD website at tpwd.state.tx.us.

TRD-201102717
Todd George
Staff Attorney
Texas Parks and Wildlife Department
Filed: July 19, 2011

♦ ♦ ♦

Texas Public Finance Authority

Request for Proposals

Pursuant to Texas Government Code, Chapter 2254, Subchapter B, the Texas Public Finance Authority announces its Request for Proposals #2012-347-0002 to obtain executive search services to assist the Board of Directors in selecting an Executive Director. A copy of the RFP is available on the Authority's website, at www.tpfa.state.tx.us/RFPs and on the Electronic State Business Daily at: http://esbd.cpa.state.tx.us. Interested firms and individuals may also contact the agency directly by email at: paula.hatfield@tpfa.state.tx.us.

The Board will base its selection on the best value to the State considering a combination of the Respondent's demonstrated competence, knowledge, and qualifications and the reasonableness of its proposed fee.

Proposals must be submitted by 5:00 p.m. (CT), August 1, 2011, pursuant to the requirements stated in the Request for Proposals.

TRD-201102681
Susan K. Durso
Interim Executive Director and General Counsel
Texas Public Finance Authority
Filed: July 15, 2011

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Public Utility Commission of Texas

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

The Public Utility Commission of Texas received an application on July 12, 2011, to amend a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Nortex Communications to Amend its State-Issued Certificate of Franchise Authority to include the City of Lindsay, Texas, Project Number 39584.

The requested amendment is to expand the service area footprint to include the municipality of Lindsay, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll free) (800) 735-2989. All inquiries should reference Project Number 39584.

TRD-201102687
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 15, 2011

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

The Public Utility Commission of Texas received an application on July 18, 2011, to amend a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Marcus Cable Associates, L.L.C. d/b/a Charter Communications for an Amendment to a State-Issued Certificate of Franchise Authority to Add the City of Roanoke, Texas; Project Number 39611.

The requested amendment is to expand the service area footprint to include the municipality of Roanoke, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll free) (800) 735-2989. All inquiries should reference Project Number 39611.

TRD-201102726
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 19, 2011

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Notice of Application for Waiver from Requirements in Automatic Dial Announcing Devices (ADAD) Application Form

Notice is given to the public of an application filed on July 15, 2011, with the Public Utility Commission of Texas (commission) for waiver from the requirements in the commission prescribed application for a permit to operate automatic dial announcing devices.

Docket Style and Number: Request of Entergy Texas, Inc. for an Exception to the Federal Registration Number Requirement, Docket Number 39607.

The Application: Entergy Texas, Inc. (ETI) filed a request for a waiver of the registration number requirement in the Public Utility Commission of Texas prescribed application for a permit to operate automatic dial announcing devices (ADAD). Specifically, the application requires the Federal Registration Number (FRN) issued to the ADAD manufacturer or programmer either by the Federal Communications Commission (FCC) or Administrative Council Terminal Attachments (ACTA).

ETI uses a hosted services solution provided by Voxeo. ETI represented that Voxeo does not currently hold an FRN registration number. Furthermore, Voxeo believes that its system does not require registration because there is no equipment within the Voxeo system that connects to the public switched telephone network in a manner covered by the applicable regulations.

Persons wishing to comment on the action sought or intervene 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 use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 39607.

TRD-201102725
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 19, 2011

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Public Notice of Cancellation of Open Meeting/Workshop Concerning Project to Evaluate the Direct Assignment of Costs for Wholesale Classes in the Oncor Service Area

The Public Utility Commission of Texas (commission) is cancelling the workshop regarding the project to evaluate the direct assignment of costs for wholesale classes in the Oncor service area that is currently scheduled for Wednesday, August 3, 2011, from 9:00 a.m. to 4:00 p.m. in the Commissioners' Hearing Room, located on the 7th floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. Project No. 38808, *Project to Evaluate the Direct Assignment of Costs for Wholesale Classes in the Oncor Service Area*, has been established for this proceeding.

In addition, the commission has cancelled the July 20, 2011 deadline for interested parties to file responses to questions that have been previously posted regarding this project.

The commission will establish new deadlines for both the workshop and written responses to questions at a future time.

Questions concerning the workshop or this notice should be referred to Richard Lain, Director of Tariff and Rate Analysis, Rate Regulation Division, at (512) 936-7454. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-201102686

Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 15, 2011

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Texas Department of Transportation

Aviation Division - Request for Proposal for Professional Engineering Services

The City of Dallas, through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional engineering firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive proposals for professional aviation engineering design services described below:

Airport Sponsor: City of Dallas. TxDOT CSJ No. 1118DALLA. Scope: Provide engineering/design services to conduct airfield pavement evaluation, including dynamic deflection testing.

The DBE goal is set at 10%. TxDOT Project Manager is Clayton Bridwell.

To assist in your proposal preparation the criteria, 5010 drawing, project diagram, and most recent airport layout plan are available online at www.txdot.gov/avn/avninfo/notice/consult/index.htm by selecting "Dallas Executive Airport."

Interested firms shall utilize the latest version of Form AVN-550, titled "Aviation Engineering Services Proposal." The form may be requested from TxDOT Aviation Division, 125 East 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT website at http://www.txdot.gov/business/projects/aviation.htm. The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page. A prime provider may only submit one proposal. If a prime provider submits more than one proposal, that provider will be disqualified. Proposals shall be stapled but not bound in any other fashion. PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

ATTENTION: To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT website as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is a PDF Template.

Please note:

Five completed, unfolded copies of Form AVN-550 **must be received** by TxDOT Aviation Division at 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704 no later than August 30, 2011, 4:00 p.m. Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Edie Stimach.

The consultant selection committee will be composed of Aviation Division staff members and one local government member. The final selection by the committee will generally be made following the completion of review of proposals. The committee will review all proposals and rate and rank each. The criteria for evaluation of engineering proposals can be found at http://www.txdot.gov/business/projects/aviation.htm. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

If there are any procedural questions, please contact Edie Stimach, Grant Manager at 1-800-68-PILOT at extension 4518. For technical questions, please contact Clayton Bridwell, at 1-800-68-PILOT at extension 4531.

TRD-201102745
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: July 20, 2011

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Public Notice - Disadvantaged Business Enterprise Goals, Fiscal Year 2012

In accordance with Title 49, Code of Federal Regulations, Part 26, recipients of federal-aid funds authorized by the Transportation Equity Act for the 21st Century (TEA 21) are required to establish Disadvantaged Business Enterprise (DBE) programs. Section 26.45 requires the recipients of federal funds, including the Texas Department of Transportation (department), to set overall goals for DBE participation in U. S. Department of Transportation assisted contracts. As part of this goal-setting process, the department is publishing this notice to inform the public of the proposed overall goals, and to provide instructions on how to obtain copies of documents explaining the rationale for each goal.

The proposed Fiscal Year 2012 DBE goal is 11.7% for highway construction and design. The proposed goal and goal-setting methodology is available for inspection between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, for 30 days following the date of this notice. The information may be viewed in the office of the Texas Department of Transportation, Office of Civil Rights, 200 E. Riverside Drive, Austin, Texas 78704.

The department will accept comments on the DBE goal until 5:00 p.m. on September 13, 2011. Comments can be sent to Eli Lopez, Office of Civil Rights, 125 East 11th St., Austin, Texas 78701; (512) 486-5511; Fax: (512) 486-5509; email: eli.lopez@txdot.gov.

TRD-201102751
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: July 20, 2011

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Texas State University System

Request for Proposal

INTRODUCTION

The purpose of this RFP is to solicit proposals to provide the Texas State University System (TSUS) with an estimated budget and a work plan to create a brand and marketing strategy that will strengthen the university system's position as a higher education leader in Texas.

TSUS is the oldest and third-largest university system in Texas, comprising eight institutions serving more than 75,000 students. Its mission is to provide a high-quality education that is affordable and accessible in order to enrich the lives of all potential students and enable them to become productive and contributing members of society.

TSUS is unique in that it is Texas' only horizontally-structured university system. TSUS does not have a flagship institution, and, unlike other university systems in Texas, each component institution has a unique brand that reflects its location, distinct culture, and history.

TSUS component institutions operate 12 campuses stretching from West Texas to the Louisiana border:

Lamar University (Beaumont)

Sam Houston State University (Huntsville)

Sam Houston State University (The Woodlands)

Sul Ross State University (Alpine)

Sul Ross State University Rio Grande College (Del Rio, Eagle Pass, and Uvalde)

Texas State University-San Marcos

Texas State University-San Marcos (Round Rock Higher Education Center)

Lamar Institute of Technology (Beaumont)

Lamar State College-Orange

Lamar State College-Port Arthur

SPECIFICATIONS AND REQUIREMENTS

For purposes of this RFP, the party to whom the RFP is addressed shall be referred to as "Supplier" and any materials submitted in response to the RFP shall be referred to as the Supplier's "Proposal."

The Supplier will develop brand concepts that will enhance public awareness of the university system and its component institutions. The Supplier will identify key audiences and create a marketing plan that will communicate TSUS's strengths to these audiences. The marketing plan will promote a System brand that is strong and unifying, but also highlights the diversity of the eight component institutions.

The Supplier will work with the TSUS Branding Committee through every phase in the development of marketing and communications material, including:

Clearly defining goals and objectives of the program

Audience identification and analysis

Creative design

Materials and strategy refinement

Production

TSUS requires the Supplier to provide the following services and products. It is TSUS's expectation that all of the items described below will be provided within the project budget.

Conduct public opinion research and/or focus groups to identify branding themes and key messages for a marketing campaign.

Design, test, and refine a logo and tagline that establish a strong TSUS brand.

Design, test, refine, and produce marketing and communications materials that include, but are not limited to:

A promotional brochure

Fact sheets

A media kit

An annual report or informational booklet

Create artwork that compliments the branding effort, which could be used in publications, on the website, and other media.

Enhance the TSUS website by incorporating the System brand and key messages of the marketing program. The current System website is designed and hosted by Texas State University-San Marcos using the Magnolia content management system. Website enhancements shall conform to Magnolia CMS requirements and comply with the State of Texas' website policies and standards.

Develop and execute a social networking strategy and enhance the System's Facebook, Twitter, and YouTube pages by incorporating the System brand and the key messages of the marketing program.

Develop a 12-month paid media strategy, including advertisement design and placement. The paid media campaign shall highlight the diversity of component institutions and increase awareness of the TSUS brand.

Develop an earned media strategy to enhance public awareness of the System and component institutions.

Develop strategies to enhance TSUS brand awareness on the campuses of the component institutions through signage, websites, and promotional materials. This strategy shall create a strong linkage between the component institutions and the Texas State University System.

PRELIMINARY RESEARCH

In January 2011, Public Strategies, Inc., conducted a survey of TSUS Regents, System Office employees, institution presidents, Branding Committee members, and Student Advisory Board members. Respondents were asked to share their opinions about the advantages and disadvantages of a System branding initiative, internal and external perceptions of the System, key audiences and messengers, and unique or positive attributes of the System and component institutions. Additionally, the System Office and component institutions developed "Points of Pride" highlighting each institution's successes and programs of excellence. These survey results and "Points of Pride" will be provided to contract awardee to help inform the branding and marketing program.

SCHEDULE AND SELECTION PROCESS

The following schedule and due dates may be modified at the discretion of the TSUS at any time. The Supplier will be notified of changes to this schedule. All times are in Central Daylight Saving Time.

July 29, 2011: RFP Issues to Suppliers

July 29 - Aug. 12, 2011: Pre-Proposal Questions/Answers

August 12, 2011: RFP Response Due by 4:00 p.m. CDT

Aug. 23 - 25, 2011: Finalist Interviews

Aug. 29, 2011: Contract Award Announced

Aug. 31, 2011: Statement of Work Negotiated

Proposals will be evaluated based on a wide range of criteria, including but not limited to: Creativity and originality of the Proposal; development of branding concepts and strategies that meet TSUS's objectives; the Supplier's previous branding and marketing experience in Texas, higher education, or government; and the Supplier's proximity to Austin, Texas.

A single point of contact has been established for all pre-proposal questions and follow-up relating to this RFP. You should direct all questions to Mike Wintemute at mike.wintemute@tsus.edu.

One printed and one electronic copy of your proposal must be returned by 4:00 p.m. CDT on August 12, 2011. All correspondence should be addressed to:

Mike Wintemute

Director of Governmental Relations and Communications

The Texas State University System

208 E. Tenth Street, Suite 600

Austin, Texas 78701

TRD-201102746
Brian McCall
Chancellor
Texas State University System
Filed: July 20, 2011

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Upper Rio Grande Workforce Development Board

Request for Proposals

The Upper Rio Grande Workforce Development Board has released a Request for Proposals (RFP) to solicit bids from qualified and certified Insurance Brokers to provide broker services for the Board staff.

The authorized Workforce Board contact person for this procurement is Guillermo Morales II, Regulatory Administrator, Upper Rio Grande Workforce Development Board, 221 N. Kansas St., Suite 1000, El Paso, Texas 79901, Telephone: (915) 772-2002, Ext. 239, Fax: (915) 351-2790 or via e-mail at guillermo.morales@urgjobs.org.

Packets may be picked up in person or requested in writing. The RFP will also be available on the Workforce Board website at www.urgjobs.org under the Procurements section.

A respondents' conference is not scheduled for this procurement. The Workforce Board shall accept written, e-mailed, and faxed questions prior to, during, and up to the deadline for questions. Questions will not be accepted after 1:00 p.m. MST, August 1, 2011. Respondents are encouraged to check the Workforce Board's website daily for any changes to the RFP or any additional information pertinent to the RFP. Should you encounter problems accessing the Workforce Board's website, contact the Procurement and Contracts Manager immediately for assistance. Questions should be addressed to:

Workforce Solutions Upper Rio Grande

ATTN: Guillermo Morales II, Regulatory Administrator

221 N. Kansas, Suite 1000

El Paso, Texas 79901

Phone: (915) 772-2002, ext. 239

Fax: (915) 351-2790

E-mail: guillermo.morales@urgjobs.org

The Workforce Board representative must physically receive responses to this RFP no later than 5:00 p.m. MST, August 16, 2011. Any response submitted after this time will not be accepted under this RFP.

Any reasonable delivery method, except facsimile or e-mail, may be used. Use of a traceable delivery method, such as certified mail-return receipt requested, guaranteed express service, or hand delivery is recommended. Submissions postmarked prior to the due date of August 16, 2011 but received after the due date of August 16, 2011 will not be considered.

TRD-201102691
Guillermo Morales
Regulatory Administrator
Upper Rio Grande Workforce Development Board
Filed: July 18, 2011

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Request for Proposals

The Upper Rio Grande Workforce Development Board has released an RFP for Management and Operation of Workforce Solutions Upper Rio Grande Career Centers.

The authorized Workforce Board contact person for this procurement is Guillermo Morales II, Regulatory Administrator, Upper Rio Grande Workforce Development Board, 221 N. Kansas St., Suite 1000, El Paso, Texas 79901, Telephone: (915) 772-2002, Ext. 239, Fax: (915) 351-2790 or via e-mail at guillermo.morales@urgjobs.org.

Packets may be picked up in person or requested in writing. The RFP will also be available on the Workforce Board website at www.urgjobs.org under the Procurements section.

Written questions will be accepted before 1:00 p.m. MST on August 12, 2011. Answers to questions will be posted on an ongoing basis, within three (3) business days after receipt of the question, to the Workforce Board website located at www.urgjobs.org. Therefore, respondents are encouraged to view the website frequently to ensure they are fully aware of the most current information. All answers issued in response to respondent questions become part of the RFP and the RFP process.

The respondents' conference will take place August 5, 2011 at 10:30 a.m. MST at the Workforce Board offices located at 221 N. Kansas Street, Suite 1000, El Paso, Texas 79901. Although attendance at the respondents' conference is not mandated, it is strongly encouraged. Therefore, each respondent should have a representative attend. The purpose of the conference is to brief interested parties on the objectives of the RFP, the proposal format and to answer any questions concerning the RFP process. Subsequent to the conference, all potential respondents shall receive a copy of all clarifying information given at the conference, as well as any addenda to the RFP that have been identified.

A Notice of Intent to Submit a Proposal is recommended to all organizations/individuals planning to submit a proposal under the provisions of this RFP. This is a preferred step in the process and will be used to create the list of potential respondents. The Workforce Board will not be responsible for the communication of any activities that affect the RFP to organizations/individuals that do not submit a Notice of Intent to Submit a Proposal. Submitting a Notice of Intent does not commit the respondent to submit a proposal. Notices of Intent to Submit a Proposal are due no later than 5:00 p.m. MST on August 12, 2011.

The Procurement and Contracts Management staff (or Workforce Board representative) must physically receive responses to this RFP no later than 5:00 p.m. MST, August 31, 2011. Responses submitted after this time will not be accepted under this RFP.

Any reasonable delivery method may be used. Use of a traceable delivery method, such as certified mail-return receipt requested, guaranteed express service, or hand delivery is recommended. Submissions post marked prior to the due date of August 31, 2011 but received after the due date of August 31, 2011 will not be considered. No facsimile or e-mail may be used.

TRD-201102692

Guillermo Morales
Regulatory Administrator
Upper Rio Grande Workforce Development Board
Filed: July 18, 2011

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Texas Veterans Commission

Request for Applications Concerning the Texas Veterans Commission Fund for Veterans' Assistance Grant Program

Filing Authority. The availability of grant funds is authorized by Texas Government Code, §434.017.

Eligible Applicants. The Texas Veterans Commission (TVC) is requesting applications from organizations eligible to apply for grant funding. Eligible applicants are units of local government, IRS Code §501(c)(19) Posts or Organizations of Past or Present Members of the Armed Forces, IRS Code §501(c)(3) private nonprofit corporations authorized to conduct business in Texas, Texas chapters of IRS Code §501(c)(4) veterans service organizations, and nonprofit organizations authorized to do business in Texas with experience providing services to veterans.

Description. The purpose of this solicitation is to receive applications proposing projects that meet the needs of veterans and their families. These needs include, but are not limited to: emergency financial assistance; transportation services; family and/or individual counseling for Post-Traumatic Stress Disorder (PTSD) and Traumatic Brain Injury (TBI); employment, training/job placement assistance; housing assistance for homeless veterans; family and child services; non-criminal legal services; development of professional services networks; and enhancement or improvement of veterans' assistance programs, including veterans' representation and counseling. Grant funds must be used to supplement, not supplant, existing funds and/or services.

Dates of Project. The projected start date for these grants is January 1, 2012, or the date that the grant agreement is executed, whichever is later, with an ending date of December 31, 2012. TVC will require periodic performance and expenditure reports.

Project Amount. For this solicitation, the minimum grant award will be $10,000. The maximum grant award will be $1,000,000. This project is funded 100% from state funds.

Selection Criteria. Applications will be selected based on the ability of each applicant to carry out all requirements contained in the solicitation. Reviewers from the TVC Fund for Veterans' Assistance Advisory Committee will evaluate applications and make award recommendations to the Commission based on the overall quality of the proposed project and the extent to which the project addresses the needs of veterans and their families. Applications must address all requirements of the application to be considered for funding.

TVC is not obligated to approve an application, provide funds, or endorse any application submitted in response to this solicitation. This solicitation does not commit TVC to pay any costs before an application is approved and a grant agreement is signed. This issuance does not obligate TVC to award a grant or pay any costs incurred in preparing a response.

Requesting the Materials Needed to Complete an Application. All information needed to respond to this solicitation will be posted to the TVC website at *http://www.tvc.state.tx.us* on or about July 29, 2011.

Further Information. In order to assure that no prospective applicant may obtain a competitive advantage because of acquisition of information unknown to other prospective applicants, any and all questions must be submitted via email to *grants@tvc.state.tx.us.* All questions and the written answers will be posted on the TVC website in the format of Frequently Asked Questions (FAQs).

Deadline for Receipt of an Application. Applications must be received by TVC no later than 5:00 p.m. (Central Time), August 26, 2011, to be considered eligible for funding.

TRD-201102749
Bill Wilson
Director, Fund for Veterans' Assistance
Texas Veterans Commission
Filed: July 20, 2011

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How to Use the Texas Register

Information Available: The 14 sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

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 36 (2011) is cited as follows: 36 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 "36 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 36 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 at: 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 information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The ***Texas Administrative Code (TAC***) is the compilation of all final state agency rules published in the ***Texas Register***. Following its effective date, a rule is entered into the ***Texas Administrative Code***. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the ***TAC***.

The ***TAC*** volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at http://www.sos.state.tx.us/tac.

The following companies also provide complete copies of the TAC: Lexis-Nexis (800-356-6548), and West Publishing Company (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 ***Index of Rules***. The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register***. If a rule has changed during the time period covered by the table, the rule's ***TAC*** number will be printed with the ***Texas Register*** page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

TITLE 1. ADMINISTRATION
Part 4. Office of the Secretary of State
Chapter 91. Texas Register
40 TAC §3.704.....950 *(P)*